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PRIVATE WELFARE AND PENSION PLAN STUDY, 1971

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

EXAMINATION OF PRIVATE WELFARE AND PENSION PLANS
(PURSUANT TO S. RES. 35, SECTION 4)

JULY 27, 28, AND 29, 1971

PART 1

Printed for the use of the Committee on Labor and Public Welfare

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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U.S. GOVERNMENT PRINTING OFFICE
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PRIVATE WELFARE AND PENSION PLAN STUDY, 1971

TUESDAY, JULY 27, 1971

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

The subcommittee met at 10 a.m., in room 4332, New Senate Office Building, Senator Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams (presiding), Randolph, Javits, and Taft.

Subcommittee staff members present: Mario T. Noto, special counsel; and Michael Gordon, minority counsel.

The CHAIRMAN. The Senate Labor Subcommittee hearings on pension plans will now officially begin.

These hearings beginning today by the Senate Subcommittee on Labor deal with the problems and hardships workers experience in private pension plans in our country. On March 1 of this year, the U.S. Senate by Senate Resolution 35 continued a prior mandate to this subcommittee to conduct a general study of welfare and pension plans with special emphasis on the need for protection of covered employees.

Congress has a growing and deep concern for the workers who, having been led to believe that they would receive retirement benefits upon completion of their working lives, learn with sorrow that for some reason beyond their control, they are not going to receive any pension.

The Subcommittee on Labor has the duty to determine whether private pension plans do, in fact, fulfill the promise to workers who must depend upon pensions in order to meet the financial obligations necessary to help them maintain a decent living upon retirement. Congress has the obligation to assure workers that pension plans do furnish them with meaningful benefits and that pensions are not just promises resulting in cruel delusions at a late stage in life.

Our first hearing today is to hear testimony from workers who because of inadequate or inequitable plans failed to receive retirement pensions which, in good conscience, they believed they were entitled to.

Private pension plans must be financially sound and fair, and, most importantly, be real, and not as the New York Times editorially stated on April 17, 1971, "* * * a phantom for millions of workers who now never collect them." Congress needs to learn the problems of private pensions in order to respond properly to the need for corrective or remedial legislation. Constructive inquiry and effective dialog among the Congress, individual workers, employers, unions, industry, and others affected will assist us in determining the extent of need for legislative action.

Our subcommittee study, in fulfillment of its mandate, will be comprehensive, methodical, and analytical. We shall ascertain the views of Government agencies which exercise regulatory control over pension plans and inquire into the extent and effectiveness of the administration and operation of plans by employers, trustees, and unions. We shall hear from these as the subcommittee attempts to cover the spectrum of problems intrinsic to pension plans, such as vesting, funding, portability, reinsurance, and fiduciary controls.

At this point in the subcommittee inquiry, it is apparent that many private pension plans are properly administered and effective in accomplishing their purpose. However, many others, as a result of unsound or inequitable provisions, are inflicting hardships upon workers who have no recourse for remedy. The complaints coming to the subcommittee indicate that many welfare and pension funds are not serving their purposes because of four major problems:

First, failure of pension funds to provide necessary minimum and adequate vesting provisions.

Second, premature termination of pension plans without adequate insurance coverage to protect the employees.

Third is the failure of pension plans to have sufficient and sound funding to meet accrued and vested liabilities.

Fourth, ineffective fiduciary requirements which threaten the safety and preservation of fund assets.

These shortcomings make it essential for us to inquire into the adequacy of vesting standards to be prescribed in plans, whether asset funding is sufficient or requires increase, whether plans should be reinsured, whether there is need to institute portability arrangements, and whether there is need for further and additional protective and regulatory control over fiduciaries.

Subcommittee inquiry has established by overwhelming evidence that there exists inadequate and in cases even total failure of communication of pension benefits and causes for their denial to worker participants. The attempted explanations by employers, administrators, or trustees are too legalistic, too complicated for the average worker to fully comprehend. To remedy this, on July 19, 1971, I wrote to the Secretary of Labor advising him of our finding and of my support of a petition filed by Ralph Nader which seeks to bring reform in this area of communication. And I shall place a copy of that letter into the record at this point.

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

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
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ROBERT E. NAGLE, GENERAL COUNSEL

United States Senate
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

July 19, 1971

Honorable James D. Hodgson
Secretary
Department of Labor
Washington, D.C.

Dear Mr. Secretary:

As you know, the Senate Labor Subcommittee is currently conducting a comprehensive study of private pension plans in the United States, with special emphasis upon the need for protection of employees covered. This study is pursuant to Senate Resolution 35, of the current Congress.

In the course of its study, the Subcommittee has learned of various hardships and inequities sustained by employee participants in pension plans and funds which result in their failure to realize the retirement benefits they had been led to believe they would receive. Among the causes for the resulting hardships, there is one which manifests itself in many cases studied by the Subcommittee. This is the total failure of or inadequacy of communication of plan provisions to worker participants resulting in a lack of knowledge or misunderstanding of the provisions of the pension plan and such benefits to which an employee would be entitled to or disqualified from.

The inadequate communications to worker participants of the provisions of retirement plans in many instances is attributable to the complicated and otherwise legalistic language in the plan which is difficult, if not impossible of comprehension, by an average employee. In many instances, plan provisions are communicated in easily understandable terms to an employee too late, and as a result of plan

provisions, he is irrevocably precluded from qualifying for benefits which he had been led to believe he was entitled to. The areas in which understandable communication seems to be lacking or insufficient for comprehension purposes applies to the vesting, portability, and funding provisions.

As you know, on July 14, 1971, Mr. Ralph Nader, Washington, D.C., filed a petition with your Department, wherein he requests promulgation of rules and regulations pursuant to the Welfare and Pension Plan Disclosure Act, as amended, 29 USC 301, which in substance would require administrators of pension plans to furnish advice to plan participants of details concerning their eligibility or lack thereof to receive benefits. The results to date of the inquiry conducted by our Subcommittee, as I have indicated herein, adequately sustain the petition in question and support the issuance of appropriately revised regulations to accomplish the objective.

I would appreciate it if in your consideration of the petition filed, you would consult with the Subcommittee in order that your Department may receive the pertinent results of the Subcommittee's inquiry on the issues involved. These should prove of assistance in your consideration of a much needed remedy to the problem that pension plan participants do not receive sufficient and comprehensible information concerning their rights under pension plans filed with the Office of Labor Management and Welfare-Pension Reports of your Department.

Sincerely,

HARRISON A. WILLIAMS, JR.
CHAIRMAN

The rapid growth of private pension plans in the United States has been phenomenal. Only 20 years ago, private pension plans covered fewer than 10 million workers. Their total reserves were $12.1 billion. Today, an estimated 30 million workers in our country are covered under a variety of individually tailored private pension plans. With their total assets exceeding $130 billion, pension assets have thus become tremendous sources of financial power. These assets have an annual growth rate which forecasts that pension funds will increase to $215 billion by 1980, and the number of persons covered will increase to 42 million workers at that time.

One of the first steps undertaken by the subcommittee in its study was a survey of the operations of 1,500 private pension plans of the more than 34,000 such plans registered with the U.S. Department of Labor, under the provisions of the 1959 Welfare and Pension Plans Disclosure Act. This plan study was designed to establish an independent data base from which information could be developed. This was necessary because there is no one Federal agency in the Government responsible for acquiring the necessary data, nor is there any with overall responsibility for overseeing the operations and administration of private pension plans. This plan survey provides the subcommittee with the opportunity for an in-depth study.

On March 31, 1971, together with Senator Jacob K. Javits, I released a preliminary staff analysis of 87 of these private pension plans. In short, the analysis covered $16 billion in pension assets and 9.8 million workers, who had participated in pension plans since 1950. It further established that of 6.9 million workers who had been covered in 51 plans and had 11 years or more of service, only 4 percent of them or 253,118 workers received any kind of early or deferred vested retirement. Of the other 2.9 million workers who participated in 36 plans with 10 years or less of service during the same year, only 8 percent received benefits. While, as we stated at the time the analysis was released, these statistics were to be viewed from an historical perspective, it is apparent that they manifest problems, shortcomings, and resulting hardships upon workers. This analysis was placed in the Congressional Record on April 5, 1971, and I believe it appropriate to make it a part of the record of this hearing.

(The material referred to may be found in appendix A.)

I think it is also appropriate for me to announce at this time that within the next several weeks, the subcommittee shall release to the public further results from the continuing analysis by the staff of the 1,500 pension plans. At that time the subcommittee analysis will reflect to what extent private pension plans in this country are providing for death and survivorship benefits and even more importantly, the average monthly annuity which retired persons in this country are receiving for their retirement years.

Public response to our subcommittee study has been overwhelming. We have received thousands of letters from every part of the country depicting individual and group hardships which have befallen aged workers and pensioners in the American labor market. In many instances, the letters bring to the surface accounts of suffering and illusory promises which cannot be remedied under current legislation.

While investigations and studies, both private and public, tend to explain, criticize or justify pension plan inadequacies, the public seldom hears the problem from those who are most affected—the

workers themselves. While labor, management, and government, as well as insurance, banking and related groups have a genuine interest in this area, the witness with no public voice is the worker himself. It is time for the Congress to hear from the workers of the variety of problems which beset them as participants in private pension plans. These are people who have communicated with the subcommittee and have volunteered to offer their problems in a public forum. While employers, and administrators of plans were apprised of the claimed hardship of each witness who will appear, and offered opportunity to testify with respect to these workers, few accepted. It is not the purpose of this hearing to harass or indict employers, trustees, or administrators of pension plans. Accordingly, no attempt has been made to compel their testimony. It is anticipated the record will most probably speak for itself.

It is inevitable that there will be critics who will characterize these hearings and the unfortunate witnesses as "horror stories" or "sympathy cases." These are critics who find no fault with our private pensions and who continue to assure us that time will cure the defects. If what comes from the personal accounts and misfortunes of these witnesses is sorrow, then let us not only be compassionate, but also resolve to find the ways to better the lives of those who have yet to retire.

Before beginning with our first witness, I would like to place into the record a compilation of 22 letters selected at random from the many received by the subcommittee from individuals. These reflect a variety of specific problem areas of private pension plans and describe, in the words of the workers themselves, the types of hardships sustained which certainly warrant and demand the attention of Congress. Without objection, I will place those in the record at this point and turn to Senator Javits who has legislation before this committee. His commitment to improving the whole scene dealing with private pensions in this country is well known.

(The letters referred to follows:)

LETTERS TO SENATOR WILLIAMS FROM INDIVIDUALS REFLECTING PROBLEM AREAS OF PRIVATE PENSION PLANS

SAN PEDRO, CALIF., *January 29, 1971.*

DEAR SENATOR WILLIAMS: It is reported in the newspapers that your committee is going to investigate pension plans of various private corporations with an eye toward making them more responsive to the needs of retirees. . . . I have over twenty years services in the _____ Co. for which I will realize not one penny. I had to quit and get another job 15 years ago to support my growing family as the wages of the ——— Company were getting worse each year. During the time that I did work for the ——— Company I complained about the poor remuneration and was always told, "but look at the good pension you have to look forward to * * *

CREVE COEUR, MO., *March 9, 1971.*

DEAR SENATOR WILLIAMS: We read in the *St. Louis Globe-Democrat* that your committee is investigating pension funds that never pay out benefits to many or most of their members. We think it very commendable that you are looking into this matter.

The _____ Union indeed has a pension plan, and we all must pay into it. It is held up as one of the earliest. But none of us can draw any benefits until he has been a member for twenty-five long years. A member who has paid in for twenty-four years can receive nothing.

We have a member in our local, a woman, who is sixty-one, and has paid in twenty years. Her husband is older and has been retired for several years already. She would like to retire and spend some well-earned leisure time with him at their retirement home in another State. But she must continue working and paying in another five years to get anything at all * * *

STATEN ISLAND, N.Y., *March 12, 1971.*

DEAR SENATOR WILLIAMS: * * * My husband and I have been working diligently for years in order to send our son and daughter to college and to build up a pension fund which would take care of us in our sunset years. My husband worked 22½ years for a company when they merged with another, and then began with another company and worked there over 13 years when they moved out West, causing an involuntary termination and loss of benefits for the second time.

Meanwhile I worked for a company 14½ years when my company moved out of the country, resulting in an involuntary termination for me and loss of pension benefits. These were all large companies that well could have afforded doing something beneficial for their employees. Adding up all these years totals a loss of 50 years of pension benefits through no fault of ours * * *

STERLING HEIGHTS, MICH., *March 24, 1971.*

DEAR SENATOR WILLIAMS: * * * My husband has been employed at ——— Company for the past 30 years. In January of this year the company posted a notice saying they would close the plant and were moving the outfit to North Carolina. So, then comes the big question. What happens to the pension fund and the monies that the men have been depending on for their old age? The ——— which is the union my husband belongs to, has at present a suit pending against ——— Company, but at the present time, we don't know any more now than we did when the closing notice was posted.

My husband is now 49 years old and we have three children left at home, 17, 14, and 11 years old. It takes every nickel we can scrape together to clothe and feed them and sure does not leave anything left to put away for our old age.

For many years my husband stayed on at ——— Co. under the delusion that we would be all set when he retired and would not have to ask for help from children, state or Federal government. Now it looks like all we have left are our delusions. At the present time it looks like the only persons who will get anything out of this pension fund are men who are already 65 or will retire immediately at 62 before the plant moves. What is going to happen to the millions in the fund, only God knows, but I'll tell you, it seems a rotten way to run a government * * *

WILMINGTON, DEL., *March 24, 1971.*

DEAR SENATOR WILLIAMS: I would like to say something about these pension plans for the workers of the country. I am in the ——— Union in Wilmington, Delaware; I have 23 years involved in the pension plan, but if I lose my job I am out in the cold. I have no vested rights in the pension. I think a federal law should be passed that after so many years, you are guaranteed a pension. Our pension plan is so full of loopholes. They don't want you to collect. There is no control over what the trustees of the plan do * * *

FOREST HILLS, N.Y., *March 26, 1971.*

DEAR SENATOR WILLIAMS: * * *I offer my own case as a personal example of the gross inadequacies of most company pension plans. Twenty-two years ago I graduated from high school and started working. The three jobs I have had during that time have all ended the same way * * * The company, due to merger or other management decision, relocated to another part of the country. In each case I was not with the firm long enough to have acquired any vested rights, which means that now after twenty-two years of working to support myself I am no nearer to a pension than when I left school.

Please note that I am not referring to employees who flit from job to job * * * I refer to companies who move out from under their employees * * *

LANCASTER, PA., *March 28, 1971.*

DEAR SENATOR WILLIAMS: I want to congratulate you on your investigation of pension plans * * * I spent 16 years in the employment of ———. As business is depressed, there has been a lay-off.

This past Monday morning I was informed that I was being laid off March 31, 1971. The pension plan here, only the company contributes to, so when the

employee leaves he has nothing coming except his severance pay. And since no pension fund follows to a new place of employment, at my 57 years of age, my chances are slim of retirement at 62 as I had planned * * *

MIAMI, FLA., *March 31, 1971.*

DEAR SENATOR WILLIAMS: I was very much impressed with an article . . . "Retiring to Despair: Pensions as Elusive as a Pot of Gold".

This is certainly true in my case. I have worked in the same industry, the same building and the same office since 1941. In 1958 our company was purchased by another and I selected to stay with the new company because I thought their policies were so high and their reputation so great; nothing was said about my pension being lost at the time of take-over. Then in October 1961 this company was forced to sell to another company. Again, I lost my pension rights. We were taken on with all seniority rights except the pension. I was told later on that I would have to work one year of eligibility and then ten years in order to be entitled to a pension. I will be 66 years old at that time. Working longer does not concern me but losing a decent pension does. I have a small home left to me by my parents when they died and I have tried hard to maintain it so that I could really enjoy my garden, etc., for a year or so at least before I would have to sell it * * *

WHARTON, N.J., *March 31, 1971.*

DEAR SENATOR WILLIAMS: * * * I want to wish you the best of luck in this investigation as this is important to most elderly persons. My father, too, lost his pension rights after a long period of employment.

He worked well over 25 years for ——— Company and he suffered a heart attack right before his retirement. They would not let him continue working and he lost his pension rights. This depressed him terribly at that trying time. I feel that it contributed toward his death.

I do not want to see other elderly persons suffer as my father did.

Birmingham, Ala., April 2, 1971.

DEAR SENATOR WILLIAMS: * * * I was employed by the ——— Company for 18 years at the Bessemer, Alabama facility. During this period the company collected approximately 13½ cents for hour of "straight" time worked * * * as a contribution to his pension.

In March of this year I retired—my pension is $45.55 per month. I find it extremely difficult to imagine that with my contribution, the pension could amount to so little.

Also, you may be interested in noting that the contribution rate was increased over the years in lieu of direct in-pocket raise * * *

CLAREMONT, CALIF., *April 2, 1971.*

DEAR SENATOR WILLIAMS: * * * My father was employed by ——— for more than 40 years. He died just six months before retirement. The result was that his pension, which would have gone to his widow, my mother, who is a victim of multiple sclerosis, was taken away. My mother is left with only my father's own contribution to the pension fund, which is, of course, far from adequate.

I have asked the company to restore my father's pension for I believe firmly that 40 years of service warrants something better than a widow on public welfare. But whether or not this request is granted—and I have some hope that it will be—the problem is a general one.

WEST ALLIS, WIS., *April 2, 1971.*

DEAR SENATOR WILLIAMS: I read in the Milwaukee Journal that you were making a study of pension plans. I worked as a stenographer for ——— in West Allis for 26 years and they had a pension plan and I was under it; I started working there in May 1927 until May 1953 and received no pension. I think I should have received some pension from the company as I could not work for 3 years after quitting that company. Wish you would look into this and advise me if I should get a part of my pension. * * *

SPRINGFIELD, MASS., *April 8, 1971.*

DEAR SENATOR WILLIAMS: Hurrah for you and your investigation of pension plans.

My case is one in point. Female—employed 10/1/23, left because of pregnancy 1/23/47—returned to work with ——— [the same company] on part time or occasional basis the same year. 10/47—unable to get full time employment because of hearing loss. This loss could be traced to employment * * * This was over a period of eight years, after which I was employed, having received a promotion to the business office. I worked about seven years on occasional basis and 23 years full time, and received no pension.

This company has put billions of dollars in their pension fund. There must be hundreds of people like myself who are now 65 years old and receive no pension * * *

MADISON, WIS., *April 9, 1971.*

DEAR SENATOR WILLIAMS: I note that your Labor Subcommittee has been investigating private pension plans, and as a former participant in one I pass the following information on for your use. It serves as a good example and adds more fuel to the fire.

I am a chemical engineer and in September, 1946 I went to work in a management position at one of the ——— plants. It has a private, non-contributory pension plan. After a number of transfers I was terminated by them due to a change in top management in July 1960. My length of service was 13 years, 10 months. The result was no vested rights. At that time I was 45 years old.

In July 1966 I again went to work for ——— at another facility near here with a promise that my rights would be vested, and again due to a change in management I was terminated in June 1970. My age was 55. My length of service was four years. The result again was no vested rights.

In summary, I have spent 17 years and 10 months of total service with ——— and am almost 56 years old. And yet, I have nothing in the form of retirement income * * *.

NEW ORLEANS, LA., *April 13, 1971.*

DEAR SENATOR WILLIAMS: We read, with great interest, this article in our local newspaper concerning your survey of company pension rights. We too were shocked to realize that what happened to my husband wasn't an isolated case but a common practice * * *

For my husband is one of those men forced to resign from —— after 28 years of service without a pension. Also the life insurance and health plan we paid into for 28 years wiped out. In fact, everything was so neatly wiped out, it was as though we had never even been associated with ———.

When he realized he wasn't to get a pension and they dangled the termination pay before him, of course we took it. Something was better than nothing. Now we know this is just what the company counted on so they could waive all his rights to a pension.

Under such emotional stress who thinks! Oh yes, it was skillfully manipulated and with purpose to avoid giving him a pension. Think of the money they saved! And the timing was beautiful! Had he completed 30 years he would have gotten a pension. So this was carefully done at 28 years * * *

ALLENTOWN, PA., *April 21, 1971.*

DEAR SENATOR WILLIAMS: Upon reading an article in the Allentown Morning Call April 1, 1971, concerning pensions, I am sure that I have a legitimate reason for writing to you. I started to work for ——— Dairy on April 1, 1940, when I was 23 years old. I started as a groundsman, watchman, Janitor and engineer, receiving $65.00 per month and working 60 or 70 hours per week. Although this pay was not anything to talk about, I had a steady job with promises of steady work as long as I wanted it. Over the years * * * I grew to better positions until in 1962 I was promoted to Maintenance Manager * * * Now to get to my complaint—After working for ——— Dairy for 30 years and 10 months I was finally told on January 1, 1971 that my classification was being eliminated and as of this date I was no longer working for ——— Dairy. You can imagine what this does to a person at 55 years of age. I not only lost my job but also lost my retirement pension, which I worked 31 years for * * *

COLUMBUS, OHIO, *April 22, 1971.*

DEAR SENATOR WILLIAMS: A recent news release by AP made known that the Senate Labor Committee will seek to remedy conditions disclosed in a study of private pension plans which do not vest to the employee until after an unreasonable period of time and in some extreme cases do not vest at all until the employee has reached age 65 regardless of the number of years of service to the employer . . .

I am now employed by ——— and have been since November, 1935, a period of thirty-five years. My company has a so-called "Non-contributory" pension plan, qualified under the Internal Revenue laws, which has no vesting whatsoever until an employee reaches sixty-five years of age. * * *

KENOSHA, WIS., *April 23, 1971.*

DEAR SIR: * * * I wish something could be done for people who have been cheated out of their pensions. My husband worked for 25 years at the same iron ore mine in Ironwood, Michigan and has no pension rights. He was employed by ——— there for 18 years, but that was from 1936–1954 and before they had vested pensions. When ——— gave up the property in 1954, they did not offer the men jobs elsewhere. The men received no advice from the union or anyone else and were required to accept their severance pay in order to be hired by the new operators, the ——— Co. This company operated the mine for 7 years and then was forced to abandon it due to competition from foreign ore. This time, with few jobs in the area, we were forced to leave our home and my husband started all over again at the age of 49 at ———. He has been employed there for almost 8 years but has only 5½ years of pension rights because he has been laid off so much due to lack of seniority.

A couple of years ago, I wrote to the ——— Union to ask them to try to do something for the miners who lost all rights to their pensions. I never received an answer * * *

THE BRONX, N.Y., *April 27, 1971.*

DEAR SENATOR WILLIAMS: After having been employed by ——— for more than 29 years, I have been notified that my employment is being terminated. At the time this notification was given to me, my superiors stressed that my work was entirely satisfactory and that I should not feel that the action was a reflection of my performance. In fact, throughout the entire period of my employment which began on March 23, 1942 all of my superiors have, without exception, rated my work performance entirely satisfactory, and in most cases, as outstanding.

Needless to say, the termination comes as a jolt. My employment with ——— covers "years of plenty" when other employment opportunities as well as education opportunities were readily available, and when job offers were declined in favor of continued employment with ——— One of the major influencing factors in reaching the decision to remain with ——— in each instance was the pension which would eventually be available to me * * * It seems significant that my employer has elected to terminate my employment after these many years of service and only two years before I become eligible to receive the pension * * *

PORTLAND, OREG., *May 3, 1971.*

DEAR SIR: * * * My wife and I heartily agree that private industry in many instances is unfair to workers on their retirement pension plan.

My wife worked for ——— from October 1947 through July of 1966, when because of the working conditions she resigned from her job at the district office in Portland, Oregon.

At the time she resigned, the pension plan was set up on a 25 year basis. Six months after she resigned, they reduced their retirement pension plan to only 20 years.

When my wife resigned there was no mention that retirement would be reduced to 20 years. If she knew this, my wife would have worked 20 years and drawn the ——— pension. It is true that ——— contributed all the money for their pension * * * However, it is unfair that 18 years and 9 months go down the drain, and they do not pro rate the pension.

Respectfully yours,

ADRIAN, MICH., *June 1, 1971.*

DEAR SIR: I'm writing to ask you if your investigation would cover this point. As you well know, some companies were very slow in starting pension plans of any kind. This was the case of my husband's company, ——— now ——— due to a merger. He worked for this company from the day it was begun in 1934 (29 years when he retired). He only received his pension 1½ years. It was cut off immediately when he died in 1966. I don't think this is fair for he wanted that security as much for me as for himself. They make no concession of any kind and not even a part of it to the widow. I wouldn't expect it if I remarried but I haven't and I certainly could use it * * *

SAUGUS, MASS.

DEAR SIR: Business Week recently carried an article stating that your Labor and Public Welfare Committee was going to consider pension legislation.

This would probably improve pensions in a company which has not been greatly influenced by labor unions. This is a huge company and very abundantly financed.

Pensions here run roughly one half of what the ——— Workers recently gained. It takes about 40 years of service to obtain any kind of pension here.

In my case, I worked for ——— from 1925 to 1941, and 1947 to the present with about a year to retirement. My pension service is only from 1947.

If these two periods were joined I could obtain some $350 to $400 per month as against $250.

However, ——— started vesting in the 1950's but prior to that no service credits on broken service. How can they be so whimsical on this?

My case is not unique. I have many friends with the same service trouble, just hoping for a change of rules.

The CHAIRMAN: Senator Javits?

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

Senator JAVITS. Thank you very much, Mr. Chairman. I'd like to say in return that no one could have given greater response and more complete response to the efforts to determine what we should do than our chairman. I'm very grateful to him and hope that our collaboration will produce laws which will affect and help 30 million Americans who are concerned in private pensions also, Mr. Chairman.

And my statement will be brief. My own bill in this field is the Pension and Employee Benefit Act S. 2, which I wish to make clear, is the very gifted work of Frank Cummings, my administrative assistant, and Gene Mittelman, who is minority counsel of this subcommittee. And now is added, Mike Gordon who worked with Mr. Noto on this inquiry.

Let me say that my whole purpose, Mr. Chairman, is to fortify and develop a private pension plan system which will give the American worker a new sense of confidence and a new sense of participation in our private sector of economy. It is not in any way to disparage the private pension system. I believe in it deeply and I want to build it up so it really represents a considerable portion of every worker's retirement security. So that he really feels it is this, plus social security, which will give him every assurance of comfort and dignity in his older years.

Mr. Chairman, our investigation and my own work has demonstrated that the average pension plan—and I emphasize the word "average"—does not deliver a pension to the average employee who works under it.

That's the "system." The trouble with the private pension system is not "bad people" but rather bad structure—and the absence of law. It would be comforting, in a way, to find that the widespread disappointments in the pension field are simply the products of fraud, theft and criminal activity, because then all we have to do to solve the problem is "catch the thieves"—not provide for a system which would really deliver on the sound and highly desirable pension plan idea.

Not that there are no thieves in the pension business—we all know there are some, though I think they are very few.

But what we really have here is a set of plan structures and eligibility requirements which have become customary and accepted—even by the most sincere employers and by some unions—but which all too often have no relation to the realities of an employee's actual working life.

We're here today to hear evidence.

For example, a man works 26½ years—as an actual case—for one employer, but becomes disabled at age 46. He forfeits all pension credits because his plan doesn't provide for any vesting under age 50. That's "the system."

Another man works for several decades under a plan which vests at age 55. But when he's 50 years old, after three decades under the plan, his union supplants the company plan with a new union plan. He is too ill to work long enough to qualify under the new plan, and yet too young to vest under the old one. So he gets nothing. That's "the system."

Such cases are legion.

And the general conclusion is: Under this system some employees get a pension, but most get nothing, and many forfeit after 10, 20, 30, and even 40 years of service.

Four years ago, I first introduced a bill to set minimum Federal standards for all private pension plans: Minimum eligibility standards—"vesting"—minimum requirements for funding and solvency, Federal reinsurance in case of untimely termination of the plan, a voluntary Federal clearinghouse for portable pension credits, fiduciary standards of conduct eliminating conflicts of interest for pension administrators, and a new Federal Pension Commission to administer all these requirements, as well as existing laws now handled by the Labor Department, the Treasury, and other widely scattered departments and agencies, all of which would come under the proposed new Pension Commission.

S. 2, that bill, is still pending in the committee.

The evidence has continued to mount and the results of the fine investigation undertaken by our chairman, which the Senate has properly financed, the questionnaire sent out by the committee a year ago at my suggestion, and the evidence at these and previous hearings already held in the other House, all point to the urgent need for legislation and the desirability of a true private pension system.

It's my judgment that every defect in the system revealed by our investigation and the previous hearings would be corrected by S. 2.

Every employee witness who got nothing under "the system" would have had a pension if the system were corrected as provided in my bill.

We're not here to create a record as an academic exercise. The problems are too real, the human tragedy is profound and the losses, which continue every day, are tragic.

We're here to document the facts, pinpoint the weaknesses in the system, and correct them.

And there's no reason why we cannot do this, carefully, intelligently, and thoroughly, and with deliberate speed before the end of the 92d Congress.

Mr. Chairman, I ask unanimous consent to insert in the record a copy of S. 2 together with an explanation of it, and a copy of my testimony before the Labor Subcommittee of the House of Representatives, together with certain appendixes to that testimony.

The CHAIRMAN. Certainly. Thank you, Senator Javits.

(The material referred to follows:

92D CONGRESS
1ST SESSION

S. 2

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1971

Mr. JAVITS introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To provide additional protection for the rights of participants in employee pension and profit-sharing-retirement plans, to establish minimum standards for pension and profit-sharing-retirement plan vesting and funding, to establish a pension plan reinsurance program, to provide for portability of pension credits, to provide for regulation of the administration of pension and other employee benefit plans, to establish a United States Pension and Employee Benefit Plan Commission, to amend the Welfare and Pension Plans Disclosure Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pension and Employee Benefit Act".

DEFINITIONS

SEC. 2. (a) As used in this Act—

(1) The term "Commission" means the United States Pension and Employee Benefit Plan Commission established under section 3.

(2) The term "employee" means any person employed by an employer, and includes an officer or director of a corporation or of an unincoporated organization and an agent acting for his principal on a substantially full-time basis.

(3) The term "employees' benefit plan" means any plan providing for the payment of any of the benefits specified in section 2 (4).

(4) The term "employees' benefit fund" means any fund, whether established pursuant to a collective bargaining agreement or unilaterally by an employer or by a labor organization, which is available for the payment either from principal or income, or both, to persons who are employed in an industry affecting commerce or who are members of a labor organization representing employees in an industry affecting commerce, or to members of the families, dependents, or beneficiaries of such persons, of one or more of the following benefits: Medical or hospital care, pension on retirement or death of employees, benefits under a profit-sharing-retirement plan, compensation for injuries or illness resulting from occupational activity or insurance to provide any of

the foregoing, or unemployment benefits or life insurance, disability and sickness benefits, or accident benefits, or pooled vacation, holiday, severance or similar benefits, or defraying the costs of apprenticeship training programs, or, in the case of a fund subject to the restrictions of section 302 (c) of the Labor-Management Relations Act, providing any other benefit which may be permitted by subsections 302 (c) (5) or 302 (c) (6) of that Act: *Provided*, That any fund to which contributions are made solely to provide workmen's compensation benefits, disability benefits, or other benefits required by State or local law to be provided to employees (including supplemental workmen's compensation or supplemental disability benefits permitted but not required by State or local law) shall not be deemed to be an employees' benefit fund. To the extent that benefits under an employees' benefit plan are provided through the medium of an insurance contract under which benefits are guaranteed by the insurance company to the extent that insurance premiums are paid, and under which neither the employer nor any labor organization retains the power to instruct the insurance carrier with respect to entitlement to receipt of benefits, disposition of assets or any other matter relating to the moneys received by the insurance carrier pursuant to the plan, such plan shall not be deemed to involve an employees' benefit fund subject to the provisions of title IV.

(5) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to a pension plan or employee's benefit fund, and includes a group or association of employers acting for an employer in such capacity.

(6) The term "person" means an individual, partnership, corporation, mutual company, joint stock company, trust, unincorporated organization, association, or employee organization.

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

(8) The term "commerce" means trade, commerce, transportation, or communication, among the several States, or between any foreign country and any State, or between any State and any place outside thereof.

(9) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(10) The term "life annuity" means an annuity that continues for the duration of the life of the annuitant, whether or not it is thereafter continued to some other person.

(11) The term "deferred life annuity" means a life annuity the commences at retirement age under a pension plan, but in no event later than age seventy.

(12) The term "pension benefit" means the aggregate annual, monthly, or other amounts to which an employee will become entitled upon retirement or to which any other person is entitled by virtue of such employee's death.

(13) The term "pension plan" means a pension fund or plan, other than a profit-sharing-retirement plan, organized and administered to provide pension benefits for employees or their beneficiaries, and includes, without limiting the generality of the foregoing:

(A) a unit benefit plan under which pension benefits are determined with reference to remuneration of an employee for each year of service, or for a selected number of years of service.

(B) a money purchase plan under which pension benefits are determined at the retirement of an employee with reference to the accumulated amount of the aggregate contributions paid by or for the credit of the employee, and

(C) a flat benefit plan under which the pension

benefits are expressed either as a fixed amount in respect of each year of employment or as a fixed periodic amount.

(14) The terms "registered pension plan" and "registered profit-sharing-retirement plan" mean, respectively, a pension plan or profit-sharing-retirement plan registered with and certified by the Commission as a plan organized and administered in accordance with title I.

(15) The term "reinsured pension plan" means a registered pension plan which has been reinsured under title II and which has been in operation for at least five years and, for each of such years, has met the registration requirements of title I: *Provided,* That any addition to or amendment of a reinsured pension plan shall, if such addition or amendment involves a significant increase, as determined by the Commission, in the initial unfunded liability of such pension plan, be regarded as a new and distinct pension plan which may become a "reinsured pension plan" only after meeting the five-year operation requirements of this paragraph and section 202 (c) and the registration requirements of title I.

(16) The term "supplemental pension plan" includes a pension plan established for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan.

(17) The term "voluntary additional contribution" means an additional contribution by an employee to or under a pension or profit-sharing-retirement plan except a contribution the payment of which, under the terms of the plan, imposes upon the employer an obligation to make concurrent additional contribution to or under the plan.

(18) The term "experience deficiency" with respect to a pension plan means any actuarial deficit, determined at the time of a review of the plan, that is attributable to factors other than (i) the existence of an initial unfunded liability, or (ii) the failure of the employer to make any payment as required by the terms of the plan or by the provisions of title I, other than as required by section 108 (b) (3).

(19) The term "fully funded" with respect to any pension plan means that such plan at any particular time has assets actuarily determined by a person authorized under section 108 (e) to be sufficient to provide for the payment of all pension and other benefits to all employees and former employees then entitled to an immediate or deferred benefit under the terms of the plan.

(20) The term "unfunded liability" means the amount, on the date when such liability is computed, by which the assets are actuarily required to be augmented to insure that the plan is and will remain fully funded.

(21) The term "initial unfunded liability" means the

amount, on the effective date of this Act, or the effective date of a pension plan or any amendment thereto, whichever is later, by which the assets are actuarily required to be augmented to insure that the plan is and will remain fully funded.

(22) The term "special payment" means a payment made to or under a pension plan for the purpose of liquidating an initial unfunded liability or experience deficiency.

(23) The term "fund" shall mean a trust fund, but shall also include a contractual right pursuant to an agreement with an insurance company.

(24) The term "funding" shall mean payment or transfer of assets into a fund, but shall also include payment to an insurance company to secure a contractual right from such company.

(25) The term "profit-sharing-retirement plan" means a plan established and maintained by an employer to provide for the participation in his profits by his employees in accordance with a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan upon retirement or death. Such plan may include provisions permitting the withdrawal or distribution of the funds accumulated upon contingencies other than, and in addition to, retirement and death.

(26) The term "interest in a profit-sharing-retirement plan" means the amount allocated to the account of a participant in a profit-sharing-retirement plan.

(27) The term "service for a continuous period" means service for a period of time without regard to periods of temporary suspension of employment, and shall include equivalent aggregate service as provided in section 107 (f).

(28) The term "Administrator" means the person defined in section 2 (b) (3) of this Act.

(b) As used in titles IV and V of this Act, and in the Welfare and Pension Plans Disclosure Act,

(1) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization, or a relative, partner or joint venturer of any of the above described persons.

(2) The term "relative" means a spouse, ancestor, descendent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

(3) The term "administrator" means—

(A) the person specifically so designated by the terms of the plan, collective bargaining agreement, trust agreement, contract, or other instrument, under which the plan is operated; or

(B) in the absence of such designation (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintain the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

(4) The term "adequate consideration" means either (1) at the price of the security prevailing on a national securitites exchange which is registered with the Securities and Exchange Commission, or (2) if the security is not traded on such a national securities exchange, at a price not less favorable to the fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer.

(5) The term "security" has the same meaning as in the Securities Act of 1933 (15 U.S.C. 77(a) et seq.).

(6) The term "fiduciary" means any person who exercises any power of control, management, or disposition with respect to any moneys or other property of an employee benefit fund, or has authority or responsibility to do so.

(7) The term "market value" or "value" when used in this Act means fair market value where available, and otherwise the fair value as determined in good faith by the administrator.

ESTABLISHMENT OF PENSION AND EMPLOYEE BENEFIT PLAN COMMISSION

SEC. 3. (a) There is hereby established in the executive branch of the Government an independent agency to be known as the "United States Pension and Employee Benefit Plan Commission". The Commission shall be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. Members of the Commission shall serve for terms of six years, except that (i) of the members first appointed two shall be appointed for a term of two years, two shall be appointed for a term of four years, and one shall be appointed for a term of six years, and (ii) members appointed to fill vacancies occurring by reason of death or resignation shall be appointed for the unexpired terms of their predecessors.

Not more than three members of the Commission shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No member of the Commission shall engage in any business, vocation, or employment other than that as serving as a member, nor shall any member participate, directly or indirectly (except as a beneficiary) in the management of any plan or fund subject to regulation under this Act. One of the members shall be designated by the President as Chairman of the Commission. Three members shall constitute a quorum of the Commission.

(b) (1) Section 5314 of title 5, United States Code (which lists positions in level III of the Executive Schedule) is amended by adding at the end thereof the following:

"(46) Chairman, United States Pension Commission."

(2) Section 5315 of such title (which lists positions in level IV of the Executive Schedule) is amended by adding at the end thereof the following:

"(78) Members, United States Pension Commission."

(c) The Commission is authorized to appoint and fix the compensation of such officers and employees, and to incur such expenses, as may be necessary to enable it to carry out its functions.

POWERS AND DUTIES OF COMMISSION

SEC. 4. (a) It shall be the duty of the Commission—

(1) to promote the establishment, extension, and improvement of pension, profit-sharing-retirement and other employee benefit plans;

(2) to accept for registration all pension and profit-sharing-retirement plans required and qualified to be registered with the Commission under title I, and to reject any pension or profit-sharing-retirement plan that does not qualify for registration;

(3) to cancel certificates of registration of pension and profit-sharing-retirement plans registered under such title which cease to be qualified for such registration;

(4) to direct and administer the pension reinsurance program established by title II;

(5) to direct and administer the pension portability program established by title III;

(6) to enforce the provisions of title IV; and

(7) to perform such other functions as may be necessary to administer the provisions of this Act.

(b) The Commission or its duly authorized representatives shall have power, at any reasonable time—

(1) to inspect the books, files, documents, and other records respecting pension and profit-sharing-retirement

plans kept by an administrator, employer, insurer, trustee, or other person in relation to such plans: *Provided*, That the Commission may delegate its powers under this subsection (b) to the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation in cases involving books, files, documents, or other records held by a bank or trust company, subject to their respective supervisory power, and

(2) to require any such administrator, employer, insurer, trustee, or other person to furnish, in a form acceptable to the Commission, such information as the Commission deems necessary for the purposes of ascertaining whether this Act and regulations of the Commission hereunder have been or are being complied with.

(c) The Commission is authorized by regulation to prescribe minimum standards and qualifications for persons performing services required by the provisions of this Act to be performed by actuaries and, upon application of any person, to determine whether such person meets the standards and qualifications so prescribed. The Commission shall issue certificates of qualification to applicants determined by the Commission after such examination, investigation, or other procedure as it may deem necessary, to meet such standards and qualifications.

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(d) The Commission is authorized by regulation to prescribe reasonable fees for the registration of pension and profit-sharing-retirement plans and other services to be performed by it in connection with such plans under this Act, and to make and enforce such other regulations as may be necessary to enable it to carry out its functions and duties under this Act. All fees collected by the Commission shall be paid into the general fund of the Treasury.

(e) The Commission shall transmit to the Congress annually a report of its activities under this Act during the preceding fiscal year together with the results of such studies as may be directed by this Act or, from time to time, by other Acts of Congress. In its first such report, the Commission shall include information, research findings and recommendations for such further legislation as may be advisable, including but not limited to additional coverage under this Act.

(f) In accordance with the Administrative Procedure Act, the Commission may prescribe such rules and regulations as may be necessary or appropriate to carry out the purposes of this Act. Among other things, such rules and regulations may define actuarial, accounting, technical, and trade terms; may prescribe reasonable limitations or actuarial assumptions as to interest rates, mortality, turnover rates, and other matters; may prescribe the form and detail of all re-

ports required to be made under this Act; and may provide for the keeping of books and records and the inspection of such books and records. Prior to promulgating rules or regulations, the Commission shall consult with other Federal departments or agencies which have jurisdiction over employee benefit plans with a view to avoiding unnecessary conflict, duplication or inconsistency in the rules and regulations which are applicable to such plans under other laws of the United States.

APPROPRIATIONS

SEC. 5. There are authorized to be appropriated such sums as may be necessary to enable the Commission to carry out its functions and duties.

ADMINISTRATION OF WELFARE AND PENSION PLANS DISCLOSURE ACT

SEC. 6. (a) The functions of the Secretary of Labor and the Department of Labor under the Welfare and Pension Plans Disclosure Act, as amended, are hereby transferred to and shall be administered by the Commission.

(b) All personnel, property, records, and unexpended balances of appropriations, which the Director of the Bureau of the Budget determines are used or intended for use by the Secretary of Labor or the Department of Labor primarily in the administration of functions transferred under the provision of this section, are transferred to the Commission.

(c) In addition to the filing requirements of the Welfare and Pension Plans Disclosure Act, it shall be a condition of compliance with section 7 of such Act that each annual report hereinafter filed under that section shall be accompanied by a certificate or certificates in the name of and on behalf of the plan, the administrator, and any employer or labor organization participating in the establishment of the plan, designating the Commission as agent for service of process on the persons and entities executing such certificate or certificates in any action arising under the Welfare and Pension Plans Disclosure Act or this Act.

TITLE I—BENEFIT STANDARDS

PLANS TO WHICH TITLE APPLIES

SEC. 101. (a) Except as provided by subsection (b), this title applies to any pension plan and, to the extent hereinafter provided, to any profit-sharing-retirement plan, established by an employer engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in an industry or activity affecting commerce or by both.

(b) This title shall not apply to a pension or profit-sharing-retirement plan if—

(1) such plan is administered by the Federal Gov-

ernment or the government of a State or subdivision thereof, or by an agency or instrumentality thereof;

(2) such plan is administered by an organization which is exempt from taxation under the provisions of section 501 (a) of the Internal Revenue Code of 1954 and is administered as a corollary to membership in a fraternal benefit society described in section 501 (c) (8) of the Internal Revenue Code of 1954 or by an organization described in section 501 (c) (3) or (4) of such Code: *Provided,* That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining;

(3) such plan is established by a self-employed individual for his own benefit or for the benefit of his survivors or established by one or more owner-employers exclusively for his or their benefit or for the benefit of his or their survivors;

(4) such plan covers not more than twenty-five participants;

(5) such plan is established and maintained outside the United States by an employer primarily for the benefit of employees who are not citizens of the United States; or

(6) such plan is unfunded and is established by

an employer primarily for the purpose of providing deferred compensation for a select group of management employees and is declared by the employer as not intended to meet the requirements of section 401 (a) of the Internal Revenue Code.

REGISTRATION OF PLANS

SEC. 102. (a) Every administrator of a pension or profit-sharing-retirement plan to which this title applies shall file with the Commission an application for registration of such plan. Such application shall be in such form as shall be prescribed by regulation of the Commission, and shall be accompanied by a copy of the plan, a copy of the trust deed, insurance contract, by law, or other document under which the plan is constituted. Thereafter, while such plan is in force, the administrator shall maintain its qualification for registration under this title.

(b) In the case of plans established on or after the effective date of this Act, the filing required by subsection (a) shall be made within six months after such plan is established. In the case of plans established prior to the effective date of this Act, such filing shall be made within six months after such effective date.

(c) If, after examination of a pension or profit-sharing-retirement plan filed under this section, the Commission is satisfied that such plan is qualified for registration under

this title the Commission shall issue a certificate of registration with respect to such plan. If the Commission is not so satisfied it shall notify the administrator.

(d) If at any time subsequent to the issuance of a certificate under subsection (c) with respect to any plan, the Commission determines that such plan is no longer qualified for registration under this title, it shall notify the administrator.

(e) A notification under subsection (c) or (d) shall set forth the deficiency or deficiencies in the plan or in its administration by reason of which the notification is given, and shall give the administrator, the employer of the employees covered by the plan, and the labor organization, if any, representing such employees a reasonable time within which to remove such deficiency or deficiencies. If the Commission thereafter determines that the deficiency or deficiencies have been removed it shall issue or continue in effect the certificate, as the case may be. If it determines that the deficiency or deficiencies have not been removed it shall enter an order denying or canceling the certificate of registration.

ANNUAL REPORTS ON REGISTERED PLANS

SEC. 103. The Commission may, by regulations promulgated pursuant to the Administrative Procedures Act, provide for the filing of single reports satisfying the reporting requirements of this Act, the Welfare and Pension Plans Disclosure

Act, and such other Acts as are administered or enforced by the Commission.

AMENDMENTS OF REGISTERED PLANS

SEC. 104. Where a pension or profit-sharing-retirement plan filed for registration under this title is amended subsequent to such filing, the administrator shall within six months after the effective date or the date of adoption of such amendment, whichever is later, within sixty days after the effective date of such amendment file with the Commission a copy of the amendment and such additional information and reports as the Commission by regulation requires to determine the amount of any initial unfunded liability created by the amendment and the special payments required to liquidate such liability.

QUALIFICATION OF PLAN FOR REGISTRATION

SEC. 105. A pension or profit-sharing-retirement plan shall be deemed to be qualified for registration under section 102 if it conforms to, and is administered in accordance with, the standards and requirements set forth in section 102 and sections 106 to 110, inclusive.

GENERAL REQUIREMENTS

SEC. 106. (a) Every pension plan and, to the extent required by regulations issued by the Commission, every profit-sharing-retirement plan shall define the benefits provided by such plan, the method of determination and pay-

ment of benefits, conditions for qualification for membership in the plan and the financial arrangements made to insure provisional or full funding of benefits under the plan. Each such plan shall provide for the furnishing of a written explanation to each member of the plan of the terms and conditions of the plan and amendments thereto applicable to him, together with an explanation of the rights and duties of the employee with reference to the benefits available to him under the terms of the plan and such other information as may be required by regulations of the Commission.

(b) The Commission shall, by regulation, require each plan to furnish each participant, upon termination of service with a vested right to a deferred life annuity, pension, or other vested interest, with a certificate setting forth the benefits to which he is entitled, including but not limited to the name and location of the entity responsible for payment, the amount of benefits, and the date when payment shall begin, as such regulations shall specify. A copy of each such certificate shall be filed with the Commission In any proceeding arising under this Act, such certificate shall be deemed prima facie evidence of the facts and rights set forth in such certificate.

(c) A pension or profit-sharing-retirement plan filed for registration under this title, and any trust forming a

part of such plan, shall meet all the requirements set forth in section 401 of the Internal Revenue Code of 1954, as determined by the Commission, except to the extent such requirements are inconsistent with the provisions of subsection (a) of this section or of sections 107 to 110, inclusive.

VESTING OF BENEFITS

SEC. 107. (a) A pension or profit-sharing-retirement plan filed for registration under this title shall provide, under the terms of the plan in respect of service on or after the effective date of this Act, or by amendment to the terms of the plan or by the creation of a new plan on or after such date in respect of service on or after the effective date of such amendment or new plan, that—

(1) a member of the plan who has been in the service of the employer, or has been a member of the plan, for a continuous period of six years is entitled upon termination of his employment or membership in the plan prior to attaining retirement age (i) in the case of a pension plan to a deferred life annuity commencing at his normal retirement age, and (ii) in the case of a profit-sharing-retirement plan to a nonforfeitable right to his interest in such plan, equal to 10 per centum of full pension benefits as provided by the plan in respect of such serice or of such interest, respectiely, and such entitlement shall increase by at least 10 per centum per

year of continuous service thereafter until the completion of fifteen years of continuous service, after which such member shall be entitled upon termination of employment or membership in the plan prior to attaining retirement age to a deferred life annuity commencing at his normal retirement age equal to the full pension benefits as provided by the plan in respect to such service, or to the full amount of such interest in the profit-sharing-retirement plan, respectively;

(2) the pension benefits provided under the terms of a pension plan, the deferred life annuity referred to in paragraph (1), and an interest in a profit-sharing-retirement plan referred to in paragraph (1) shall not be capable of assignment or alienation and shall not confer upon an employee, personal representative, or dependent, or any other person, any right or interest in such pension benefits, deferred life annuity, or profit-sharing-retirement plan, capable of being assigned or otherwise alienated: *Provided,* That the Commission may by regulation provide for the final disposition of plan assets when beneficiaries cannot be located or ascertained within a reasonable time;

(3) an "employee" shall be deemed a "member" of a pension plan beginning on the day when contributions are first made to the plan or its fund with respect

to the employee's service to the employer, but in no event shall any pension plan subject to this Act provide, as a condition of membership or eligibility to participate in such plan, a period of service longer than six months.

(b) Anything in subsection (a) to the contrary notwithstanding, a pension or profit-sharing-retirement plan may provide for vesting upon service or membership in the plan for a lesser period than is provided in such subsection.

(c) Anything in subsection (a) to the contrary notwithstanding, when a plan so provides, an employee may receive in discharge of his rights thereunder upon termination of employment prior to attaining normal retirement age as defined in the plan, or upon attaining such retirement age, a lump sum amount equal to the commuted value of the annuity prescribed by the plan, or, in the case of a profit-sharing-retirement plan, the value of his interest in such plan.

(d) If a pension plan so provides, a person who is entitled to a deferred life annuity under subsection (a) may, before the commencement of payment of such life annuity, elect to receive, partly or wholly in lieu of the deferred life annuity described by subsection (a)—

(1) a deferred life annuity the amount of which is reduced or increased by reason of early or deferred

retirement, by provision for the payment of an optional annuity to a survivor or to the estate of the employee, or by variation of the terms of payment of such annuity to any person after the employee's death, and

(2) a payment or series of payments by reason of a mental or physical disability as prescribed by regulations of the Commission.

(e) For the purposes of subsections (b) (2) and (c), the commuted value of a deferred life annuity shall be computed on the basis of such interest rate and mortality tables and in such manner as may be approved by the Commission.

Aggregate Service

(f) In any case in which an employee has been a member of the plan for an aggregate number of days equivalent to the period of time required for a non-forfeitable right under section 107 (a) (1), such employee shall be deemed to have satisfied the continuous service requirement to which his aggregate days of service are equivalent, on the basis of 240 working days being equivalent to one working year and 20 working days being equivalent to one working month, but in no event shall an employee's time worked in any period in which he is credited for a period of service under the plan be credited under this paragraph to any other period of time.

FUNDING OF PLANS

SEC. 108. (a) A pension plan filed for registration under this title shall provide for funding, in accordance with this title, that is adequate to provide for payment of all pension benefits, deferred life annuities and other benefits required to be paid under the terms of the plan.

(b) Provisions for funding shall set forth the obligation of the employer to contribute both in respect of the current service cost of the plan and in respect of any initial unfunded liability and experience deficiency. The contribution of the employer, including any contributions made by employees, shall consist of the payment currently into the plan or fund of—

(1) all current service costs;

(2) where the plan has an initial unfunded liability, special payments consisting of equal annual amounts sufficient to liquidate such initial unfunded liability over a term not exceeding,

(A) in the case of an initial unfunded liability existing on the effective date of this Act, in any plan established before that date, forty years from that date, and

(B) in the case of an initial unfunded liability resulting from an amendment to a pension plan made on or after the effective date of this Act, or

resulting from the establishment of a pension plan on or after the effective date of this Act, thirty years from the date of such amendment or establishment; and

(3) where the plan has an experience deficiency, special payments consisting of equal annual amounts sufficient to liquidate such experience deficiency over a term not exceeding five years from the date on which the experience deficiency was determined: *Provided,* That the Commission may suspend the special payments requirements or extend the five-year period provided in this subparagraph (3) in cases involving business necessity or substantial risk to the continuation of the employing enterprise.

Notwithstanding the provisions of this subsection, (i) the liquidation of initial unfunded liabilities or experience deficiencies may be accelerated at any time, and (ii) where an insured pension plan established before the effective date of this Act is funded by level annual premiums to retirement age for each individual member and benefits are guaranteed by the insurance company to the extent that premiums have been paid, it shall be deemed to meet the requirements of paragraph (2) (A) of this subsection.

(c) One year after the effective date of this Act, in the case of pension plans registered on or before that date, or

within six months after the date of establishment of the plan in other cases, the Administrator shall submit a report of the person authorized by subsection (e) certifying—

(1) the estimated cost of benefits in respect of service in the first year during which such plan is required to register and the rule for computing such cost in subsequent years up to the date of the next report;

(2) the initial unfunded liability, if any, for benefits under the pension plan as of the date on which the plan is required to be registered; and

(3) the special payments required to liquidate such initial unfunded liability in accordance with subsection (b).

Where an insured pension plan is funded by level annual premiums extending not beyond the retirement age for each individual member and benefits are guaranteed by the insurance company to the extent that premiums have been paid, the report required by this subsection may certify the adequacy of the premiums to provide for the payment of all benefits under the plan in lieu of the matters required to be certified under clauses (1), (2), and (3).

(d) The Administrator in respect of a registered pension plan shall cause the plan to be reviewed by a person authorized by subsection (e) not more than three years after registration and at intervals of not more than three years there-

after and the person reviewing the plan shall prepare a report certifying—

(1) the estimated cost of benefits in respect of service in the next succeeding year and the rule for computing such cost in subsequent years up to the date of the next report;

(2) the surplus or the experience deficiency in the pension plan after making allowance for the present value of all special payments required to be made in the future by the employer as determined by previous reports; and

(3) the special payments which will liquidate any such experience deficiency over a term not exceeding five years.

If any such report discloses a surplus in a pension plan, the amount of any future payments required to be made to the fund or plan may be reduced by the amount of such surplus. A report under this subsection shall be filed with the Commission by the Administrator upon its receipt.

(e) The reports and certificates referred to in subsections (c) and (d) shall be made by an actuary certified by the Commission under section 4(c): *Provided*, That the Commission may exempt any plan, in whole or in part, from the requirement that such reports and certificates be filed where the Commission finds such filing to be unnecessary.

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(f) Anything in this section 108 to the contrary notwithstanding, if evidence satisfactory to the Commission shall be filed on behalf of a pension plan in connection with an application for registration under this title demonstrating that (i) such pension plan is a multiemployer plan in which at least 25 per centum of the employees in the industry covered by the plan, either nationally or in a particular region in which a substantial number of employees in such industry is employed, participate, and (ii) no single employer employs more than 20 per centum of the employees covered by the plan, and (iii) the history and present business condition of the industry make it improbable that there will be a substantial decrease in employment in the industry within the foreseeable future—

(I) the Commission may register such plan without regard to the funding requirements of section 108 if such plan meets the following alternative funding requirements:

(1) annual payment into the fund of all current service costs;

(2) annual payment into the fund of an amount equal to the interest, at such rate of interest as the Commission shall prescribe, but not more than 6 per centum per annum, on the unfunded liability of such fund at the date each such payment is made;

(3) annual payment into the fund of an amount equal to the insurance premium for such year required to be paid on behalf of such fund by section 203 of title II of this Act; and

(4) in computing unfunded liability under this subsection (f), the Commission may permit a multiemployer plan to compute such liability solely on the basis of information obtained from participants pursuant to a requirement of the plan under which each such participant, upon reaching the age of forty and completing ten years of continuous service, is required to file with the Administrator of the plan notification of his status under the plan.

(II) the Commission may by regulation approve alternative requirements for payments into the fund other than those specified in subparagraph I of this subsection (f) when, in the opinion of the Commission, such standards will provide reasonable assurance of sufficient assets in the fund of the multiemployer plan to provide for payment of anticipated benefits.

(g) Each pension plan shall, as a condition of registration under this title, apply for reinsurance and pay the reinsurance premiums provided in title II.

(h) For the purpose of this section, a profit-sharing-retirement plan, within the meaning of section 2(26) of

this Act which meets the requirements of title I insofar as they are made specifically applicable to such a plan by section 105, and any money purchase plan within the meaning of section 2(13)(B), shall be deemed fully funded.

DISCONTINUANCE OF PLANS

SEC. 109. (a) Upon complete termination, or substantial termination as determined by the Commission, of a pension plan—

(1) All contributions by an employer, a labor organization, an employee or other person made after January 1, 1968, in respect of the deferred life annuity prescribed in section 107(a) shall be applied under the terms of the plan—

(A) first, in the case of persons who have already retired and begun to draw benefits under the plan, or who, on the date of such termination, had the right to retire and begin to draw such benefits immediately, to provide the life annuities to which such persons were entitled at the date of termination of their employment;

(B) second, in the case of persons who have vested rights under the plan but have not reached retirement age and begun to draw benefits, to provide the deferred life annuities to which they were entitled at the date of such termination of the plan;

(C) third, in the case of any other participants in the plan, to provide deferred life annuities to which they are entitled under the plan pursuant to the requirements of section 401 (a) (7) of the Internal Revenue Code of 1954, as amended; and

(D) in any case, the Commission may approve payment of survivor benefits with priorities equal to those of the employees or former employees on whose service such benefits are based.

(2) The employer, and the employees if the plan so provided, shall be liable to pay all amounts that would otherwise have been required to be paid to meet the tests of solvency prescribed by section 108, up to the date of such termination, to the insurer, trustee, or administrator of the plan.

(3) No part of the assets of the plan shall revert to the employer until provision has been made for all pensions and other benefits vested or otherwise payable under section 109 according to the plan in respect of age and service up to the date of the discontinuance to members of the plan and for all benefits to pensioners and their pension beneficiaries in accordance with the terms of the plan.

(b) Upon complete termination, or substantial termination as determined by the Commission, of a profit-sharing-

retirement plan, the interests of all participants in such plan shall fully vest.

PAYMENTS TO SURVIVORS

SEC. 110. (a) Where in accordance with the terms of a pension or profit-sharing-retirement plan an employee or former employee has designated a person or persons to receive a benefit payable under the plan in the event of te employee's death—

(1) the employer's liability to provide the benefit shall be discharged upon payment to such person or persons of the amount of the benefit; and

(2) such person or persons may upon death of the employee or former employee enforce payment of the benefit, but the employer shall be entitled to set up any defense that he could have set up against the employee or former employee. As used in this subsection, the term "employer" includes a trustee or insurer under a pension or profit-sharing-retirement plan.

(b) An employee or former employee may from time to time alter or revoke a designation made under a pension or profit-sharing-retirement plan, but any such alteration or revocation may be made only in the manner set forth in the plan.

AMENDMENT TO INTERNAL REVENUE CODE

SEC. 111. (a) Section 401 of the Internal Revenue

Code of 1954 (relating to qualified pension, etc., plans) is amended by redesignating subsection (j) as (k) and by inserting after subsection (i) the following new subsection:

"(j) PENSION AND PROFIT-SHARING-RETIREMENT PLANS TO WHICH THE PENSION AND WELFARE BENEFITS ACT OF 1969 APPLIES.—For purposes of this part, any pension or profit-sharing-retirement plan to which title I of this Act applies, and any trust forming a part of such plan—

"(1) shall be treated as meeting the requirements of this section during any period for which a certificate of registration with respect to such plan issued by the United States Pension Commission under such title is in effect or an application therefor is pending before the Commission, and

"(2) shall be treated as not meeting the requirements of this section during any period for which such application has not been timely filed or such certificate has been denied or cancelled by such Commission."

(b) The amendment made by subsection (a) shall apply with respect to periods after the effective date of this Act, except that with respect to any pension plan established before the effective date of this Act, such amend-

ment shall not apply to any period before the date specified by the Commission under section 102 (b).

MINIMUM WAGE QUALIFICATION

SEC. 112. Contributions by an employer to a registered pension or profit-sharing-retirement plan shall not be deemed to be part of or to affect the "regular rate" as that term is used in section 7 of the Fair Labor Standards Act.

DELEGATION OF OTHER REGULATORY AUTHORITY

SEC. 113. The President, as may be necessary or appropriate to establish and maintain a uniform, consistent, and simplified system of law applicable to employee benefit plans, may by Executive order delegate to the Commission authority to administer and enforce any other provisions of the laws of the United States insofar as such provisions regulate or affect employee benefit plans.

DELAY IN THE APPLICATION OF TITLE I

SEC. 114. If the Commission finds that the application of this title to any employee benefit plan would increase the costs of the parties to the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employees' compensation it may grant to such plan a delay, not to exceed five years, in satisfying the requirements of this title, under such conditions as it may

prescribe as necessary or appropriate to effectuate the policies of this Act.

TITLE II—PENSION REINSURANCE

ESTABLISHMENT OF PROGRAM

SEC. 201. There is hereby established a program to be known as the Federal pension reinsurance program (hereinafter referred to as the "program"). The program shall be administered by, or under the direction and control of, the Commission.

CONTINGENCY INSURED AGAINST UNDER PROGRAM

SEC. 202. (a) The program shall insure (to the extent provided in subsection (b)) beneficiaries of a reinsured pension plan against loss of nonforfeitable benefits to which they are entitled under such pension plan arising from substantial cessation of one or more of the operations carried on by the contributing employer in one or more facilities of such employer before such plan has been fully funded.

(b) The rights of beneficiaries of a reinsured pension plan shall be insured under the program only to the extent that such rights do not exceed—

(1) in the case of a right to a monthly retirement or disability benefit for the employee himself, the lesser of 50 per centum of the average monthly wage he received from the contributing employer in the five-year

period after the registration date of the plan for which his earnings were the greatest, or $500 per month;

(2) in the case of a right on the part of one or more dependents, or members of the family, of the employee, or in the case of a right to a lump sum survivor benefit on account of the death of an employee, an amount found by the Commission to be reasonably related to the amount determined under subparagraph (1).

In the case of a periodic benefit which is paid on other than a monthly basis, the monthly equivalent of such benefits shall be regarded as the amount of the monthly benefit for purposes of clauses (1) and (2) of the preceding sentence.

(c) If a registered pension plan has not been registered under title I for each of at least the five years preceding the time when there occurs the contingency insured against, the rights of beneficiaries shall not be insured: *Provided,* That the Commission may, in its discretion, credit against the five year requirement of section 202 (c) one or more years prior to the effective date of this Act for any pension plan which, during such prior years, would have satisfied the registration requirements of title I had this Act been in effect.

PREMIUM FOR PARTICIPATION IN PROGRAM

SEC. 203. (a) Each registered pension plan shall pay an annual premium for reinsurance under the program upon payment of such annual premium as may be established by

the Commission. Premium rates established under this section shall be uniform for all pension funds insured by the program and shall be applied to the amount of the unfunded liability for non-forfeitable benefits of each insured pension fund. The premium rates may be changed from year to year by the Commission, when the Commission determines changes to be necessary or desirable to give effect to the purposes of this title; but in no event shall the premium rate exceed 1 per centum for each dollar of such unfunded liability. Premiums under this title shall be payable as of the effective date of this Act, or for plans adopted after that date, as of the effective date of such plans.

(b) If the Commission determines that, because of the limitation on rate of premium established under subsection (a) or for other reasons, it is not feasible to insure against loss of rights of all beneficiaries of reinsured pension plans, then the Commission shall insure the rights of beneficiaries in accordance with the following order of priorities—

First: Individuals who, at the time when there occurs the contingency insured against, are receiving benefits under the pension plan, and individuals who have attained normal retirement age or if no normal retirement age is fixed have reached the age when an unreduced old-age benefit is payable under title II of the Social Security Act, as amended, and who are eligible,

upon retirement, for retirement benefits under the pension plan;

Second: Individuals who, at such time, have attained the age for early retirement and who are entitled, upon early retirement, to early retirement benefits under the pension plan; or, if the pension plan does not provide for early retirement, individuals who, at such time, have attained age sixty and who, under such pension plan, are eligible for benefits upon retirement;

Third: In addition to individuals described in the above priorities, such other individuals as the Commission shall prescribe.

(c) Participation in the program by a pension plan shall be terminated by the Commission upon failure, after such reasonable period as the Commission shall prescribe, of such pension fund to make payment of premiums due for participation in the program.

REVOLVING FUND

SEC. 204. (a) In carrying out its duties under this title, the Commission shall establish a revolving fund into which all amounts paid into the program as premiums shall be deposited and from which all liabilities incurred under the program shall be paid.

(b) The Commission is authorized to borrow from the

Treasury such amounts as may be necessary, for deposit into the revolving fund, to meet the liabilities of the program. Moneys borrowed from the Treasury shall bear a rate of interest determined by the Secretary of the Treasury to be equal to the average rate on outstanding marketable obligations of the United States as of the period such moneys are borrowed. Such moneys shall be repaid by the Commission from premiums paid into the revolving fund.

(c) Moneys in the revolving fund not required for current operations shall be invested in obligations of, or guaranteed as to principal and interest by, the United States.

TITLE III—PENSION PORTABILITY PROGRAM

ACCEPTANCE OF DEPOSITS

SEC. 301. (a) It is declared to be the policy of the Congress that a system of pension portability should be established by the Federal Government to facilitate the voluntary transfer of credits between registered pension or profit-sharing-retirement plans having similar benefit features and actuarial assumptions. Nothing in this title nor in the regulations issued by the Commission hereunder shall be construed to require participation in such portability system by a plan as a condition of registration under this Act.

(b) The Commission is authorized and directed, in accordance with regulations prescribed by it, to receive amounts which are transferred to it from a registered pension

or profit-sharing-retirement plan and which are in settlement of an individual's rights under the plan when such individual is separated from employment covered by the plan before the time prescribed for payments under the plan to such individual or to his beneficiaries.

SPECIAL FUND

SEC. 302. Amounts received by the Commission pursuant to section 301 shall be deposited in a special fund which shall be established by it for the purposes of this title. The amounts in the funds which are not needed to meet current withdrawals shall be invested as provided under regulations prescribed by the Commission.

INDIVIDUAL ACCOUNTS

SEC. 303. There shall be established and maintained in accordance with regulations prescribed by the Commission, an account for each individual with respect to whom the Commission receives amounts under this title. The amount credited to each such account shall be adjusted at the times and in the manner provided by such regulations to reflect earnings of the special fund and transfers from the special fund for costs of administration.

PAYMENTS FROM INDIVIDUAL ACCOUNTS

SEC. 304. Amounts credited to the account of any individual under this title may, in accordance with regulations prescribed by the Commission, be paid by the Commission—

(1) to a registered plan, if such individual becomes an employee covered by such plan and if such plan has benefit features and actuarial assumptions similar to those of the plan from which such amount was originally transferred, or

(2) to such individual or his beneficiaries, if he dies or reaches the age of sixty-five.

Payments under this section shall be made at such times, in such manner, and in such amounts in a lump sum or otherwise as may be determined under such regulations. The amount of any periodic payments shall be determined on an actuarial basis.

COST OF ADMINISTRATION

SEC. 305. There are authorized to be made available out of the special fund established pursuant to section 302 such amounts as the Congress may deem appropriate to pay the costs of administration of this title.

EFFECTIVE DATE

SEC. 306. No amount may be transferred to the Commission pursuant to section 301 of this title before the first day of the twelfth month following the month in which this Act is enacted.

TECHNICAL ASSISTANCE

SEC. 307. The Commission and the Secretary of Labor are authorized to provide technical assistance to employers,

trade unions, and administrators of pension and profit-sharing-retirement plans in their efforts to provide greater retirement protection for individuals who are separated from employment covered under such plans. Such assistance may include, but is not limited to (1) the development of reciprocity arrangements between plans in the same industry or area, and (2) the development of special arrangements for portability of credits within a particular industry or area.

TITLE IV—DISCLOSURE AND FIDUCIARY STANDARDS

PART A—AMENDMENTS TO, AND ADMINISTRATION OF, THE WELFARE AND PENSION PLANS DISCLOSURE ACT

SEC. 401. (a) The functions and powers of the Secretary of Labor and the Department of Labor under the Welfare and Pension Plans Disclosure Act, as amended, are hereby transferred to and shall be administered by the Commission. Such powers provided in the Welfare and Pension Plans Disclosure Act shall be available to the Commission in the enforcement of the provisions of this Act. Wherever the terms "Secretary" appears in the Welfare and Pension Plans Disclosure Act, the term "Commission" (as defined in this Act) is hereby substituted.

(b) All personnel, property, records, and unexpended balances of appropriations, which the Director of the Bureau of the Budget determines are used or intended for use by

the Secretary of Labor or the Department of Labor primarily in the administration of functions transferred under the provision of this section, are transferred to the Commission.

(c) In addition to the filing requirements of the Welfare and Pension Plans Disclosure Act, it shall be a condition of compliance with section 7 of such Act that each annual report hereinafter filed under that section shall be accompanied by a certificate or certificates in the name of and on behalf of the plan, the administrator, and any employer or labor organization participating in the establishment of the plan, designating the Commission as agent for service of process on the persons and entities executing such certificate or certificates in any action arising under the Welfare and Pension Plans Disclosure Act or this Act.

(d) Section 6 of the Welfare and Pension Plans Disclosure Act is amended to read as follows:

"(a) A description of any employee benefit plan shall be published as required herein within ninety days after the establishment of such plan or when such plan becomes subject to this Act.

"(b) The description of the plan shall be comprehensive and shall include the name and type of administration of the plan; the name and address of the administrator; the schedule of benefits; a description of the provisions providing for nonforfeitable pension benefits (if the plan so provides) written

in a manner calculated to be understood by the average participant, and if the plan does not provide such benefits, a statement to this effect; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported in accordance with regulations prescribed by the Commission".

(e) Subsection (a) of section 7 of such Act is amended by adding the number "(1)" after the letter "(a)", and by striking out that part of the first sentence which precedes the word "if" the first time it appears and inserting in lieu thereof the words "An annual report shall be published with respect to any employee benefit plan if the plan

provides for an employee benefit fund subject to section 14 of this Act or".

(f) Section 7(a)(1) of such Act is further amended by striking out the word "investigation" and inserting in lieu thereof the words "notice and opportunity to be heard", by striking out the words "year (or if" and inserting in lieu thereof the words "policy or fiscal year on which", adding a period after the word "kept", and striking out all the words following the word "kept."

(g) Section 7(a) of such Act is further amended by adding the following paragraphs:

"(2) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Commission to be necessary to enable such administrator to comply with the requirements of this Act.

"(3) The administrator of an employee benefit plan shall cause an audit to be made annually of the employee benefit fund established in connection with or pursuant to the provisions of the plan. Such audit shall be conducted in accordance with accepted standards of auditing by an independent certified or licensed public accountant, but nothing herein

shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to periodic examination by an agency of the Federal Government or the government of any State. The auditor's opinion and comments with respect to the financial information required to be furnished in the annual report by the plan administrator shall form a part of such report."

(h) Sections 7 (b) and (c) of such Act are amended to read as follows:

"(b) A report under this section shall include:

"(1) the amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets, liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes; the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position or employment he holds with any party in interest;

"(2) a schedule of all investments of the fund showing as of the end of the fiscal year:

"(A) the aggregate cost and aggregate value of each security, by issuer;

"(B) the aggregate cost and aggregate value, by type or category, of all other investments, and separately identifying (i) each investment the value of which exceeds $100,000 or 3 per centum of the value of the fund and (ii) each investment in securities or properties of any person known to be a party in interest.

"(3) a schedule showing the aggregate amount, by type of security, of all purchases, sales, redemptions, and exchange of securities made during the reporting period; a list of the issuers of such securities; and in addition a schedule showing, as to each separate transaction with or with respect to securities issued by any person known to be a party in interest, the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, and in the case of a sale, redemption, or exchange, the gross and net proceeds (including a description and the value of any consideration other than money) and the net gain or loss;

"(4) a schedule of purchases, sales, or exchanges during the year covered by the report of investment assets other than securities—

"(A) by type or category of asset the aggregate amount of purchases, sales, and exchanges; the aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

"(B) for each transaction involving a person known to be a party in interest and for each transaction involving over $100,000 or 3 per centum of the fund, an indication of each asset purchased, sold, or exchanged (and, in the case of fixed assets such as land, buildings, and leasehold, the location of the asset); the purchase or selling price; expenses incurred in connection with the purchase, sale, or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale, and his relationship to the plan, the employer, or any employee organization;

"(5) a schedule of all loans made from the fund during the reporting year or outstanding at the end of the year, and a schedule of principal and interest pay-

ments received by the fund during the reporting year, aggregated in each case by type of loan, and in addition a separate schedule showing as to each loan which—

"(A) was made to a party in interest, or

"(B) was in default, or

"(C) was written off during the year as uncollectible, or

"(D) exceeded $100,000 or 3 per centum of the value of the fund,

the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and as to loans written off as uncollectible an explanation thereof;

"(6) a list of all leases with—

"(A) persons other than parties in interest who are in default, and

"(B) any party in interest,

including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leaseholds, etc., the location of the property), the identity of the lessor or lessee from or to whom the plan

is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, and with respect to any such leases in default, their identity, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

"(7) a detailed list of purchases, sales, exchanges, or any other transactions with any party in interest made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the net gain or loss, the identity of the other party to the transaction and his relationship to the plan;

"(8) if some or all of the assets of a plan or plans

are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the report shall include a statement of assets and liabilities and a statement of receipts and disbursements of such common or collective trust or separate account and such of the information required under section 7(b) (2), (3), (4), (5), (6), and (7) with respect to such common or collective trust or separate account as the Commission may determine appropriate by regulation. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information determined by the Commission to be necessary to enable the plan administrator to comply with the requirements of this Act; and

"(9) in addition to reporting the information called for by this subsection 7(b), the administrator may elect to furnish other information as to investment or reinvestment of the fund as additional disclosures to the Commission.

"(c) If the only assets from which claims against an employee benefit plan may be paid are the general assets of the employer or the employee organization, the report shall

include (for each of the past five years) the benefits paid and the average number of employees eligible for participation."

(i) Section 7(d) of such Act is amended by striking out the capital "T" in the word "The" the first time it appears in paragraphs (1) and (2) and inserting in lieu thereof a lower case "t".

(j) Section 7(e) of such Act is amended to read as follows:

"(e) Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:

"(1) the type and basis of funding,

"(2) the number of participants, both retired and nonretired, covered by the plan,

"(3) the amount of all reserves or net assets accumulated under the plan,

"(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,

"(5) the ratios of the market value of the reserves and assets described in (3) above to the liabilities described in (4) above,

"(6) a copy of the most recent actuarial report, and

"(A) (i) the actuarial assumptions used in

computing the contributions to a trust or payments under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this section 7 (e), insofar as any such actuarial assumptions are not included in the most recent actuarial report,

"(B) (i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments than are used for any other purpose, a statement explaining same,

"(7) a statement showing the number of participants who terminated service under the plan during the year, whether or not they retain any nonforfeitable rights, their length of service by category, the present value of the total accrued benefits of said participants and the present value of such benefits forfeited, and,

"(8) such other information pertinent to disclosure under this section 7 (e) as the Commission may by regulation prescribe."

(k) Section 7 of such Act is further amended by striking out in their entirety subsections (f), (g), and (h).

(l) Section 8 of such Act is amended by striking out subsections (a) and (b) in their entirety and by redesignating subsection (c) as subsection (a). The subsection redesignated as subsection (a) is further amended by striking out the words "of plans" after the word "descriptions", striking out the word "the" before the word "annual" and adding the word "plan" before the word "descriptions".

(m) Section 8 of such Act is further amended by adding subsections (b), (c), (d), and (e), to read as follows:

"(b) The administrator of any employee benefit plan subject to this Act shall file with the Commission a copy of the plan description and each annual report. The Commission shall make copies of such descriptions and annual reports available for public inspection.

"(c) Publication of the plan descriptions and annual reports required by this Act shall be made to participants and beneficiaries of the particular plan as follows:

"(1) the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement, contract, or other instrument under which the plan was established and is operated available for examination by any plan partici-

pant or beneficiary in the principal office of the administrator;

"(2) the administrator shall furnish to any plan participant or beneficiary so requested in writing a fair summary of the latest annual report;

"(3) the administrator shall furnish to any plan participant or beneficiary so requesting in writing a complete copy of the plan description (including all amendments or modifications thereto) or a complete copy of the latest annual report, or both. He shall in the same way furnish a complete copy of the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established and operated. In accordance with regulations of the Commission, an administrator may make a reasonable charge to cover the cost of furnishing such complete copies."

PART B—FIDUCIARY STANDARDS

SEC. 402. (a) Every employees' benefit fund established to provide for the payment of benefits under an employees' benefit plan shall be established pursuant to a duly executed trust agreement which shall set forth the purpose or purposes for which such fund is established and the detailed basis on which payments are to be made into and out of such fund. Such fund shall be deemed to be a trust and shall be held for the exclusive purpose of (1) providing

benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan.

(b) (1) A fiduciary shall discharge his duties with respect to the fund—

(A) solely in the interests of the participants and their beneficiaries;

(B) with the care under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(C) in accordance with the documents and instruments governing the fund insofar as is consistent with this Act: *Provided,* That any assets of the fund remaining upon dissolution or termination of the fund shall, after complete satisfaction of the rights of all beneficiaries to benefits accrued to the date of dissolution or termination, be distributed ratably to the beneficiaries thereof or, if the trust agreement so provides, to the contributors thereto: *Provided further,* That in the case of a registered pension or profit-sharing-retirement plan, such distribution shall be subject to the requirements of the previous titles of this Act.

(2) Except as permitted hereunder, a fiduciary shall not—

(A) lease or sell property of the fund to any person known to be a party in interest;

(B) lease or purchase on behalf of the fund any property known to be property of any party in interest;

(C) deal with such fund in his own interest or for his own account;

(D) represent any other party with such fund, or in any way act on behalf of a party adverse to the fund or to the interests of its participants or beneficiaries;

(E) receive any consideration from any party dealing with such fund in connection with a transaction involving the fund;

(F) loan money or other assets of the fund to any person known to be a party in interest;

(G) furnish goods, service, or facilities to any person known to be a party in interest,

(H) permit the transfer of any property of the fund to, or its use by, or for the benefit of any person known to be a party in interest; or

(I) permit any of the assets of the fund to be held, deposited or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States district court, except as authorized by the Commission by ruling or regulation.

The Commission may by rule or regulation provide for the

exemption of any fiduciary or transaction from all or part of the proscriptions contained in this subsection 402(b)(2), when the Commission finds that to do so is consistent with the purposes of this Act and in the interest of the fund and its participants and beneficiaries; *Provided, however,* That any such exemption shall not relieve a fiduciary from any other applicable provisions of this Act.

(c) Nothing in this section shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund: *Provided,* That no person so serving who already receives full-time pay from an employer or an association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed;

(3) serving in such position in addition to being

an officer, employee, agent, or other representative of a party in interest;

(4) engaging in the following transactions:

(A) purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the plan under which the fund was established or a corporation controlling, controlled by, or under common control with such employer: *Provided*, That the purchase of any security is for no more than adequate consideration in money or money's worth: *Provided further*, That if an employee benefit fund is one which provides primarily for benefits of a stated amount, or an amount determined by an employee's compensation, an employee's period of service, or a combination of both, or money purchase type benefits based on fixed contributions which are not geared to the employer's profits, no investment shall be made subsequent to the enactment of this amendment by a fiduciary of such a fund in securities of such an employer or of a corporation controlling, controlled by, or under common control with such employer, if such investment, when added to such securities already held, exceeds 10 per centum of the fair market value of the assets of the fund. Not-

withstanding the foregoing, such 10 per centum limitation shall not apply to profit-sharing plans, nor to stock bonus, thrift, and savings or other similar plans which have the requirement that some or all of the plan funds shall be invested in securities of such employer;

(B) purchasing on behalf of the fund any security other than one described in (A) immediately above, or selling on behalf of the fund any security which is acquired or held by the fund, to a party in interest: *Provided*, (i) That the security is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission, (ii) that no brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with such transaction, and (iii) that adequate consideration is paid;

(5) making any loan to participants or beneficiaries of the plan under which the fund was established where such loans are available to all participants or beneficiaries on a nondiscriminatory basis and are made in accordance with specific provisions regarding such loans set forth in the plan;

(6) contracting or making reasonable arrangements with a party in interest for office space and other

services necessary for the operation of the plan and paying reasonable compensation therefor;

(7) following the direction in the trust instrument or other document governing the fund insofar as consistent with the specific prohibitions listed in subsection 402 (b) (2) ;

(8) taking action pursuant to an authorization in the trust instrument or other document governing the fund, provided such action is consistent with the provisions of subsection 402 (b) .

(d) Any fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this Act shall be personally liable to make good to such fund any losses to the fund resulting from such breach, and to restore to such fund any profits of such fiduciary which have been made through use of assets of the fund by the fiduciary.

(e) When two or more fiduciaries undertake jointly the performance of a duty or the exercise of a power or where two or more fiduciaries are required by any instrument governing the fund to undertake jointly the performance of a duty or the exercise of a power, but not otherwise, each of such fiduciaries shall have the duty to prevent any other such cofiduciary from committing a breach of a responsibility, obligation, or duty of a fiduciary or to compel such other cofiduciary to redress such a breach: *Provided,*

That no fiduciary shall be liable for any consequence of any act or failure to act of a cofiduciary who is undertaking or is required to undertake jointly any duty or power if he shall object in writing to the specific action and promptly file a copy of his objection with the Commission.

(f) No fiduciary may be relieved from any responsibility, obligation, or duty under this Act by agreement or otherwise. Nothing herein shall preclude any agreement allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries, but no such agreement shall restrict the obligations of any fiduciary to a plan or to any participant or beneficiary without prior approval of the Commission.

(g) A fiduciary shall not be liable for a violation of this Act committed before he became a fiduciary or after he ceased to be a fiduciary.

(h) No person who has been convicted of, or has been imprisoned as a result of his conviction of: robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, kidnaping, perjury, assault with intent to kill, assault which inflicts grievous bodily injury, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)(1)), or a violation of any provision of this Act, or a violation of section 302 of the Labor-Management Relations

Act of 1947 (61 Stat. 157, as amended; 29 U.S.C. 186), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, as amended; 29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve—

(1) as an administrator, officer, trustee, custodian, counsel, agent, employee (other than as an employee performing exclusively clerical or janitorial duties) or other fiduciary position of any employee benefit plan; or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Commission determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) in violation of this subsection. Any person who willfully violates this subsection

(h) shall be fined not more than $10,000 or imprisoned for not more than one year, or both. For the purposes of this subsection (h), any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this section. For the purposes of this subsection (h), the term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(i) No person who is a party in interest shall receive or accept, directly or indirectly, whether through a corporation or other entity owned or controlled in any substantial degree by such person or otherwise, any payment, loan, pledge, hypothecation, assignment, or other transfer out of the assets of such fund (other than benefits to which such person is entitled as an employee), except that if such person is an officer or employee of such fund, reasonable fees or expenses of attending meetings in connection with the business thereof may be paid from the fund to any such officer or employee attending such meetings in an official capacity. Nothing herein contained shall prohibit the purchase of a

profit-sharing-retirement plan or other profit-sharing plan, in the ordinary course of business, of the securities or indebtedness of any coorporation or other business entity employing directly or through a subsidiary or parent entity a substantial number of the beneficiaries of such fund.

(j) All investments and deposits of the funds of an employees' benefit fund and all loans made out of any such fund shall be made in the name of the fund or its nominee, and no officer or employee of the fund, no trustee or administrator or officer or employee thereof, no employer or officer or employee thereof, and no labor organization, or officer or employee thereof shall either directly or indirectly accept or be the beneficiary of any fee, brokerage, commission, gift, or other consideration for or on account of any loan, deposit, purchase, sale payment or exchange made by or on behalf of the fund.

TITLE V—ENFORCEMENT

SEC. 501. Whenever the Commission—

(1) determines, in the case of a pension or profit-sharing-retirement plan required to be registered under title I, that no application for registration has been filed in accordance with section 102 (a), or

(2) issues an order under section 102 (e) denying or canceling the certificate of registration of a pension or profit-sharing-retirement plan,

the Commission may petition any district court of the United States having jurisdiction of the parties, or the United States District Court for the District of Columbia, for an order requiring the employer or other person responsible for the administration of such plan to comply with such requirements of title I as will qualify such plan for registration under title I.

SEC. 502. Whenever the Commission has reasonable cause to believe that an employees' benefit fund is being or has been administered in violation of the requirements of part B of title IV, the Commission may petition any district court of the United States having jurisdiction of the parties or the United States District Court for the District of Columbia for an order (1) requiring return to such fund of assets transferred from such fund in violation of the requirements of such title, (2) requiring payment of benefits denied to any beneficiary in violation of the requirements of such title, and (3) restraining any conduct in violation of the requirements of part B of such title, and granting such other relief as may be appropriate to effectuate the purposes of this Act.

SEC. 503. Upon the filing of any petition pursuant to section 501 or 502, the district court may, in its discretion, (a) appoint a receiver to take possession of the assets of the plan or fund which is the subject of the petition and to administer them until such time as the violations of law alleged in such petition no longer exist, and (b) remove a fiduciary

who has failed to carry out his duties or is serving in violation of the provisions of this Act.

SEC. 504. Suits by persons entitled, or who may become entitled, to benefits from employees' benefit funds or plans may be brought in any court of competent jurisdiction, State or Federal, or the United States District Court for the District of Columbia, without respect to the amount in controversy and without regard to the citizenship of the parties (1) against any such fund or plan to recover benefits required to be paid from an employees' benefit fund or plan pursuant to the terms of the agreement pursuant to which such fund or plan is established or other constituent instrument; or (2) on behalf of and in the name of an employees' benefit fund against any person who shall have transferred or received any of the assets of such fund in violation of any such agreement or of the requirements of part B of title IV. Where such action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. In any such action the court in its discretion may—

(A) allow a reasonable attorney's fee and costs of the action to any party;

(B) require the plaintiff to post security for payment of costs of the action and reasonable attorney's fees. A copy of the complaint in any such action shall be served upon the Commission by certified mail who shall have the right, in his discretion, to intervene in the action.

SEC. 505. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115) shall not be applicable with respect to suits brought under this title.

SEC. 506. Suits by an administrator or fiduciary of a pension plan, a profit-sharing-retirement plan, or an employees' benefit fund, to review any final order of the Commission, to restrain the Commission from taking any action contrary to the provisions of this Act, or to compel action required under this Act, may be brought in the name of the plan or fund in the district court of the United States for the district where the fund has its principal office, or in the United States District Court for the District of Columbia.

"SEC. 507. It is hereby declared to be the express intent of Congress that the provisions of this Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act: *Provided,* That nothing herein shall be construed to exempt or relieve any person

from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary. Nothing herein shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (other than the Welfare and Pension Plans Disclosure Act of 1958 as amended (92 Stat. 994)) or any rule or regulation issued under any such law."

SEC. 508. Any action, suit or proceeding based upon a violation of this Act or the Welfare and Pension Plans Disclosure Act shall be commenced within five years after the plaintiff has notice of the acts or events forming the basis of the claim: *Provided*, That truthful disclosure of a fact in any form or other document required to be filed with the Commission shall be deemed such notice.

CONGRESS MUST ACT ON PRIVATE PENSION REFORM

(Testimony of Senator Javits,
Ranking Republican Member of the Senate Labor and Public Welfare Committee
Prepared for delivery to
The House General Subcommittee on Labor
Hearing on Private Welfare and Pension Plan Legislation
Room 2257 Rayburn Office Building
Wednesday, April 28, 1971, 10AM)

Mr. Chairman:

The key fact---and the one which too often remains hidden under the self-laudatory rhetoric of self-proclaimed pension spokesmen---is that the majority of private pension plans in this country are established and operated on the basis of three dangerously obsolete assumptions.

The first of these assumptions is that an employee is going to work for one company all or most of his working career. The second assumption is that the company can and should use the pension plan as a club to prevent the employee from seeking job opportunities elsewhere. The third assumption is that the company will stay in business forever in substantially the same or expanded form as when it installed the pension plan.

It is these outmoded and unrealistic assumptions which are at the heart of what is wrong with private pension plans today and which have caused so many employees to leave plans empty-handed and utterly broken hearted. I would like to emphasize this point because there are all too many who believe that the inequities in the private pension system are caused by dishonest and corrupt individuals and that all that is necessary is to establish strong federal standards of fiduciary responsibility. I yield to no one in my concern over assuring the honest, loyal and prudent management of welfare and pension plans, but I can guarantee to this Committee that the vast majority of these funds are run honestly and faithfully, and that enactment of fiduciary standards alone would barely touch on the really serious and pervasive deficiencies in the private pension system.

The New York Times entitled its lead editorial of April 17--- "Phantom Pensions in Industry." In that editorial, the Times declared that "private pension plans now cover the majority of American workers, but the security which these plans seem to offer is often a delusion." Mr. Chairman, in a nutshell, that is what private pension legislation is all about and why it is so urgently needed.

VESTING

By now I am sure that the Chairman and members of this Committee are fully aware that there are nearly 30-million employees covered by private pension plans with assets of $130-billion --- predicted to grow to over $200-billion by 1980 --- the largest aggregate of virtually unregulated money in the Nation. Despite the enormous resources commanded by these funds, however, there is grim evidence that private pension plans deliver on their promises to a relatively inadequate number of employees covered by these plans.

-more-

Contrary to the assumption on which most private pension plans are built, in today's modern industrial society, labor mobility is the rule rather than the exception. Very few employees work for one employer all their working lives. In fact, very few work for one employer as long as 30 years or even 20 years. Despite undeniable evidence of the enormous velocity in job changes among the Nation's work force, private pension plans continue to be structured in a manner which can only result in an abnormally high loss of pension benefits.

Mr. Chairman, at my initiative a year ago, the Senate Labor Subcommittee, under the wise and concerned leadership of its Chairman, Senator Harrison A. Williams, Jr. of N.J. --- who is now Chairman of the full Committee on Labor and Public Welfare as well --- undertook a landmark study into the operation of the private pension system. On March 31 of this year, the Chairman and I released some preliminary results from this survey. The full text of the report is included in Appendix A to my prepared statement and I ask unanimous consent that it be included in the record of these hearings together with my prepared statement.

While these results are "preliminary" --- in the sense of not being statistically all-encompassing --- they are sufficiently sobering to alert all of us to the dangerously inequitable provisions in private pension plans and the hardship and privation that has been worked on thousands upon thousands of employees.

In brief, the preliminary report indicated that in a 20-year period, of 51 plans ($10-billion in assets) with no vesting or 11 or more years for vesting only 5% of all participants who have left their jobs since 1950 have received benefits. In 36 plans ($6-billion in assets) with 10 years of vesting or less, 16% of all participants who left since 1950 have received benefits.

In terms of forfeitures, 92% of all active participants since 1950 who left the 51 plans forfeited without qualifying for benefits; 73% of all active participants since 1950 who left the 36 plans forfeited without qualifying for benefits. The study also indicates that substantial numbers of workers who lost their pension benefits are long-service employees; and the precise figures in this respect are contained in the text and tables of the report.

These appalling statistics on forfeiture of benefits have been reinforced in human terms by the steady stream into my Office --- and I assume into your offices, Mr. Chairman, and the offices of members of this Committee --- of letters of complaint from employees and their beneficiaries. While I have been receiving these letters at the rate of about 1500 a year, for the last 4 or 5 years, in only a three-week period that elapsed from the release of the Senate Labor Subcommittee's preliminary findings, my staff informs me that we received over 500 letters, of which all but 4 were letters detailing specific cases of long-service employees who forfeited pensions and who urge enactment of a comprehensive pension bill (S.2). Incidentally, of the 4 letters of opposition, 3 were from firms of pension plan consultants and one was from the vice-president of a large corporation. Representative examples of these letters, with identities of individuals, companies and plans removed, are provided in Appendix B to my testimony, and I ask that this material also be included in the record of these hearings.

The experience I have just described is not unique. The 1970 Report to Congress by the Secretary of Labor on the Welfare and Pension Plans Disclosure Act states:

> "The Department of Labor continued to receive many letters directly from plan participants, or through Congressional or White House liaison, requesting assistance in collecting retirement benefits

or asking for legislation requiring liberalization of plan provisions. Letters are received from participants in retirement plans administered by employers, unions, and joint boards of trustees. The most common and most serious complaint is inability to meet lengthy service requirements for pension eligibility, frequently despite a lifetime of employment. Some workers with thirty, forty, and even more years of service find themselves ineligible for pension benefits because the continuity of their service with one employer or under a particular plan was broken. Many plan participants are innocent victims of events beyond their control: discharge from employment in middle age without vested benefits, failure of employers to contribute to a multiemployer plan, frequent layoffs resulting in cancellation of previously earned pension credits, plant shutdowns, or company mergers. Job changes are also a frequent cause of pension ineligibility. Many of the letters deal with the inadequacy of retirement benefits, made even more inadequate by the rise in the cost of living with no corresponding increase in benefits."

REACTION TO THE SENATE LABOR SUBCOMMITTEE STUDY

Reaction to the release of the Labor Subcommittee's preliminary data was overwhelmingly favorable. The mail my office received since then runs at the rate of 100 to one in favor of legislation. The Times editorial I have mentioned is typical of the growing understanding of what is needed.

Nevertheless, as I anticipated, there has been some adverse reaction ---principally from some pension consultants who have had long experience in this field, designing the very plans we are investigating.

It has been stated to the press by officials of certain pension consulting firms that my conclusions on the basis of the preliminary findings are "gross misrepresentations of the facts," that the study is "falacious material," and that it is nothing more than a "manufactured crisis which could lead to government control of the private pension system."

Mr. Chairman, I will not go into the technical defects in the so-called data which have been circulated in an effort to rebut the Labor Subcommittee's study, but I ask unanimous consent to insert in the Record a memorandum commenting on some of these "counter-studies."

This memorandum, which I am submitting for the record, will show quite clearly how it is possible to construct a statistical study of vesting in which most people appear to get something; the two principal devices are (1) don't count the people who "pass through" the plan---only count those who are there on one specific date, and then take a percentage of them who will vest (i.e., leave out those who come and go during the time it takes the handful of lucky ones to earn a vested interest); and (2) don't actually count all vested interests---just "estimate" them. With that kind of study, you can produce any result you like.

Mr. Chairman, the Senate Labor Subcommittee study is not an "estimate," it is a compilation of the answers which were supplied by the pension plan administrators themselves---the hard data, the number of forfeitures, over the past 5 years, and the past 20 years.

Note also, Mr. Chairman, what the two principal arguments now being made against my bill are. First, vesting is so improved in recent years that no legislation is necessary; and second, the cost of complying with the legislation for vesting would be too great.

Now it ought to be obvious that one or another of these arguments has to be misconceived! And in point of fact they both are.

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Suffice it to say that, if it were true that vesting has so drastically improved that legislation is unnecessary, it would also be true that the impact of the vesting standards set forth in my bill, for example, would be negligible, and plans would encounter little difficulty in complying. But at the same time, it is argued that mandatory vesting would be prohibitively expensive and therefore should be resisted.

In a diversion from the major substantive issue --- loss of pension benefits --- opponents of legislation setting minimum vesting standards have argued that the Congress really ought to focus on how to encourage extension of private pension plans to those employees who do not have them. I favor encouraging the extension of private pension plans to the maximum feasible extent by whatever means are appropriate, but while engaging in this highly praiseworthy effort we should not lose sight of the serious deficiencies in existing plans which, as I have noted, already cover 30 million American workers.

There is no reason to suppose that there is an inherent conflict between encouraging the growth of private pension plans on the one hand, and establishing minimum standards to insure that every private pension plan is equitable and adequately protects employees against loss of their just pension benefits. In this respect, I cannot emphasize too strongly the salient importance of enacting a comprehensive federal insurance program to protect employees against loss of pension benefits owing to premature plan termination. And, I doubt that I could improve in this connection on the eloquent and impressive testimony of I. W. Abel, President of the Steelworkers Union, before this Committee last Wednesday.

To those who minimize the importance of pension legislation, I say ask the 40 busloads of steel workers who poured into this hearing room a week ago whether they agree --- and who were characterized by the Chairman of this Committee "as the largest number of people to attend a public hearing on a specific piece of legislation in my 40-odd years of legislative duties." It is all very well for those who are in the business of selling and servicing pension plans to pooh-pooh the need for pension legislation, but it is the employee who is getting it in the neck --- who knows why he needs legislation!

PRINCIPAL DIFFERENCES BETWEEN S.2 (JAVITS PROPOSAL) AND H.R. 1269 (DENT PROPOSAL)

Mr. Chairman, both the bill I have authored (S.2) and your bill (H.R. 1269) are substantially similar in intent and technique. Both mandate basic standards for vesting, funding and fiduciary responsibility, and both establish a program of federal insurance. There are, however, a number of important differences between the two bills and by illuminating and concentrating attention on them both may profit.

1. Minimum Vesting Schedule

First, as to vesting, S.2 provides a 10 percent vested right after the 6th year of service, and increasing by 10 percent each year thereafter, so that at the end of 15 years of service the employee has a 100 percent vested right. The concept employed is known as deferred graded vesting.

H.R. 1269 provides a 100 percent vested right after an employee has worked 10 years. The concept employed here is known as deferred full vesting.

I believe that the essential advantage provided by the approach taken in my bill is that vesting starts earlier and avoids an "all-or-nothing" result. An employee who works 9 years and 11 months and then is separated from employment would forfeit all pension credits under H.R. 1269,

but under my bill he would have a 40 percent vested right. As the Senate Labor Committee report shows, there are very substantial numbers of employees who forfeit with more than 5 but less than 10 years of service and I think it is imperative in such a highly mobile industrial society as ours, that we start vesting pension credits early in a worker's career once he has clearly moved out of the transient or casual category.

2. "Aggregate Service"

S.2 also provides vesting based on "aggregate" years of service rather than "continuous" years of service. The distinction is important because many employees have complained about loss of pension credits owing to a "break in service" despite the fact that their years of service, in the "aggregate," would have qualified them for vested rights under the plan.

H.R. 1269, which is based on the "continuous service" concept, does authorize the Secretary of Labor to decide whether "break in service" rules are reasonable, but I believe the entire notion is an artificial one, and that the employee's pension credits --- like his wages --- should not be lost simply because he is compelled to leave his employment and subsequently returns.

3. "Waiting Periods"

In addition, S.2 removes all restrictive eligibility rules from pension plans. Plans are required to admit employees to membership in the plan from the date the employer contributes to the plan on their behalf but in no event later than 6 months from the date of hire. Restrictive "waiting periods" for joining plans have the effect of deferring qualification for vesting and should not be permitted.

H.R. 1269, on the other hand, permits plans to set eligibility for participation at 3 years or until age 25, whichever is the later. Thus, under H.R. 1269, it is possible, for example, for an employee to be hired at age 19 and have to wait 6 years to participate in the plan and then another 10 years to qualify for a vested right --- a total of 16 years. I think this is too harsh.

4. Funding

Insofar as funding is concerned, the major substantive difference concerns the funding of past service liabilities. H.R. 1269 requires the systematic amortization of past service liabilities only to the extent they represent vested liabilities. This is, of course, a vast improvement over the Internal Revenue Service requirements but not adequate enough. There should be a systematic liquidation of past service (vested or not) from the date these liabilities are incurred, and S.2 so provides.

5. Reinsurance

Regarding reinsurance, the most important substantive difference between S.2 and H.R. 1269 is that the latter does not establish any limits on the amount of vested benefits that will be covered by reinsurance nor does it spell out the order of priorities to which reinsurance shall be allocated. S.2 limits reinsurance of vested benefits to the lesser of 50 percent of the employee's average monthly wage for the period at which his earnings were the greatest, or $500 per month. S.2 also sets out an order of priorities which govern the insurance of beneficiaries' rights.

I believe it would be impractical to establish reinsurance to cover every vestige of benefit right because such an approach might significantly impair the viability of the reinsurance program, particularly during a

period of depressed economic activity. By way of analogy, the Federal Deposit Insurance Corporation limits coverage of savings deposits to $20,000 in any one banking institution.

In addition, the Committee should give careful consideration to establishing an order of priorities in the legislation. All too often, plan provisions for distribution of assets on termination are lacking or incomplete, or contain requirements for distribution to beneficiaries which are in direct conflict with the vesting provisions of the plan.

6. Portability

Unlike S.2, H.R. 1269 does not establish a Federal program for portability of pension credits. There has been, unfortunately, a great deal of confusion concerning the concepts of portability and vesting, so I would like briefly to clarify my objective.

S.2 establishes a Federal central clearinghouse to promote, on a voluntary basis, the transfer of vested pension credits from plan to plan. There are some who believe that portability would cover the transfer of non-vested pension credits as well but this would be tantamount to immediate full vesting and would be too expensive and impractical to administer on other than a social security basis. Without portability, a typical worker would receive at retirement a number of checks from different employers representing the vested pension credits he had earned from each of them. However, each of these checks would represent vested benefits earned at the time of separation of employment from each respective employer and would be based on the benefit formula in existence at that time. To a large extent, employees would lose out on improved benefit formulas or benefit formulas geared to their improved earnings as they move from corporation to corporation.

The portability program established under S.2 would provide one solution to this problem. By being able to transfer the value of the benefit right to the new employer or to central investment pools authorized under the Federal clearinghouse arrangement, the employee would be able to enhance the value of his benefit right by "plugging it in" to the more desirable benefit formula of the new employer or to the central clearinghouse fund, where it would be credited with the investment earnings of that fund. Such a program would greatly enhance the adequacy of retirement income that the worker ultimately receives.

7. Administration

Finally, there are substantial differences between S.2 and H.R. 1269 concerning the administration of pension regulatory functions. S.2 would create an independent SEC-type commission to administer the provisions of the bill as well as pension functions presently performed by other agencies, such as the disclosure functions of the Department of Labor under the Welfare and Pension Plans Disclosure Act, and the bulk of the tax qualification functions performed by the Internal Revenue Service. H.R. 1269 would provide for the administration of vesting, funding, fiduciary and disclosure standards by the Department of Labor and would create a governmental corporation within the Department of Labor to administer the reinsurance provisions.

I regard centralization of all pension regulatory functions as highly desirable. There is too much overlapping and duplication of effort going on right now. For example, many of the reports filed with the Internal Revenue Service are also filed with the Department of Labor and if proposed fiduciary provisions should be enacted, not only would the duplication of paperwork be increased but the Secretary of Labor's enforcement of fiduciary standards would overlap with the Internal Revenue Service's enforcement of the "prohibited transactions" section of the Internal Revenue

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Code. Many other examples could be given, e.g. enforcement of the funding standards, but these will suffice.

While the pension industry may well experience some transitional problems in accomodating to a new centralized regulatory agency, I firmly believe that in the long run the industry will be much better served if duplicate disclosure burdens and potential conflicts between competing bureaus are eliminated. And in this connection, I would like to observe that H.R. 1269 only preempts state law in the area of fiduciary standards while S.2 preempts state law with regard to all the subjects covered by the legislation. Once an across-the-board federal pension law is enacted, it seems unfair and unduly burdensome to subject private pension plans---many of which are interstate in operation---to additional state regulation.

Mr. Chairman, I intend to submit a more detailed comparison of the technical differences between S.2 and H.R. 1269, and I ask that the Chairman keep the record open so that I can provide this material.

CONCLUSION

Mr. Chairman, the Senate Special Committee on Aging has reported just last year that 1 out of every 4 persons over age 65 lives in poverty and the number is steadily increasing. In New York City alone, over 12 percent of the city's population --- one million persons --- consists of senior citizens over age 65. Substantial numbers of these persons are living from hand-to-mouth in the most deplorable conditions, with inadequate sources of income to maintain a decent and dignified standard of living.

How many of these persons are retired workers who were covered by private pension plans, but who left empty-handed, nobody really knows. Judging from the complaints my office has received, the number is quite significant.

I know that the Chairman of this Committee has established improvements in the minimum wage laws as a matter of high priority and the attainment of this objective has my full support. I regard the enactment of pension reform legislation as a matter of equally high priority. The minimum wage stadards are designed to protect the worker against unjust economic exploitation during his productive years but how short-sighted we would be if we failed to provide similar protection for the deferred compensation that the worker has earned by his labor so that he may live decently when his productive years come to an end.

I would submit that unless the Congress enacts pension legislation --- so that private pensions will truly serve as an adequate supplement to Social Security --- the anger and disappointment of thousands of frustrated, empty-handed beneficiaries will create enormous pressure for punitive legislation against the private pension system that ultimately will be most difficult to resist.

I urge this Committee in its deliberations carefully to consider the alternatives and to respond to these problems meaningfully.

I ask that the hearing record also include the following: the New York Times editorial and various newspaper and magazine articles and the full text and explanation of my pension bill, S.2.

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EXPLANATION OF "U.S. PENSION AND EMPLOYEE BENEFIT PLAN COMMISSION"

Established in the executive branch of the Government an independent agency to be known as the "United States Pension and Employee Benefit Plan Commission" composed of five members to be appointed by the President, by and with the advice and consent of the Senate.

Provides that it shall be the duty of the Commission: (1) to promote the establishment, extension, and improvement of pension, profit-sharing-retirement and other employee benefit plans; (2) to accept for registration all pension and profit-sharing-retirment plans required and qualified to be registered with the Commission, and to reject any pension or profit-sharing-retirement plan that does not qualify for registration; (3) to cancel certificates of registration of pension and profit-sharing-retirement plans registered which cease to be qualified for such registration; (4) to direct and administer the pension reinsurance program; (5) to direct and administer the pension portability program; (6) to enforce the provisions of title IV; and (7) to perform such other functions as may be necessary to administer the provisions of this Act.

Provides that the functions of the Secretary of Labor and the Department of Labor under the Welfare and Pension Plans Disclosure Act, as amended, are transferred to and shall be administered by the Commission.

Declares that all personnel, property, records and unexpended balances of appropriations, which the Director of the Bureau of the Budget determines are used or intended for use by the Secretary of Labor or the Department of Labor primarliy in the administration of functions are transferred to the Commission.

Title I—Benefit Standards.—Provides that this title applies to any pension plan and any profit-sharing-retirement plan established by an employer engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in an industry or activity affecting commerce or by both.

Provides that every administrator of a pension or profit-sharing-retirement plan to which this title applies shall file with the Commission an application for registration of such plan. Declares that such application shall be in such form as shall be prescribed by regulation of the Commission, and shall be accompanied by a copy of the plan, a copy of the trust deed, insurance contract, bylaw, or other document under which the plan is constituted. Provides that, while such plan is in force, the administrator shall maintain its qualification for registration.

Provides that every pension plan and, to the extent required by regulations issued by the Commission, every profit-sharing-retirement plan shall define the benefits provided by such plan, the method of determination and payment of benefits, conditions for qualification for membership in the plan and the financial arrangements made to insure provisional or full funding of benefits under the plan. Directs that each such plan shall provide for the furnishing of a written explanation to each member of the plan of the terms and conditions of the plan and amendments thereto applicable to him, together with an explanation of the rights and duties of the employee with reference to the benefits available to him under the terms of the plan and such other information as may be required by regulations of the Commission.

Provides that a pension plan filed for registration shall provide for funding, that is adequate to provide for payment of all pension benefits, deferred life annuities and other benefits required to be paid under the terms of the plan.

Requires the funding to set forth the obligation of the employer to contribute both in respect of the current service cost of the plan and in respect of any initial unfunded liability and experience deficiency.

Title II—Pension Reinsurance.—Establishes a program to be known as the Federal pension reinsurance program. Declares that it is to be administered by, or under the direction and control of, the Commission.

Provides that the program shall insure beneficiaries of a reinsured pension plan against loss of non-forfeitable benefits to which they are entitled under such pension plan arising from substantial cessation of one or more of the operations carried on by the contributing employer in one or more facilities of such employer before such plan has been fully funded.

Provides that each registered pension plan shall pay an annual premium for reinsurance under the program as may be established by the Commission. Declares that premium rates shall be uniform for all pension funds insured by the program and shall be applied to the amount of the unfunded liability for non-forfeitable benefits of each insured pension fund. Directs that the premium rates may be changed from year to year by the Commission, when the Commission determines changes to be necessary or desirable to give effect to the purposes of

this title. Declares that in no event shall the premium rate exceed 1 per centum for each dollar of such unfunded liability.

Directs the Commision to establish a revolving fund into which amounts paid into the program as premiums shall be deposited and from which all liabilities under the program shall be paid.

Title III—Pension Portability Program.—Declares it to be the policy of the Congress that a system of pension portability should be established by the Federal Government to facilitate the voluntary transfer of credits between registered pension or profit-sharing-retirement plans having similar benefit features and actuarial assumptions. Provides that nothing in this title nor in the regulations issued by the Commission shall be construed to require participation in such portability system by a plan as a condition of registration under this Act.

Authorizes the Commission, in accordance with regulations prescribed by it, to receive amounts which are transferred to it from a registered pension or profit-sharing-retirement plan and which are in settlement of an individual's rights under the plan when such individual is separated from employment covered by the plan before the time prescribed for payments under the plan to such individual or his beneficiaries.

Authorizes the Commission and the Secretary of Labor to provide technical assistance to employers, trade unions, and administrators of pension and profit-sharing-retirement plans in their efforts to provide greater retirement protection for individuals who are separated from employment covered under such plans. Directs that such assistance may include, but is not limited to: (1) the development of reciprocity arrangements between plans in the same industry or area; and (2) the development of special arrangements for portability of credits within a particular industry or area.

Title IV—Disclosure and Fiduciary Standards.—Provides that the functions and powers of the Secretary of Labor and the Department of Labor under the Welfare and Pension Plans Disclosure Act, as amended, are transferred to and shall be administered by the Commission. Directs that such powers provided in the Welfare and Pension Plans Disclosure Act shall be available to the Commission in the enforcement of the provisions of this Act.

Provides that every employees' benefit fund established to provide for the payment of benefits under an employee's benefit plan shall be established pursuant to a duly executed trust agreement which shall set forth the purpose or purposes for which such fund is established and the detailed basis on which payments are to be made into and out of such fund. Provides that such fund shall be deemed to be a trust and shall be held for the exclusive purpose of: (1) providing benefits to participants in the plan and their beneficiaries; and (2) defraying reasonable expenses of administering the plan.

Declares that a fiduciary shall discharge his duties with respect to the fund: (A) solely in the interests of the participants and their beneficiaries; (B) with the care under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (C) in accordance with the documents and instruments governing the fund insofar as inconsistent with this Act.

Title V—Enforcement.—Provides that whenever the Commission: (1) determines in the case of a pension or profit-sharing-retirement plan required to be registered under title I, that no application for registration has been filed in accordance with this act; or (2) issues an order denying or canceling the certificate of registration of a pension or profit-sharing-retirement plan the Commission petition any district court of the United States having jurisdiction of the parties, or the United States District Court for the District of Columbia, for an order requiring the employer or other person responsible for the administration of such plan to comply with requirements of title I as will qualify such plan for registration under title I.

New York Times Editorial and Other Newspaper and Magazine Articles

[From the New York Times, Apr. 17, 1971]

Phantom Pensions in Industry

Private pension plans now cover the majority of American workers, but the security which these plans seem to offer is often a delusion. If a worker quits or is fired before he is 65, he usually forfeits his rights to a company pension. Similarly, if he dies, his widow collects nothing.

A worker may lose his pension if his company goes into bankruptcy or is merged with another firm. He may lose out if the pension fund is actuarially unsound. This may be because the employer failed to put enough money into it or because the fund trustees made reckless investments. Funds administered by various labor unions—the miners, the teamsters, the barbers—have all come under severe criticism for dubious investment practices.

The preliminary findings of an investigation by the Senate Labor Committee underscore these grim facts. A sample of 51 plans established before 1950 showed that out of nearly seven million workers covered at various times over the past twenty years, more than five million have left and are no longer covered. Unlike Social Security credits, which accompany a worker no matter how many times he changes jobs, rights in a private pension plan are not "portable," except in a few instances where union members are protected while in the same industry.

Under many plans a worker does not even build up a "vested" right to a pension. That is, he does not acquire a nonforfeitable right to a share of a pension fund which he can later collect even if he quits or is fired by the company before he is 65. Even where plans do have a vesting provision, it usually becomes operative only after a worker has put in ten or fifteen years of service. The explanation is simple: money. Providing vested rights or portability for those who leave their jobs adds substantially to the cost of pensions or cuts down benefits for workers who stay long enough to retire.

In 1962, President Kennedy appointed a committee on corporate pension funds. When it made its report three years later, the committee recommended that all private plans be required by law to provide vested rights. But President Johnson, under pressure from businessmen, never endorsed the proposal. The Nixon Administration has been similarly reluctant. A reform bill which it submitted last year was much too modest.

Senator Javits of New York has reintroduced his bill providing that a worker with six years of service be guaranteed 10 per cent of his earned pension rights and 10 per cent more each year after that until 100 per cent vested. A strong bill would establish a new regulatory agency to supervise the more than $130 billion controlled by approximately 33,000 private pension funds, require the auditing and insuring of these funds by the Federal Government and provide for universal vesting.

Such a switch toward fuller embodiment of Social Security principles in private pension plans would necessitate some realism by unions at the bargaining table. Pension costs would rise sharply and workers, through their unions, would have to decide how much of their current wage increases they were willing to set aside to get improved pension benefits in the future.

If the law provided for full vesting, private pensions would undoubtedly be smaller than those now offered, but they would become a more dependable complement to Social Security. Such pensions would then become a fact, not a phantom, for millions of workers who now never collect them.

[From U.S. News & World Report, Apr. 12, 1971]

Urged: Tighter Rules On Pension Funds

Are private pension systems paying off for workers who participate? Some members of Congress are convinced the answer is "No" in too many cases.

Under way in Congress is a move to clamp stricter controls on the handling of private pension funds and to require that more employes receive benefits from these fast-growing plans.

At least 30 million Americans now have a stake in private pension systems, according to a study made public on March 31 by the Senate Subcommittee on Labor. This report found that private pension funds already have assets of 130 billion dollars and are expanding at the rate of 10 billion dollars a year.

A major flaw, says Senator Jacob K. Javits (Rep.), of New York, a member of the Subcommittee, is that many workers fail to benefit.

"As things now stand," the Senator said, "only a relative handful of the estimated tens of millions of American workers under private pension plans will ever get anything from the plans on which they now stake their futures."

The Javits statement was sharply disputed by consultants for pension-fund firms. Said one: "The Committee study is nothing more than a manufactured crisis which could lead to Government control of the private pension system."

GUARANTEES ASKED

To correct the alleged inequities, Senator Javits urged "a minimum standard of vesting."

"Vesting" means guaranteeing to an employe a share of the company's pension fund even if he leaves the firm before retirement age.

In the early days of private plans, there was little vesting. The promise of a pension was held out as a lure to stay with the company until retirement.

In recent years, however, the trend in private pension funds has been toward giving an employe vested rights after he has been with a firm for a specified period or reached a certain age.

Under a bill introduced by Senator Javits, after six years of service a worker would be guaranteed 10 per cent of his earned pension rights. He would get another 10 per cent each added year he stayed with the same firm. Thus, by the end of 15 years' service employes would have vested rights to 100 per cent of their share in funds.

ADVANTAGE FOR WORKERS

The study by the staff of the Subcommittee on Labor indicated that a larger percentage of workers received pension benefits in plans offering early vesting. Examples cited:

One group of 36 pension plans had total assets of 6 billion dollars and offered vesting rights after 10 years of employment. Of 1.4 million workers who left the companies involved in the past 20 years, 242,000—or about 16 per cent—have received some benefits to date.

Another group of 51 private pension plans with total assets of 10 billion dollars offered no vesting at all, or only after 15 years of employment. Out of 5.2 million workers who have left these companies since 1950, only 253,000—or about 5 per cent—have received any pension benefits to date.

Senator Harrison A. Williams, Jr., (Dem.), of New Jersey, chairman of both the Committee on Labor and Public Welfare and the Subcommittee on Labor, listed these examples of individuals who lost pension benefits due to lack of vesting:

"A man with 28½ years of continuous employment at a paper mill lost his job and all pension rights. As he put it in a letter to me: 'One day security—next day nothing for retirement.'

"A man who is now 64 years old with more than 15 years for the same company was laid off and could not find work. In applying for his pension he discovered that he was one year short of eligibility for full benefits. Since there was no qualifying job available, he could not get the one year needed for his pension."

FUND MANAGEMENT

The bill introduced by Senator Javits also would place more restrictions on financial management of funds. Citing "weaknesses" in the system, Senator Javits said:

"One case describes a pension plan with 53 per cent of its assets invested in the securities of the contributing employer. Others describe weaknesses in funding and failure either to keep adequate records or to disclose what's going on."

Senator Javits added, however, that sometimes investment in the stock of the company involved can be beneficial. He cited the case of Sears, Roebuck & Company, in which the buying of company stock with pension funds led to control of the firm by employes and proved to be a bonanza as an investment.

Private studies in recent years have indicated that most funds are soundly based and adequately financed.

Senator Williams stressed that findings of the study by the Subcommittee on Labor were "preliminary." It is based on data from 1,500 of the largest private pension plans registered with the Department of Labor under the Welfare and Pension Plans Disclosure Act.

CASE HISTORIES CITED IN A CONGRESS STUDY

In a survey released March 31, the staff of the Senate Subcommittee on Labor listed a number of case histories to show apparent weaknesses in the funding or management of pension plans. Examples:

A large data-processing manufacturing firm: $41,171,580 of this company's pension fund is invested in unsecured loans.

An aerospace company: With 649 million dollars in liabilities for accured benefits due workers, this pension fund has assets worth only 273 million at this time.

Three major U.S. corporations: Total assets in pension plans of these firms are 260 millions, but none of the companies was able to give details of how many employes are enrolled or hold vested rights.

A clothing manufacturer: Of 2.4 millions in pension-fund assets, $400,000 has been invested in securities of the company itself.

A large oil company: Of 105,000 persons participating in its pension plan since 1950, more than 61,000 have received no benefits on leaving the company. Of these, 3,680 had more than 10 years' service and 13,430 had worked at least five years.

A joint union-employer trust plan: There is no provision for appeal procedure when a benefit claim is denied.

[From the Washington Post, Apr. 1, 1971]

PENSION PLAN STUDY REVEALS BIG MAJORITY GETS NO BENEFITS

(By George Lardner, Jr.)

The top-ranking members of the Senate Labor Committee warned yesterday that only a relative handful of American workers will ever get a penny from the $130 billion now ostensibly set aside for them in private pension plans.

Sens. Harrison A. Williams (D–N.J.) and Jacob Javits (R–N.Y.) pledged a drive for effective government regulation of the funds at a press conference called to outline the first results of a survey started last year. Williams is committee chairman and Javits the ranking minority member.

The initial Senate study, confined to a limited sample of 87 pension plans, showed that fewer than 500,000 of the 9.8 million workers covered since 1950 had received any kind of retirement benefits thus far.

In that 20-year period, 6.7 million workers left their jobs before retirement, and of these, 3.9 million lost all their pension benefits. Included among those who had to forfeit all claim to a pension were 125,500 workers with at least 15 years of service.

Williams called the findings illustrative of the "nightmarish problems" older workers face in receiving adequate retirement income.

The major issue involved "vesting"—the worker's nonforfeitable right to share in this pension fund even if he leaves his job before retirement.

Fifty-one of the 87 plans in the study, with assets of $10 billion, provide no vesting at all or vesting only after at least 11 years of employment. In this group, 92 per cent of the 5.2 million workers since 1950 left their jobs before retirement received nothing. Of the 6.9 million who were or are covered, only 253,118 or 4 per cent had received any retirement benefits at the time of the survey.

The other 36 plans, with $6 billion in assets, required 10 years or less for vesting, but even here, the study found, 73 per cent of the 1.5 million workers who left early forfeited all their benefits. Of the 2.9 million workers covered by these plans since 1950, only 242,510 or 8 per cent had gotten any pension benefits.

"As things now stand," Javits protested, "only a relative handful of the estimated tens of millions of American workers under private pension plans will ever get anything."

Under legislation that he first proposed four years ago, workers would be guaranteed 10 per cent of their earned pension benefits after six years with a company and 10 per cent more each year after that.

Because of the high mobility of American workers, Javits said, more than 50 per cent would still give up their pension right under his proposal, a ratio that he suggested the pension funds could live with.

Both he and Sen. Williams have also suggested minimum funding standards, federal insurance, and safeguards against conflicts of interest and other unethical practices. According to the Labor Department, there are now 42,670 private pension plans in the nation covering 25 or more workers. They involve an estimated 28 million to 30 million workers in all and their assets are growing by $10 billion a year.

The private funds, a recent SEC study showed, had assets of $128.6 billion at the end of 1969, compared to $110.3 billion in all federal, state and local programs, including Social Security. Tax-deductible payments by employers account for an estimated 85 percent of all contributions to private retirement plans.

The Senate study, which will take months to complete, is aimed at 1,500 representative pension plans, but only about 1,000 have responded so far. Williams hinted yesterday that subpoenas will be issued if necessary. Repeated instances of questionable practices have already been uncovered, the study staff said yesterday. Among them—

A major oil company in Oklahoma whose president is both trustee of its $62.2 million pension plan and a director of the bank where the funds are deposited.

A Midwestern cable corporation with $900,000 or 5 percent of its $1.7 million in pension fund assets invested in securities of the company. The company president is both a member of the committee that administers the plan and a director of the Missouri bank that invests the plan's funds.

A major mining company with pension plan assets of $33.3 million and liabilities of $107 million for vested benefits. If the plan were to be terminated, many of the workers would lose all or most of their pensions.

Pension plans granted tax exemptions by the Internal Revenue Service are, on paper, prohibited from using their funds for the benefit of anyone but the employees covered. But there are no criminal penalties for violators and the most the IRS can do is to revoke the tax exemption, a step that would hurt the beneficiaries most.

[From the New York Times, Apr. 1, 1971]

Private Pensions Scored by Study—Panel in Senate Finds Few Workers Get Any Benefits

(By Philip Shabecoff)

Washington, March 31.—Only a small fraction of American workers belonging to private pension plans ever receive a penny in pension benefits, according to a Senate subcommittee study released today.

The study, made by Senator Jacob K. Javits, Republican of New York, and Senator Harrison A. Williams Jr., Democrat of New Jersey, indicates that a majority of workers in pension plans forfeit all benefits by leaving their employer before retirement age.

Senator Javits, who has introduced a sweeping pension reform bill, described private pension plans as "a major American institution built upon human disappointment. It is a shocking thing."

Senator Williams pointed out at a briefing on the study that private pension plans in the United States involve assets of $130-billion and have 30 million participants.

He said that data released today represented a preliminary study and that a full report on pensions would be made after hearings to be held soon by his labor subcommittee.

"In recent years, older workers in retirement have faced nightmarish problems in receiving adequate retirement income," Senator Williams said. "For many of them the specter of sudden layoff or job termination represents more than the loss of present income. All too frequently it can also mean the loss of credits built up from long years of service—credits that can never be retained even with a new job."

"Vesting Rights"

The study deals with the problem of "vesting rights"—rights by a worker to a share in the pension fund even if he leaves his job.

According to Senator Javit's staff, the overwhelming majority of private pension funds have no vesting rights.

A part of the study that surveyed 51 pension plans with total assets of $10-billion—but with no vesting rights or rights that began only after 15 years or more—showed that of 5.2 million participants who left their employers since 1950, only 253,000, or about 5 percent, have actually received any pension benefits. A total of 6.9 million people participated in the plans, but 1.7-million of these are still working.

The remaining 95 percent participants forfeited all rights to pension benefits by leaving the particular employer before retirement age or before they stayed at the company the 15 years or more needed to acquire vesting rights.

Under the prevailing system in most pension plans, these workers lost all the money paid by employers to the pension fund, even if those payments were part of the employes' compensation, Senator Javits pointed out.

Senator Williams added that in many cases the worker can lose even his own contribution to the pension fund.

Another survey that is part of the subcommittee study encompasses 36 pension plans with assets of $6-billion that offered vesting rights after 10 years. Workers are shown to have done somewhat better under this plan.

Of 1.4 million workers who have left employers covered by these plans since 1950, 242,000, or about 16 percent have received pension benefits. This was more than three times the number of workers who received benefits with no vesting rights or only long-term rights, but it was still a minority of all the workers who had paid the plans, Senator Javits observed.

UNUSED FUNDS "PILING UP"

The Senator said that a variety of things were done with money that was not paid out the money that was not paid to workers as pensions.

Much of it was simply "piling up" in banks as frozen assets, he said, adding that in some cases employers had just ceased paying pensions. Because so much money piled up, he said, there was a "temptation to use the money for lush expenses."

The study did not name specific employers. "The system" is guilty of the pension wrongs to workers, Mr. Javits contended.

The study presented several case studies of misuse of pension funds. It noted, for example, that one, "cable corporation in the Midwest" had invested more than half of its pension plan assets in its own corporate securities. The same company had also spent a third more on costs to operate the plan than it did on benefits.

[From the Christian Science Monitor, Apr. 7, 1971]

REGULATION PROPOSED—SENATORS TO PROBE PENSION PROGRAMS

(By Philip W. McKinsey)

WASHINGTON.—A high-powered Senate subcommittee is cranking up an investigation of the way private pension plans operate.

It is not a small question. There are some $130 billion of assets in pension plans nationwide.

And what a Senate labor subcommittee, headed by Sen. Harrison Williams (D) of New Jersey, with the strong backing of Sen. Jacob Javits (R) of New York, wants to look into is how few people actually get pensions they expect to get.

It draws now on a survey of pension plans which suggests a need for stronger regulation of what Senator Williams calls the "most unwatched and unregulated reservoir of money" in the United States.

Senator Williams already has singled out an example of a "man with 28½ years continuous employment at a paper mill" who lost all his pension rights. And he cites another man of 64 with 15 years at the same company who was laid off and discovered he was one year short of eligibility for full pension benefits.

"As things stand now, only a relative handful of the estimated tens of millions of American workers under private pension plans will ever get anything from the plans on which they now stake their futures," Senator Javits said.

WIDE INQUIRY MAPPED

The subcommittee has about $500,000 to conduct its inquiry and expects to put 15 staffers at work to dig out and publicize what Senator Williams terms "horrible examples" of pension problems. Public hearings will be held this spring and summer.

Mr. Williams says he has "reasonable hopes for legislation" from Congress this year or next. As he and his aids now view it, the most likely new law will focus on centering fiduciary responsibility on the trustees of some 34,000 pension funds, increasing their liability for violation of rules of conduct covering conflicts of interest, graft and mishandling of funds.

The subcommittee last year sent out a detailed questionnaire to 1,500 pension-fund managers—whose funds cover about 16 million employees—and the examples being cited by the Senators now come from this sample.

Data from this study comes from only 87 plans which responded fully to the questionnnaire. But committee officials say that this provides enough information to conclude that a great number of employees wind up with no pensions despite years on a job for a company with a pension plan which supposedly benefits employees.

From this survey the committee analyzed two types of pension plans. One group provided no vesting at all, or vested right after 11 years of service. The second provided vesting with 10 years of service or less.

BILL SEEKING REGULATION

In the former group were 51 plans, covering 6.9 million participants since 1950, of which 5.2 million employees had left the "scope" of the plan, and of which only 5 percent received any benefits.

Senator Javits has introduced a bill which would set up a Securities and Exchange Commission-type body to regulate pension plans.

Of the group turned up in the committee's survey he comments, "If my bill had been law, the 719,688 workers (each with more than five years of service) . . . would have received something, instead of nothing, from the $10 billion piling up in those plans for the past 20 years. Instead, of those who left employment under those plans in the last 20 years, only 5 percent got something while 95 percent got nothing."

The second group of 36 plans with vesting provisions for 10 years of service or less covered 2.9 million participants since 1950, of which 1.5 million left the scope of the plans during that period. Of this total, 73 percent forfeited benefits, with 16 percent receiving benefits.

Senator Williams acknowledges that these figures come from a limited sample. But he points out that complete analysis will take some time since about a third of the 1,500 trustees sent questionnaires have not responded at all, and many of the respondents did not provide complete answers.

JAVITS URGES ACTION

The Javits bill would provide—

Some pension benefits to any employee after six year, with full benefits after 15 years of service. It would require minimum funding—with contributions sufficient to establish actually sound reserves—to assure that funds are solvent and able to pay for benefits.

A federal insurance program to pay benefits even if an employer goes out of business.

A system of portability allowing an employee to take his pension from one job to another.

Rules and penalties to deal with graft and mishandling of funds.

Establishment of a U.S. pension and employee benefit commission to administer the rules.

[From the Wall Street Journal, Apr. 1, 1971]

SENATE LABOR PANEL ARRANGING HEARING ON PRIVATE PENSIONS—WITNESSES TO BE CALLED TO BOLSTER INQUIRY SEEKING TO ESTABLISH NEED FOR PENSIONER PROTECTION

WASHINGTON.—The Senate Labor Committee has begun preparing for hearings on the need for legislation giving more protection to participants in private pension plans.

Sen. Harrison Williams (D., N.J.), committee chairman, said witnesses will be summoned to the hearings to explore "some of the problems not suitable to analysis" as part of the committee's current statistical study of 1,500 private pension plans.

Preliminary results from questionnaires received from more than 1,000 of the plans were made public yesterday by Sen. Williams and Sen. Jacob Javits (R., N.Y.), the ranking Republican on the committee.

"As things now stand," Mr. Javits declared at a news briefing, "only a relative handful of the estimated tens of millions of American workers under private

pension plans will ever get anything from the plans on which they now stake their futures. And the solution is a minimum standard of vesting."

Vesting refers to how much service an employe must have to gain a non-forfeitable right to a share of a pension fund even though his employment is terminated before he reaches the usual retirement age. The preliminary data released by the committee was divided into two categories, depending on the vesting provisions of the plans.

Among 51 plans established before 1950 where employes are vested after 11 or more years of service, the committee's study found only 5% of the active participants who've dropped out in the past 20 years have received "any kind of normal, early or deferred" benefits. Of the 6.9 million participants in the 51 plans since 1950, 5.2 million had "left the scope" of their plan for one reason or another; the rest were still covered.

The second category involved 36 plans that have a vesting requirement of 10 years or less. The study found that 16% of the 1.5 million participants who have left the plans since 1950 have received any kind of benefits. The total number of participants in the 36 plans since 1950 was 2.9 million.

The administration is considering submitting pension reform legislation this year that would set certain vesting requirements, among other thing. Presumably, the administration's proposal, if introduced, will be examined during the committee's planned hearings.

Several pension reform bills already have been introduced in the Senate and House.

[Condensed from Harvest Years, April 1971]

What You Should Know About Your Pension

Each year, thousands of Americans who think they are "covered" fail to get the retirement benefits they've been counting on. Here's why.

Week after week despairing letters stream into Congress and the Labor Department from people who have suddenly discovered that their long-expected pensions have evaporated into thin air. Last April, George P. Shultz, then Secretary of Labor, told a Congressional committee that an estimated *one third* of all employes currently covered by private retirement plans "will never receive a pension." According to this calculation, nearly nine million of the 26 million Americans now enrolled in these plans will lose out.

The crunch in large part comes because only a minority of workers spend a lifetime or even 20 years with one employer. In a dynamic, innovative economy it is quite common to change jobs three or four times in a working career of 40 to 45 years. No personal instability is involved, merely an individual's desire to better himself, or the need to shift because technological change has wiped out old jobs. In recent months, too, because of the recession as well as budgetary cutbacks in the defense and aerospace industries, a great many people have lost their jobs before they could nail down their pension rights.

Clearly, there are major flaws in this country's system of private pension plans. Among them:

Inadequate "vesting" provisions. Vesting is the non-forfeitable right to a pension that an employe retains when he leaves a job prior to retirement age. Generally, it is a deferred right—the worker draws the pension when he reaches 60 or 65—and it is less than a full pension, its amount depending on his length of service. According to a recent Bureau of Labor Statistics study, 23 percent of pension plans offer no vesting—which, of course, means that a worker has to stay on the job until retirement age to be assured of a pension.

Moreover, only 34 percent of plans give vested rights after five to ten years' service—an excellent provision—whereas 30 percent require 11 to 15 years and nine percent 16 to 20 years. (In many of these plans an employe has to attain a certain age—often 40 or 50—before he can be vested.)

Business disasters. Expectations of a pension can be cruelly thwarted not only because employes change or lose jobs before they qualify; some workers are victimized because their employers go out of business before they can put enough money in the pension fund to meet all its obligations. The best-known disaster of that kind befell employes of the Studebaker Corporation, which stopped automobile manufacturing at its South Bend, Ind., factory in 1964. Studebaker had instituted a pension plan in 1950, but by the time the fund was formally terminated and retirees were compensated through the purchase of annuities, the money

left in the pot was grievously inadequate to satisfy all the vested claims. The solution: each man got 15 percent of what he was entitled to, in lumpsum settlements that ranged from $200 to $1600. Most of these workers were in their early 50s and had only a remote chance of qualifying elsewhere for a pension.

The United Steelworkers of America, which has about a million members covered by pension plans, has within the last five years seen over 70 pension funds founded because of plant shutdowns, bankruptcy or merger. A Department of Labor study showed that 4259 pension plans were terminated from 1955 through 1965—affecting some 225,000 employes. Some of these plans had a fair amount of money in the till, and some of the workers were transferred to plans in merged corporations. Nonetheless, many thousands of workers each year were victimized.

Unethical conduct. Another threat to employes' pensions comes from the loose standards which govern the plans. In theory, a pension fund is set up solely in the interest of its beneficiaries. In practice, there are innumerable opportunities for the company or the plan trustees to manipulate the fund for their own private advantage. In one celebrated case, corporate officers of a holding company were also the trustees of the pension fund of their principal operating company. They used pension-fund money to purchase the stock of the holding company, thereby supporting its market price when it was declining. During this same period, the trustees were prudently selling blocks of their own stock in the company. At the end of a two-year period, the fund took a loss of more than $1.6 million in these over-valued securities. There was nothing illegal in this operation. It was simply unethical.

Pension funds have also been known to pay their trustees enormous sums for their services. One large corporation had 16 pension and profit-sharing plans, administered by five trustees. In one year, the trustees received $300,000 in fees from the 16 funds. Their duties could not have been too onerous, however, for the funds also paid $130,000 to a separate corporation to handle their investments and administer the benefit plans.

What can be done? The problem has been under study for years, and both Republicans and Democrats have introduced legislation to eliminate abuses and inadequacies. Among the proposed remedies are mandatory vesting after ten years, and "graded vesting" (already in existence in many of the better pension plans), whereby vesting starts, say, after the sixth year of employment and increases by ten percent a year thereafter, so that the employe is half vested after ten years, fully vested after 15.

Another suggested solution involves "portability," which allows employes to transfer credits from one pension plan to another as they shift jobs. Such reciprocity in the transfer of pension credits already exists between a number of multi-employer pension plans. Though portability is a useful device, most experts believe that it involves many technical problems, and that adequate vesting provisions will achieve a similar result, enabling a worker to retire with two or three reduced pensions.

Improved funding standards have also been proposed, to ensure that the employer continues to put enought money in the pot each year so that if the plan were terminated it could pay off all its pension obligations. To solve the problem of a company going out of business prior to full pension-plan funding, a federal insurance program has been suggested, similar to the nearly 40-year-old program that insures bank deposits. (Premiums would be paid by the pension funds, just as banks pay premiums to the Federal Deposit Insurance Corporation.)

Requirements for vesting, funding and insurance are contentious matters, however. Employer groups like the U.S. Chamber of Commerce oppose mandatory provisions largely on the ground that the additional financial burden will restrain the creation of new pension plans. Labor is of divided mind on the issue. The steelworkers and auto workers have strenuously campaigned for vesting, funding and insurance, while the International Ladies' Garment Workers' Union and the Amalgamated Clothing Workers, which have long sponsored multi-employer plans, have vigorously argued that the cost of the proposed reforms would be onerous for their modest-sized and often hard-pressed employers and would force a reduction of already small pension benefits—$75 and $85 a month in the case of the ILGWU. Like the garment unions, the AFL–CIO maintains that in multi-employer plans, 25- or 30-year funding is unnecessary, for with many hundreds of employers putting up the money, the demise of any particular employer would not imperil the fund.

The view has merit and, in at least one proposal, a multi-employer plan which is clearly not dominated by any one employer would be exempt.

Less controversial proposals involve stricter standards under which "self-dealing" would be outlawed. Pension-fund trustees would be held to standards similar to those that apply to the trustees of an estate. Any deviation from such behavior would compel the trustees to make up losses suffered by a fund and, in the case of willful delinquency, criminal penalties could be imposed. Annual reports would have to be filed with the Labor Department providing for more detail on fund investments than is now required.

The Nixon Administration is strongly on record for a fiduciary standards and disclosure bill, and there will be an energetic push to pass reform legislation in the new Congress. But even now there are a few important steps *you* can take to protect your pension:

1. Study the details of your pension plan. Benefits have often been lost through ignorance. If the plan requires 15 years' service and attaining the age of 42 for vesting, don't make the mistake of leaving when you're 41.
2. See if there are any hidden gimmicks in the plan. Sometimes an ex-employe is denied vested rights in a pension if he goes to work for a competitor.
3. Check occasionally with the personnel office to make sure that there are no errors about your length of service. It is easier to correct mistakes soon after they occur than when you are on the brink of retirement.
4. If you have a vested right in a pension, get a written statement from the pension fund as to your equity when you leave your job. Don't wait until you retire.

Foresight can save a lot of woe. But in the end Congress will have to act if the pension rights of millions of Americans are to be protected.

[From the Washington (D.C.) Post, Nov. 24, 1970]

Lapses by Huge Pension Funds Bring Cries for Greater Control

(By Ronald Kessler)

For 41 years, Charles N. Evelyn worked for a newark, N.J., chemical factory as a mechanic. As part of his compensation, Evelyn was promised a pension of $100 a month when he retired at 65.

At 63, Evelyn was laid off when the firm was acquired by a larger concern. Because he was not working for the company when he turned 65, Evelyn became ineligible for the pension he had counted on for years.

"I never thought it could happen," says Evelyn, now 75 and subsisting on social security. "I thought the money was secure as a bank account."

According to increasing criticism of retirement plans by congressmen and federal officials, such cases occur because pension funds remain one of the least regulated—and least understood—financial institutions in the country.

"There are vast sums of wealth being built up in this country (by pension funds) that are litttle-noticed and over which there is little control," says Rep. Martha W. Griffiths (D-Mich.), chairman of the Joint Economic Committee's Fiscal Policy Subcommittee.

Sen. Jacob K. Javits (R-N.Y.), who has introduced numerous bills to regulate the funds more closely, estimates "a large proportion" of workers covered by pension plans "never receive any benefits, often even after long years of service." The exact number of such instances is not known.

Defenders of pension systems, such as the U.S Chamber of Commerce, argue that the tremendous growth of pension coverage would not have been possible under strict government regulation and that abuses have been minimal. More than one in two American workers are now covered by a pension plan, and some 10 million persons receive benefits.

The majority of pension funds are run fairly and prudently. But each year thousands of workers report that their promised pensions, for one reason or another, have vanished.

Evelyn found that the restrictive rules of his company's pension plan wiped out benefits if an employee was laid off, fired, or quit before he turned 65.

Some workers learn too late that their employer has not placed enough money in the pension fund to cover benefits if the company becomes bankrupt.

Still other are victimized by companies and unions and irresponsible investing by unions and companies that run pension funds, affecting both the beneficiaries and society.

RECENT DEVELOPMENT

The growth in pension funds is a relatively recent development. Although the first formal pension plan was established in this countdy in 1875 by American Express Co., employer provisions for retirement security remained a novel experiment in labor relations until World War II, when wage controls clamped a lid on salary increases—but not on such fringe benefits as pensions.

Aided also by tax concessions and a 1949 Supreme Court ruling allowing labor unions to negotiate pensions under collective bargaining laws, pension fund assets grew from $7 billion in 1940 to $108 billion in 1960, including funds run by companies, unions, insurance companies, and state, local and federal governments.

In the past 10 years, pension assets have more than doubled to $240 billion, an amount equal to about a third of the gross national product, a compilation of government figures shows. (The figure includes $34 billion in social security assets.) The money represents one-eighth of all the savings held by individuals in checking and savings accounts, stocks and bonds, and life insurance policies. One out of 10 shares traded on the New York Stock Exchange is owned by a pension fund.

Because of the tax concessions and forfeitures by employees who leave companies before they become eligible for a pension, an employer who contributes $100 a year to an employee's pension fund provides the workers with an annual income after 40 years' employment of about $2,300.

If the same money is given as salary and placed by an employee in a savings account earning 5 per cent interest, his annual annuity after the age of 65 would be only about $800, according Edwin F. Boynton, an actuary for the Wyatt Co., a large pension consultant.

In addition to tax advantages to the employee (he does not pay taxes until he begins receiving the money, when he is probably in a lower bracket, and investment income of the fund is not taxed), the employer's contribution to the pension fund is tax-deductible.

EASY TO START

Starting a pension fund is relatively easy. To get favorable tax treatment, the Internal Revenue Service requires filing of a special form stating that the money will be used solely for the benefit of employees and listing financial details. Only about 1,000 of some 115,000 such forms on file are examined by IRS agents each year, according to former IRS Commissioner Sheldon S. Cohen. However, corporate pension plans are examined when the companies are examined, the IRS says.

Pension funds must also file annual statements with the Department of Labor disclosing overall financial data but not individual investments.

Unless pension fund administrators violate criminal embezzlement statutes, experts say, these requirements essentially constitute the extent of regulation of the pension industry—a situation many critics find disturbing.

"There's no reason why pension funds should not be as well-regulated as banks and insurance companies; the security of the money is just as important," says Paul P. Harbrecht, professor of law at York University in Toronto and author of "Pension Funds and Economic Power."

FUNDS NOT AUDITED

Unlike bank accounts, critics say, pension funds are neither audited nor insured by outside agencies. Employers are not required to place enough money in the funds to cover benefits promised should the company become bankrupt or simply close down. If the company does dissolve, it is not liable for the obligations of its pension fund.

In 1963, for example, some 4,000 employees of Studebaker Corp.'s South Bend, Ind., plant found that their pensions amounted to little after the factory closed down. There was not enough money in the fund to pay benefits, although Studebaker had honored all its contract obligations. Men who had worked for the company for 30 and 40 years got 15 per cent of their promised pensions; many others received nothing.

"In all too many cases," Thomas R. Donahue, a former Labor Department assistant secretary testified in Congress two years ago, "the pension promise shrinks to this:

PENSIONS ARE LOST

"'If you remain in good health and stay with the same company until you are 65 years old, and if the company is still in business, and if your department has not been abolished, and if you have't been laid off for too long a period, and if there is enough money in the fund, and if that money has been prudently managed, you will get a pension.'"

Exactly how many workers lose pensions and for what reasons is unclear. Former Labor Secretary George P. Shultz estimated before a House Labor Subcommittee last April that one third of the 30 million workers covered will never receive a pension.

Between 1955 an 1965, the Labor Department concluded, about 225,000 workers were affected by pension plans that terminated because of bankruptcies or mergers. However, the figures do not include partial plan terminations and workers whose pension coverage was renewed by an acquiring company.

The Labor Department receives about 1,000 letters a year complaining of individual cases of alleged pension fund unfairness or default.

RANGE OF PROBLEMS

To many, the confusion over the figures illustrates both the lack of knowledge about pension funds and the wide range of problems to which they are heir.

For example, Shultz's estimate on the loss of pensions is based primarily on only one type of loss—those caused by restrictive rules.

These rules frequently deny benefits to workers unless they are employed by their same company at the age of 65, when they begin receiving benefits. The result is lower contributions to the pension fund by the employer, because of the many forfeitures by workers who leave, die, or who are fired before 65.

Sen. Javits and others who have studied pensions maintain that a worker should receive some rights to benefits—pro-rated for years of service—after working for a company for five or 10 years. Such provisions, called vesting, already are offered voluntarily by many pension funds, particularly those run by the largest companies.

Legislation to require vesting universally was among the key recommendations of the President's Committee on Corporate Pension Funds, appointed by John F. Kennedy in 1962.

When the report was finally issued in 1965, President Johnson was dissuaded from endorsing legislation to implement the proposals by Henry Ford II, chairman of Ford Motor Co., who argued in several personal appeals that further government regulation would hamper growth of pension funds and alienate the business community, according to Rodney W. Markley, a Ford vice president in Washington, and high government officials. A bill was finally backed by the Labor Department without White House support.

The 1965 report generated additional bills to deal with another area of congressional and governmental concern: handling of pension fund money.

Through the years, any number of financial irregularities have been uncovered in various pension funds, often in those run solely by unions.

"You don't have an adversary system in a union pension fund," the pension negotiator for one large manufacturing union explains. "It's disloyal for a union member to question his officers about pension money."

Pension funds jointly administered by union and management representatives "normally end up being run by the union because the employer knows he will have to face those (union) guys across the bargaining table, and the union officials usually outlast the company executives assigned to represent management on the fund," says a Federal Bureau of Investigation agent who specializes in pension fund cases.

What can happen the agent says, is that "people who can't get loans elsewhere because of their backgrounds or the purpose of the loan get them from union pension funds by paying kickbacks. This jeopardizes the fund, because the investments are marginal. And it leads to further corruption."

Indictments are expected within the next month by a Chicago federal grand jury investigating $11 million in loans by pension fund of the Journeyman Barbers, Hairdressers, Cosmetologists & Proprietors' International Union of America (AFL-CIO). According to a grand jury report, $3 million of the loans are delinquent to the pension fund. Thomas A. Shaheen Jr., who lived until recently in Chevy Chase, has been arrested in connection with one loan of $350,000 to a Chicago dry cleaning firm.

PAYMENT DEMANDED

A complaint signed by U.S. Attorney William J. Bauer alleges Shaheen demanded payments over seven years of up to 42,800 in return for Shaheen's help in securing the loan. An affidavit filed with the complaint stated $14,000 was paid to a Washington company 85 percent owned by Shaheen's wife, Evelyn.

David L. Green & Sons, the dry cleaning firm, recently went out of business, and the loan is in default.

Other loans were made to business interests of Lammot du Pont Copeland Jr., a partner in several ventures with Shaheen. Copeland, son of the chairman of the E. I. du Pont de Nemours & Co., recently startled the business world by filing for protection under the federal bankruptcy laws.

This month, a former auditor of the International Brotherhood of Teamsters' Central States, Southeast, and Southwest Pension Fund was convicted for a kickback arrangement.

Testimony at the trial indicated Mid-City Development Corp., a Detroit real estate company, obtained an increase on a loan from the pension fund from $1,050,000 to $2,500,000 by paying a kickback of $10,000 to Herbert Itkin, a New York mortgage broker who has been prosecution witness in several prominent criminal cases.

MAFIA CONNECTION

Terms of the transaction were arranged by Mafia operatives in Pittsburgh, testimony at the trial indicated.

Two years ago, the New York State Investigation Commission charged that members of a crime syndicate control New York locals of the Mason Tenders Union and its welfare and pension fund.

Among those to be close to the union were Michele Miranda, a reputed Mafia chieftain who attended the 1957 Appalachin underworld meeting, and the late Carlo Gambino, who allegedly headed one of New York's five Mafia families.

New York State filed suit to seize control of the union's $19.6 million in pension and welfare fund assets, charging that the trustees' operations might present a "financial hazard" to the beneficiaries. Among items cited by the department were about 40 instances of apparent fraud, many involving alleged overpayment of benefits and insurance premiums.

The case is still pending in court.

1968 CASE

A 1968 Senate Labor Subcommitte investigation concluded that current laws gave no grounds for prosecuting the case of a New York Teamsters local official who quietly diverted the entire assets of one pension fund to foreign companies controlled by him. The money—$47 million—was returned by the official. George Barasch, after the Subcommittee publicized the case.

One of the most publicized union pension fund perculiarities is the insistence of the United Mineworkers of America on keeping as much as $70 million from its pension and welfare fund in an interest-free checking account at National Bank of Washington, which is 75 percent owned by the union.

The latest balance, according to congressional investigators, was $26 million, representing an annual loss at simple 5 percent interest at $1.3 million. Officials of the union say the practice is followed to keep the money readily available for a strike.

Some pension fund administrators make loans to themselves or to their companies, frequently when the transactions would be too shaky for a traditional lender, or engage in other self-dealing.

Several years ago, Labor Department officials have said, some McCrory Corp. officers who also were trustees of its pension fund purchased shares of the New York retailing company's stock for the fund while they were selling their own shares in the company. When the fund stopped buying the value of the stock dropped to a third of its previous price, reducing the pension fund's assets by more than $4.5 million.

HOTEL MORTGAGE

The temporary deflation in value did not affect employee benefits, but workers at other companies have not fared so well.

For five years, employee contributions to the profit-sharing fund of a Chicago hotel exceeded employer contributions. In 1965, more than a third of the fund's

assets were invested in a third mortgage to the hotel at a low interest rate and another loan to the hotel operator, the Labor Department says.

The hotel went bankrupt in 1967, and the mortgage "appears to be worthless," the department concluded.

Pension funds, unlike banks, sometimes fail to subject administrators of the funds to rigorous checks before they are hired.

Two years ago, New York City hired a securities analyst to manage $39 million in annual stock market investments made by the city employees' pension fund without checking his resume.

Subsequent investigation by New York County District Attorney Frank S. Hogan and the city investigation commission revealed the analyst, Issac Glickman, succeeded in taking responsibility for stock investments away from Chase Manhattan Bank and placing it in his own hands. Official sources say some stock broker reported Glickman knew little about the stock market and its terms. Others claimed he was a genius. By buying and selling huge blocks of stock, Glickman made more commissions for stockbrokers than Chase had made in 18 months.

BRIBE CHARGE

Glickman was indicted less than a year after being hired for accepting a $700 bribe from a former salesman of Shearson, Hammill & Co. and new issues of common stock from a former member of Goodbody & Co., both New York stock brokerage houses, allegedly in return for referral of city pension fund business.

Glickman pleaded guilty this month to accepting unlawful gratuities. He will be sentenced next month.

Glickman declined through his lawyer to comment on his case.

His superior, Eugene L. Sugarman, former third deputy comptroller, was subsequently indicted for allegedly taking $88,000 in bribes for recommending approval of mortgage loan applications made to the city pension fund. Sugarman has denied the charge.

Many of the 15 pension bills introduced in the last session of Congress would attempt to reduce the incidence of financial irregularities by imposing "fiduciary standards" on administrators of pension funds, requiring fuller disclosure of pension plan operations, and mandating annual audits by independent accounts of pension money.

"Fiduciary standards" would require plan administrators to make prudent investments solely in the interests of employees, as outlined in trust law precedents. And persons convicted of certain crimes would be barred from serving as a pension administrator for five years from the end of imprisonment.

The measures are supported by President Nixon.

OTHER PROVISIONS

Other bills would establish a new regulatory agency to supervise pension funds, insure pension funds in case of company bankruptcies, require the funds to invest specified amounts in housing, and restrict pension fund investments to 1 percent or less of the company's own stock.

The administration has not yet taken a position on these proposals.

Chamber of Commerce spokesman E. S. Willis contends measures, including vesting standards, "would generate unnecessary costs, create a huge and costly new bureaucracy, reduce flexibility in pension and related fringe benefit planning, tend to limit free collective bargining, and inhibit private pension growth."

The chamber supports the administration-backed bills.

Rep. Wright Patman (D-Tex), chairman of the House Banking and Currency Committee, who introduced bills to funnel more pension money into low-income housing, argues that the funds' growth has been achieved largely because of government concessions. The tax loss from employers' deduction of pension contributions alone is roughly $4 billion a year, according to Isadore Goodman, chief of the IRS Pension Trust Branch. Some unions in construction trades invest as much as 60 percent of their pension assets in housing, mostly government-insured.

Others counter that pension administrators' first obligation is to beneficiaries of the pension plan.

"The fiduciary is under a responsibility to get the highest yield, and we believe that over the long-term stocks provide a better yield than fixed investments (such as mortgages)," say George M. Lingua, senior vice president in charge of the institutional investors division of New York's First National City Bank, the fourth largest trustee of employee retirement plans.

CONFLICT OPPORTUNITIES

Many bankers and pension administrators believe pension funds that invest heavily in the stock of the fund's own company present opportunities for conflict-of-interest and place employees in double jeopardy: if the company becomes bankrupt, the pension assets are worthless.

The 1965 President's committee recommended that such investments be restricted for both pension and profit-sharing plans from the requirement on the theory that these plans are founded with an element of risk.

The profit-sharing plan of Sears, Roebuck & Co. is frequently cited as a classic example of a fund that invested successfully in the stock of the employer. More than 80 percent of the fund's assets are in Sears' stock and its rise in value has enabled $6,000-a-year employees of Sears to retire regularly with lump-sum payments in six figures. About 85 percent of the assets of The Washington Post's profit-sharing plan are also invested in the stock of The Post.

As pension funds have grown, they have invested an increasing proportion of their assets in stocks of all types. While the value of stock listed on the New York Stock Exchange doubled in the past decade, private pension plan investment in NYSE shares increased four-fold, and state and local pension fund investment soared 10-fold.

With the shift has come increasing concentration of control of pension fund investments at relatively few banks with large trust departments. Four New York banks managed 40 percent of the pension money in the country in 1968, a House Banking Committee study found.

The buildup of funds has caused concern among securities industry and government officials. The Securities and Exchange Commission is conducting an institutional investor study to determine, among other things, if tighter controls on pension fund investments should be legislated by Congress.

[From the Chicago Tribune, Mar. 21, 1971]

RETIREMENT DREAMS BECOME TRAGEDIES IN "PENSION HOAXES"

(By James Strong and Ronald Koziol)

[First in a Series]

The American dream of retirement with a comfortable income and freedom from financial worries may only be a myth for millions of workers covered by private pension plans.

Of the more than 28 million workers participating in retirement programs with assets of roughly $130 billion, between a third and a half may become victims of the so-called "pension hoax" described by the many pensioners who have been left virtually penniless by unscrupulous employers, union leaders and pension fund administrators.

THE TRIBUNE has learned of many such cases in an investigation of the mounting problem.

JUST THE BEGINNING

Recent federal indictments following wholesale looting of union and pension funds of the United Mine Workers and the Barbers Union only scratch the surface of fund abuses.

Senate probers are quietly conducting a detailed investigation into the legal looting of company, union and jointly administered pension programs with an eye toward seeking Congressional action this year to protect retirement security for the aged.

Results of the Senate inquires are expected to be disclosed soon. TRIBUNE reporters have uncovered widespread abuses that have been allowed to continue because present federal and state laws and enforcement powers are inadequate.

Unchecked abuses include embezzlement, deals between unions and kickbacks, mismanagement and schemes to withhold pensions thru eligibility requirements that are excessively strict.

FIND EXAMPLES IN FILES

TRIBUNE reporters unraveled examples of pension fund abuses from records on file with the Department of Labor. The pension fund records are submitted to the department under provisions of the Welfare and Pension Act of 1958, an act which does little more than require disclosure. It provides only limited authority to investigate possible abuses.

Among the examples found were:

A Texas trailer manufacturer borrowed heavily from his employes' fund just before the company went bankrupt.

A company-appointed trustee of a Chicago manufacturing company put $250,000—69 percent—of the assets of the employe pension fund into the company's preferred stock. In a year, the stock was worthless and the fund's assets had shrunk to $13,500.

EQUIPMENT RENTAL SCHEME

A Midwest hotel chain, whose executives administer the pension plan, saves the cost of buying air conditioners and television sets by first purchasing the equipment thru the fund and then renting the equipment from the fund at very low rates.

Such loose control of pension funds has let to murder. Two members of a painters' union local in San Francisco, Dow Wilson and Lloyd Green, were killed by trustees to cover thefts from union pension funds.

The trustees, later convicted and sentenced to prision, also made questionable loans from the fund.

A plumbers' union local in Ashbury Park, N.J., anxious to gain control of $720,000 in pension fund assets, paid the insurance company administering the plan $66,000 in penalties to regain control of the assets.

MOST SCHEMES ARE LEGAL

Most sophisticated plans to loot pension funds or swindle pensioners' retirement funds are legal. As a consequence, agencies of the Department of Labor and Justice and the Internal Revenue Service are helpless to aid victims, said Frank Castaneda, a special investigator for Labor's welfare and pension fund branch.

"Sure, we see the continued abuses of pension funds but we can't do a thing about them," Castaneda said in an interview. "We have no powers to investigate and even if we did, there are no laws to stop abuses."

Castaneda noted that the great majority of pension plans are above criticism but he said far too many abuses involving unsuspecting workers have come to light in recent years.

There now are 158,000 private pension plans in effect in the United States. The funds' $130 billion in assets are virtually unregulated.

225,000 LOST PENSIONS

During a study conducted from 1955 to 1965, 4,300 pension plans affecting 225,000 persons were terminated. Presently, 500 plans, affecting about 25,000 workers, are cut off each year.

Of the 4,300 terminations, 44 percent occurred during financial difficulties when pension funds were likely to suffer losses, said Thomas Donahue, a former assistant secretary of labor.

There are no records available to determine how many, if any, victims of pension plan terminations received a share of the funds.

"Too often victims never knew anything about their pension plan, who administered it, eligibility, how much they would be entitled to, or if there was any money in the fund," Castaneda said.

JAVITS HITS SLOW ACTION

Sen. Jacob Javits (R., N.Y.) said in a statement that he believes there has been "a marshalling of forces aimed at frustrating pension fund reform legislation."

"These forces, which include substantial segments of the business community and even some international unions, are quite formidable and it will require great unity and perserverence on the part of many, including the trade union movement, if effective reforms are to be realized," he said.

The workers hardest hit at retirement age by pension fund abuses are those involved in industries with high employe turnover. These workers often are women, low income earners and members of minority groups employed in unstable industries.

These workers frequently change jobs, forfeiting rights to pension contributions they made to company or union funds in lieu of wages.

HITS WHITE COLLAR WORKERS

As a result of the present financial climate, large numbers of white collar workers have discovered the problems of pension loss or denial for the first time.

"This is no longer a blue collar problem alone, but one that crosses all color lines, classes and income levels," Michael S. Gordon, special minority counsel to the Senate Labor Committee, said in an interview.

He said skilled technicians and executives nearing 40 affected by cutbacks in military and aerospace industries are concerned as much about employment with adequate pension benefits as they are about finding jobs.

Sen. Harrison A. Williams Jr. (D., N.J.), a leading proponent of pension reform legislation, gave a summary of what he said was the average worker's chances of getting a retirement pension from a private plan:

"IF you manage to get a job with a company that has a private pension plan, IF you stay with that same company [in some cases, same industry] for 25 years without being laid off or discharged, IF you survive to age 65, IF the company does not go out of business and IF the pension fund does not suffer loses in its investments—you may be lucky enough to get an adequate pension."

MEMORANDUM CONCERNING CERTAIN STUDIES CITED BY VARIOUS PENSION CONSULTANTS (ATTACHMENT TO TESTIMONY OF SENATOR JAVITS)

A. THE GRIFFIN-TROWBRIDGE STUDY

I would like to urge the chairman and the members of this committee to review this well-publicized study on funding in private pension plans, which was co-authored by one of the architects of the criticism directed at the Senate Labor Subcommittee's survey. This study, which incidentally purportedly demonstrated the soundness of private pension plan funding, was conceded by its authors to underrepresent multiemployer plans and small plans and was based exclusively on plans which "cooperated" with the authors. In this regard, the Chief Economist of the Bureau of Labor Statistics stated in 1969: "The actuaries who supplied the data for the study succeeded in persuading their client plans to adopt conscientious funding programs. But the actuaries who did not supply any data—particularly those who advise multiemployer plans—may not have been as successful. In other words, it is impossible to determine whether the plans included in the survey are representative of those who by the nature of the survey had to be excluded."

B. THE A. S. HANSEN STUDY

I have been led to understand that the principal basis for the "criticism" of the Senate survey is that the data produced by the Senate survey is only "historical" in nature and therefore cannot be used to evaluate the future impact of private pension plans on employee benefits expectations. It is asserted that vesting has vastly improved and can be expected to improve even more in the future.

These predictions are based on a "study" of private pension plans by A. S. Hansen, Incorporated, prepared at the request of the Treasury Department, after it was suggested by A. S. Hansen Incorporated to the Treasury Department that they perform such a study.

A. S. Hansen purported to survey all private pension plans serviced by A. S. Hansen. They directed their study to the number of current employees covered by these plans and purported to ascertain the number of these current employees who were already vested and the number of those current employees who could be "expected to vest." Out of 864 plans surveyed, with 881, 281 current active participants, it was found that 132,466 were retired and vested, 265,817 were

vested and 319,239 were "expected to vest." Thus the percentage vested and expected to vest is 66%; the percentage expected to forfeit is 34%. With respect to the percentage expected to forfeit, it is anticipated, according to one press report that they will "find future employment in firms with pension coverage."

Hansen also breaks down the percentage not vested by age group. In the 25–30 age category, the percentage not vested is 99%, in the 30–35 age group the percentage is 96%, in the 35–40 age group the percentage is 86% and in the over 40 age group, the percentage is 47%. However, no attempt is made to breakdown these age categories by length of the employee's service so it is impossible to ascertain the degree to which longer service employees might lose pensions under these plans.

Aside from the fact that the percentage expected to forfeit (34%) is not exactly insubstantial, and that many of these may very well be longer-service employees, major defects in the Hansen study are these:

(1) Since it is only directed at current employees it necessarily results in exaggerating the quota for vesting, because the total number "expected to vest" is stated as a percentage of current employees, instead of being stated as a percentage of the much larger number of participants who will come into and pass out of the plans during the years ahead. By way of contrast, the Senate Labor Subcommittee study took account of all participants who had flowed through the plans it sampled during a 20 year period.

(2) In determining the number of employees "expected to vest," Hansen made "estimates" on the basis of "typical" employee turnover rates which Hansen characterizes as "armchair" assumptions which can be made applicable to all plans regardless of specific experience. The Labor Subcommittee study did not "assume" turnover and foreiture experience for each plan sampled.

APPENDIX B.—REPRESENTATIVE LETTERS OF COMPLAINT FROM PENSION BENEFICIARIES

APRIL 1, 1971.

DEAR SENATOR JAVITS: I have read with great interest an article in today's News pertaining to an investigation on pension plans and the unjust by-laws used by the unions to retain this pension money when one leaves the union before retiring.

I am in such a predicament at the present time. I have been with ——— Local ——— for the past 18 years and have been paying pension to the local union. I have decided to move to Florida for my wife's health. I belong to an International Union and have requested a transfer. A transfer card will be given to me to work in Florida, but I was told by Mr. ——— of Local ——— that all of my pension money will remain with the Local. I am told it cannot be carried over to any other local. I am now 49 years of age and have given my best years of work while in this union. It hardly seems fair to start all over again, especially since the dues and assessments paid to my local by both me and my employer supported this international union.

Since I have no other alternative and the union refuses to give me any of these funds or transfer them, I am asking you to help me in this matter, if possible or refer me to who ever can assist me.

Thanking you in advance, I remain

Very truly yours,

———, ———.

APRIL 18, 1971.

DEAR SENATOR JAVITS: I don't know if you can do anything for me or not but this is my problem.

I joined the ——— Union on October 25, 1962. At that time we were told at the age of 65 and with 15 years of service in the union shop we could get a pension. A short time later the union officials changed the time from 15 to 20 years.

I was a steady member until November 1968 when I was taken sick. I paid my dues for 26 weeks hoping my health would improve so I could go back to work but it did not. I applied for a pension but was turned down because I did not have 20 years in. I think I am entitled to at least a partial pension by our first agreement. If I could only get something I would not have to have Medicaid as

I do now for the doctor and medicine. My social security is not enough to pay all I have to pay by the time I pay my mortgage payment, lights, heat and telephone. I do not have anything left. If it were not for the Food Stamps I would not be able to have enough food.

I hope you can look into this for me.

Thank you,

———, ———.

APRIL 3, 1971.

SENATOR JACOB K. JAVITS,

DEAR SIR: On January 11, 1968, I had to be relieved of my route because of chest pains. I was admitted to the hospital on January 15 and on January 23 I sustained an acute myocardial infraction and I am unable to work any more.

I was 59 years of age and I filed a retirement form with my union because of my disability. I was a union member for 31 years from 1937 to 1968 and I was turned down. I was told that I had to be 60 years of age to collect a pension on disability. I am receiving no benefits from my union now. My employer has paid into the pension fund all these years and I feel a great injustice is being done to me.

My doctor suggested that I move to California to prolong my life.

I read an article in the Los Angeles Times about your interest in the Union pension plans. Can you please help me to get my disability pension? My union is ———.

Very truly yours,

———, ———.

APRIL 5, 1971.

SENATOR JACOB K. JAVITS.

DEAR SENATOR: I have read with a great deal of interest the P.P.I. release on pension funds of large companies.

My circumstances should be brought to light:

Employed by ——— Company at age 17, September 1, 1942 until April 19, 1969—26 years. Required surgery and was unable to return to my job as manager. At age 35 after 18 years of work I did not qualify for the pension program because vested rights are acquired only at 50. At age 46 I do not qualify for any pension rights. After 26% years of loyal and continuous employment in capacity as manager and District Manager, I have been advised that I am no longer on the pension program.

I have no income as social security advises my disability is not serious enough to continue any benefits.

I applaud your efforts to expose this fraud upon millions of innocent employees all over America.

Sincerely,

———, ———.

APRIL 5, 1971.

DEAR SENATOR JAVITS: I read with interest your recent press release concerning pension plans in industry.

I am a recent victim of one of these cancellation of right to participation in one of these plans. I worked for 40 years in the ——— Plant at Elizabethton Tennessee. ——— was owned by ——— which in turn is owned by ———, a Texas corporation. Then in December 1970 they closed down the ——— Plant and it has now reopened under new ownership. My rights to the retirement plan were terminated. It is now too late to build anywhere else. I have been hurt and other longtime employees of this plant have also been hurt.

I checked with the Social Security Administration and found that my benefits at age 62 after 40 years of work would be $134.80. Now a bill is being readied to give a minimum of $200 monthly on welfare. This is disgusting. It put a premium on laziness and irresponsibility and penalizes the man who works. I realize that answers are difficult and hard to find but unless found I fear for the existence of our nation.

Yours truly,

———, ———.

APRIL 1, 1970.

DEAR MR. JAVITS: Having just read an article in the New York Post, dated March 31, 1971, and thinking that my case might just fit into the type of legislation that you are proposing, I'll state it here.

The ——— Company has the type of pension plan which I think you refer in the article. Non-participation on the part of the employee. At age 55 and after 20 years of service, an employee is qualified to retire and draw pension. I worked for the company for 18 years, left of my own volition and could draw nothing. Two years later I tried to return and complete my term by working for five more years (to bridge the service) but they would not take me. They said, "for medical reasons," but I doubt that. Anyway, that part is not important. What I am interested in is the first part. If I am right and this is what you are talking about, please make the legislation retroactive for at least 10 years. My reason for that is simple. I left the phone company in 1964, and would certainly like to benefit by the passage of such a bill.

Wishing you continued success in all your endeavors. I am,

Very truly yours,

——— ———.

APRIL 9, 1971.

Hon. JACOB K. JAVITS.

HONORABLE SIR: This is to commend your proposed pension plan as per the enclosed clipping. Be assured any such legislation will have our unqualified support although it will come to late to benefit us. The following brief employment record is explanatory of our feelings in this matter.

Twenty-five years (25) employment at a steel company in the midwest, working up slowly and painfully from the ranks of common labor to Complaint Metallurgist. On leaving the company monthly salary was $575. There was no pension plan for salaried workers, but an employee-paid annuity fund had been set up during the last ten or twelve years of that time. Total accrument was $3,100.

Three years (3) in an aerospace firm in California. The company had a ten-year minimum pension plan.

Four years (4) in an aerospace firm in the state of Washington. This company had a ten-year minimum plan. Employee was not eligible because he would reach age 65 in less than ten years.

Employed since October 1969 by a California aerospace firm. Again not eligible for pension plan.

On retirement at age 65 in June 1974 will be entitled to Social Security benefits somwhere near, but not at, maximum level. Will also have a dependent wife who will not reach age 62 until 1979.

There will be some money to invest in a home or small business because we have been careful to live within or below our means at all times. However, it seems a small reward for 37 years devoted to being faithful, dedicated and a most competent employee.

As you can see the Golden Years will hardly be that for us. So we say hurrah for you in the hope that those who follow us have the security, and its attendant peace of mind, we have been denied.

Very sincerely yours,

——— ———.

APRIL 3, 1971.

DEAR SENATORS: I am one of the boys that you are talking about. I worked for ——— Corps. for 24 years, 14 years as a supervisor. Through some misunderstanding with an engineer I quit this job in 1948, but 6 years later they wanted me back. That was in 1954, but I did not get in 10 years, because I had to retire in 1959 when I was 65. They said I lost all my years of service. All I get from ——— is $19.75 a month.

If you would like more information, I would gladly give it to you.

Sincerely,

——— ———.

APRIL 5, 1971.

Senator JACOB JAVITS.

DEAR SIR: In regard to your proposed bill concerning "Vesting Pensions," I was happy to see that someone was taking an interest in persons like myself and many others in my industry as well as other industries where pensions are concerned. For instance, I have 23 years on the job and have no rights to my pension until age 55. I am tied to my job, as I was offered other employment, but due to the pension fund, if I left now I would lose everything. I and many others would be very grateful if this bill would be passed.

Thanking you, I remain,

——— ———.

MARCH 31, 1971.

DEAR SENATORS JAVITS: Enclosed is an article about pension plans removed from the Denver Post of March 31, 1971.

I would like to point out two cases of hardship and mistreatment from a large corporation ——— Inc.

I was fired January 1965 after 18 years of hard service and I don't know how many hours of free hours of work I donated to ——— with no pay. I lost my pension rights as I did not compete my 20 years service to get my vested rights so I could draw my pension.

Another case, my brother ——— ——— was fired after 32 years of hard labor. He also lost his pension rights because he is still under 50 years of age.

I am very happy the government is finally going to look after the rights of the working man and give him some protection. I had 2 years to complete to get my vested rights, and my brother had 21 months to go before he could get his vested rights.

Who wants to hire people our age and give us a pension now. We gave ——— Inc. our youth and they gave us an easy goodbye for our labor.

Sincerely,

——— ———.

APRIL 13, 1971.

Hon. JACOB K. JAVITS.

DEAR SIR: In regards to an article in the newspapers April 1, 1971, you are co-sponsoring a bill for pensions to people who have been working for companies. I have been working about 18½ years for ———. I resigned in 1968 because I was past 65 years old. It was just 6 months before the old union contract expired.

I took my wife to Copenhagen, Denmark for an operation so we stayed there a year and returned in 1970.

I then went to ——— to ask if I could get some pension. The answer was "No," only if I was on the payroll in 1969 (I retired July 1, 1968).

I do not know what to do, and would like to have your advice, if there is any hope in the bill you have co-sonsored.

Sincerely,

——— ———.

APRIL 2, 1971.

Senator JACOB K. JAVITS.

DEAR SENATOR: May I have several copies of your bill that has been introduced in the Senate relative to guarantee pension rights for vested assessments after five years.

Believing the bill has merit now denied those retired, of benefits actually due them; and that your bill should include a "portability" clause covering all 50 states, if same is not already inserted.

May I state my case briefly:

Belonging to a parent national union, that claims they have no jurisdiction as regards local union pension funds.

One local union of which I was a member for 34 years and assessed for that length of time for pension benefits if I retired after 20 years, but a clause inserted stated I must return to that local to receive that benefit. After 34 years I moved from that state and secured employment in New York.

After working another 15 years in the latter state I retired, but this local also had a 20-year clause, although I was assessed 15 years for pension benefits.

So you see I paid into local pension funds for 52 years and at the present time I am not entitled to any benefits from either of the two locals, except the former IF I rejoin that group, out of state.

Surely both locals should be covered by insurance laws guaranteeing benefits, regardless of what state they lived in upon retirement, and should be retroactive to the date of that retirement.

Thanking you for introducing such a wonderful bill, and hoping it becomes federal law in all 50 states, so future retirees are not forfeiting pensions actually due them.

Sincerely,

———, ———.

P.S.—From the above you can judge why I wrote you previously for action on a World War I pension. Seems I get nothing no place!

APRIL 2, 1970.

DEAR SENATOR JAVITS: Regarding the Senate Labor Subcommittee survey of Company pension plans, I though that you might be interested in hearing from a victim of one of these plans.

I had long service with a company, 25 years to be exact, and was told very suddenly that my job had been terminated due to the sale of the division of the company in which I was employed to another company. Also, I was informed that the only benefits I would receive would be one weeks pay for each year of service and any money plus interest for contributions to the pension plan from my salary over a 3 year period of employee contribution to the company pension plan. Although the company had always had some form of pension plan, the 22 years of service before this period yielded nothing to the terminated employee.

I would like to fill you in on the history of my particular case as a victim of a large company and its disregard for long term employees where pension plans are concerned. My 25 years of service began in November, 1944 with the ——— Corp. of Richmond, Virginia. As of November, 1962, the ———, ——— Company. During the 25 year period with these two companies, it was the understanding of all employees that we had a retirement plan; however, as of November, 1969, when my job was terminated along with 150 ——— employees in the Richmond, Virginia area, we were informed that the only employees receiving retirement pay would be those with a total of 75 years with the company, which was determined by adding the employees age and years of service together for a total. As I was only 43 years old in 1969, I fell short of this 75 year figure by 7 years.

I hope this letter will add a little fuel to the fire your committee has started. Please contact me, if I can be of any help.

Very truly yours,

———, ———.

APRIL 1, 1970.

DEAR MR. JAVITS: Relative to the article appearing April 1, 1971 in the Syracuse Post Standard of the Labor Sub-Committee on Company Pensions.

I worked for the ——— Company 30 years, 26 years in ———, New York. The last 10 years as chief engineer. 31 of the best years of my life and have never received any pension.

Any small monthly amount would be deeply appreciated.

I am enclosing a quarter century club from the ——— Company acknowledging my services in the ——— Plant to substantiate my above statements.

Very truly yours,

———, ———.

APRIL 6, 1971.

Hon. JACOB K. JAVITS.

DEAR SIR: After having been employed by the ——— Company for more than twenty-nine (29) years, I have been notified that my employment is being terminated. At the time this notification was given to me, my superiors stressed that my work was entirely satisfactory and that I should not feel that the action was a reflection on my performance. In fact, throughout the entire period of my ——— employment which began March 23, 1942, all of my superiors have, without exception, rated my work performance entirely satisfactory, and in most cases as outstanding.

Needless to say, the termination notice comes as a jolt! My employment with ——— covers "years of plenty" when other employment opportunities as well as

education opportunities were readily available, and when job offers were declined in favor of continued employment with ———. One of the major influencing factors in reaching the decision to remain with ——— in each instance was the pension which eventually would be available to me under the ——— Plan for Employees' Pensions, Disability Benefits, and Death Benefits. The anticipated pension naturally has always been considered by me to be a part of my compensation, especially during periods when comparatively low salaries were being received by ——— employees. The pension was always stressed by ——— to both existing and new employees as a major employment benefit. It seems significant that my employer has elected to terminate my employment after these many years of service and only two years before I become eligible to receive the pension.

Although I have given "permission" to seek employment in other departments of the company, it also seems significant that I have been unable to locate another position even though personnel changes are occurring constantly. Throughout the company, new employees are being hired to fill positions, many of which I am certainly adequately qualified to handle.

While I am aware that all employers are, at times forced to take force reduction measures. I feel that the action taken with regard to my termination is a grave injustice involving prejudice and discrimination.

It is a frightening thing, after having devoted a lifetime to ———, to find myself in the ranks of the unemployed and to be thrust suddenly into the position of job seeking at a time when the economic situation is very unfavorable; when my age (47) is not considered the most desirable by most prospective employers; and when my years of experience with ——— are not readily adaptable to another field.

In view of your involvement with the Senate Labor and Public Welfare Committee and its recent investigation of private pension plans, I urgently appeal to you, as my representative in the U.S. Senate, for any assistance and/or advice you can provide me with regard to recourse available to me.

Yours very truly,

——— ———.

———

April 5, 1971.

Senator Javits: I worked for the ——— Company for 19½ years and let go for cause. I guess the cause was because at 20 years I would have been entitled to the pension plan. When I heard on the television that the ——— Company is asking for an increase and they are definitely in need of money, I have my doubts, since 60% of the installers and repairmen are under 35 years of age and not making top pay.

Anything you can do in my case would be appreciated, since I am now on Welfare.

Sincerely,

——— ———,

———

April 6, 1971.

Hon. Jacob K. Javits.

Dear Sir: You are to be congratulated on your efforts to remedy many of the inequities which exist in Pension Plans throughout the country.

I was a member of Local ——— with the New York City District Council for 35½ years and at age 65, found the work too strenuous and applied for a pension in September 1969.

My membership record is as follows:

[In years]

June 11, 1923 to July 13, 1930	7
July 27, 1942 to date	28½
Total	35½

With this record I assumed that I would qualify for a pension. My application was denied because I did not work for a contributing employer during the years 1956 and 1957.

Being unable to pursue this type of strenuous work, I find it very difficult to manage on social security alone. A pension, which I so rightfully deserve, would be very helpful at present.

I wish you much success in your endeavor to help us unfortunates who have fallen into this desperate situation.

Very truly yours,

———— ————.

———

APRIL 1, 1971.

DEAR SENATOR JAVITS: I was reading the article in the N.Y. Daily News about the Company and Union pension plans and I agree with you 100% that something must be done about this and soon. I for one am one who has been caught in this sinking ship. I worked for 12 years for ——— Company in their warehouse in New York. We were represented by Local ——— of the ——— Union. In our contract the company paid 12½ cents an hour for our pension plans which comes to $5.00 a week for every man and woman. If that money had not been put into a pension plan we would have received it in our pay envelope as a fringe benefit.

Now after 12 years the company moved to Harrisburg, Pa., and took only 4 men with them. There are other people who had 15, 20 and 25 years with the Company about 100 of us in the same spot, we receive nothing. I contend that the money that was put in for us is ours or at least part of it. We paid union dues every month at the rate of $7.00 per month.

I would like to see something done about this situation too, because I think that the thing is very unfair to the working man.

Yours respectifully,

———— ————.

———

APRIL 15, 1971.

Senator JACOB JAVITS.

SIR: I am a former member of the ———— Union for 38 years. For the past 9 years I worked in California for the ———— Union for which I receive $30.

The 30 years I put in the ———— Union, Locals ———— and ———— respectively. They claim no reciprocal agreement. I have already written you and every one in the upper echelon connected with the union and they keep passing the buck. I am now 69 years of age and sadly in need of my pension. Things are bad and we cannot survive on social security and the $30 pension. I know how hard you have been fighting for use and I hope before I die, life will be a little easier.

I read the article in the Los Angeles Times and I am grateful and hopeful something will come of this.

Thank God for men like you. Oh, I forgot to mention we are former residents of New York City and we were with you all the way.

I sincerely hope my prayers will be answered.

Thank you.

Sincerely,

———— ————.

———

APRIL 10, 1971.

Hon. JACOB K. JAVITS.

MOST HONORABLE SIR: It is with a glitter of hope that I take note of your interest in the pension plan injustices that are being exposed both on T.V. and the news media, because I too am a victim who, although being over 70 years of age, cannot retire because I do not have (according to their findings) enough time with their local.

I am a member of this union for almost 30 years, but only 11 years with this local, so they say I have to wait another 4 years (if I live that long) to begin to collect a pension.

Why can't I retire even with a reduced pension, or if not that, why not a lump sum to lighten the time left to live with some dignity.

In January 1970, I received a letter from Senator Harrison A. Williams regarding the Pension Benefit Security Act, advocating vested retirement benefits for participatants who put in 10 years service or more.

If there is anything you can do to help me get something in the way of pension, I should be glad to give you more detailed information.

I am sure there are a good many more senior citizens who are in this very same position and who would appreciate whatever you can do. Also, let me point out that time is very short and we cannot wait until 1972 or 1973—time for action is now—Please.

Sincerely,

———— ————.

The CHAIRMAN. We have four or five witnesses scheduled for this morning and after that we will come back this afternoon with four witnesses.

First, Mr. Stephen Duane. Mr. Stephen Duane, will you come up and join us here at the middle table?

Mr. DUANE. Right here?

The CHAIRMAN. Good morning. And we appreciate your being here.

We will say that we might, if the schedule permits, go a little later this morning to get as much done as we can so that we can reduce the afternoon session. There are conflicts this afternoon.

Now, Mr. Duane, we appreciate your cooperating with our deliberations here on pension plans. Would you introduce yourself, tell us where you live, and give us a description of your experience.

STATEMENT OF STEPHEN H. DUANE, OF JERSEY CITY, N.J., FORMER EMPLOYEE OF THE GREAT ATLANTIC AND PACIFIC TEA CO.

Mr. DUANE. My name is Steve Duane. I come from Jersey City, N.J. I worked 32 years for the A. & P. Tea Co. At age 19, in May 1939 I first went to work for the A. & P. In 1941, when war was declared, we were one of the first ones to go. In 8 months I became a first sergeant. I want to tell you this because I have a reason.

After the war I went back to the A. & P. A friend of mine, who wanted to take advantage of my leadership ability as a first sergeant came to me and offered me a job as a foreman in another company. But I was a man who went through the depression and the hard times, and what I was looking for in life was security. Security to bring my family into the world, educate them, and in my old age to be secure. I believed that I had security with the A. & P.

At the time it was good. Now, briefly, I want to tell you what in the last 35 years I did with the A. & P. to let you know that I worked hard for them. I worked in a cold storage warehouse and did all sorts of warehouse work. And later, I became head of the union and also became a foreman. I'm telling you this to let you know that they appreciated at the time that I did my work and I was a good worker. My attendance record is that in the first 17 years with the A. & P., I lost 4 days in illness. After that I worked 11 years before I got an operation. Now this went on, I had a good job, and of course, every year the pension was improved.

In April of 1970 a man came from Newark, N.J. and he got a few of us together and he said, we have bad news for you. In September the building is going to close. We have no job for you. The whole operation is moving 6 miles away, but it is not going to be done by the A. & P. workers any more. It's going to be done by Merchants Warehouse, which was a different union. We do not need any of you men.

Now, I went back to the men and I told them that and they were shocked with disbelief. In fact, they told me I was a liar. We brought the union in and they affirmed it. They said, there's nothing we can do about it. If a company wants to move, they move. So we figured, what benefits can we get? We formed a committee and we wanted to see, where do we stand on a pension, hospitalization, and insurance. For 32 years I paid in insurance, $4.80 a month.

It was a terrible summer, because the A. & P. would not send anybody over to give us the answer. Finally, they sent a man, a Mr. McKee over. He listened to our questions and he said, I will be back with the answers. Another month passed and the men actually wanted to put on a sitdown strike. But we told them that if you get laid off, you would lose your severance. So, finally, the union forced them to come in. He came in again in August with the same thing. We still did not have the answers. Well, in September we finally got most of the answers. And, of course, being in group insurance and hospitalization, we got nothing out of that part. In the hospitalization, if you get laid off by the 7th of the month, you're paid up until the end of the year. The way it was, we got laid off on Christmas Eve—a wonderful Christmas present—which gave us 6 days in the hospitalization, which wasn't time enough to get into a plan, any kind of a hospital plan. When I did apply for hospitalization, I had to wait 60 days. Thank God, nobody in my family got sick. But I understand some of the other men did suffer and it practically wiped them out.

The biggest blow that fell on us was when we found out about that pension. Now, a lot of people who were going to work knew they gave us a book, but three men could read that book and come up with three different answers. We pleaded time after time with the A. & P. to explain. They would send riders and revisions and we would just add them to our book. And they meant nothing to us. Maybe at the time we were a little younger and we didn't care about our pension. I know when I was steward, when the men asked for a big raise, I said, take a little bit and the rest goes in our pension or in our benefits. Finally, when this man did come, he said, well, put on pension any man over 55.

Now, at the time I was 51, which made me the big loser with 32 years. And I get nothing, absolutely nothing out of it. Now, some men who were with the company 10, 14 years, did get a pension. I did not begrude them, because one workingman doesn't begrudge another workingman anything he gets. But it does not seem fair that I put in half of my life and got nothing for it.

That was only the start of my problem. I know, technically you could do nothing about it. It was in black and white you had to be 55. So, now, I figure I'm a big strong man. I've done warehouse work. I'll go out and get myself a job. That, to me, is a bigger problem than the pension, because the way this country is set up today, when a man is 50 years old looking for a job, he might as well dig a hole and pull a sturdy knot in it. It is practically impossible. In my own case, I applied for a couple of positions. And when you fill out a questionnaire and you get the age and when you write 51 small, all of a sudden it gets big. And when you hand it back to the personnel manager, he looks up and all of a sudden he sees your gray hair. You get weak and you feel you're 51 years old.

So, in my own case, I was lucky. The same man who 30 years ago offered me a foreman's job said, I have a job for you. It was a foreman's job. I'm a laborer. I compete with boys 26 years old. Now I feel the next 6 or 7 years I can still do the work. But I cannot say what I'm going to do after that. I personally don't like to think of 65, because a man like me who has worked 35 years and going to get nothing but social security, and I think social security was never intended to live on. I figured it would supplement what I made.

Well, on this pension, I missed being on the pension only 3 years and 3 months. Before I got this job at Benjamin Moore, I went to get a job as a toll collector to make a dollar and a half on the New Jersey Turnpike. I went to the local politician, and they took my card out, and they said, Mr. Duane is too old to be a toll collector. Well, I told them if they want me to go down and pick up the toll both, I would gladly do it. I said to them, would you put that in writing, because in every plant in the United States, it's a law that you have to have displayed, you can't discriminate against a man for his race, religion, or age. These cannot be held as a barrier against you. And this New Jersey State and federally financed road discriminated against me. But at that time I wasn't looking for trouble, I was looking for a job. So I let it go. I didn't get names and I don't want to make that a big issue. But that is one of the issues.

Now, another big issue, I got nothing from the A. & P. for my 30 years in an icebox. I got arthritic hands, and I could pound them and wouldn't feel it. I also have a condition on my hand that I went to 13 dermatologists about and A. & P. said, get a lawyer. Well, I got a lawyer and the case didn't come up yet. This has nothing to do with the pension, but it's a disability. I'm just trying to point out that the A. & P. has done nothing for me, for the years of service that I gave.

Now, in conclusion, I just like to say, you men know and I know I have no personal gain out of this. There's no legislation you could possibly put through which would get me a pension. I know that. When I went to the wonderful people I work for, the Benjamin Moore people, and I asked them, could I have time off to come down to this hearing. These people said, yes, it's a wonderful thing and they said, we are going to pay you for this. Well, I said, even if I wasn't paid, it's something I got to do. It's something that has laid in me like a disease and I've got to say it. And right now, I am starting to feel better that I'm passing on my experience to you.

And in the letter that I wrote to Senator Williams, in the beginning from a little piece I saw in the Jersey Journal, I mentioned, and I'd like to mention again, that I think it's wonderful that men like him and this committee are doing something for the workingman in this country.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Duane. I tell you, we appreciate the contribution you are making in our most earnest effort to eliminate the situation that faced you.

For 31 years you believed you would be covered by a pension and then when your place of employment, the warehouse, closed, you had nothing.

Now, let me just ask you one or two questions, Mr. Duane.

During that period you did have a book that explained the plan?

Mr. DUANE. Yes, I did.

The CHAIRMAN. And you say it was difficult to understand, and any three people could get three different answers?

Mr. DUANE. We tried to sit down to read it, and everybody seemed to look at it a different way. I know, technically, the A. & P. is right. It said that you have got to be 55 before you're even considered in their plan. So I would have to practically work 37 years of my life to get into their plan.

The CHAIRMAN. So there was no vested right——

Mr. DUANE. No vested right——

The CHAIRMAN. Until you reach 55, no matter how many years of service you had.

Mr. DUANE. Technically they were right. I know that. But I believed that I had this security, and I wasn't worried about being 50. I figured I would stay until 65 and reap all the benefits.

The CHAIRMAN. Mr. Anderson from our staff talked to you?

Mr. DUANE. That's right, Mr. Anderson.

The CHAIRMAN. Now, my notes tell me that when the warehouse closed, then you learned that the administration of the A. & P. pension had been transferred to another group. You didn't mention this in your statement.

Mr. DUANE. Now, that's almost what I wrote in Mr. Javits' letter, that under the last contract, which was just a year ago, the union had been trying to get this pension. I know, because I sat on many negotiating committees to put two teamsters on the A. & P. Welfare Board. And the A. & P. wouldn't stand for it. They didn't want it. They wanted to handle it always themselves. We wanted to put two teamsters on to protect our rights. But when you get something for nothing, I guess they figure you have no rights. So we finally succeeded in getting it with the union. At the time I was against it, because with the union's plan, I would have to work 5 more years with Local 863 before I would be credited with 15 years. So any way you look at it, I would lose. So if I worked until I was 65, even if the A. & P. didn't go out of business, I could only be credited with 24 years, although I would actually have 47.

Say thank God for small things. I got a check for $220 from the local, which represented 1 year vested rights at 25 percent. Now, if the union had got control of this pension 20 years ago, I may have ended up with $8,000 or $9,000. So with the union getting the pension, it is going to help. It's going to be wonderful. But the A. & P. would never give it up. We still didn't pay into it, because it was like a union benefit.

The CHAIRMAN. Were you a member of that union?

Mr. DUANE. Oh, yes, over 20 years.

The CHAIRMAN. Was that the same union that had been the agent for you all of those years?

Mr. DUANE. That's right.

The CHAIRMAN. And the union had wanted to be part of the management of the pension fund.

Mr. DUANE. They took it over completely.

The CHAIRMAN. Took it over completely?

Mr. DUANE. Except the men who were 55 remained in the A. & P. plan. They were all right. But I was the big loser. See, the young men thought it was a good deal, because when they were old they would get more. It was much better when the union took it over.

The CHAIRMAN. Senator Javits.

Senator JAVITS. Thank you very much.

Mr. Duane, I'd like to join with our chairman in thanking you very much for being here and I'd like to thank your employers for making it pleasant and easy for you to come down.

In the course of your employment over all these years, did you feel—and could you tell us the views of your fellow workers—that you were going to get a pension so you could take that into consideration in the wage and other benefits which were acceptable to you?

Mr. DUANE. Yes. I helped form the union there. I was the first steward and I remained, I think, 6 years. I gave it up because there were too many women involved and too many problems.

But women have different problems and I was getting sick of them. But I used to always tell the men, don't always be greedy and take $2 in the hand. Try to think of your future. But at the time we were young, and you want the dollar in your hand. But now, when you get a raise, you don't get $2. You get $15 or $10. We ain't complaining on the union. It's the cost of living. So we got to keep up with that too. So instead of taking $15, we would take $8 and let the rest go in our benefits. Where it went to, we don't know. Whether it went into our pension plan, we don't know.

Some of the guys I meet say, you and your ideas. Now you took $8 and you put it over there. Where is it? It's mine, but I don't have it. If you had given it to me, I'd have it put in the bank and have interest. That could be another problem, to find out where my money went for the last 30 years. But they'll tell you, we didn't put anything away for you, because when you're 50, we'll put it away. But I was part of that contract. I should have got it. So if they were going to do it that way, they should say, all right, anybody over 55 we'll give $8. You people are under 50. We'll give you the $15. But things are not explained.

I think part of your thing is you want the people more orientated on what these plans contain. The average working man in my class, laborers, that's all we are, warehousemen, we're not lawyers, we can't sit down and read what they intend it to be.

Senator JAVITS. Certainly not.

Now, it is a fact, is it not, that those who worked with you, some with half and less than half of your service did get some pension?

Mr. DUANE. Oh, yes. And I didn't begrudge it to them, not a bit. They were older than me, but they didn't have the service. Me begrudging them wouldn't make me richer.

Senator JAVITS. I understand. I appreciate that.

But the fact is the vesting of a right was not based upon length of service, but attainment of age in your case?

Mr. DUANE. That's right.

Senator JAVITS. And the company could cut that off at any time without any act by you, by simply letting you out. Is that right?

Mr. DUANE. In the book that we got, it says that if your service got terminated by anything but retirement, the plan is canceled.

Senator JAVITS. As far as you're concerned?

Mr. DUANE. I didn't retire. The plant moved. The plan is canceled.

Senator JAVITS. And you weren't fired for cause or anything else?

Mr. DUANE. None whatsoever. I was one of the last men there.

Senator JAVITS. So you feel really aggrieved in this matter, because of the fact that this was an expectation built into your compensation arrangements?

Mr. DUANE. Oh, yes.

Senator JAVITS. And unfairly used?

Mr. DUANE. I think so.

Senator JAVITS. Now, I was very interested in what you said about social security. Is that a general attitude of the worker, that you can't really rely on social security to live on?

Mr. DUANE. Yes. And most people believe that, because we feel it never was intended to live on, because you certainly cannot live on it. And the people that I know, like my own mother, social security pays her rent and gas. Now, with four children, we each donate stuff. And, of course, she gets the food stamps. But that's what people are living on nowadays. And we figured that the social security would only supplement what the A. & P. paid. I figured that I could end up with maybe $400 a month for me and my wife. It would be very good living. At 65 you only need the necessities.

Senator JAVITS. If you had been 55 when your employment was severed, do you know what your pension benefit would have been?

Mr. DUANE. I have a friend of mine who was 58. He didn't get full, and he told me that he gets $250 a month——

Senator JAVITS. Now, he——

Mr. DUANE (continuing). Which wasn't bad. It's not bad. The A. & P. pension is good.

Senator JAVITS. If you get it.

Do you have any idea how many people were involved in severance that you were involved in?

Mr. DUANE. When the A. & P. moved their operation to Wisconsin we ended up with 65 men.

Senator JAVITS. Who were let go?

Mr. DUANE. Let go. And out of them, I think I would bring it down to maybe 14 men actually received pensions——

Senator JAVITS. Who got any pension?

Mr. DUAN5. They received pensions. None of them were 65. I know that or they would have left before.

Senator JAVITS. And all of them were long-term workers?

Mr. DUANE. I think there were about only three who had more time than me. They were there 40 years, but this one man had 40 years and he was just in his early sixties. He had no intention of retiring. And these men, besides myself, are walking the streets since December.

Senator JAVITS. Finding a job?

Mr. DUANE. And when their social security and their unemployment is finished, it is welfare, which is a sorry state for men who are willing to work and there's nothing for them to do.

Senator JAVITS. I should say so.

Well, Mr. Duane, thank you very much. We certainly appreciate your testimony. And while you're on the stand, Mr. Chairman, I wish to note for the record that, as I understand it, the A. & P. was offered the opportunity to testify and did not choose to do so. And therefore, Mr. Chairman, I would like to offer as part of the record A. & P.'s answer to the committee's questionnaire, which is marked Pension Study Form P–1, and particularly, the responses to questions 20, 21, and 22. They would indicate, Mr. Chairman, that of an aggregate number of 50,957 employees, who left the A. & P. plan since 1950, 37,510 forfeited the right to a pension. And of these who forfeited, 30,641 forfeited in the last 5 years, including 800 who had more than 15 years' service, 2,000 who had more than 10 years' service and 15,000

who had more than 5 years' service. I think it is a critically important fact that the average age of those who forfeited with more than 15 years' service was 51—which happens to be Mr. Duane's age. And with more than 10 years' service it was age 42, and with more than 5 years' service it was age 34.

Also, Mr. Chairman, A. & P. states in the P–1 that it stopped making contributions in 1969 because the plan was by then adequately funded, in their judgment. And it's very clear why the plan was so well funded—simply because people like Mr. Duane, who had worked for decades, were let go without any rights whatsoever.

Thank you, Mr. Chairman.

The Chairman. Thank you. Let that material be included.

I think at this point too, our invitation to Mr. Stiffler, national director of personnel and industrial relations at A. & P. will be included in the record together with his reply of July 19 in which he advises that the company would not appear to testify. I think that there are some questions on the funding that we would have liked to ask him. Well, together with their response to your testimony, and their response to our questionnaire, we will get part of the picture.

Certainly, again, we return to the original expression of gratitude, Mr. Duane. Thank you.

See you back home.

Mr. DUANE. Thank you.

(The information subsequently supplied, follows:)

JK
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United States Senate

SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

July 1, 1970

PENSION STUDY: FORM P-1
(S. Res. 360)

(Note: Answer all questions as of July 1, 1970, unless otherwise specified. If extra space is needed to answer any item use additional sheets and attach to this form.)

File No. WP 017696
(Give No. assigned by U.S. Department of Labor.)

Part I. Identification

1. A. Name of Plan Employees Retirement Plan

B. Address of Principal Office of Plan 420 Lexington Ave., New York N. Y. 10017
(Street) (City) (State) (ZIP Code No.)

C. Name of Administrator
The Great Atlantic & Pacific Tea Company, Inc.

D. Name and title of individual(s) who prepared response for this study:
J. W. Van Vliet
Secretary of Plan
Telephone: 212 - 689-4000 - 274

Part II. Plan Profile

2. A. Year of Plan establishment 1948

B. Is the Plan qualified by the Internal Revenue Service?

(1) Yes ☒ (2) No ☐ If "No," explain.

3. A. Date employer contributions to the Plan commenced (or reserves created) 1948

B. Date initial benefit payments under the Plan were made (other than refund of employee contributions) 1949

This is a non-contributory Plan.

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4. Funding:

A. Self-administered ☐

(1) Trust ☐

(2) Other (specify) ☐

B. Insured (specify) ☐

C. Combination (specify) ☒ Funds were placed to 1960 with Prudential Insurance Company for payment of benefits under deposit administration account.

Starting in 1960 contributions were made to the Plan for deposit at Bankers Trust Company, Trustee.

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5. Type of Administration:

A. Employer or Employer Association	B. Union	C. Joint Employer-Employee Board of Trustees	D. Other (specify)
☒	☐	☐	☐

6. Total number of current Plan participants (treat the term "participant" as having the same meaning as in the Welfare and Pension Plans Disclosure Act, i.e., "any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee . . . pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit." However, specifically include any preparticipant who has not qualified for membership in the plan but with respect to whose service payments were made into the pension plan or fund. Also include any person whose service has been temporarily interrupted, e.g., persons on military leave, but who may still be eligible to receive benefits if their service is resumed. This procedure should be followed with respect to all subsequent questions involving the term "participant.")

A. Active 24,779 B. Retired 8,229

As at December 31, 1969

7. Check the category or categories that best describes the groups covered by the Plan.

A. All Employees	B. Hourly Rate	C. Salaried	D. Other (specify)
☐	☐	☐	☒

All full-time employees except those in Jointly-Administered Plans

---

8. Industry in which most of the participants are employed (check one):

A. Manufacturing ☐	B. Mining ☐	C. Construction ☐
D. Transportation ☐	E. Communications and Utilities ☐	F. Wholesale and Retail trade ☒
G. Finance, Insurance and Real estate ☐	H. Services ☐	I. Other (specify) ☐

9. A. Is the Plan collectively bargained?
(1) Yes ☐ (2) No ☒

B. Does more than one employer contribute to the Plan?
(1) Yes ☐ (2) No ☒

10. A. Current employer contribution formula:
(1) ☐ Fixed rate per hour, week or month or percent of payroll (specify)

(2) ☒ Other (specify)

Actuarial Computation

B. Is this formula specified in a written collective bargaining agreement, plan, trust agreement or similar governing document?
(1) Yes ☐ (2) No ☒

If "Yes," specify the document or documents in which the formula appears:

(a) Collective bargaining agreement ☐
(b) Plan ☐
(c) Trust agreement ☐
(d) Insurance contract ☐
(e) Other (specify) ☐

11. Current benefit formulas (give data for service which would commence as of date of study).

A. Normal retirement At Age 65

1-1/2% of "Final Pay" (Average of five consecutive years of highest earnings of last 10 years. Pay is base earnings including extra compensation for regularly scheduled work but excluding overtime or other extras.)

22123

For each year of Plan membership (maximum 33-1/3 Years)

Less half of Primary Social Security Payable at age 65

Special Minimum Income Feature

At Age 65 - $5. a month for each year of Plan Membership up to 35 Years. Therefore under this feature income can be as high as $175., a month ($5. multiplied by 35 Years).

Income to be the higher of either formula.

B. Early retirement

After reaching age 55 and 10 years Plan Membership may retire early at immediately payable reduced benefits as follows:

Age	Benefit
55	50%
56	55%
57	60%
58	65%
59	70%
60	75%
61	80%
62	85%
63	90%
64	95%
65	100%

May also elect a Level Income Option to increase Plan income before Social Security Benefits normally begin and decrease after age 65.

C. Disability

Early Retirement.

D. Death

$1,500 Death Benefit.

E. Other (e.g., survivorship, temporary retirement, etc.) (specify)

Widow's Benefit = 40% of Employees Benefit payable for life but will stop on remarriage.

Upon death before normal retirement widow also receives Group Life Insurance.

12. Age and service requirements for obtaining benefits.

A. Normal retirement

Age 65 and entry into Plan Membership.

1925

B. Early retirement

After Age 55 and 10 years Plan Membership.

C. Disability

After Age 55 and 10 years Plan Membership.

D. Death

$1,500 Death Benefit to designated beneficiary.

E. Other (e.g., survivorship, temporary retirement, etc.) (specify)

1022

If death occurs after age 55 of eligible member active or retired, his widow married to him for at least one year and not separated by law or in fact will be eligible for 40% of his benefit for life or until remarriage.

13. A. Specify the requirements of the vesting provision, i.e., age, service, type of separation, etc.

After age 55 and 10 years Plan Membership.

1224

B. What percentage of accrued benefits are initially vested? None

C. After how many years are all accrued benefits vested? Same as Early Retirement Requirements.

D. Specify the vesting formula (including whether such formula has retroactive effect).

Same Formula as Early Retirement Requirements.

Age	Benefit
55	50%
56	55%
57	60%
58	65%
59	70%
60	75%
61	80%
62	85%
63	90%
64	95%
65	100%

E. Specify any survivorship rights under the vesting provisions.

Widow's Benefits and $1,500 Death Benefit to eligible Plan member's designated beneficiary.

F. Specify whether any benefits in the event of illness (i.e., medical, surgical, hospital benefits, etc.) are provided to retirees under the Plan. Indicate the requirements for obtaining such benefits.

No such benefits are covered under other plans.

14. Does the Plan credit service with other employers or service with respect to other plans of the same employer? A. Yes [X] B. No [ ]

If "Yes," specify the type of credit provided, i.e., partial, full, etc., and provide such other essential details as will clarify the arrangement (include data on any reciprocal arrangements entered into with other plans, including the identity of such other plans).

All subsidiaries employees credited in same manner as total Company and credits transferred with employee if he transfers within Company.

See also Question 45 B, P. 30, as regards acquired entities.

---

15. Does the Plan provide for employee contributions? A. Yes [ ] B. No [X]

If "Yes," specify that rate of such contributions, and indicate whether the Plan requires such contributions to be made as a condition of participation.

---

16. A. Specify the pre-participation service period required as a condition precedent to membership in the Plan (check one):

(1) None	☐		(4) 2–3 years	☐	
(2) 3–6 months	☐		(5) Over 3 years	☐	
(3) 1 year	☐		(6) Other (specify)	☒	5 Years full-time service.

B. Specify the minimum age required as a condition precedent to membership in the Plan (check one):

(1) None	☒		(3) 22–25	☐
(2) 18–21	☐		(4) Over 25	☐

C. Does the Plan credit pre-participation service with respect to the Plan?
(1) Yes ☐ (2) No ☒

If "Yes," specify the type of credit provided.

---

17. Specify the maximum age, if any, at which an employee is barred from membership in the Plan 65

---

18. A. If the Plan contains a continuous service requirement, specify the period of time which will constitute a "break in service." (check one):

(1) Less than 1 year ☐
(2) 1 year ☐
(3) 2 years ☐
(4) Over 2 years ☐
(5) Other (specify) ☒

Any break in service for any period, except if same is pursuant to an approved leave of absence or service in Armed Forces.

B. Enumerate any other conditions which will constitute a "break in service."

-

C. Enumerate any circumstances recognized by the Plan which will serve to waive a "break in service."

Approved leave of absence or service in Armed Forces.

Part III. Data on Benefits and Forfeitures

(Where records of the Plan are unavailable, estimate if necessary but indicate if the figure is an estimate.)

19. A. Specify the total number of persons who have participated in the Plan since 1950 or since the Plan's establishment if that date is later than 1950 ..... 64,076 (E)

B. Specify the total number of persons who have participated in the Plan within the past 5 years 59,349

(E) Estimated.

20. A. Specify the total number of participants who received benefits since 1950 or since the the Plan's establishment if that date is later than 1950:

(1) Normal retirement	7,834
(2) Early retirement	4,416
(3) Disability retirement	-
(4) Death	1,197
(5) Other	-

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement ..... -

C. Specify the total number of participants within the past 5 years who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement ..... -

---

21. A. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for any reason (include those who retired and/or died) ..... *50,957 (E)

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for reasons other than normal or early retirement ..... *38,707 (E)

C. Specify the total number of participants within the past 5 years who left the scope of the Plan for any reason (include those who retired and/or died) ..... *34,035 (E)

D. Specify the total number of participants within the past 5 years who left the scope of the Plan for reasons other than normal or early retirement. *30,775 (E)

---

22. Specify according to the following categories the total number of participants, regardless of their age, who left the scope of the Plan without entitlement to any retirement benefits:

A. Since 1950 or since the Plan's establishment if that date is later than 1950 ..... *37,510 (E)

B. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 15 years service under the Plan ..... -

C. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 10 years service under the Plan ..... -

D. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 5 years service under the Plan ..... *37,510 (E)

E. Within the past 5 years ..... *30,641 (E)

F. Within the past 5 years with more than 15 years service under the Plan ..... * 800 (E)

G. Within the past 5 years with more than 10 years service under the Plan ..... * 2,000 (E)

H. Within the past 5 years with more than 5 years service under the Plan ..... *15,000 (E)

I. Within the past 5 years due solely to voluntary separation ..... *29,000 (E)

J. Within the past 5 years due solely to failure to meet continuous service requirements ..... -

(E) Estimated.

---

*Most of these separations were withdrawals to Jointly Administered Plans within past several years.

23. Specify according to the following categories the average age of participants who left the scope of the Plan without entitlement to retirement benefits:

A. Within the past 5 years with more than 15 years service under the Plan.... 51 (E)

B. Within the past 5 years with more than 10 years service under the Plan.... 42 (E)

C. Within the past 5 years with more than 5 years service under the Plan..... 34 (E)

---

24. A. Indicate the average monthly benefit paid to retirees 5 years ago.
(1) Normal $170.43 (2) Early $109.97 (3) Disability -

B. Indicate the average monthly benefit paid to retirees within the last year.
(1) Normal $189.27 (2) Early $210.67 (3) Disability -

Part IV. Funding Status Data

25. Specify the following (give the latest figures):

A. Total assets of Plan (at cost, book, and market value):
(1) $291,245,000* (Cost) (2) $291,245,000 (Book) (3) $309,866,000 (Market) (4) 12/31/69 (Date of latest evaluation)

B. Total liabilities for all accrued vested benefits (include benefits vested under vesting, early retirement, disability retirement and normal retirement provisions, and give present dollar value) $218,119,171 — 12/31/68 (Date of latest evaluation)

C. Total value of all accrued benefits, treating all such benefits as if they were vested (give present dollar value) $419,000,000 (E) — 12/31/69 (Date of latest evaluation)

*No contributions to Plan in 1969: See Question 26 B

---

26. A. Provide a concise description of the actuarial methods, factors and assumptions used in determining contributions or premium payments under the Plan (indicating specifically the assumption used with respect to the rate of employee termination for reasons other than death, disability, or retirement).

See attached as with the D-2 Report.

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B. Except for multiemployer plans, specify the total number of years (identifying each year) since 1950 or since the Plan's establishment if that date is later than 1950, in which the employer did not make contributions to the Plan, or reduced his rate of contributions to the Plan, indicating concisely the factors which dictated this result.

1969 Due to Adequate Funding.
See Attachment.

C. If a multiemployer plan, list those employers who are delinquent in their contributions to the Plan as of the date of this study, the duration of the delinquency, the steps, if any, taken by the Administrator in this respect, the total amount of delinquent contributions, and the total number of currently contributing employers.

None.

27. A. Indicate the total amount ($ value) of loans made by the Plan fund which are outstanding as of the date of this study (exclude investments in government, corporate and other bonds)..... None

B. Indicate the total amount ($ value) of loans made by the Plan fund which are outstanding as of the date of this study which were made without collateral being provided by the debtor..... None

C. Indicate the total amount ($ value) of loans made by the Plan fund which are in default as of the date of this study..... None

D. Indicate the total amount ($ value) of loans made by the Plan fund which are in default and which have been written off as uncollectable as of the date of this study..... None

E. Indicate the total amount ($ value) of debt owed by the Plan fund None

---

28. A. List and identify all employers contributing to the Plan fund (including any employer controlling such an employer, controlled by such an employer or under common control with such an employer) in whom the Plan fund has invested its assets, or with respect to whom the Plan fund has made a loan, guaranteed a loan, or pledged its assets within the past 5 years. Indicate the amount and date of such investment, loan, pledge, etc., for each employer listed.

Plan, under Trustee Management, last 5 year acquisitions of the Common Stock of The Great Atlantic & Pacific Tea Company, Inc., were as follows:

Year	Shares	Cost
1965	11,500	$338,078.65
1967	3,000	95,164.52

B. List and identify all officers or employees of the union whose members are covered by the Plan with respect to whom the fund has invested its assets or made a loan, guaranteed a loan, or pledged its assets, within the past 5 years. List and identify any corporation, joint-stock company, mutual fund, etc., which such officer or employee owns or in which he has controlling interest, with respect to whom the fund has invested its assets or made a loan, guaranteed a loan, or pledged its assets, within the past 5 years. Indicate the amount and date of such investment, loan, pledge, etc., for each officer or employee listed, or of each entity owned or controlled by him.

None.

29. Indicate what percentage of corporate stock at current market value held by the Plan as of the date of this study was purchased directly from the issuer or owner..... None

30. Specify the following:

A. The average amount of administrative costs charged to the Plan for the last 5 years..... None

B. The ratio (percent) of current administrative costs charged to the Plan to total fund assets calculated at current market value..... None

C. The ratio (percent) of total administrative costs charged to the Plan for the last 5 years to the total income earned by the fund during the last 5 years..... None

D. The ratio (percent) of total administrative costs charged to the Plan for the last 5 years to the total amount of benefits paid out by the Plan during the last 5 years..... None

All costs paid by The Great Atlantic & Pacific Tea Company, Inc.

31. A. Indicate what percentage of total Plan fund assets at current market value as of the date of this study has been invested in arrangements intended to provide funds for housing or other social-economic improvement programs 23.134%

B. List and identify each such program in which the Plan fund has invested and the amount of the investment at current market value .....

Bankers Trust Portion

	Market
Government National Mortgage Association - $500,000	$501,565
Mortgage Bond 8-1/8% due 6/1/71	

There is an intention to invest further in this program.

The Plan's proportionate share of Prudential investment in housing loans and mortgages is approximately $45,919,505

Further funds have been committed by Prudential for urban core housing during 1969.

Part V. Internal Administrative Data

32. Does the Plan provide a booklet to each participant explaining the terms, conditions and procedures relative to the Plan? A. Yes ☒ B. No ☐

---

33. A. Does the Plan provide the participant with an opportunity to request a hearing on his claim for benefits? (1) Yes ☐ (2) No ☒

B. Does the Plan require a complete or partial denial of a claim for benefits to be put in writing? (1) Yes ☐ (2) No ☒

C. Does the Plan provide for any appeal procedures with respect to a denial of a benefit claim? (1) Yes ☐ (2) No ☒

D. If the Plan provides an appeal procedure, is it set forth in the booklet described in question 32? (1) Yes ☐ (2) No ☒

---

34. Indicate approximately how many claims were considered for each of the last 5 years..... Approximately 4

---

35. Indicate whether the Plan utilizes the following (check all which are applicable):

A. [X] Professional administrator - Deposit Administration Account Prudential Insurance Co.

B. [X] Corporate trustee Bankers Trust Company

C. [X] Actuary (indicate qualifications) Towers, Perrin, Forster & Crosby

D. [X] Public accountant (indicate qualifications) Independent Certified Public Accounting Firm - Haskins & Sells

E. [X] Attorney at law

F. [ ] Investment advisor

G. [ ] Other consultants (specify)

36. Are the Plan participants represented at any level in the administration of the Plan?

A. Yes ☒ B. No ☐

If "Yes," explain, and indicate how such participants are selected.

Retirement Board selected by the Board of Directors consisting of one outside Director, and three Inside Director employees of the Company who are also members of the Plan.

---

37. A. Specify the procedure for amending the Plan.

Recommendations through the Headquarters Administrative Committee, reviewed by the Actuaries and Attorneys, and approved for presentation and qualification with The Internal Revenue Service where necessary by Employer's Board of Directors or Executive Committee thereof.

B. Indicate approximately how many amendments have been made to the Plan since 1950 or since the Plan's establishment if that date is later than 1950..... 12

C. Indicate approximately the intervals at which the Plan is codified in a single document to incorporate all amendments..... 2 times since 1948 - 1960 and 1970.

38. If the Plan is administered by a group of individuals, e.g., board of trustees or committee, indicate whether the Plan contains a provision requiring regular periodic meetings of the group.
A. Yes ☐ B. No ☒
If "Yes," specify the period at which such group is required to meet.

39. Investment decisions are made by (check all that participate):

A. ☐ Committee appointed by employer
B. ☐ Committee appointed by union
C. ☐ Joint employer-union board of trustees or committee
D. ☒ Corporate trustee
E. ☐ Investment adviser
F. ☐ Corporate trustee or investment adviser with review by employer, union, joint board of trustees, or committees appointed by any of the foregoing
G. ☒ Other (specify)

Prudential Insurance Company makes decisions with respect to funds held by it in deposit administration account.

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40. Specify what formal restrictions, if any, limit the discretion of those persons charged with the responsibility for investing Plan assets (e.g., provisions with respect to diversification of funds, investment in securities of the employer, restrictions against investment in corporate stock, etc.)

With respect to Funds held by corporate trustee, no investments may be made in stock or other securities or obligations of any Company or Enterprise primarily engaged in the manufacture or distribution of food products other than the Company or any of its subsidiaries, affiliates or related Companies or in property in which any such Company or Enterprise has a leasehold or other interest without prior written consent of the Company.

---

41. Is the Plan audited at least once a year by an independent licensed or certified public accountant?
A. Yes ☒ B. No ☐

---

42. Has qualification of the Plan or exemption of the trust under the Internal Revenue Code ever been revoked or suspended? A. Yes ☐ B. No ☒ If "Yes," explain.

---

43. A. If the Plan is insured, list and identify:

(1) Any administrator, officer or employee of the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

None.

(2) Any director, officer or employee of any employer contributing to the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

None.

(3) Any officer or employee of the union whose members are covered by the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

None.

B. If the Plan utilizes a corporate trustee, list and identify:

(1) Any administrator, officer or employee of the Plan who is a director, officer or employee of the corporate trustee.

None.

(2) Any director, officer or employee of any employer contributing to the Plan who is a director, officer or employee of the corporate trustee.

None.

(3) Any officer or employee of the union whose members are covered by the Plan who is a director, officer or employee of the corporate trustee.

None.

---

44. Indicate the provisions for distribution of assets upon Plan termination, including the order of priorities for distribution under the Plan.

1. Full benefits to all retirees, widows and contingent annuitants.

2. Full vested benefits to all Plan members according to their vested interests.

3. Balance distributed proportionately according to their creditable service to the remaining members of the Plan.

4. Nothing to come back to the Company.

---

45. A. Specify any layoffs or closing of a plant, department or subdivision of an employer which resulted in more than 10 percent or more than 500 of the active participants in the Plan being separated from the scope of the Plan (give data for last 5 years and specify in each case the percentage and number of employees separated).

None.

B. Does the Plan cover participants who became eligible to participate in the Plan by virtue of a corporate acquisition, merger, consolidation, lease, etc., which resulted in termination of their prior plan? (1) Yes [X] (2) No [ ] If "Yes," furnish the following details:

(a) Name of the predecessor corporation Gress Stores Company, Inc.

(b) Date of the acquisition, merger, consolidation, lease, etc. April 21, 1969

(c) Name of the terminated plan of the predecessor corporation Gress Stores Company, Inc. Employees Pension Trust Plan

(d) Date the plan of the predecessor corporation was terminated April 21, 1969

C. Indicate the percentage of participants currently covered by the Plan who received vested rights under other plans of the same or a predecessor employer .02%

46. List and identify any compensated administrator, officer or employee of the Plan who also receives compensation as a director, officer or employee of the employer contributing to the Plan or as an officer or employee of a union whose members are covered by the Plan.

None.

---

47. If the Plan is administered by a group of individuals, indicate how frequently within the last 5 years membership of the group has changed ..... Annually

---

48. A. Specify the number of lawsuits within the last 5 years brought against the Plan by or on behalf of persons who are or claim to be participants or their beneficiaries *2

B. Of the total figure furnished in (A), specify the number which were successfully resolved in favor of such persons or which were settled *2

C. Of the total figure furnished in (A), specify the number of suits which were based on claims for benefits *2

*One case was withdrawn by Claimant. Other case involved purely formal establishment of entitlement to benefits of incompetent widow who killed participant, her husband.

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D. Of the total figure furnished in (C), specify the number of suits which were successfully resolved in favor of such persons or which were settled *2

E. With respect to all litigation not involving claims for benefits, specify the following:

(1) Title of the action (and court in which the action was brought)

-

(2) Date

-

(3) Law reporter citation(s) (if any)

-

(4) Nature of issue

-

(5) Outcome

-

*See note on Page 31.

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
JENNINGS RANDOLPH, W. VA.
CLAIBORNE PELL, R.I.
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STEWART E. MCCLURE, STAFF DIRECTOR
ROBERT E. NAGLE, GENERAL COUNSEL

United States Senate
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

July 14, 1971

Mr. Darrell V. Stiffler, Jr.
National Director of Personnel and Industrial Relations
The Great Atlantic & Pacific Tea Co., Inc.
420 Lexington Avenue
New York, New York

Dear Mr. Stiffler:

On March 1, 1971, by Senate Resolution 35, the U. S. Senate ordered the Senate Subcommittee on Labor to conduct a study of the private pension system in the United States, with special emphasis upon the need for protection of employees covered by these funds.

As you were advised on July 7, 1971 by a staff member of the Senate Subcommittee on Labor, Stephen F. Duane of Jersey City, New Jersey had informed the Subcommittee of alleged hardships resulting from inability to qualify for a pension under your pension plan. These were discussed with you in order to ascertain appropriate explanation in response to the difficulties recited.

The complainant has been invited to testify before the Subcommittee on Labor on or about July 27, 1971, on hearings to be held pursuant to the Senate study of private pension plans. It will be for the purpose of presenting the problem alleged.

Accordingly, the Subcommittee on Labor similarly invites your organization to designate a representative to appear to testify with respect to your pension plan benefits relating to Mr. Duane, and matters alleged by complainant. It would be appreciated if you would indicate expeditiously whether you will appear. In the interim, please forward a copy of the pension plan and such other publications which you issue relating thereto. Your assistance is appreciated.

Sincerely,

Mario T. Noto
Special Counsel
Subcommittee on Labor

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
ESTABLISHED 1859

EXECUTIVE OFFICES
GRAYBAR BUILDING, 420 LEXINGTON AVENUE
NEW YORK, N. Y. 10017

DARRELL V. STIFFLER
NATIONAL DIRECTOR OF
PERSONNEL & INDUSTRIAL RELATIONS

PENSION STUDY
JUL 23 1971
13

July 19, 1971

Mario T. Noto, Esq.
Special Counsel
Subcommittee on Labor
United States Senate
Committee on Labor and Public Welfare
Washington, D.C. 20510

Dear Mr. Noto:

This will acknowledge receipt of your correspondence dated July 14, 1971.

On July 7, 1971 representatives of our company met with Mr. Arthur Lowy, staff member of the Senate Subcommittee on Labor and reviewed the employment record and pension coverage of a former employee, Stephen F. Duane, Jersey City, N.J.

Mr. Duane was in our employ from May 13, 1939 to January 22, 1971. At the time his services were terminated, he was a member of a collective bargaining union represented by Teamsters Local 863, Newark, N.J. and a participant in the jointly administered Teamsters Local 863 pension fund to which we were a contributing employer. Mr. Duane's participation in this fund resulted from collective bargaining and his complaint of inability to qualify for pension properly relates to the Local 863 pension fund.

Therefore, we advised Mr. Lowy we will not appear to testify, as any response to the difficulty cited by Mr. Duane can only be appropriately explained by the principals of the jointly administered Local 863 pension fund.

Yours very truly,

DVS:jw

The CHAIRMAN. We have now two witnesses formerly employed by the Michigan Tool Co., Mr. George Silver and Mr. Earl Machelit.

Now, who is who?

Mr. SILVER. I'm Silver.

Mr. MACHLEIT. I'm Machleit.

The CHAIRMAN. All right, Mr. Silver, do you want to start?

We appreciate very much your being here.

STATEMENT OF GEORGE J. SILVER, OF STERLING HEIGHTS, MICH., AND EARL MACHLEIT, OF ST. CLAIR SHORES, MICH., FORMER EMPLOYEES OF THE MICHIGAN TOOL CO.

Mr. SILVER. Thank you.

My name is George Silver and I worked in the Detroit area for 30 years. I'll be 50 years old in December. I work for the Michigan Tool Co.

Now, for 30 years we were supposed to have had a pension plan in that place. So just on February 28 they put a notice on the board that they were moving out of the State of Michigan. They were going to North Carolina. Then, in April, they put a notice on the board that our pension plan was terminated. So we were supposed to have vested rights in this pension plan too. So we went to put in our slips for vested rights. They refused to take it.

Now, we are supposed to get $5 a year for every year of service. We get nothing. We don't get any severance pay, and they say that even the men that are 58 years old will not be able to draw any money out of the pension fund because there's no money there. Something's got to be done about this because I'm 50 now. I got another 15 years to go so I can start again, but if there's no laws, they can write me out again in 15 years. So somebody's got to do something.

The CHAIRMAN. When did you go to work for Michigan Tool?

Mr. SILVER. April 28, 1941.

The CHAIRMAN. And you had continuous employment there?

Mr. SILVER. Except for 3 years when I was in service and we carried our seniority, even though we were in service.

The CHAIRMAN. Until June of this year?

Mr. SILVER. June 15 of this year we were laid off.

The CHAIRMAN. Now, can you describe your understanding of what your pension program was? Was it a company-administered plan? Was the union involved in it? Just what was your understanding of it?

Mr. SILVER. Well, each had three men on a panel. That's the way I understand it. Now, every time we had a contract, we negotiated pension benefits along with, with the whole package, an across-the-board package.

The CHAIRMAN. You say each had a man on the board.

Mr. SILVER. The company and the union. We had three men and they had three men.

The CHAIRMAN. I see.

Mr. SILVER. So this was a negotiated thing from 1941 to 1951, our pension plan. They paid in, started off 7 cents an hour per hour for every hour worked and it got to 14 cents an hour for every hour worked. Then they went into this new plan which the company did not have to pay into per hour. They paid just to keep it solvent. So I guess

they used the money that was in there before when they were paying by the hour, and just moved it into the new plan. To me, it looks like the company picked up all the interest. They're the ones that came out ahead.

The CHAIRMAN. It was your understanding through those years that for each hour there was a contribution to the pension fund?

Mr. SILVER. That's right. From 1941 when I started there. I think it started before then.

Mr. MACHLEIT. It's in our book. They put in 14 cents an hour prior to 1951 when the company sort of took over. They said, we'll take care of it from now on, so the union must have agreed with it. But I still think we should have got some severance pay or something from that 7 cents or 14 cents that we had been contributing to the fund prior to 1951. I have been there for 34 years.

The CHAIRMAN. Did you have a book that described the plan?

Mr. SILVER. I had one, but I haven't got it now. It described the plan, but like the witness before me, you wouldn't get the same thing out of it that I did. And this goes on in any of them. I don't think there's a pension plan that I've looked at that two men can get the same answer out of, especially men that are not college men or lawyers.

The CHAIRMAN. But you did know that the company was to contribute 14 cents for each hour.

Mr. SILVER. That much I know.

There was money going in there. That was up to 1951 until they changed over to the plan we have now where all they have to do was keep it solvent. All you did was give the company the money back, because I know the company wasn't paying 14 cents an hour from 1951 up to now. It's not possible, because we didn't have that many men retiring.

Our retiring just started in the last 6 or 7 years that men started getting old enough to retire.

The CHAIRMAN. Well, did you know all the way through that you just had to be there until a certain age to get anything at all?

Mr. SILVER. No, you didn't have to do that because with this here, I got a slip here with our vested rights.

Now, guys that quit Michigan tool and went someplace else to work, they were handed a vested rights slip that gives you your credits and you were supposed to get this when you reached 65 years of age. Well, they accepted them from the men that quit. There's mine. It says, I. George J. Silver apply for deferred pension benefits to which I am entitled, Mechanics Educational Society, MESA, Local 6, retirement income plan. They refused to accept it. After 30 years of service, they refused to accept this, but yet the man that quit a year or two before this, they accepted. They gave him this. This slip was made out by the union because the company would not give us a slip to make out. The men that quit when the company gave the notice had the slips signed. They have vested rights, but the guy that stayed there until the end hasn't got vested rights.

The CHAIRMAN. What did the vested rights mean to the men who quit earlier?

Mr. SILVER. Well, it's a reduced rate on the pension, but when they reach 65——

The CHAIRMAN. If he's not yet 65?

Mr. SILVER. Maybe he'll come under the same thing now as us. They claim there's no money in there for us.

The CHAIRMAN. Well, his vested right then at this point appears, from what you said, to be vested in a fund that is insolvent and nonexistent, really.

Mr. SILVER. That's right, true.

The CHAIRMAN. Well, it's a jointly administered fund. Is that right? What was the union, by the way?

Mr. SILVER. Mechanics Educational Society.

This goes back when Marvin Anderson owned Michigan Tool. This is before Ex-cell-o took over Michigan Tool. See, Michigan Tool is owned by Ex-cell-o Corp. But under Michigan Tool, they were still under the Michigan Tool name. Now, in North Carolina it's going under Swannawoa Tool Co., but it's still been owned by Ex-cell-o.

Mr. MACHLEIT. Yeah, a slip they hung up there said something about the company that's had 50 years of gearmaking, and here it's supposed to be a new shop. They just changed the names on it. That's all, but they have the same personnel.

The CHAIRMAN. While you're looking for that, Mr. Silver, I see you have the books that describe the plan.

Mr. SILVER. That's the pension plan.

The CHAIRMAN. I wonder if we could get that included in our record?

Mr. SILVER. Yeah, here's a sales thing put out by Michigan Tool Co. It tells about moving down to North Carolina. It says this new plant is a former Ex-cell-o-plant and already has the workers. Nobody was asked to go from the Michigan Tool to go to North Carolina. They didn't want any workers from Michigan Tool to go down there. This place will be furnished by a work force from the Asheville Technical Institute. And from what the union tells me, 60 percent of the tab is being picked up by the taxpayers of the U.S. Government on this training thing. And that's a pretty good deal, when they use your tax dollar to train somebody else to do your job. I got nothing against them moving as long as they use their money to move. And this thing they claimed they'll do when we were working and making money for them. Let them stay behind this thing and pay it out.

The CHAIRMAN. How old are you now?

Mr. SILVER. I'll be 50 years old in December.

The CHAIRMAN. You have some minor children I see?

Mr. SILVER. Yes. They are 11, 15, and 17.

The CHAIRMAN. Where are you working now?

Mr. SILVER. Right now, State of Michigan unemployment, and that's a long, a long line in the State of Michigan, believe me.

The CHAIRMAN. You are a machine tool operator?

Mr. SILVER. That's right.

The CHAIRMAN. For exactly 30 years?

Mr. SILVER. Well, from the termination date I would be 4 days short of 30 years, but I worked until June, which is over 30 years.

The CHAIRMAN. Before we turn to Mr. Machleit, the Chair recognizes Senator Randolph.

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

Senator RANDOLPH. Thank you, Mr. Chairman. I am in an executive session of the Subcommittee on Air and Water Pollution, and we're attempting to complete certain provisions to bring legislation of importance to you gentlemen as well as to all Americans. I did want to come to commend you in no cursory fashion, Mr. Chairman. You and Senator Javits had a conference not too many weeks ago, which I recall very well, in which you focused attention on this subject by discussing the preliminary results of the study of the private pension plans. I, at that time, felt that what you were doing, leading the way toward these hearings, was of vital importance. And in the Senate on Monday, May 17, I gave a commendation to you and I ask that I be permitted to read just very brief extracts from my remarks in the Senate on that date.

In 1968, the then Assistant Secretary of Labor, Thomas R. Donahue, testified before the Senate Labor Subcommittee on pending pension plan legislation. He stated with brevity, yet with eloquence, the essence of the problems which have prompted his characterization of these plans as a "cruel illusion." His words, now I repeat:

> If you remain in good health and stay with the same company until you are 65 years old, and if your department has not been abolished, and if you haven't been laid off for too long a period, and if there is enough money in the fund, and if that money has been fruitfully managed, you get a pension.

Those were the words of the Assistant Secretary of Labor speaking in 1968.

Now, I add that no pension plan legislation, Mr. Chairman and Senator Javits, was enacted in furtherance of that incisive statement which was given to us in 1968. There was no legislation that was passed in 1969 and there was no legislation passed in 1970. And so I think that the three of us present today at this hearing believe that the time has come to enact into law a comprehensive, realistic, and protective measure. I'm in nowise critical. I'm only saying what the record shows which is that we had a rather blunt warning in 1968 and I've read part of that testimony.

Now, I would like to quote these words from my statement in the Senate of May 17 of this year:

> As a matter of equity and fair treatment, an employee should not have to work his entire productive life for one company in order to receive a pension. A worker, after a reasonable period of service, is entitled to protection of his retirement benefits against any termination of his employment. If the private pension system is to be a partner with our public Social Security program, as it should be, pension plans must be considerably more enlightened. Labor mobility is now the rule in this country, not the exception.

I know, Mr. Chairman, you've commented many times as have other Senators on the rather large segment of our working force that moves from one point to another in America because of employment in one area being better at a certain time than the work opportunities in another area. Because we are a nation of mobility with good transpor-

tation and communication, this has come to pass. So I commend you today. I commend Senator Javits for your initiative in these hearings where we're discussing the human problems and, certainly, they're very important, associated with private pension plans. I'm sure that it is not an overstatement for me to say that millions of workers, and many of these workers are in our State of West Virginia, are looking anxiously and earnestly to these hearings and hope for action by the Congress. And I will ask unanimous consent, Mr. Chairman, to present, as a part of the record, certain communications supporting legislation of the type that you're thinking of and working toward. One letter comes from Charles E. Adkins, of Point Pleasant, W. Va. Another communication, cosigned by 122 persons, comes over the signature of Carmen J. Pagliero. He's president of Local Union 1640, United Steel Workers of America, and the letter comes from Fairmont, W. Va. I shall read these lines from that communication. "We know you are aware that of 6.9 million workers who participated in 51 pension plans since 1950, only 4 percent received benefits." Now, whether this is correct or not, I'm giving you a statement of constituents. "Also of the 2.9 million participants in the 36 group plans since 1950 only 8 percent receive retirement benefits."

Senator WILLIAMS. These are our figures.

Mr. RANDOLPH. Fine. Fine. And he specifically requests that we support legislation that would guarantee that pension funds would be as well regulated as banks and assured as accounts within those financial institutions. He indicates they believe it's important for legislation to provide portability of pension fund benefits from company to company so an employee can take his pension with him regardless of his reason for being transferred from company to company. Also, that if the company should close the plant doors or sell to another company, the pension fund would remain with the employees. He respectfully urges—and the 122 persons who cosigned the letter—that legislation is needed and that these people have given faithful productive service to the companies, not only in West Virginia, but throughout the Nation.

I ask unanimous consent, Mr. Chairman, that the pertinent parts of these communications, perhaps even listing the cosigners with their names and addresses, be included as a part of the record of today's hearings.

The CHAIRMAN. They certainly will be.

(The letters referred to, subsequently supplied, follows:)

3306 Franklin Avenue
Point Pleasant, W.Va.
March 20,1971

Senator Jennings Randolph
United States Senate
Senate Office Building
Washington, D.C.

Dear Senator Randolph:

Would you please put your considerable talents to work on the Dill or a Bill similar to the one Senator Yarbourgh started that would give working men the rights to the pensions that have been negotiated for them. Some means of vesting and to make the pensions portable between employers would endear you to the working man and further your name as the humanitarian you are.

Sincerely,
Charles E. Adkins
Charles E. Adkins

Carmen J. Pagliaro
United Steelworkers of America
President of Local Union #1640
816 Nuzum Place
Fairmont, West Virginia, 26554

Mar

Senator Jennings Randolph
Senate Office Building
Washington, D. C.

Dear Senator Randolph:

We know you are aware that of 6.9. million workers who participated in 51 pension plans since 1950 only four per cent received benefits. Also of the 2.9. million participant in the 36 group plans since 1950 only eight per cent received retirement benefits.

We respectfully request that you propose and support legislation that would guarantee that pension funds would be as well regulated as banks and assured as bank accounts. Futher, we would like to have legislation that would provide portability of pension funds and benefits from company to company so that an employee could take his pension with him regardless of his reason for being transferred from company to company.

Also that if the company should close its plants doors or roll out to another company the pension fund stay with the employees.

We respectfully urge prompt enactment of Laws which will assure payment of pension that have been earned by long years of faithful service to the companies and corporations of this great country.

I felt that you would receive thousands of letters to read on this subject, so instead of all our union brothers writing individual letters they would just sign there names and address on the attached pages.

Respectfully,
Carmen J. Pagliaro
Carmen J. Pagliaro
President of Local Union #1640
United Steelworkers of America
816 Nuzum Place
Fairmont, West Virginia, 26554

(Note: A letter cosigned by 122 other interested individuals may be found in the files of the subcommittee.)

The CHAIRMAN. These will make a significant contribution to our record, and your statement of deep concern certainly contributes to our work.

Senator RANDOLPH. As you know, I have been working in the Special Committee on Aging, on the subcommittee which I chair, on employment and retirement incomes for old people, and this problem of pensions arises to haunt us over and over again. I do hope that what you are doing, Mr. Chairman, will be productive, and I pledge for the record that I shall attempt to cooperate with you in bringing legislation, well reasoned legislation, as quickly as possible to the Senate so that we may enact a measure that is so important to American workingmen and women.

The CHAIRMAN. Thank you very much. It has been a long time really since the Congress has acted in this area. The last major development was the Welfare and Pension Plans Disclosure Act.

We were here for that, and there were certain hopes. Some have been realized, but that is only the first small step in this whole area, and certainly vesting and funding are two of the principal concerns. We have had two witnesses, and we are about to have the third. They are certainly demonstrating that vesting and funding in some present pension systems are grossly inadequate.

Senator RANDOLPH. Mr. Chairman, I refer to a letter from Mr. Adkins who has written from Point Pleasant. He specifically directs his thinking toward vesting and funding features which you have just emphasized, and I think that it is certainly wholesome and helpful that the men who have been through this pension experience sit at this table today and give us the case histories of individuals and groups.

It all points, I think, toward not some hit or miss type of legislation but well reasoned legislation, and I repeat that because it is a subject that we have to consider very carefully.

Mr. Chairman, Senator Javits also, I again offer my special commendation to you for your work here. I will now return to my other subcommittee and deal with some water pollution problems, but I appreciate your allowing me to interrupt.

The CHAIRMAN. Thank you very much.

In furthering one point here on the funding Mr. Silver, Mr. Wade spoke with you in Michigan and notes that I have from Mr. Wade tell me that your union has filed suit.

Mr. SILVER. Our union has filed a suit. It was in recorders court and the company for some reason wanted to put it in Federal court. It is a suit for $2.5 million.

The CHAIRMAN. Is this suit in connection with the pension fund?

Mr. SILVER. With the funding of the pension, yes.

Mr. MACHLEIT. We had actuaries. One of our union lawyers got the actuaries of the fund itself and he found out it was about a million dollars in there where it should have been $3.5 million in order for all of us to participate in the pensions.

The CHAIRMAN. Could we look at that letter?

Mr. SILVER. This is what was sent to me from the union, to say about the law suit.

The CHAIRMAN. Could we have that for our records?

Mr. SILVER. Sure.

The CHAIRMAN. We would make a copy and return the original.

Mr. SILVER. You can have the copy there.

The CHAIRMAN. This is from the Mechanics Educational Society of America. The union is filing suit in court to make Michigan Tool Co. pay sufficient money into the pension fund to provide the benefits you are entitled to under the plan.

Now this is to the members of the union.

We would like to make a copy of this.

(The information subsequently supplied, follows:)

WOodward 3-0701

Mechanics Educational Society of America
AFFILIATED WITH AFL - CIO
Local No. 6
1421 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226

April 6, 1971

TO ALL PAST AND PRESENT MICHIGAN TOOL EMPLOYEES
ELIGIBLE FOR PENSION UNDER THE MICHIGAN TOOL
M.E.S.A. LOCAL #6 PENSION PLAN.

Dear Sir & Brother:

The M.E.S.A., through its Attorneys Eugene O'Leary and Philip Gillis, is filing suit in court to make Michigan Tool Company pay sufficient money into the Pension Fund to provide the benefits you are entitled to under the Plan.

It will take some time before a decision is obtained and we ask that you, as a member having a substantial interest in the outcome, keep us advised of your current address in case you move during the interim period.

Please send any change of address to the Local Office as shown on this letterhead.

Fraternally yours,

ROBERT WYNNE
Local #6 Secretary

The CHAIRMAN. Now we turn to you, Mr. Machleit.

Mr. MACHLEIT. That has about covered it all.

The CHAIRMAN. My notes tell me you gentlemen are relatives.

Mr. SILVER. Brothers-in-law.

The CHAIRMAN. Somebody married somebody's sister. Which is which?

Mr. MACHLEIT. I married his sister.

The CHAIRMAN. How long was your service?

Mr. MACHLEIT. Thirty-four years. The notice was on the board saying that April 13 we would terminate, close the shop. So I said how about if I put in my vested rights now and then the personnel manager said no, you can't unless you quit. You will have to quit first and then we will take your vested rights and file it, and you will get your pension when you are 65.

But I had to quit though prior to April 26, I think it was, something like that. But we all stuck together and said well, let's work out and find something else. So we worked all the way until June and then when we got laid off we asked them for our vested rights and they said no, it is too late, it is terminated, you have got no right to it now.

The CHAIRMAN. Now let me make sure that what you are saying is clear enough for me to understand.

Who advised you to quit the job in order to get your vested rights?

Mr. MACHLEIT. The personnel manager of the company.

The CHAIRMAN. And you have worked there how many years?

Mr. MACHLEIT. Thirty-four.

The CHAIRMAN. When did you believe that your rights became vested?

Mr. MACHLEIT. You mean secured?

The CHAIRMAN. Yes.

Mr. MACHLEIT. Right along I always thought it was all right.

The CHAIRMAN. Did you know that there had to be a period of service that was defined in the contract?

Mr. MACHLEIT. Every 10 years. If you have at least 10 years you are entitled to a pension——

The CHAIRMAN. That was your understanding? Ten years of service and you had a right?

Mr. MACHLEIT. Yes.

The CHAIRMAN. Well, could you collect the benefits under that right at a certain age?

Mr. SILVER. Sixty. I could have got early retirement at 60. That would be probably 80 percent of the money that I would have collected if I waited until I was 65. So I figured in another year and a half I would be 60 and I could get on the early retirement, 80 percent of what I had coming to me, and that would be it.

But then they said no, it is all over with now, the company is done, and the pension fund is terminated.

He never told me I could come back when I am 65 and collect it. So that is why the union had filed that suit, to make sure there is enough money in there, and then when I get 65 I go to the union and they are supposed to try to see if there is any money left and get something for me.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Gentlemen, I would like to ask you both, either one of you, whether you know how many employees were involved in the shutdown?

Mr. SILVER. You mean the latest group that was working?

Senator JAVITS. Yes.

Mr. SILVER. Oh, I gather 200, maybe 175.

Mr. MACHLEIT. About 200. But the thing is, Senator, you see they moved part of this operation of Michigan Tool. They owned another one at Manistee, Mich. They make machines up there, too. This was over a period of time, where they kept moving the men out, so there was a lot of them out of work at that time, so actually working there was about 175 or 200 men.

Senator JAVITS. Now, of the 175, do you have any idea how many lost all pension rights?

Mr. MACHLEIT. Almost all of them, because anybody that had 10 years' seniority would draw their pensions. It would be almost a hundred percent loss of the people that were left in there at the time.

Senator JAVITS. Have you any idea as to what happened in terms of the whole work force? How many of those——

Mr. SILVER. Well there is about 120 of them drawing it, the pension plan.

Senator JAVITS. Now?

Mr. MACHLEIT. Yes.

Mr. SILVER. There is some of them that started collecting back in 1951 or 1955 and 1960.

Senator JAVITS. Over that whole period?

Mr. SILVER. Yes.

Senator JAVITS. And as far as you are concerned, I gather you figured that this pension plan was part of your compensation; is that right?

Mr. SILVER. True.

Mr. MACHLEIT. Yes.

Senator JAVITS. And the fine print deprived you of it because you worked 6 days longer, did it not, than the time they terminated the plan.

Mr. MACHLEIT. We worked longer than 6 days.

Senator JAVITS. They terminated the plan on April 24, 1965.

Mr. MACHLEIT. Yes.

Senator JAVITS. And you terminated on April 30, 1971.

Mr. SILVER. No. June 15.

Mr. MACHLEIT. That April 30, Senator, is when we tried to turn in the slips.

Senator JAVITS. Right. And because of that 6 days if you had terminated your employment on April 23 and turned in your slip you would have gotten your benefit?

Mr. MACHLEIT. We would have had to quit. We would have got our pension benefits but no unemployment.

Senator JAVITS. So you were better off for quitting than you were for staying.

Mr. MACHLEIT. At least with my unemployment I am getting my money every week, but how am I going to know when I am 65, if I am going to get my pension?

Senator JAVITS. And whether the plan will be adequately funded.

Mr. MACHLEIT. That is right.

Senator JAVITS. I think the important thing is that you gentlemen had a right to expect, after working all those years with the general idea that there was a 10-year vesting provision, that you had something in hand, rather than to be deprived of it by the fine print in the contract.

Now I understand this matter is in litigation, is it not, between the employer and the union?

Mr. MACHLEIT. That is right.

Senator JAVITS. And there has been no resolution of that?

Mr. MACHLEIT. We haven't heard anything yet.

Senator JAVITS. Suppose you had had a vested right, would you each tell us what would that have given you at age 65?

Mr. MACHLEIT. $160 a month.

Mr. SILVER. It comes to $5 for each year that we are employed.

Senator JAVITS. So you would get about $170.

That is a big loss.

Mr. MACHLEIT. With your social security a man can get along. But not on social security alone. It is impossible.

Senator JAVITS. And that is the feeling that workers generally have, as you know it?

Mr. MACHLEIT. True.

Senator JAVITS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator JAVITS. Mr. Chairman, I wish to raise one question in connection with the failure of A. & P. to appear.

I would respectfully submit to the Chair that we ought to consider whether or not in the case of employers' testimony which relates directly to workers' testimony and the employer refuses to appear—do I understand in this case the employer will appear?

The CHAIRMAN. They are the next witnesses.

Senator JAVITS. In the previous case they refused to appear, and I should submit to the Chair and the committee at the appropriate time the suggestion that we use our subpena power.

The CHAIRMAN. At the appropriate time.

Now the Michigan Tool Co. represented by Mr. William W. Fellers, and Mr. William Tayler.

Mr. TAYLER. I am not the witness. The witness is William W. Fellers, the vice president of the Wyatt Co., an actuarial firm. This is Mr. Fellers here.

The CHAIRMAN. My information was not quite accurate because we received this only yesterday. You are a Washington attorney, Mr. Tayler?

Mr. TAYLER. C. William Tayler.

The CHAIRMAN. Why don't you sit down.

Mr. Fellers is who?

Mr. TAYLER. He is standing to my right.

Mr. FELLERS. I am the actuary for the plan.

The CHAIRMAN. I am glad to hear there is still a plan.

Proceed any way you want.

STATEMENT OF WILLIAM W. FELLERS, FSA ACTUARY, THE WYATT CO.; ACCOMPANIED BY C. WILLIAM TAYLER, WASHINGTON COUNSEL FOR MICHIGAN TOOL CO.

Mr. FELLERS. Mr. Chairman and members of the subcommittee, I am William W. Fellers, vice president and a director of the Wyatt Co., an international firm of consulting actuaries and employee benefit consultants. Since I have been directly involved for some years in the actuarial work for the retirement income plan, MESA Local No. 6, Michigan Tool Co., the company has designated me to appear before you in response to your invitation to testify about the plan.

Accompanying me today is C. William Tayler, Washington counsel for Michigan Tool Co.

I have been a fellow of the Society of Actuaries since 1946. This is the largest examining body for actuaries in North America. The Wyatt Co. represents over 3,000 clients, including large and small businesses involving various types of pension plans. We are often retained at the joint request of unions and management. We also work for a number of unions servicing their staff pension plans.

The retirement income plan, effective January 1, 1951, was the result of a negotiated agreement between Michigan Tool Co. and the Mechanics Educational Society of America, Local No. 6. Employees eligible to participate in the plan were those persons employed by the company on or after the effective date who were represented by Local No. 6 of the Mechanics Educational Society of America.

The plan which is qualified under sections 401 and 501 of the Internal Revenue Code provides for retirement, disability and death benefits for those employees who meet the eligibility provisions of the plan. It further provides that the employees make no contributions to the plan and that the entire cost of the plan be borne by the company.

The company established a trust fund with the Manufacturers National Bank of Detroit to receive the moneys contributed by the company, to invest these funds and to pay benefits from the fund.

Payments from the fund and administration of the plan are directed by a joint board of administration consisting of six members; three appointed by the company and three appointed by the union. The board has sole power to administer the plan in accordance with the plan in accordance with the plan provisions. Disbursements from the fund may only be made upon direction by the board with at least two signatures each by the company and union members of the board.

Prior to 1959, the plan was funded on a cents-per-hour basis. Since 1959, the plan has been funded on the basis of paying the normal cost and amortizing the unfunded liabilities over 30 year periods from the dates incurred by benefit increases.

Parenthetically, I might say that this is in line with the requirements under the proposed legislation.

In our opinion, the plan has been funded on a sound actuarial basis for a going plan, consistent with methods employed by other plans of a similar nature.

Contributions have been made to the trust fund by the company on an annual basis since the establishment of the plan. These funds ap-

pear to have been invested by the trustee in a prudent manner. Actuarial assumptions used by the actuaries in computing the company contributions to the plan have been on a basis consistent with sound actuarial practice and in accordance with Internal Revenue Service rules and regulations.

Since its establishment in 1951, the plan has been amended eight times pursuant to union demands and subsequent negotiations. These amendments have served to increase the benefits provided for under the plan. For example, the eighth and most recent amendment dated March 14, 1968, increased the benefit structure from $3.25 per month per year of credited service to $5 per month per year of credited service for employees retiring on and after January 1, 1968; an increase in benefits of more than 50 percent.

Further, these increased benefits were based on all credited service, including service retroactive to the date of hire of each active participant. In addition, those employees who retired prior to January 1, 1968, received a $1.50 per month increase in benefits for each year of credited service from date of hire to date of retirement.

Article VIII, section 4, of the plan provides that a participant who terminates his service with the company after he reaches his 35th birthday and who, at the time of termination, has 10 or more years of credited service with the company will be eligible, upon making due application, to receive a deferred vested pension benefit. This benefit may be received, at his election, either at age 65 or after age 60; but if payments commence before age 65, they will be paid on a reduced basis.

The terms of the plan also provide that following the end of a 3-year period commencing January 1, 1965, either the company or the union may serve a 60-day written notice of desire to negotiate with respect to modification of the plan.

During such negotiation, or at any time after expiration of the 60-day period, either party may serve upon the other a second written 60-day notice of desire to terminate, in which event the plan will terminate 60 days after such termination notice has been served.

On January 13, 1971, the union was notified that the plant located at 7171 East McNichols, Detroit, Mich., would terminate its manufacturing operation due to excessive and unacceptable losses incurred. Proper notices of the termination of the plan was made to the union. As a result, the plan was terminated April 24, 1971.

Article XII of the plan provides that upon its discontinuance, the assets of the plan be allocated, to the extent that they are sufficient, for the purpose of paying retirement benefits to employees in the following order of precedence:

(*a*) to employees retired prior to the date of discontinuance,

(*b*) to those employees age 65 or over on the date of discontinuance,

(*c*) to those employees age 60 or over, but less than age 65 on the date of discontinuance.

(*d*) to those employees age 50 or over, but less than age 60 on the date of discontinuance,

(*e*) to those employees below age 50 on the date of discontinuance,

(*f*) terminated employees with vested rights are to be included in their appropriate age categories, except that, within each category, active employees and retired employees will have precedence over terminated employees with vested rights in the distribution of benefits.

The above termination provisions of the plan are of long standing and list the order of precedence for distribution of the assets of the trust fund upon termination of the plan and are common to plans of this type. This procedure is recognized by the Internal Revenue Service and has been approved by it in this instance.

Mr. Earl E. Machleit who was born October 24, 1912, was hired September 7, 1939, and was laid off on June 15, 1971. As of April 24, 1971, the date of termination of the plan, he had accumulated 34-3/12 years of credited service. Since he was an active employee on April 24, 1971, and had attained age 50 but not age 60 at that time, he would be classified under category (d) above.

Mr. George J. Silver who was born December 18, 1921, was hired April 28, 1941, and was laid off on June 15, 1971. As of April 24, 1971 the date of termination of the plan, he had accumulated 30-1/12 years of credited service. Since he was an active employee on April 24, 1971, and had not yet attained age 50 at that time, he would be classified under category (e) above.

We understand that, Mr. Machleit and Mr. Silver are alleging hardships "* * * resulting from inability to qualify for a pension" under the Michigan tool plan. These employees were actively at work when the plan terminated. As such, their age automatically puts them into the categories described above.

If these employes had voluntarily terminated their employment prior to termination of the plan, they would have been eligible for a deferred vested benefit under article VIII, section 4 of the plan. They would thus be classified under category (f) described above, thereby being in a less favorable position than if they had been actively employed on the termination date of the plan, April 24, 1971.

As we have made the staff of this subcommittee aware, there is now a suit pending concerning the plan brought by the union and individuals which the company is having heard in Fedral Court in Michigan. In that suit, the union makes charges of unsound actuarial funding and other serious charges which the company intends to contest vigorously. Until that litigation is concluded, I am sure that you can understand the company cannot and should not predict just what benefits any claimants will receive.

Michigan Tool Co. feels that it has abided by the provisions of the plan and all of the laws now in effect.

That concludes my statement, Mr. Chairman. I am now ready to answer any questions.

The CHAIRMAN. Because of the litigation you conclude that the company cannot and should not predict just what benefits any claimants will receive.

Mr. FELLERS. That is right.

The CHAIRMAN. Well I certainly think that is a fair statement and that as far as the dollar benefits are concerned I appreciate that because it is in litigation, but I certainly think that you can help us define just what the nature of the vested rights are of the two men who were just here as witnesses. Certainly their service period has created in them a vested right. They both have over 10 years with the company.

Could you describe just what their present right is? How would you describe it?

Mr. FELLERS. I would describe that in terms of the years of credited service, multiplied by the $5 that they have as of the date the plan is terminated subject to the funds reaching to the category of employees as enumerated, and in the order enumerated.

You see, the funds are used first to take care of the retired people and then if anything is left it goes to people age 65 and over.

The CHAIRMAN. Well now, in other words these men who felt when they came up here that they had no rights, they do have vested rights in the funds.

Mr. FELLERS. I certainly would say they have vested rights in the fund to the extent that the fund will reach down into that category.

The CHAIRMAN. They are in category D coming down the list of priorities which leads us to the obvious question and this is more pertinent to your testimony as actuary than even the company perhaps, as you say your conclusion is that this plan has been an actuarially sound plan. They certainly will be reached if it is an actuarially sound plan. Is this so?

Mr. FELLERS. That is not necessarily so.

The CHAIRMAN. How does that happen?

Mr. FELLERS. Well——

The CHAIRMAN. A vested right. You know that word "vesting," when you combine it with "right" that has as much dignity as anything I know of in the law.

Mr. FELLERS. I think that the distinction here is that vested right in a going plan versus a vested right in a terminated plan.

Senator JAVITS. If the Chair would yield, this plan was terminated by the company; right?

Mr. FELLERS. Right. Yes.

Senator JAVITS. And yet you say it is soundly financed actuarially, so you imply that there is money to go down to D. & E. Isn't that what it comes down to?

Mr. FELLERS. I really don't know.

Senator JAVITS. The implication is clear from your testimony. If there was you would say so. You ought to be proud of it.

Let me ask you another question.

The CHAIRMAN. While we are on that, now I am not an accountant, certainly not an actuary, but when you have a vested right you can compute what is needed, assuming you have a 10-year right. And while it doesn't fix until age 65, in that 10 years of service, the actuaries can tell the company what is needed in terms of a fund to pay that right at age 65.

Mr. FELLERS. Yes, and we have.

The CHAIRMAN. Then these men do have, if it is actuarially sound and the fund is sound, if they followed your advice, these men have a right. There will be a benefit when they reach the age.

Mr. FELLERS. I think the problem is this, Mr. Chairman, that the plan has been amended from time to time. Just a few years ago the benefits were increased by 50 percent. And significant additional benefit was given to retired people.

Now the company did not immediately make that whole. It was funding for that over a period of time, by amortizing any unfunded liabilities over a 30-year period, you see. And it is within the framework of this kind of funding that I feel that the plan was being funded on a sound actuarial basis as a going plan.

Now once a plan terminates, the document provides that the amount of moneys will be distributed in accordance with a certain order of priorities. And so therefore it has to reach down as far as it will go.

Senator JAVITS. If the Chair would yield, I get that picture perfectly, but this is not an involuntarily terminated plan, it is a voluntarily terminated plan; isn't that true?

This company could call it off whenever it wanted to?

Mr. FELLERS. Yes.

Senator JAVITS. But your actuarial assumption was that they would not and therefore you say it's soundly financed actuarially because your assumption is they would continue to pay for the 30 years and not terminate.

Mr. FELLERS. We assume that they would so long as the plan was in operation.

Senator JAVITS. I am sorry. That is not responsive. Your actuarial assumption was that they would continue to pay for 30 years, otherwise it was not actuarially sound; isn't that true?

Mr. FELLERS. I don't think it is. No, Mr. Javits.

Senator JAVITS. Well you and I differ 100 percent.

Mr. FELLERS. Yes, we do.

Senator JAVITS. And we will get actuaries to find out whether you are telling us the right thing or not because they had the right to terminate and you say it is actuarially sound because they were funding over 30 years. You did not take that into account, that they would terminate sooner?

Mr. FELLERS. No.

Senator JAVITS. OK. That is the only point I am making.

One other thing. Isn't it a fact that the plan having been amended eight times—that is what you say—it would be necessary to adjust the funding every one of those times?

Mr. FELLERS. And it was.

Senator JAVITS. It was. But also without taking account of their right to terminate sooner?

Mr. FELLERS. Well as an actuary I don't know of any assumption that can really be made with respect to the possibility of the plan being terminated.

Senator JAVITS. Now we are getting to the point. I am not finding fault with you. I said that before. I am not finding fault with you, but with the system. If we are going to require actuaries to take that into consideration, we are going to have to do that for everybody.

I do think that you would be much more helpful to us if we have the key points. The fact is as an actuary you did not assume that it would terminate, you assumed that it would go on for 30 years and therefore, it is underfinanced materially because the company unilaterally, not involuntarily, decided to terminate so when it pulled the string everything else went down the drain.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Taft?

Senator TAFT. Mr. Chairman, I don't know exactly what rules we are operating under.

The CHAIRMAN. We have had the statement of Mr. Fellers and your turn has arrived for questioning.

Senator TAFT. Mr. Fellers, the only solution of this problem would have been the funding of the whole plan at the outset.

In other words, if you have a plan that is subject to termination, the only way that you can assure that the funded rights under the plan will be taken care of is to fund the whole plan at the outset.

Mr. FELLERS. That is right. It would mean that at any time there was an increase in benefits in order to be absolutely sure that the benefits are protected by a fund, why then the whole fund would have to be established at that time. This is about what it boils down to.

Senator TAFT. What effect do you think such a requirement would have upon the establishment of the private pension plans?

Mr. FELLERS. Under that kind of requirement—very few, if any, plans would be adopted of this type.

Senator TAFT. Do you have any ideas about what the additional cost would be comparatively per year in the first year of the plans as compared to the alternatives adopted in this plan?

Mr. FELLERS. Roughly, my recollection is that the unfunded liabilities when the plan was first initiated were a magnitude of $600,000 or $700,000 and the contribution requirement on the basis of paying the going normal cost and budgeting that over a 30-year period—were a magnitude of $60,000 to $70,000.

Senator TAFT. So it would have been about 10 times as much.

Mr. FELLERS. Yes.

Senator TAFT. Had employees contributed to the plan?

Mr. FELLERS. No; the company was paying for all the benefits.

Senator TAFT. And the terms of the plan were negotiated under the collective bargaining representatives?

Mr. FELLERS. Yes.

Senator TAFT. Were you in on the original negotiations?

Mr. FELLERS. No; I wasn't involved in the original negotiations.

Senator TAFT. Thank you very much.

Senator JAVITS. I would just continue—now suppose that when the plan was terminated there was a provision in the plan that the company had a continuing obligation to fund everything that was vested. They would have done that; would they not?

Mr. FELLERS. If there was money I suppose they would have.

Senator JAVITS. Isn't it analogous to the fact that they may have had a lease on the property they vacated and they couldn't get out of the lease unless they terminated, they would simply have to liquidate?

Mr. FELLERS. Yes.

Senator JAVITS. And if they didn't choose to do that they could go right on and pay into the fund for the same 30-year period that you actuarily assumed.

Mr. FELLERS. They could if the agreement provided for it but it does not.

Senator JAVITS. I understand. So that your testimony about front-end loading, which is what you just testified to, that it would be 10 times the amount in the first year, assumes that the agreement would not provide that if they chose to terminate they still would have to fund; of course if they didn't choose to terminate, the 30-year period is fine. The employees aren't objecting to that. Isn't that true?

Mr. FELLERS. Yes.

Senator JAVITS. That is all.

The CHAIRMAN. Just to go back and clarify the understanding of our witnesses, one testified that he was advised that if he quit his job

at a certain point which happened to be 2 months prior to the termination, he would have had a right. He elected not to quit. He was there at the end of operations and "the termination of the plan."

And then he was told he had no right, his application for inclusion on the list of those who had a vested right was refused. That is what the testimony was.

Could you clarify for this record and for those men what their situation is? I gathered that it was not quite that way, that they didn't have to quit to get a right.

Mr. FELLERS. That is right. Actually by being with the company at the time, by being active employees at the time the plan was terminated, they have a right, which has a prior order of preference over the right they would have had if they had terminated voluntarily before that date.

So I would say they are in a stronger position from a rights standpoint than the way they would have been the other way.

The CHAIRMAN. Well they have a right and now their union is pursuing their remedy and I think we will leave it right there.

Senator TAFT. Mr. Fellers, regarding the testimony you just gave on the lease, in the event of a termination of a lease that would be as a result of a provision actually written in the lease contract——

Mr. FELLERS. Yes.

Senator TAFT. Insofar as the payment—supposing we went into a pension plan or the fact that Senator Javits just mentioned, with regard to a voluntary termination, this would be provided for in the terms of the pension agreement, and what you are saying is that this pension agreement did not have it nor was it required by Internal Revenue to have it in order to qualify as a qualified pension plan.

Mr. FELLERS. The union and the company agreed to the kind of provision they have in the plan which did not include any provision for any payments after the plan was terminated.

Senator TAFT. And the payments were to be made under the plan were then based upon that assumption and payments were made by the company?

Mr. FELLERS. That is right.

Senator TAFT. Had the company agreed to different terms, had it agreed that in the event of a voluntary termination it would pay up the unfunded liability, would that have changed the cost of the plan?

Mr. FELLERS. Yes. In my opinion it could have changed it materially. I think the company would then have had to take this into account and would have actually been liable at this point certainly for making all of these benefits whole.

At this stage, my understanding is that the benefits are limited, you see, to what can be provided by the funds. As it is now. And the agreement does not contemplate any additional contributions to make the thing whole in case there are some people with these rights which could not be taken care of.

Senator TAFT. And in agreeing to a provision such as has been suggested, that all unfunded liability would be paid in the company voluntarily terminated, the management would in a sense be imposing upon itself an additional burden with regard to continuing the operation of that plan. It would have to take that into account in the cost of the overall plan.

Mr. FELLERS. Yes.

Senator TAFT. As a matter of sound business judgment for all practical purposes in order to keep a complete freedom as to management decision it would have to fund the liability at the outset.

Mr. FELLERS. That is right.

Senator TAFT. The cost would still be 10 times in sound management thinking on this proposition, for the first year of the plan would still be ten times what the actual cost was.

Mr. FELLERS. That would have been their liability and I think that would have been increased each time there was a plan amendment.

Senator TAFT. Thank you very much.

The CHAIRMAN. Thank you very much.

Mr. Murray Finkelstein is our next witness. Mr. Finkelstein?

Senator JAVITS. May the record show in connection with the testimony of the previous witness that one of the important aspects of the legislation before us is reinsurance, and that reinsurance is especially designed to "mutualize" the risk which is involved in plans which become unfunded for practical purposes by virtue of the exercise of the right of termination such as is here described.

This is a critically important point it seems to me in respect of the feasibility and cost of such plans under my bill S. 2.

The CHAIRMAN. Thank you.

Mr. Finkelstein, we appreciate your coming to us from New York.

STATEMENT OF MURRAY FINKELSTEIN OF REGO PARK, N.Y., MEMBER OF THE RETAIL SHOE EMPLOYEES' UNION, LOCAL 1268

Mr. FINKELSTEIN. Thank you.

Mr. Chairman, and Senator Javits, my name is Mr. Murray Finkelstein and I have been a member of my Union 1268 for 35 years.

The CHAIRMAN. What union?

Mr. FINKELSTEIN. The Retail Shoe Salesmen's Union.

I have been a member for 35 years.

Well let's start at the time when our pension became in effect, which was the year—I think either 1950 or 1951.

The CHAIRMAN. Where were you working then?

Mr. FINKELSTEIN. I was employed in a store on 34th Street, New York City, Foot Rest Shoes. At that time I had 4½ years of coverage before I got an opportunity to better my position.

So from there I went to Andrew Geller Shoes which was at the time located at 18 West 57th Street. They were at that time affiliated with the union pension plan. Now I did not at any time pay any money into the pension plan, but our fringe benefits were contractual.

Every 3 years when we used to settle our contracts, our fringe benefits would increase every time to an extent where at the time when this place of business closed, which was in a period of 15 years, which I have worked there, our fringe benefits were $14 a month, paid into the union.

At the time of closing, the entire outfit including their factories and stores and everything closed up. So I had to look for other employment.

Now I was approached by the union for other employment, but in the event that if I would take this type of a position I would have to

go back 25 years to the extent where actually I started into the business until I worked myself up to the position that I was in.

Now when I say in the position that I was in, in the 15 years of employment with Andrew Geller, which was a very high priced lady's shoe running up to anywhere from $30 to $150 a pair, I acquired a clientele and customers would come in and ask for me.

Now this type of trade was not a salesman-customer trade. This was a company trade which we acquired which is actually a friendly type. This was very, very important to me.

Now when Andrew Geller closed up I was approached by the I. Miller firm. They had heard of us going out of business and heard of my reputation. I was approached and asked if I would accept a position with their firm which is exactly, I would say about 250 yards away from the Andrew Geller store that I was working.

Now the question was this. If I were to accept the I. Miller position I would have to give up my pension for the simple reason that the I. Miller firm which is owned by Genesco have their own pension. They in turn pay in for their employees and you have got to be employed there at least 15 years in order to get the same thing, I would say, as the union would offer me.

If I would accept the union job, it would be a question of taking a very large cut in salary, going back to the type of trade that wouldn't be beneficial to me because most of our business is done on commission and in the interim, while I was working for Andrew Geller I had a heart attack. That was 3½ years ago, and I am feeling fine now.

So I had to take that into consideration for the simple reason that working for the I. Miller firm and taking my clientele with me, which they have done, I don't have to work hard, I can take care of myself, where I can wait on five or six customers a day and do my work and satisfy my employer.

I approached the union asking them that if in the event I would contribute $14 a month to their plan, whether they would accept it. They said no, it must come from the employer. I am going on 60 years of age. If I would stay on the I. Miller plan I would have to be 75 years of age in order to retire.

Now all this money that has been paid in for me actually if we didn't have a pension plan, this money would come into my pocket because these are fringe benefits which were negotiated under contract.

So as I said at the time when my place closed up, my employer was paying $14 a month for every man into the pension fund. Now my problem is this: I am very happy and satisfied where I am. Do I give up this position and go back 25 years after putting in 20 years on a pension plan without seeing anything for it? This thing has gone down the drain with no benefits.

The CHAIRMAN. Let me understand. You started under the plan when you went with Geller or was it prior to that?

Mr. FINKELSTEIN. Prior to that.

The CHAIRMAN. When you were at various shoe stores?

Mr. FINKELSTEIN. Only two prior to the Andrew Geller store.

The CHAIRMAN. You went with them in 1955. They terminated 1970, and went out of business; is that it?

Mr. FINKELSTEIN. Right.

The CHAIRMAN. You had 15 years with Geller and how many years prior to that under the plan?

Mr. FINKELSTEIN. 4½ or 5 years.

The CHAIRMAN. This was a union administered plan and the employer paid into the plan?

Mr. FINKELSTEIN. The employer paid into the plan through fringe benefits.

The CHAIRMAN. When you say fringe benefits, what does that mean to you?

Mr. FINKELSTEIN. Fringe benefits, things that we get while we are negotiating a contract. Now we had a pension fund and a health fund. Now this was paid in—we started, of course, very small and gradually, as moneys were coming into the fund, our benefits were increased, but I know as far as the pension fund was concerned there was $14 a month paid in for each man belonging to that particular type of pension.

The CHAIRMAN. For how long a period was this?

Mr. FINKELSTEIN. The $14 was for about 7 to 8 years. In fact, in the last negotiation, which was about 2 years before Andrew Geller closed, the pension fund got a $2 increase for every man.

The CHAIRMAN. Well, how did you look at that? You call that a fringe benefit?

Mr. FINKELSTEIN. Yes.

The CHAIRMAN. On the other side of the coin, how do you compare that with your wages? This was bargained for at the time your wages were bargained for?

Mr. FINKELSTEIN. Correct.

The CHAIRMAN. Now, if the fringe benefits were not in the bargaining process, what would that have meant?

Mr. FINKELSTEIN. It would have meant a larger increase.

The CHAIRMAN. A larger wage?

Mr. FINKELSTEIN. Right.

The CHAIRMAN. Does that mean you look at this in terms of really deferred wages?

Mr. FINKELSTEIN. That is right. That is cash money.

The CHAIRMAN. As cash money.

Mr. FINKELSTEIN. Correct.

The CHAIRMAN. When did you think that you would be able to get any cash money from that fringe benefit?

Mr. FINKELSTEIN. If Andrew Geller would not go out of business and if I worked until I am 65, I would have collected.

The CHAIRMAN. I see.

Mr. FINKELSTEIN. Now, I will be 60 this November and I don't have anything. The only type of income I have is at the age of 65 my social security and my wife's.

The CHAIRMAN. Did you know when you were contributing as a matter of your fringe benefits that you would have to stay there until 65?

Mr. FINKELSTEIN. No.

The CHAIRMAN. What did you think?

Mr. FINKELSTEIN. I could change my job. But the idea of changing my job. I would compare—I would say, to a Senator who all of a

sudden becomes nominated to become President, that is a pinnacle of the thing. This is the farthest you can go.

Well that is what happened to my position. This is the furthest I can go in my job. This is a good paying job. It has respect, and everybody in my field looks forward to this. When I was a boy, I would say of 25 or 26, I used to pass these stores and I used to say to myself if I could only work there. And well I reached that position.

Now to give that up and go back 25 years I would probably go back on a pension. But I couldn't give that up in the condition I am in. You see now I feel fine and wonderful, but to start it all over again where I would have to be working continually from the time I come in until the time I go home, I made a choice. Well, this was it. Then I read your article in one of the magazines and I wrote you a letter explaining the situation and that is all I can say to you. It is not much. The pension is only $75 a month but eventually, by the time I reach 65 this thing would be $100 a month. And when you are ready to retire every little bit counts I think.

The CHAIRMAN. Did you appreciate through those years that in order to collect anything under that pension you had to say in that particular plan until you were age 65?

Mr. FINKELSTEIN. Right.

The CHAIRMAN. You knew this?

Mr. FINKELSTEIN. Yes.

The CHAIRMAN. In other words, when Geller terminated, was your expectation that you could stay at the same quality job and still stay in the same plan? The problem here was you could stay in the same quality work with Miller.

Mr. FINKELSTEIN. Correct.

The CHAIRMAN. You had to switch plans and you lost those years under the other plan?

Mr. FINKELSTEIN. The reason for that is today, with the situation in that particular field—there are no other firms in that plan. And this I. Miller is still a union store. I still pay my dues every month, regardless, with no benefits whatsoever from the union. The only benefits I do get is from the firm. Hospitalization plan. Pension plan I cannot get. I will get it if I work there until I am 75 years old.

The CHAIRMAN. Is there a contribution being made monthly?

Mr. FINKELSTEIN. As I said before I. Miller belongs to Genesco. How it works I do not know.

The CHAIRMAN. This is one of the gaps that we address ourselves to when changing jobs, all the credits that have been built up just evaporate.

Mr. FINKELSTEIN. Correct.

The CHAIRMAN. You have to start all over again.

Mr. FINKELSTEIN. Yes. If I was 10 years younger it would be fine. I would have no problem. But at this age of the game I have got a problem and that is it.

The CHAIRMAN. Well, because of the fine letter that you wrote to me we are able to understand your problem.

Mr. FINKELSTEIN. I appreciate this and believe me, I took the time off. I spoke to my manager and he says it is perfectly all right.

The CHAIRMAN. Well, you see you have helped us so much. From your personal experience you have described what we in our language

call the lack of portability of pension contributions, developing benefit rights, that submerge because you don't carry them next door on 57th Street.

Mr. FINKELSTEIN. And we don't have any vested rights whatsoever after 20 years. Everything goes down the drain.

The way this particular pension plan was written, they depend on people like us to fall out. They depend on people like us to die before we hit 65. This is what they claim so they can have money to pay the pensions.

The CHAIRMAN. Well, these are the forfeitures we talked about earlier, and we will be talking more about them and about studies that we made. The conclusions from the information we receive tell us exactly the same story.

Mr. FINKELSTEIN. You know, it would be a wonderful thing if something would come out of this retroactive to people like us where we could still get the benefit out of this thing. It is very well for the future, you know, but it is very important for people like us.

The CHAIRMAN. Well, thank you very much. You have been most cooperative.

Mr. FINKELSTEIN. I appreciate it very much.

The CHAIRMAN. Thank you. When I am feeling very plush one day maybe I will pay your store a visit.

Mr. FINKELSTEIN. That is right. They run up to $200.

The CHAIRMAN. That is why I said when I am feeling very plush.

I think we at this point will also include in the record the exchange of correspondence with the Retail Shoe Employees Union.

(The information referred to follows:)

SEPTEMBER 28, 1970.

Senator HARRISON A. WILLIAMS,
Chairman, Senate Labor Relations Subcommittee,
Washington, D.C.

DEAR SENATOR WILLIAMS: I enclose a photocopy of a recent article which was brought to my attention, and which encouraged me to address myself to you in the hope that you will continue to pursue the problem of non-transferable pension funds. Perhaps my story will aid in your endeavors:

I am a 35-year member of Retail Shoe Salesmen Employe's Union, Local No. 1268 (Union Square, N.Y.C.). In 1950, I started employment at Foot Rest Shoes, 34th Street, N.Y.C., and remained there for 4½ years until the store went out of business. The contract then in existence between employer and union provided, among other things, for a pension fund—paid in by the employer and administered by the above union.

My next job was with Andrew Geller Shoes, 57th Street, N.Y.C., who are manufacturers and retailers of ladies' shoes. I was employed there for 15 years until the retail shop closed this summer. The final blow came when I was informed by my union that my pension funds (19½ years' worth) were non-transferable unless I found employment in another shoe shop that had the same contractual arrangement with the union. This was almost impossible to accomplish in the weeks gone by, in view of economic conditions in general. In order to avoid any further loss of income, I was forced to take a job with the I. Miller Shoe Shop in Manhattan, N.Y.C. Unfortunately, their pension plan with my union was of a different type: under their conditions, I would have to begin all over again and work for 15 years before being eligible for retirement funds. Thus, at age 58 I had to look forward to staying employed until age 73—before I would be granted the security toward which I had been laboring for 35 years!

The union cannot (or will not) help. They say: rules are rules. I ask: what has happened to all those funds paid-in by my two former employers? Why aren't they transferable, since it involves the same union? Even partial payment would help somewhat. What legal recourse now lies open to me in order to secure my old age? It is very discouraging, to say the least.

I have written today to the Attorney General for the State of New York, seeking his help in a more direct manner. You can well imagine my indignation at this point in my life.

May I hear from you at your convenience?

Respectfully,

MURRAY FINKELSTEIN.

[Excerpts from Financial World, September 23, 1970]

WASHINGTON NEWSLETTER

BANK MERGERS MAY RUN INTO STIFFENED REGULATORY OPPOSITION—TOUGHER RULES PROPOSED FOR PENSION FUNDS—SWIFTER ACTION ON SECURITIES VIOLATIONS

(By Ephraim Kahn)

Tougher rules for private pension funds have been proposed by Sen. Harrison A. Williams, Jr. (D-N.J.), Chairman of the Senate Labor Subcommittee. He would set up a federal body to make sure that benefits are paid when pension funds are terminated before they are fully funded, require that pension funds meet certain standards to make certain that their assets are adequate to meet their obligations, and require that workers covered by private pension plans receive at least certain minimum benefits after working for 10 years for a company. The Williams bill would also have the Labor Department make additional studies of pension plans, including the practicability of 'portable' pensions which would move with workers from job to job. Sen. Williams notes that the bill he has introduced is subject to alteration, and comments that changes may be "substantial." But he says he will do his utmost "to make sure that during the next 12 months some kind of effective regulation of pension plans is enacted."

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
JENNINGS RANDOLPH, W. VA.
CLAIBORNE PELL, R.I.
EDWARD M. KENNEDY, MASS.
GAYLORD NELSON, WIS.
WALTER F. MONDALE, MINN.
THOMAS F. EAGLETON, MO.
ALAN CRANSTON, CALIF.
HAROLD E. HUGHES, IOWA
ADLAI E. STEVENSON III, ILL.
JACOB K. JAVITS, N.Y.
WINSTON PROUTY, VT.
PETER H. DOMINICK, COLO.
RICHARD S. SCHWEIKER, PA.
BOB PACKWOOD, OREG.
ROBERT TAFT, JR., OHIO
J. GLENN BEALL, JR., MD.

STEWART E. MCCLURE, STAFF DIRECTOR
ROBERT E. NAGLE, GENERAL COUNSEL

United States Senate
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

July 14, 1971
SPECIAL DELIVERY

Mr. Jerome M. Simon, Administrator
Local 1260, Retail Shoe Employees Union
36 W. 44th Street
New York, New York

Dear Mr. Simon:

On March 1, 1971, by Senate Resolution 35, the U. S. Senate ordered the Senate Subcommittee on Labor to conduct a study of the private pension system in the United States, with special emphasis upon the need for protection of employees covered by these funds.

As you were advised on July 7, 1971, by a staff member of the Senate Subcommittee on Labor, Mr. Murray Finkelstein of Rego Park, New York had informed the Subcommittee of alleged hardships resulting from inability to qualify for a pension under your pension plan. These were discussed with you in order to ascertain appropriate explanation in response to the difficulties recited.

The complainant has been invited to testify before the Subcommittee on Labor on or about July 27, 1971, on hearings to be held pursuant to the Senate study of private pension plans. It will be for the purpose of presenting the problem alleged.

Accordingly, the Subcommittee on Labor similarly invites your organization to designate a representative to appear to testify with respect to your pension plan benefits relating to Mr. Finkelstein, and matters alleged by the complainant. It would be appreciated if you would indicate expeditiously whether you will appear. In the interim, please forward a copy of the pension plan and such other publications which you issue relating thereto. Your assistance is appreciated.

Sincerely,

Mario T. Noto
Special Counsel
Subcommittee on Labor

MTN:lt

PENSION OFFICE

The Retirement Fund of Retail Shoe Employees

JUL 23

36 WEST 44 STREET NEW YORK 36, N. Y.

MUrray Hill 2-1577-8

July 22, 1971

Chairman
JOSEPH BINENBAUM

UNION TRUSTEES
JOSEPH BINENBAUM
IRVING TUCKMAN
Retail Shoe Employees Union, Local 1268, A.F.L.-C.I.O.
Alfred Wachtel
JACK MALTZ
JOSEPH BERNER
WILLIAM HURWITZ
Retail Shoe Employees Union, Local 287, A.F.L.-C.I.O.

EMPLOYER TRUSTEES
MAC SIEGEL
National Shoes
John J. Rademaker
Sanford Miller
Nat Widman
Melvin Krauss
Harold Jacobson

United States Senate Subcommittee on Labor
Room G237, New Senate Office Building
Washington, D. C. 20510

Attention: Mario T. Noto, Esq.
Special Counsel

Dear Mr. Noto:

Reference is made to your letter of July 14, 1971 addressed to Jerome M. Simon, Administrator, Local 1260, Retail Shoe Employees Union, which obviously is intended for this Fund, The Retirement Fund of Retail Shoe Employees.

Such letter requests the attendance of a representative of this Fund at a hearing of the Senate Subcommittee on Labor conducting a study of the private pension system in the United States. Such letter states that Mr. Murray Finkelstein has been invited to attend a hearing of the Subcommittee, on or about July 27, 1971, with respect to his inability to qualify for a pension under this Fund's Plan, and invites a representative of this Fund to testify with respect to this Fund's Plan relating to him.

At the outset, mention is made of the fact that this Fund, pursuant to law, is administered by a Board of Trustees consisting of an equal number of Employer Trustees and Union Trustees, and that such Board of Trustees, and it alone, determines the policies of this Fund, including the provisions of the Retirement Plan of this Fund governing retirement benefits, and eligibility for retirement benefits, subject, of course, to the provisions of applicable law.

It was the unanimous opinion of the Employer Trustees and Union Trustees who could be consulted on the short notice occasioned by your request for a quick response, that no point would be served by sending a

representative to appear at such hearing, since the same results could be accomplished by supplying the relevant data by letter. While not ignoring the purpose of your Subcommittee, it was nevertheless felt that the facts that the Subcommittee desired could much more concretely and inexpensively be furnished by letter rather than by sending a representative to such hearing.

Retirement benefits are given by this Fund to eligible workers pursuant to the provisions of the Retirement Plan of this Fund, a copy of which, including all amendments to date, is herewith enclosed.

Pursuant to such Retirement Plan, eligibility is dependent upon covered employment as defined in such Plan. (See Articles II and III - Amendments adopted December 3 and 9, 1955.) Covered employment, on and after January 15, 1951, means employment as a full-time worker with an employer contributing to the Fund with respect to such worker.

According to the Fund's records, the facts relating to Mr. Finkelstein are as follows:

Name: MURRAY FINKELSTEIN

Date of Birth: November 13, 1911

History of Employment with employers covered by this Fund: August 21, 1946 to November 1, 1955 and December 1, 1955 to September 4, 1970

In order to be eligible to receive a normal retirement benefit under the existing Plan, Mr. Finkelstein will have to

a) Attain age 65

b) Have 20 years of covered employment in the preceding 25 years

c) Have 5 years of covered employment immediately preceding approval of application.

66-500 O-71—pt. 1—13

Since September 4, 1970, Mr. Finkelstein has voluntarily chosen not to be in covered employment.

In order to fulfill the conditions for retirement at age 65, he should return to covered employment not later than his 60th birthday, November 13, 1971. Mr. Finkelstein was informed of all these facts on several occasions beginning on June 15, 1970 and was also offered positions in covered employment on several occasions starting on July 20, 1970. If he returns to covered employment after November 13, 1971, he could still be eligible for retirement benefits after he has at least 5 more years of covered employment.

On June 15, 1970, the Union called a meeting of the workers employed by his then covered employer, due to the fact that such employer was going out of business. Mr. Finkelstein was present at this meeting. The Union informed such workers at this meeting of the necessity of securing and remaining in covered employment to be eligible for retirement benefits under the Plan.

On July 20, 1970, Mr. Finkelstein was informed by the Union about five covered employers who were in need of workers at compensation levels comparable with his then position, and to apply to them rather than to an employer who was not participating in the Fund. Mr. Finkelstein applied to only one of these employers, was offered a position there, but declined and took a position with an employer who does not participate in the Fund.

In the latter part of 1970, after he commenced working for the non-participating employer, he was again reminded by the Union of the necessity to return to covered employment. In 1971, he was again reminded by the Union of the availability of comparable positions with covered employers. In May of this year, he was informed by the Fund, in response to a telephone call from him, of the need to return to covered employment in order to be eligible for retirement benefits. Nevertheless, Mr. Finkelstein has continued to work for a non-covered employer, thereby voluntarily jeopardizing his right to retirement benefits under the Plan.

Should there be testimony at the hearing by or relating to Mr. Finkelstein, it is respectfully requested that this letter

be read thereat and become part of the record.

Very truly yours,

THE RETIREMENT FUND OF
RETAIL SHOE EMPLOYEES

By: Jerome M. Simon
Jerome M. Simon,
Administrator.

JMS:sg
Enc.

REGISTERED MAIL
RETURN RECEIPT REQUESTED

The CHAIRMAN. Mr. Hoddick, we had you scheduled for this afternoon but if you would like to testify now we would be happy to have you.

This is Michigan day here.

STATEMENT OF FRANK HODDICK OF FOUNTAIN VALLEY, CALIF., FORMER EMPLOYEE OF THE MICHIGAN BELL TELEPHONE CO.

Mr. HODDICK. Yes, sir; I am formerly from Michigan.

The CHAIRMAN. We appreciate your coming. What is your present address?

Mr. HODDICK. I am living in California.

The CHAIRMAN. All right. We appreciate having you explain your experience. It will be helpful to us in the pension study.

Mr. HODDICK. All right, I will try to.

I tried to transfer to California in 1967 from the Michigan Bell Telephone Co. My son was going to college out there at the time and my daughter had an asthmatic condition. The doctor figured that it would be better for her condition in the dryer climate so we decided to move because my son was out there and there was nothing left at home. The kids were both gone and we figured the rest of our lives belonged to ourselves.

So I decided to turn in a transfer on February 10 or 20. I have a reply here from the Pacific Co. March 10; if you would like I will read it.

The transfer application of Mr. Frank E. Hoddick, estimate assigner, Southfield, Mich. was received in our office on February 20, 1967.

We find, after reviewing his application, that we are not in a position to make a job offer. This decision is based primarily on the fact that he does not have equivalent time left for us before retirement as he has already accrued with you. With this understanding we are closing our files on this case.

If you have any further questions in regard to this matter please refer them to the personnel supervisor * * *.

The CHAIRMAN. Could we see that?

Let's go back again and let me know how many years you worked for Michigan Bell.

Mr. HODDICK. Twenty-six years 1 month and 2 days.

The CHAIRMAN. You left Michigan to go, for family reasons, to the west coast——

Mr. HODDICK. I have a transfer here if you would like to see it.

The CHAIRMAN. Oh, you did have it. You had established a transfer right to the Pacific Co., and this is part of the A.T. & T. structure, one of the subsidiary companies.

Mr. HODDICK. That was the reply from the transfer. This was the leave I took. I decided to go anyway.

The CHAIRMAN. Wait a minute. You voluntarily took leave before transferring.

Mr. HODDICK. After I received the reply, I could not transfer. We had made the decision, my wife and I, that we were going to move to California. Her parents were out here. My boy was going to college out there and, of course, my daughter's condition at the time which fortunately has cleared up.

The CHAIRMAN. When you left Michigan did you think you had a job out there with Pacific Telephone?

Mr. HODDICK. Not necessarily, no. I thought I would have no problem hiring on with them because I had heard that transfers could be worked from the other end. Now this has happened in cases with maybe 5 years seniority.

The CHAIRMAN. You had 26 years of seniority?

Mr. HODDICK. Right.

The CHAIRMAN. What were your pension rights as you understood them when you left Michigan and went out to California?

Mr. HODDICK. Specifically I had no rights as far as this application is concerned. I was class 3, not eligible for benefits under plan and no expectation of reemployment. They asked me this before I left.

The CHAIRMAN. How long do you have to be in the plan to get any rights at all?

Mr. HODDICK. Fifteen years.

The CHAIRMAN. You have been there 26 years.

Mr. HODDICK. Fifteen years if you have attained the right age, and if you have attained the age of 55 with 25 years of service, it is at their discretion. In other words, if you are going to be of more benefit to them by remaining on the job, they can hold you to that.

Senator JAVITS. Well the point is as I understand it, Mr. Hoddick, that if you had been permitted to transfer you would have been vested in your work for the company.

Mr. HODDICK. True.

Senator JAVITS. For the Pacific Bell Co., and what they were saying to you in practical effect is that you weren't going to give them enough time so that they just didn't want you to vest and hence denied your transfer.

Isn't that it?

Mr. HODDICK. Well, this is actually what it comes down to. But you can transfer within the company. It has been done before.

Senator JAVITS. And carry your pension rights?

Mr. HODDICK. Yes.

Senator JAVITS. If you are in the system. As long as you are in the Bell System.

The CHAIRMAN. As a matter of fact, on that point, in any of the Bell companies the fund goes right up to A.T. & T. and is trusteed over to Chase Manhattan, isn't that right?

Mr. HODDICK. Basically, if you live, work, and die, and stay in the same State with the same company, no problems.

The CHAIRMAN. Well, if you get a job in the Bell System, you pick right up where you left off.

Mr. HODDICK. Yes. However, this is the problem.

The CHAIRMAN. Well, now, you still have a right, don't you?

Mr. HODDICK. This I don't know. I don't know whether I have a right or not.

Senator JAVITS. You have no vested benefit of any kind because you didn't stay long enough to get it with the Michigan Co. They wouldn't let you transfer to the Pacific Co. where——

Mr. HODDICK. Well, 25 years is retirement. You can get retirement if you have attained the age, but it is at their discretion.

Senator JAVITS. But you have not attained the age, had not, in 1967 when you quit.

Mr. HODDICK. Right.

Senator JAVITS. We are not trying necessarily to indict any company—we are dealing with a system. Here is a system under which you worked for over 26 years for a company which even had portability within the system, that is within the A.T. & T. system. But because you wished to change from company to company and the latter company just didn't feel it wished to allow you to make the change, as that would have put them in a higher rate of contribution for you, then you were out, completely, you got nothing, because you were caught between the two situations.

Mr. HODDICK. What it boils down to is that the only story I ever heard from the other end, from the Pacific Co., was we have no pension benefits in California for you.

The CHAIRMAN. Say that again.

Mr. HODDICK. We have no pension benefits in California for you.

If they could be transferred, all right. I tried this angle of it with another division, San Diego, and I called back to Michigan to my old boss and he sent me the transfer application. They said they would accept it on the basis if the benefits could be transferred. So he sent me the papers. I sent them in. Three weeks later they were sorry, but they had no job to offer. Now what transpired, whether they could transfer or would and didn't, I can't say.

The CHAIRMAN. Well, the Pacific plan is identical to the Michigan plan.

Mr. HODDICK. They all are under the mother company.

The CHAIRMAN. As a matter of fact, the money contributed to the plan by Pacific goes to the same trustee for funding that the money contributed in Michigan goes to.

Mr. HODDICK. They have one of the best plans in the world.

The CHAIRMAN. This is one common fund, really, as I understand it. So was there any problem for you to transfer because of the fact that Pacific would be making the contribution rather than Michigan Bell?

Mr. HODDICK. This is all I heard.

The CHAIRMAN. You heard that. Well I have a feeling we will have to go over your statement and put specific inquiries to the company. This doesn't sound credible that they would think this way, because it may be one company, at least in terms of that pension fund.

Do you know what the accounting is on the company's contribution to the pension fund?

Mr. HODDICK. No, sir.

The CHAIRMAN. Well it is considered operating expenses, just like your salary. It is part of the rate base and that is the foundation on which we all pay to the telephone company.

Mr. HODDICK. It is negotiated in the union for the contract. How much I don't know.

The CHAIRMAN. But your vesting has to cross on two points here. You have to have a period of service and you have to be on the job at the right age.

Mr. HODDICK. This is the way it looks. That is the only thing I can get out of it.

Senator JAVITS. The issue is, when are you entitled to have a vested interest?

Mr. HODDICK. That is true.

Senator JAVITS. Under my bill it is beginning at 6 years, but in any case the law if it were changed would then mandate that having worked a given period of time you have vested interest and it has to be funded accordingly.

Mr. HODDICK. I didn't let it go at this. I was a little perturbed and I may have alienated a few affections at the time. But I did write a letter to the president of A.T. & T. in New York City. Within 6 weeks I had a reply back. They sent a special investigator out to my place to interview me and update a job position offer.

I went down for the interview. Everything was sweet and no break in service, all your benefits, your pension, the whole works, and with a magic date of the 27th of the month that I was now in.

The CHAIRMAN. Would you please move a little closer to the microphone? I am having difficulty hearing you.

Mr. HODDICK. The 27th of the month that was in question. So everything looked fine. The interview was great.

The CHAIRMAN. Where was the interview?

Mr. HODDICK. In Los Angeles, Calif.

The next day I went for a complete physical, and I mean a complete physical, X-rays, back, and, of course, at the time this special investigator came to the house I made it a point to tell him about the arm I had trouble with. I had broken this on the job with another company. And I made a specific point to tell him so there would be no problem if they did hire me, that they could turn around and fire me for giving them false testimony. So I made it a point. Yet when I approached them on the subject down at Pacific there was no mention of this in the transcript from the special investigator of the interview. So I had the interview, of course, with the splicing department down there and the safety man, and after I came back from the hospital everything was fine; I passed all the tests.

They ran a complete electrocardiogram, back, chest, and all normal medical examination. He says, "You passed everything perfect."

Now I got a call at my home maybe a week later from the doctor, their doctor, stating that he wanted me to call him. And he says I had a back injury at one time or other. I said "Well, if I did I failed to see it. I have been examined several times for jobs. Service and everything combined. And again when I applied for the job out here and nothing has ever come up."

Well he said, something about a disk. So I went as far as to get a letter from my doctor about it which I have in the letter here, there has never been any trouble with my back. And they noted about my arm. But this limits me from the job offer that they made of a cable splicer and this is the reason they refused it, because of the arm injury. So they manipulated to suit their purpose. It is the only thing I can think of. Certainly in the last 4 years they have hired people, or I assume they have.

The CHAIRMAN. You are now with another telephone company, aren't you?

Mr. HODDICK. Yes.

The CHAIRMAN. General Telephone. What is your work there?

Mr. HODDICK. I am a lineman. I have been auditing for them a little bit. I started out as a cable splicer and that is where I broke my arm

and they are well satisfied with the job I am doing. In fact, they gave me the time to come here to this meeting to see you people.

The CHAIRMAN. Are you under a pension plan with General Telephone?

Mr. HODDICK. Yes.

The CHAIRMAN. How many years do you have to be there to get this?

Mr. HODDICK. Theirs is basically the same as the 15 years.

The CHAIRMAN. What is it?

Mr. HODDICK. Fifteen, I believe it is; 15 and 55 I believe is the stipulation.

The CHAIRMAN. Years.

Mr. HODDICK. It is age and years.

The CHAIRMAN. Fifteen and fifty-five.

Mr. HODDICK. That is about normal, I think, for the plan but Bell has one of the most magnificent plans I have ever seen for retirement. If you live and work and die for them, you have a pension. There is no problem.

Senator JAVITS. Mr. Chairman, I think the witness' testimony has covered the point very adequately, which is, whether it is proper to require by law vesting based exclusively upon years of service rather than upon other conditions, such as age, which can frustrate the attainment of pension rights, without regard to the employee's long years of service.

I ask unanimous consent that part III of the questionnaire of A.T. & T. entitled "Data on Benefits and Forfeitures" showing the enormous number of men and women that get nothing because of these conditions, may be made part of the record.

The CHAIRMAN. They will be included.

(The information referred to follows:)

Part III. Data on Benefits and Forfeitures

(Where records of the Plan are unavailable, estimate if necessary but indicate if the figure is an estimate.)

		Men	Women
19.# A.	Specify the total number of persons who have participated in the Plan since 1950 or since the Plan's establishment if that date is later than 1950 — Total 188,453	58,125	130,328
B.	Specify the total number of persons who have participated in the Plan within the past 5 years — Total 85,129	39,003	46,126

20. A. Specify the total number of participants who received benefits since 1950 or since the the Plan's establishment if that date is later than 1950:

#	(1) Normal retirement	Total 3,109	(Men 2,346	Women 763)
#	(2) Early retirement	Total 4,720	(Men 2,165	Women 2,555)
	(3) Disability retirement	Total 363	(Men 83	Women 280)
#	(4) Death	Total 3,371	(Men 2,671	Women 700)
	(5) Other	-	-	-

		Men	Women
B.	Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement — Total 32	16	16
C.	Specify the total number of participants within the past 5 years who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement — Total 32	16	16

Vesting provisions in the Plan became effective on June 1, 1969.

		Men	Women
21.#* A.	Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for any reason (include those who retired and/or died) — Total	33,299	114,589
		147,888	
# B.	Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for reasons other than normal or early retirement — Total	29,479	111,535
		141,014	
C.	Specify the total number of participants within the past 5 years who left the scope of the Plan for any reason (include those who retired and/or died) — Total	12,736	28,571
		41,307	
D.	Specify the total number of participants within the past 5 years who left the scope of the Plan for reasons other than normal or early retirement — Total	11,197	27,522
		38,719	

* We have interpreted this question as applying to active employees only and have answered accordingly.
# Denotes estimate

22. Specify according to the following categories the total number of participants, regardless of their age, who left the scope of the Plan without entitlement to any retirement benefits:
All data to December 31, 1968.

		Men	Women
#	A. Since 1950 or since the Plan's establishment if that date is later than 1950 — Total 132,707	26,763	105,944
#	B. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 15 years service under the Plan — Total 3,499	2,171	1,328
#	C. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 10 years service under the Plan — Total 6,782	3,435	3,347
#	D. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 5 years service under the Plan — Total 14,992	5,224	9,768
	E. Within the past 5 years — Total 38,489	10,713	27,776
	Less than 6 mos'. service: Tot. 4,791, M 1,737, W 3,054		
#	F. Within the past 5 years with more than 15 years service under the Plan — Total 1,436	983	453
#	G. Within the past 5 years with more than 10 years service under the Plan — Total 2,582	1,572	1,010
#	H. Within the past 5 years with more than 5 years service under the Plan — Total 4,299	2,179	2,120
	I. Within the past 5 years due solely to voluntary separation — Total 37,084	9,982	27,102
	J. Within the past 5 years due solely to failure to meet continuous service requirements — Total 5	0	5

23. Specify according to the following categories the average age of participants who left the scope of the Plan without entitlement to retirement benefits:

A. Within the past 5 years with more than 15 years service under the Plan — 43 M 40 F

B. Within the past 5 years with more than 10 years service under the Plan — 39 M 36 F

C. Within the past 5 years with more than 5 years service under the Plan — 35 M 31 F

These figures are Bell System Averages for the years 1964-1968

24. A. Indicate the average monthly benefit paid to retirees 5 years ago.
(1) Normal $401 M / 162 F (2) Early $291 M / 165 F (3) Disability $91 M / 80 F

B. Indicate the average monthly benefit paid to retirees within the last year.
(1) Normal $436 M / 203 F (2) Early $449 M / 185 F (3) Disability $271 M / 95 F

# Denotes Estimate

The CHAIRMAN. We have this letter—we will make a copy of this and get this back to you.

Mr. HODDICK. I keep all the originals of everything I have.

The CHAIRMAN. To whom is this letter addressed?

Mr. HODDICK. To the Michigan Bell Telephone Co.

The CHAIRMAN. I see Mr. R. C. Barron's name crossed out and Mr. Bender's name written in. And I see the name Ruggles.

Mr. HODDICK. He was my immediate second level man.

The CHAIRMAN. This letter is from Pacific Telephone to Michigan Bell.

Mr. HODDICK. Yes.

The CHAIRMAN. (reading from the letter):

"We find after reviewing his application that we are not in a position to make a job offer. This decision is based primarily on the fact that he does not have equivalent time left for us before retirement as he has already accrued with you."

I don't know, what does that mean?

Mr. HODDICK. Yet I had 20 years left to work. I had 26 years in and 20 to go. I had more with the Michigan Co. than I had to give to them.

The CHAIRMAN. It says, "With this understanding we are closing our files in this case."

Mr. HODDICK. Right.

The CHAIRMAN. It is a little difficult for me to understand. Let me turn to counsel. I need a lawyer. Mr. Noto, what does that mean?

Well now we have lawyers in disagreement. So I can see the problem.

Well certainly we will have a record copy for the file and that will be included in the record.

(The information referred to follows:)

PACIFIC TELEPHONE,
Los Angeles, Calif., March 10, 1967.

Mr. R. C. BARRON,
General Plant Personnel Supervisor,
Michigan Bell Telephone Co.,
Detroit, Mich.

DEAR MR. BARRON: The transfer application of Mr. Frank E. Hoddick, Estimate Assigner, Southfield, Michigan was received in our office on February 20, 1967.

We find, after reviewing his application, that we are not in a position to make a job offer. This decision is based primarily on the fact that he does not have equivalent time left for us before retirement as he has already accrued with you. With this understanding we are closing our files on this case.

If you have any further questions in regard to this matter, please refer them to the Personnel Supervisor, who may be reached on 621–4084, Area Code 213.

Yours truly,

B. W. GLASSCOCK,
General Plant Personnel Supervisor.

The CHAIRMAN. We do have the information returned on our questionnaire——

Senator JAVITS. I think too, Mr. Chairman, we might ask whether within the system, the Pacific Bell Telephone would have had to pay an amount which they consider excess because they would be taking over your pension right at a much higher rate, and that is the reason for the statement in the letter they made that, considering the amount of time you had worked for them, it didn't pay, and that is the bind in which you were caught.

Mr. HODDICK. You see, they are sole distributors of the program. There is nobody else, not even the union. They have a say but that is all. The board completely reserves the pension and all the benefits.

The CHAIRMAN. We have another letter for the record here.

We will put into the record the letter from us to A.T. & T. and the letter from Mr. King of A.T. & T. to Mr. Noto, special counsel to the subcommittee.

(The letters referred to follows:)

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
JENNINGS RANDOLPH, W. VA.
CLAIBORNE PELL, R.I.
EDWARD M. KENNEDY, MASS.
GAYLORD NELSON, WIS.
WALTER F. MONDALE, MINN.
THOMAS F. EAGLETON, MO.
ALAN CRANSTON, CALIF.
HAROLD E. HUGHES, IOWA
ADLAI E. STEVENSON III, ILL.
JACOB K. JAVITS, N.Y.
WINSTON PROUTY, VT.
PETER H. DOMINICK, COLO.
RICHARD S. SCHWEIKER, PA.
BOB PACKWOOD, OREG.
ROBERT TAFT, JR., OHIO
J. GLENN BEALL, JR., MD.

STEWART E. MCCLURE, STAFF DIRECTOR
ROBERT E. NAGLE, GENERAL COUNSEL

United States Senate
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

July 19, 1971

REGISTERED

Mr. S. L. King
Assistant Vice President of Personnel
American Telephone and Telegraph Company
195 Broadway
New York, New York

Dear Mr. King:

On March 1, 1971, by Senate Resolution 35, the U. S. Senate ordered the Senate Subcommittee on Labor to conduct a study of the private pension system in the United States, with special emphasis upon the need for protection of employees covered by these funds.

The Employees Benefit Fund office was advised on July 19, 1971, by a Staff Member of the Senate Subcommittee on Labor that the Subcommittee has been informed of alleged hardships resulting from the inability of Mr. Frank Hoddick from Fountain Valley, California, to qualify for a pension under your pension plan.

The complainant has been invited to testify before the Subcommittee on Labor on or about July 27, 1971, at hearings to be held pursuant to the Senate study of private pension plans. It will be for the purpose of presenting the problems alleged.

Accordingly, the Subcommittee on Labor similarly invites your organization to designate a representative to appear to testify with respect to your pension plan benefits relating to Mr. Hoddick and matters alleged by the complainant. It would be appreciated if you would indicate, expeditiously, whether you will appear. In the interim, please forward a copy of the pension plan and such other publications which you issue relating thereto. Your assistance is appreciated.

Sincerely,

Mario T. Noto
Special Counsel
Subcommittee on Labor

MTN:eph

PENSION STUDY
JUL 2

AT&T

S. L. King, Jr.
Assistant Vice President

American Telephone &
Telegraph Company
195 Broadway
New York, N.Y. 10007
Phone (212) 393-3276

July 23, 1971

Dear Mr. Noto:

Thank you for notifying us of your plans to hold hearings on or about July 27 pursuant to the Senate study on private pension plans.

We do not plan to have a witness at this particular hearing.

As requested, you will find enclosed a copy of the "Plan for Employees' Pensions, Disability Benefits and Death Benefits" of the Michigan Bell Telephone Company, which was in effect at the time Mr. Frank Hoddick left that company.

Sincerely,

S. L. King Jr.

MR. MARIO T. NOTO
Special Counsel
Sub-Committee on Labor
U.S. Senate
Committee on Labor and
Public Welfare
Washington, D.C. 20510

(NOTE: The aforementioned enclosed copy of "Plan for Employees' Pensions, Disability Benefits and Death Benefits" may be found in the files of the subcommittee.)

The CHAIRMAN. Mr. King writes: "Thank you for notifying us of your plans to hold hearings on or about July 27 pursuant to the Senate study on private pension plans. We do not plan to have a witness at this particular hearing."

We have underlined "this particular." I assume that they will probably want to come on in at another hearing.

Anything further, gentlemen?

We will recess now until 2:00.

(Whereupon, at 12:35 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

The CHAIRMAN. The first witness this afternoon will be Mr. Edmund McCarthy of New York.

Thank you for being with us today.

These hearings are, as you know, most helpful to the Congress in dealing with the private pension system problems facing people. I know you have talked with staff people and I appreciate your coming here to tell us about your experience with the pension plan.

If you will just proceed and tell us who you are, where you live and where you work.

STATEMENT OF EDMUND McCARTHY OF NEW YORK, N.Y., FORMER EMPLOYEE OF THE MALLINCKRODT CHEMICAL WORKS

Mr. McCARTHY. My name is Edmund McCarthy. I have been working with one firm for 30 years and in their pension plan for 27 years. The company was consolidated from one plant into another. They offered me a job in their Jersey plant at the bottom of their seniority list or a refund on the pension. That included only the money I had put into it.

I asked for the money they had contributed. It wasn't about to come. I asked for several conditions. Could I stay in Jersey for 3 years and be eligible for the pension at 50? I could if I would give up the severance pay. The work was exactly the same work I had been doing all these years. The trucking was done in New York.

I asked for an arrangement about leaving the truck in New York and picking the plate up in Jersey in the morning. They wouldn't have any part of it. It was on a take it or leave it basis. There isn't much I can add to that.

The CHAIRMAN. This is the Mallinckrodt Chemical Works?

Mr. McCARTHY. That is right.

The CHAIRMAN. That is St. Louis, Mo., firm, and your employment was in New York. What was your work?

Mr. McCARTHY. Truckdriver.

The CHAIRMAN. And you were a truckdriver for how long?

Mr. McCARTHY. Twenty-seven years.

The CHAIRMAN. What was your understanding of when you would have had a vested pension right? What would it have taken? How much service? What age would you have had to be? What were your rights under the plan?

Mr. McCarthy. They had two groups of vested rights. Fifteen and 25 years with different amounts of pension. Twenty-five years as the acts required, and age 50. There were still some jobs open in New York.

The Chairman. You had worked there for 27 years?

Mr. McCarthy. Twenty-seven years.

The Chairman. So you had worked all of the years needed for the vested right?

Mr. McCarthy. That is right.

The Chairman. How old were you at that point?

Mr. McCarthy. Forty-seven.

The Chairman. What happened to the company operation?

Mr. McCarthy. They moved part of their operation to New Jersey, to the Jersey factory on Westside Avenue, Bayonne. I went over there for 2½ months and it was a little too much, 14 and 16 hours a day away from home. It was 2 hours to work and 2 hours from, with a 10-hour day. It was just a little too much to take so I asked for some consideration about a job in New York. They wouldn't have it. It was take it or leave it.

The Chairman. What jobs did they have in New York?

Mr. McCarthy. They kept that office open for another 4 years before the building was torn down.

The Chairman. And they needed truckdrivers there?

Mr. McCarthy. No; they took other men in. They made one man an assistant superintendent. They gave another man a job on an elevator.

The Chairman. Your 27 years had been as a truckdriver?

Mr. McCarthy. That is right.

The Chairman. And you went over when the operation moved to New Jersey, as a truckdriver?

Mr. McCarthy. That is right, on the bottom of the seniority list, might I add.

The Chairman. Staying with the same company but changing your headquarters you went to the bottom of the seniority.

Mr. McCarthy. That is right.

The Chairman. That had nothing to do with your pension, though, did it?

Mr. McCarthy. No.

The Chairman. What did you get when you left the pension plan?

Mr. McCarthy. They refunded the money I had put into the plan, amounting to about $3,000, and $2,700 severance pay. I asked where their money was that they had contributed to this plan for all these years? "Well, you just don't get that. Where do you think the severance money is coming from?"

The Chairman. How much money had you put into the plan?

Mr. McCarthy. They gave me a refund check of about $3,000, including interest over the years from 1932 to 1957.

The Chairman. It had accrued interest?

Mr. McCarthy. They said so. There was no way of accounting for that because of the changing amount over the years. I think when it first started it was like $2.80 a month that I contributed. When I left it was near $9.

The CHAIRMAN. You were contributing at the end $9 a month?

Mr. MCCARTHY. About, yes.

The CHAIRMAN. How many years did you contribute that much?

Mr. MCCARTHY. It varied over the years. In 1950 for every dollar I put in the company would put in $2. Before that it was dollar for dollar.

The CHAIRMAN. How was that severence pay computed; do you know?

Mr. MCCARTHY. A week's pay for each year of service.

The CHAIRMAN. Mr. Carthy, you were 3 years short of vesting in terms of your age?

Mr. MCCARTHY. That is right.

The CHAIRMAN. You were 47 and at 50 you would have vested?

Mr. MCCARTHY. That is right.

The CHAIRMAN. Do you know what your monthly benefit would have been at that time?

Mr. MCCARTHY. About $140.

The CHAIRMAN. When the operation closed down in New York and moved to New Jersey how many employees were in the same position that you were, being forced to transfer or get out?

Mr. MCCARTHY. Nobody in the same position because there was only one other man with 15 years service and the rest of them had less than that. That man went over and he stayed after I left. I heard indirectly that he was out within 6 months.

The CHAIRMAN. The first vesting was after how many years?

Mr. MCCARTHY. Fifteen.

The CHAIRMAN. How many employees were there who were terminated at that point when the operation moved from New York to New Jersey?

Mr. MCCARTHY. I would say about 60 or 70 men.

The CHAIRMAN. Do you know what they received when they terminated?

Mr. MCCARTHY. Most of them would only get the severance pay. Unless you had 15 years service you didn't get any refund.

The CHAIRMAN. No refund.

Mr. MCCARTHY. I don't think so. I have no way of telling that.

The CHAIRMAN. I think that is a question we should know the answer to. You feel that but you don't know it?

Mr. MCCARTHY. Right; I don't know that to be a fact.

The CHAIRMAN. And there were about 60 to 70 employees who had employment of less than 15 years who were in this category?

Mr. MCCARTHY. Yes.

The CHAIRMAN. I will say that I know we submitted a questionnaire from the committee to this company. They didn't reply. There was an affirmative denial of the opportunity to reply. I think in fairness to the company that we should give them an opportunity to make a reply on this particular question. We invited them to come in. We not only sent them a questionnaire but invited them to come here following our discussions between you and the staff, Mr. McCarthy.

I will put this letter and the response in the record at this point.

(The letter and response referred to follow:)

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
JENNINGS RANDOLPH, W. VA.
CLAIBORNE PELL, R.I.
EDWARD M. KENNEDY, MASS.
GAYLORD NELSON, WIS.
WALTER F. MONDALE, MINN.
THOMAS F. EAGLETON, MO.
ALAN CRANSTON, CALIF.
HAROLD E. HUGHES, IOWA
ADLAI E. STEVENSON III, ILL.
JACOB K. JAVITS, N.Y.
WINSTON PROUTY, VT.
PETER H. DOMINICK, COLO.
RICHARD S. SCHWEIKER, PA.
BOB PACKWOOD, OREG.
ROBERT TAFT, JR., OHIO
J. GLENN BEALL, JR., MD.

STEWART E. MCCLURE, STAFF DIRECTOR
ROBERT E. NAGLE, GENERAL COUNSEL

United States Senate
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

July 16, 1971

REGISTERED

Mr. Lester O. Gluesenkamp
Assistant Treasurer
Mallinckrodt Chemical Works
Second and Mallinckrodt Streets
St. Louis, Missouri

Dear Mr. Gluesenkamp:

On March 1, 1971, by Senate Resolution 35, the U. S. Senate ordered the Senate Subcommittee on Labor to conduct a study of the private pension system in the United States with special emphasis upon the need for protection of employees covered by these funds.

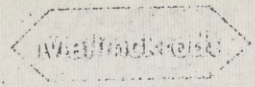
As you were advised on July 14, 1971 by a staff member of the Senate Subcommittee on Labor, Mr. Edmund McCarthy of Ozone Park, New York had informed the Subcommittee of alleged hardships resulting from inability to qualify for a pension under your pension plan. These were discussed with you in order to ascertain appropriate explanation in response to the difficulties recited.

The complainant has been invited to testify before the Subcommittee on Labor on or about July 27, 1971, on hearings to be held pursuant to the Senate study of private pension plans. It will be for the purpose of presenting the problem alleged.

Accordingly, the Subcommittee on Labor similarly invites your organization to designate a representative to appear to testify with respect to your pension plan benefits relating to Mr. McCarthy, and matters alleged by the complainant. It would be appreciated if you would indicate expeditiously whether you will appear. In the interim, please forward a copy of the pension plan and such other publications which you issue relating thereto. Your assistance is appreciated.

Sincerely,

Mario T. Noto
Special Counsel
Subcommittee on Labor



SECOND AND MALLINCKRODT STREETS • ST. LOUIS, MO. 63160 • PHONE 314-231-8980

July 22, 1971

Mario T. Noto, Esq.
Special Counsel
Subcommittee on Labor
United States Senate
Committee on Labor and Public Welfare
Washington, D. C. 20510

Dear Mr. Noto:

We acknowledge receipt of your letter of July 16, 1971 wherein you invited a representative of Mallinckrodt Chemical Works to appear to testify with respect to the pension plan benefits relating to our former employee, Mr. Edmund McCarthy.

Since Mr. McCarthy terminated employment with Mallinckrodt Chemical Works in 1957, the files relating to this particular case are not readily available. We have, however, instituted a search for all pertinent data including pension plan benefits, and we expect to furnish these to the Committee as soon as practical for its information and inclusion in its record. We will furnish the information as soon as possible, but we do not expect to send a representative to appear before the Committee.

Very truly yours,

Lester O. Gluesenkamp
Assistant Treasurer

LOG:js

PENSION STUDY
AUG 16 1971

Mallinckrodt

SECOND AND MALLINCKRODT STREETS • ST. LOUIS, MO. 63160 • PHONE 314-231-8980

August 11, 1971

Mario T. Noto, Esq.
Special Counsel
Subcommittee on Labor
United States Senate
Committee on Labor and Public Welfare
Washington, D. C. 20510

Re: Edmund V. McCarthy

Dear Mr. Noto:

As promised in my letter to you of July 22, 1971, I have undertaken a review of our files in order to respond to the points raised in Mr. McCarthy's letter to Senator Javits. Since Mr. McCarthy left our employ in 1957, the search of our files necessarily was time consuming.

Mr. McCarthy began working for Mallinckrodt at its New York location on December 21, 1931. During his entire career with the company, he worked as a chauffeur-truck driver. In 1957 it was decided to consolidate all Eastern warehousing and shipping activities at our Jersey City, New Jersey, plant. Part of this consolidation involved the closing of the New York shipping operation office. The employees there were given the option of continuing their employment in Jersey City or resigning. In the event an employee chose the latter option, he was paid a week's salary for each year of his employ as termination pay. Mr. McCarthy elected to take employment in Jersey City and was transferred on June 17, 1957, but thereafter, on September 6, 1957, he voluntarily left our employ. Since his decision to transfer to Jersey City was on a trial basis, Mr. McCarthy was paid the severance pay amounting to twenty-six weeks.

Additionally, Mr. McCarthy was given a check on September 11, 1957 for $2,917.36 which represented the refund of pension deposits made by him from July, 1932 through August, 1957, plus interest. Our pension program was instituted in 1931. As Mr. McCarthy correctly pointed out in his letter to Senator Javits, the vesting provisions of our pension policy in effect in 1957 provided that an employee had to be in the company's employ for 25 years and also have reached the age of 50. Under our current plan, the employer's contributions vest when any of three events occur; when he has 20 years of continuous service regardless of age, or 15 years of continuous service and have reached the age of 50, or simply when he has reached the age of 60 years regardless of length of service.

In October, 1957 Mr. Bernard H. Fitzpatrick, an attorney and a member of Butler, Bennett, Fitzpatrick & DeSio, 37 Wall Street, New York, New York 10005, attorney for Mr. McCarthy, wrote to Sun Life Insurance Company of Montreal, Canada, the insurer of our pension plan, requesting an application permitting the conversion of Mr. McCarthy's contributions into a paid-up annuity policy. Sun Life originally indicated that Mr. McCarthy was required to have made the election prior to terminating his employment, but since he had not cashed the check given to him immediately after his termination representing his contributions to the plan, Sun Life offered to extend the option. After some correspondence between Mr. Fitzpatrick and Sun Life as to the interpretation of the insurance contract, Mr. Fitzpatrick concluded that the insurer was correct in its interpretation that Mr. McCarthy necessarily must have reached the age of 50 years before being entitled to any of the employer's contributions. At that time, August, 1961, Mr. McCarthy finally cashed the check that had been given to him back in 1957. We find no record of any offer by Mr. McCarthy to continue to make contributions to the plan to age 50.

From his letter to Senator Javits, it would appear that Mr. McCarthy is still somewhat bitter concerning this matter. While I can understand his feelings, I would like to reiterate that under current plan he would be covered. I am sure you appreciate that the history of pension plans is marked by vitality and growth. What was an acceptable plan in 1957 is not acceptable now, and what is acceptable now may not be acceptable ten years from now.

I hope that the above will be of some assistance to you.

Very truly yours,

Lester O. Gluesenkamp
Assistant Treasurer

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The CHAIRMAN. Where are you working now?

Mr. MCCARTHY. Down at Kennedy Airport in New York.

The CHAIRMAN. Are you under another pension plan there?

Mr. MCCARTHY. I just started a new plan. It is 2 years old.

The CHAIRMAN. What does that vest? How long do you have to work at this?

Mr. MCCARTHY. After 8 years you have some rights in it, but 15 years to make it worthwhile.

The CHAIRMAN. By then you would certainly have reached the proper age: wouldn't you?

Mr. MCCARTHY. I hope so. To get 15 years in the plan now I will have to be 67 before I can retire.

The CHAIRMAN. It seems that once you are at that age the likelihood of being employed in any kind of manual work is rather negligible.

Mr. MCCARTHY. I was lucky in that respect. I got this job the week following when I left Mallinckrodt. It is quite close to home. I am still driving trucks, naturally.

The CHAIRMAN. You look to be a very healthy fellow, notwithstanding the traffic you have to put up with every day. That is some of the heaviest traffic in the country, isn't it, around Kennedy Airport?

Mr. MCCARTHY. Yes.

The CHAIRMAN. How do you keep so calm?

Mr. MCCARTHY. It is not much of a problem. On the airport we have private roads.

The CHAIRMAN. That must be the answer. It is all within the limits of the airport?

Mr. MCCARTHY. Out on the ramps and so on.

The CHAIRMAN. Thank you very much. We are most appreciative, Mr. McCarthy.

Mr. Lester Fox.

Mr. Fox, my notes tell me that your former employer is now known as the Studebaker Worthington Corp. You are living in Indiana?

Mr. FOX. Yes, sir.

The CHAIRMAN. Very good. We appreciate your coming here to be with us. This is one of the problems of pensions that many talk about and that has been given a great deal of national publicity. You are one of the employees and we are most grateful to have an opportunity to hear your story.

STATEMENT OF LESTER FOX OF SOUTH BEND, IND., FORMER EMPLOYEE OF THE STUDEBAKER WORTHINGTON CORP.

Mr. FOX. My name is Lester Fox, 443 South Van Hoyt Street, South Bend, Ind. I would like to express to the committee my appreciation for the opportunity to be here and also to comemnd the committee for continued hearings on what I consider to be a very vital subject in this present day. I am a former member of the bargaining committee and the former vice president of Studebaker Local No. 5, United Automobile Workers, but I am here today as an individual.

At Studebaker there was established a pension plan in 1950 that, like many other plans, contained a 30-year provision over which to fund or amortize the past service credits. Subsequent negotiations between Local 5 of the United Auto Workers and the corporation

placed an increased cost on past service which resulted in an extension of the funding period.

At the close of the plant, when the plant officially terminated the pension plan in 1964, it officially announced the cessation of operations in December 1963, and there was a total of $24 million accumulated in the pension fund; $21,700,000 was required to purchase annuities for all of those who were retired under the provisions of the plan and all of those who qualified for a pension under the terms of the agreement. In other words, anyone age 60 and over who had a minimum of 10 years accredited service.

That left a body in excess of 4,000 workers who had a vested right to a pension plan to divide up the sum of slightly in excess of $2 million which was paid to the 4,080 workers who paid off their vested equity in the plan. The payments ranged all the way from a minimum of $197 to a maximum of $1,757 to those workers with a vested right. Those who had not reached age 40 and did not have 10 years of accredited service received no payment from the pension fund itself.

At the time of the plant closing I was age 40, having just crept under the wire, with 20 years of accredited service toward my pension. I received a lump-sum payment of $350 as my share of the residue of the pension trust. There was a formula developed based on age and length of service and for a man 40 with 20 years it amounted to $350.

The problem which, as you indicated, has been stated repeatedly is that in this instance in excess of 4,000 workers who had a promise of a private pension plan witnessed it vanishing before their very eyes. That was a decision made by the employer. The employees had absolutely no voice in the decision to terminate the operation. This was purely a management decision.

Obviously we have given much thought to the problem. As a general rule I commend those who are considering legislation that would provide for a public reinsurance of private pension plans and I would view that as something similar to the Federal Deposit Insurance Corporation, which insures private savings. One that was, as I understand it, designed to restore public confidence in our system. I would suggest there is a need for public control over private pension plans if we are to maintain the confidence of our workers in the free enterprise system.

The trustee of the Studebaker plan was the Chase Manhattan Bank in New York. It was administered locally by three members of the corporation and three members of the union.

The CHAIRMAN. Please repeat that.

Mr. FOX. The trustee of the trust was the Chase Manhattan Bank of New York. The plan was administered locally by a joint board consisting of three members representing the corporation and three members representing the union.

The CHAIRMAN. What was their job?

Mr. FOX. Largely one of determining eligibility for benefits and interpreting the provisions of the plan and then authorizing the trustee to make pension payments.

At Studebaker we went through several processes in an effort to secure the pension fund. I might say in all honesty that anyone who

worked there subsequent to the Korean war had to be aware of the fact that the corporation faced some very difficult economic problems. In 1962 our union elected to maintain the benefit level rather than follow the pattern that was established in the auto industry in an effort not to have to continue to extend the funding period.

We also, I might say, at that time talked about solutions to the problem. We made a proposal to the corporation that if in the event it terminated its operations at any time subsequent to 1962 that the first claim on its assets would be the trust of the pension plan itself. This obviously was a demand largely designed to focus attention on the problem that we saw developing in the event the corporation did in fact terminate its operation.

Just to show you some of the practical problems that are involved in that, the next day we read a headline in the local press that the union made a $25 million demand upon the corporation, that the corporation said it would bankrupt it immediately if they had to fulfill the demand. In a way it was a very effective way of counteracting the proposal that the union presented to them.

The tragedy, as I view it—following the shutdown I worked for some time in a program financed by the Department of Labor to assist the older workers. At Studebaker there were in excess of 4,000 workers age 50 and over who faced all kinds of problems, not the least of which was the fact that they had lost their pensions, their job opportunities and the like. So in my role of directing the program I had contact with all of the workers affected by the plant closing, and of course all of those who saw their pensions vanish too.

You may be aware that there was a concerted effort on the part of our Government, the Federal Government, in concert with the local community, to attack the problems that older workers faced and to assist them in alleviating them. But despite all of the best efforts, there were those who could not find a solution nor could a solution be found. So they took the only way they could and that was to end their lives, which I think was sort of a tragic consequence as a result of a series of happenings over which the workers themselves had absolutely no control.

Again this question of promise that was not fulfilled. The workers really had no way of knowing what the plan was. There were some efforts made—I have with materials I brought with me a booklet that I personally wrote in an effort to acquaint the workers with the basic provisions of the pension plan. It was always difficult to try to talk about what we were going to do if and when the corporation went broke because it was not in the best interest of the employees to accentuate the fact that the corporation had a very dubious financial status. Obviously any statement the union made was a matter of public record and could destroy confidence among potential customers in terms of purchasing the corporation's products, so it was very difficult to deal with this question in a very meaningful and forceful way, maintaining a good communication with the workers.

It just was not in the cards, as we viewed it. It was very difficult to do. So the workers really had no way of knowing, quite frankly, that the termination of the corporation could in fact terminate their rights to a pension or a vested right. They had security built on shifting sands, if I was to summarize it in my own words.

I have tried as best I can to briefly state the situation that I found myself in at age 40. I certainly fully sympathize with workers of more advanced age. I have had opportunities to secure other employment. That to some degree will allow me to accrue pension credits, hopefully, in some other plan. But I still witnessed 20 years that I had invested in the corporation for which I fully expected one day to receive a pension but it disappeared.

The CHAIRMAN. You were part of the bargaining team for the local in trying to improve the benefits under the pension plan?

Mr. Fox. Yes, sir.

The CHAIRMAN. You held an office in the local union?

Mr. Fox. At the time of termination I was the vice president of the union and also a member of the joint pension board.

The CHAIRMAN. What were you fighting for in the bargaining process with the company over the years that you held that office?

Mr. Fox. When it became obvious that the security of the corporation was somewhat in jeopardy we made in 1962 a demand that was subsequently followed up at the time the corporation announced the termination. I have with me a copy of the demand we made. What we said in effect was that the fact that the accumulated funds in the pension trust funds are inadequate to pay pensions to those who have established a vested rights to a pension causes them to see the security they thought they had established for their older years to disapper overnight. The pension plan represents a private promise by the Studebaker Corp. which socially, morally, and as a matter of equity they are obligated to keep. So we made a demand that the corporation undertake to stand behind the promises of security that were intended by the pension plan.

I have tended to summarize, but we did attempt to make this demand, either at the time the benefit structure was initiated or as a first priority claim on the assets of the corporation in the event they elected to terminate the collective bargaining agreement.

The CHAIRMAN. Prior to the knowledge that the company was in shaky condition and you were bargaining for the general bundle of workers' interest in wages, hours, and working conditions, pensions were part of the demand at contract time; is that right?

Mr. Fox. Yes, sir.

The CHAIRMAN. Before the company was known by you to be in trouble what were you bargaining for in terms of pensions?

Mr. Fox. Basically we followed the pattern that was established either at Ford, General Motors, or Chrysler where there would be additional improvements in the plan in terms of the types of benefits, the types of options that employees would have, and increased value placed on their service, which always had the effect of course of increasing the cost of the past service. That service that the corporation indebted themselves to, or the plan provided an obligation for the corporation, for that service that existed prior to the inauguration of the plan.

We negotiated the plan in 1950. The company at that point assumed a financial obligation of roughly $20 million for all of the past service that the work force had accumulated until that time. So it was one largely of liberalizing the benefits under the program and increasing the value of the service that the work force had.

The CHAIRMAN. Does the pension benefit that you bargain for and get written into your contract with the company have a standing equal to wages? Do you think of it in terms of saving, not getting the money today but putting it aside?

Mr. Fox. Certainly the entire work force viewed this as deferred income.

The CHAIRMAN. You as a representative of the working people with an office in the union put this together. You reduce today's wage demand as you put emphasis on what you consider a fair retirement plan and a pension program; is that it?

Mr. Fox. Yes, sir.

The CHAIRMAN. So it is looked at as wages, as we have said here, deferred wages?

Mr. Fox. Yes, sir. In 1962 our economic package totaled roughly 22 cents, of which 5 cents went on the hourly rate and the balance went into fringe benefits or deferred income, insurance, pension, supplemental unemployment benefits, and the like.

The CHAIRMAN. Was it generally understood that vesting under the contract had to wait upon the happening of two events, age 40 and 10 years?

Mr. Fox. Yes, sir.

The CHAIRMAN. And then you had a vested right?

Mr. Fox. Yes, sir.

The CHAIRMAN. The payment would be deferred; wouldn't it?

Mr. Fox. Right, deferred until you complete an additional qualification of age.

The CHAIRMAN. But you and those you represented in the union, did you assume that that right, once it matured, constituted a fund in being and secured for payment to you if you made the next step which was the age?

Mr. Fox. We raised this question, Senator. I do want to be totally right on this one. We raised the question of the matter of the past service liability not being fully met because a 30-year period had not elapsed. We constantly raised the question about fully meeting that obligation in the event the corporation terminated operations. That obligation was inaugurated in 1950 and terminated in 1967, so 17 years of funding is where the deficit occurred.

The CHAIRMAN. Was it understood by you that it was short of full funding?

Mr. Fox. As an administrator it was understood by me, yes.

I would like to allude to one other question. We would raise this constantly. It was a demand that other competitors of the corporation did not have to meet. The corporation would raise the question that if General Motors meets that requirement they would meet it. To sit and argue effectively that the General Motors Corp. was going bankrupt would be difficult. It was not difficult to argue that with the Studebaker Corp. But they were not going to meet a demand that their competitors were not forced to meet.

The CHAIRMAN. I would like to go back to three points, Mr. Fox. You got part of the distribution of the sums remaining out of the $24 million fund held by the trustee, Chase Manhattan?

Mr. Fox. Yes, sir.

The CHAIRMAN. There was a full payout to those who were fully vested in terms of service and age; is that right?

Mr. FOX. There were individual annuities purchased in their names.

The CHAIRMAN. They were purchased with the $24 million fund at Chase Manhattan? Twenty-two million dollars was used to purchase the annuities for all over 60 who had the years of service so they received their full benefit? Is that right?

Mr. FOX. Yes.

The CHAIRMAN. And then it drops down to those who were less than 60 and who were vested?

Mr. FOX. Yes.

The CHAIRMAN. There were the categories of 40 and 10, and then it was a matter of the years of service on the distribution and you as one of the younger men who were vested received $350; is that right?

Mr. FOX. Yes.

The CHAIRMAN. Was there any way for you to compute what that represented, what part that would be of what in fact would have been due you at the payout age of 60?

Mr. FOX. Roughly 5 months' benefit, because our rate at the time the plant terminated was $2.50 per month per year of accredited service. At 20 years two and a half dollars would have been $50. It is roughly 7 months' benefit.

The CHAIRMAN. That you received?

Mr. FOX. That is right. I would have received $50 a month based on 20 years of service.

The CHAIRMAN. The question is, What percentage of what you would have gotten did you get? Is there any way to compute that in your mind. You were short of getting it, you see.

Mr. FOX. If I would project a normal life expectancy of 77 and assuming I retired at age 65, I would have received $600 a year for 12 years which would have been $7,200.

The CHAIRMAN. And you received $350?

Mr. FOX. Yes, sir.

The CHAIRMAN. There had been a prelude to this situation within the company. Packard went through this. Was it similar?

Mr. FOX. Not quite. Packard, because of the fact that it terminated sooner, had to reduce the pension of every current retiree. In other words, every man on pension had his pension reduced a percentage based on the funds that were in the trust fund. There were two separate trust funds. Packard had their trust at the Chemical Corn Bank in New York. Ours was Chase Manhattan. They were not a common trust fund.

The CHAIRMAN. You say the fund there was not sufficient to purchase the annuity for the fully vested employees?

Mr. FOX. No, it was not. Everyone had his pension reduced.

The CHAIRMAN. It has been suggested to me that the United Automobile Workers pension plan for its employees has 5-year vesting. Are you familiar with the union's pension plan?

Mr. FOX. The UAW has capable negotiators and I would not be surprised. I am not aware of that.

Senator JAVITS. This is, of course, the classic case which has had so much to do with energizing people like myself and our chairman and others to move into this field. The only silver lining in the Studebaker

disaster is the fact that it was such a bombshell that it alerted the whole world to the deep injustices inherent in the system, as represented by the private pension plan of Studebaker. We are certainly obliged to you, Mr. Fox, for testifying. I am very hopeful that if all goes right there will not be another Studebaker but that we will have done something about it.

Thank you, Mr. Chairman.

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

Mr. Sawyer, my notes tell me you have joined us from Fort Lauderdale, Fla.

Mr. SAWYER. Yes, sir, Mr. Chairman.

The CHAIRMAN. We appreciate your coming here. The committee is anxious to know the experiences you have had with your pension plan. Will you tell it just the way you want to.

STATEMENT OF JOHN SAWYER OF FORT LAUDERDALE, FLA., FORMER EMPLOYEE OF THE UNIVERSAL CYCLOPS STEEL CORP.

Mr. SAWYER. Thank you, Mr. Chairman. I want to commend you and Senator Javits and the committee for what you are doing. You are doing a wonderful job. I actually represented the United Steel Workers of America, although I have been away for 11 years. I am an honorary member.

The CHAIRMAN. Very good.

When you were working as a union member, you were at the Universal Cyclops Steel?

Mr. SAWYER. Yes, sir; that was the last name of the mill. I think it had changed names five times since 1924. I had 35 years there and I know in detail just who changed and so forth and so on.

From 1924 to 1933 we did not have a union. The Davy boys out of Canton—there were seven of them and you could not break them no way. So they finally sold out.

At that time the name of the plant was the Manfield Sheet & Tin Plate Co. Then they sold out in the neighborhood of the early thirties and it was Empire Steel. They sold out and it was Empire Steel Corp. They sold out and it became Empire Steel-Reeves Corp.

Now they are a subsidiary of Universal Cyclops in Pennsylvania. Down through the years they have always done very well.

I have got butterflies. I want to thank your staff member, Mr. Gaglio, for getting me up here because my lady friend was vacationing in Bethesda. I proposed to her Saturday and she accepted. Don't think I don't have butterflies being here.

Anyhow, Mr. Chairman, I have seen the steel industry start out from coal dust right on up to where they are at today. Coal dust takes you back quite a few years. I am 67 years old and spent half my life in the mill and I enjoyed every day of it. I liked it very much. I might add that I have been an officer of the union and a charter member since 1933. That was the Amalgamated Association of Iron, Steel & Tin Workers.

When Mr. Murray came in with the steel workers' organizing committee in 1936 we went right to work with them and we wanted to consolidate with them right away.

Mr. Bennett from Granite City., Ill., was chairman of the Amalgamated Association at that time. I was on the officers report committee and Mr. Murray suggested that we wait until after their first constitutional conference and then naturally they named themselves the United Steel Workers of America.

To my estimation, they are the greatest organization and the most democratic organization that was ever developed and it still is today.

I was a personal friend of Mr. Murray's——

The CHAIRMAN. I will agree with with you. They took me in.

Mr. SAWYER. Thank you.

I was a personal friend of Mr. Murray's due to my affiliation in my job in the union. I was a personal friend of David J. McDonald and a personal friend of Mr. I. W. Abel, who is the president today. He used to be my director in Ohio.

It would take a lengthy time but I could tell you what we accomplished as a union at Empire Steel. There was a time, Mr. Chairman, when there was two toilets for 1,200 people. We happened to have a woods outside on the north side and a woods outside on the south side. Most of the men used the woods.

We had no water. There was one old rusty drinking fountain. We had no heat in the winter. The columns in there had frost that thick on them. We had no fans in the summer and I am telling you, when we organized, we changed things.

It's a beautiful place to work today. I have 35 years in and, of course, our contract says in order to receive any retirement you must be 65. Although I sent Mr. Noto one of my contracts when I was president of the local—for three terms I was president and for three terms I was vice president—I was always a shop steward.

Anyhow, the contract just don't read anything for me and I knew that. But at the times when we negotiated a pension, an insurance fund—we had committees set up for that and we had committees out of Pittsburgh and Washington from the international that took care of that situation.

The actual content of our agreement is not in the book. So help me, I am sorry to say I don't know what the full content is. I am one of those people that figures, well, I will never make 65. I am 2 years over that now. So I didn't give it too much thought.

At the times the situation was not as flexible as maybe I have indicated but it was flexible enough that I should have understood it. There was not any certain amount of time you had to have in the mill, but you had to be 65 in order to receive a pension.

Mostly, Mr. Chairman, that is about it. I have a lot of information here but it would take long concerning the mill.

The CHAIRMAN. What are you receiving now?

Mr. SAWYER. Nothing. I am an honorary member of the United Steel Workers of America.

The CHAIRMAN. As a pension benefit?

Mr. SAWYER. Social security?

The CHAIRMAN. No; from your work in the mill?

Mr. SAWYER. None, sir. When I left the mill—here is a little item here. When I left the mill in 1959, I was 55. My wife was sick and she was instructed by the doctor to get south. She could not hardly walk.

When I left I told the staff man, "Brother, look up my situation. If I have anything coming, I know you will get hold of it." I never heard from him.

In the meantime I lost my wife. I had a heart attack in 1965. I come up with diabetes 2 months ago. I am buying medicine by the bushel. Without social security I don't know where in the world I would be.

The CHAIRMAN. You certainly look good.

Mr. SAWYER. Thank you. I have lost 30 pounds in 2 months.

The CHAIRMAN. How many years were you employed while there was a pension plan? When you were up in the mill, how many years were you under a plan?

Mr. SAWYER. I will have to guess at it. I should not have to. I should have looked it up. I would say 25 of those 35 years.

The CHAIRMAN. And you left the mill at age 55?

Mr. SAWYER. Yes, sir; and I have a document here on Empire paper from the personnel manager stating when I came to work and when I left, and it's notarized.

The reason I happen to have this is because I had to have a birth certificate and I needed this to get it.

The CHAIRMAN. Well, you had to be just about married to the mill to get a pension there. You had to be 65?

Mr. SAWYER. That is right. But as I said before, it got to be when the United Steel Workers came in there, a pleasant place to work. We had water and heat, toilets, showers and whatnot.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Just one question.

As a union officer did you try to change this situation about the pension plan in negotiations?

Mr. SAWYER. No. As I stated before, Senator Javits, we had a committee to take care of that. Working with our committee was a committee out of Pittsburgh.

Senator JAVITS. So you weren't in that end of it?

Mr. SAWYER. No. I had all the confidence in the world in our union.

Senator JAVITS. Did you ever approach any of the presidents like McDonald or Murray or Abel with the idea that after a man works 25 or 35 years he ought to have something, no matter how old he is?

He may not collect it until age 65, but he ought to have it?

Mr. SAWYER. They have their winter sessions at the Americana at North Beach and I am not too far from there. When they have them this year I am going over to see Mr. Abel who used to be my director.

You never met a finer man than him. Also, John S. Johns became director in that district after Mr. Abel went up to secretary-treasurer.

Senator JAVITS. Did the men who worked in the shop in which you were shop steward have any confidence or expectation regarding the pension?

Did they consider it as meaning anything to them?

Mr. SAWYER. Senator Javits, they had confidence because I had confidence. I am speaking as an officer of the union. They had confidence in me.

Senator JAVITS. Did they count on the pension as being something that was an important right which they would have, so that even if you were not geting a higher salary, you knew you were going to get a pension at the end of the road?

Mr. SAWYER. At the end of the road but nobody thought they would live that long so they didn't give it much thought.

Senator JAVITS. It was just too long to foresee?

Mr. SAWYER. Yes.

Senator JAVITS. Thank you very much, Mr. Chairman.

The CHAIRMAN. What was your local number?

Mr. SAWYER. Lodge 169.

That was one of the first ones, and I am proud of this honorary membership.

The CHAIRMAN. You should be.

Senator JAVITS. Thank you very much for coming and helping us out. Good luck in what is going to happen.

Mr. SAWYER. Thank you.

I feel pretty good about it. I think she is ace high in my book.

The CHAIRMAN. We are very grateful to you, Mr. Sawyer.

Mr. Guy H. Nichols from Ohio.

Mr. Nichols, we appreciate your being with us here today.

You may proceed in any way you care to.

STATEMENT OF GUY H. NICHOLS OF CINCINNATI, OHIO, ENGINEER

Mr. NICHOLS. My name is Guy H. Nichols. I reside in Cincinnati, Ohio. I am an engineer by education, and in my work experience.

I have a bachelor of science degree in mechanical engineering, and about 24 graduate credits, which I have accumulated over the years.

My particular problem, I believe, is rather characteristic of the aerospace and aircraft industry. I have worked over 20 years in the two industries, 3½ years with a small company by the name of Chandler Evans, and over 15 years with GE, and 2 years with the Martin Co.

I am 49 years old. I have no pension plan and I left GE after I had 9½ years of experience, fully realizing that they had a 10-year vesting period.

I did it because, I think, like many young engineers, I wasn't really looking forward to a pension plan. I left GE after 9½ years and was with the Martin Co. for 2 years. Then I rejoined GE for a period of another 6 years. Then my employment was terminated with GE due to a lack of work situation in 1970.

I am currently employed as a manufacturer's representative and I don't now have a pension plan. The company does not have a pension plan and that is their policy. I am fully aware of that, but I thought I would make you aware of the situation.

Another point I might make is that I attempted to find employment in the aerospace industry and I was unable to. I think in a case like that, a pension plan tends to work against the older worker.

I notice from the previous testimony that many of the workers have over 25 years. I am one of the few who has under 10 years, but it is a characteristic problem which exists in the aerospace and aircraft industries.

The essence of my problem, I believe, if I were attempting to really say it concisely, is that it has not been possible to transport my credits. Even with over 20 years of experience in one industry, working on various programs for the Government, I am still without a pension plan. That is the essence of my testimony.

The CHAIRMAN. Let's back up a moment here. You had nine and a half years with GE and you left for your own reasons?

Mr. NICHOLS. Yes.

The CHAIRMAN. Knowing, of course, that you were short of their minimum vesting period of 10 years?

Mr. NICHOLS. Yes, I was very much aware of it.

The CHAIRMAN. Then you went to another company?

Mr. NICHOLS. Then I went to another company for 2 years.

The CHAIRMAN. Did that company have any kind of pension program?

Mr. NICHOLS. Yes, and I can't recall all of the details, but it was a company paid pension plan, as I recall it. It required employment there at the Martin Co. for something like 5 years, I believe.

The CHAIRMAN. But was there at that time a contribution while you were working there? As well as you can recall, was there a contribution to a pension fund for development for your later retirement?

Mr. NICHOLS. At the Martin Co., there was no contribution on my part. It was all paid for by the company.

The CHAIRMAN. But as an accounting matter, they were accounting for you on their developing pension rolls, is that right? You were accruing time?

Mr. NICHOLS. I guess, Mr. Chairman, I don't completely understand that.

The CHAIRMAN. How many years did you have for vesting in the Martin Co.?

Mr. NICHOLS. I would have had to work there for a period of 5 years.

The CHAIRMAN. In other words, you had 2 years on the period that was required for vesting, is that right?

Mr. NICHOLS. Yes.

The CHAIRMAN. Then you went back to GE?

Mr. NICHOLS. Then I went back to GE, yes.

The CHAIRMAN. You didn't pick up where you left off?

Mr. NICHOLS. No, I did not. That is company policy unless they have recently changed it. I believe that is their current policy.

The CHAIRMAN. When you went back to GE, were you advised that you had to start from the beginning on a pension plan?

Mr. NICHOLS. Yes. I was very much aware of it.

The CHAIRMAN. The situation that your experience presents for us is the lack of portability of any rights. You developed rights at GE and at Martin and then rights at GE again, none in themself putting you in a vested position?

Mr. NICHOLS. That's correct.

The CHAIRMAN. Taken together it was a matter of 17 years, is that right?

Mr. NICHOLS. Adding it all together, yes, it was over 17 years. But there seems to be a characteristic appearing in the aerospace and aircraft industry and that is that there appears to be a need for more worker mobility. In other words, people move from location A to location B to location C because of the needs of the Government programs, if you will. In many cases, I think people are hired on to pick up a peakload and work for maybe 2 or 3 years. This is often done.

I think it is a more prevalent problem than perhaps you are aware of. I have talked to various of my friends on the west coast and I have the feeling that this is a rather general problem in the aerospace business. That is my personal opinion on it.

The CHAIRMAN. I would agree. Senator Javits?

Senator JAVITS. You missed vesting of some rights by 6 months the first time, did you not?

Mr. NICHOLS. Yes.

Senator JAVITS. Were you aware of that when you quit?

Mr. NICHOLS. Yes, I was.

Senator JAVITS. Was that voluntary or involuntary?

Mr. NICHOLS. It was voluntary. I guess I was a little bit too young to look ahead to a pension.

Senator JAVITS. Under the bill I have introduced, if you have had more than 5 years of service, you would have a vested right.

Mr. NICHOLS. Yes.

Senator JAVITS. Also under the bill I have, even a break in service would not count against you because it is based on aggregate service.

Mr. NICHOLS. Yes.

Senator JAVITS. Mr. Chairman, the General Electric Co. has answered our questionnaire, which I think is very cooperative of them. I do think that one could get a better picture by noting some of the figures relating to those who have realized anything under that plan, compared with those who have gone through it.

Apparently, since 1950 they show 335,000 workers going through the plan, who left without any entitlement to benefits. Of these, a very large number were employees who had more than five but less than 10 years of service.

I ask unanimous consent that part III of the data from the questionnaire may appear contiguously with this witness' testimony.

The CHAIRMAN. It will so appear.

(The information referred to follows:)

Part III. Data on Benefits and Forfeitures

(Where records of the Plan are unavailable, estimate if necessary but indicate if the figure is an estimate.)

(All amounts in Part III are estimated)

19. A. Specify the total number of persons who have participated in the Plan since 1950 or since the Plan's establishment if that date is later than 1950 — 725,000

B. Specify the total number of persons who have participated in the Plan within the past 5 years — 410,000

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20. A. Specify the total number of participants who received benefits since 1950 or since the the Plan's establishment if that date is later than 1950:

(1) Normal retirement — 25,491
(2) Early retirement — 29,583
(3) Disability retirement — 7,711
(4) Death — 7,981
(5) Other — -0-

(including retirees prior to 1950)
(survivorship election and vested retirees included with normal or optional)

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement — 15,500

C. Specify the total number of participants within the past 5 years who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement — 10,321

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21. A. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for any reason (include those who retired and/or died) — 395,000

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for reasons other than normal or early retirement — 348,500

C. Specify the total number of participants within the past 5 years who left the scope of the Plan for any reason (include those who retired and/or died) — 114,000

D. Specify the total number of participants within the past 5 years who left ~~with more than 10 years service under the Plan~~ the scope of the plan for reasons other than normal or early retirement — 98,000

22. Specify according to the following categories the total number of participants, regardless of their age, who left the scope of the Plan without entitlement to any retirement benefits:

*A. Since 1950 or since the Plan's establishment if that date is later than 1950	335,000
** B. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 15 years service under the Plan	6,700
** C. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 10 years service under the Plan	20,000
D. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 5 years service under the Plan	80,500
* E. Within the past 5 years	92,500
** F. Within the past 5 years with more than 15 years service under the Plan	1,900
** G. Within the past 5 years with more than 10 years service under the Plan	5,500
H. Within the past 5 years with more than 5 years service under the Plan	22,000
I. Within the past 5 years due solely to voluntary separation	not available
J. Within the past 5 years due solely to failure to meet continuous service requirements	Not within scope of the plan

23. Specify according to the following categories the average age of participants who left the scope of the Plan without entitlement to retirement benefits:

A. Within the past 5 years with more than 15 years service under the Plan	44
B. Within the past 5 years with more than 10 years service under the Plan	40
C. Within the past 5 years with more than 5 years service under the Plan	34

24. A. Indicate the average monthly benefit paid to retirees 5 years ago.
(1) Normal 127.50 (2) Early 168.68 (3) Disability 180.33

B. Indicate the average monthly benefit paid to retirees within the last year.
(1) Normal 159.90 (2) Early 208.79 (3) Disability 215.50

*The answers to Questions 22A&E reflect the high rate of turnover among short service employees.

**Groups 22B & C contain many employees who had vested rights but voluntarily elected to withdraw from the Plan in order to receive an immediate refund of their contributions. Groups F & G consist almost entirely of such employees.

Senator JAVITS. One other question, Mr. Nichols. How did you, as a worker, look at the pension benefit which was accruing to you, not vesting, but accruing? Did you take it into account in the wage and salary scale? How did you look at it? What was your feeling about it?

Mr. NICHOLS. I must admit that I really didn't give the matter a lot of attention. I was extremely busy and I don't think that I looked ahead, really, toward retirement. I sort of had the optimistic feeling, I think, that many of us have, that as long as I was able to work, I would be able to find something to work at.

But I am not that sure any more. I think that times are changing. I think the older engineers are not like a doctor with a little gray hair around his temple. He is just an old engineer and he is not really necessarily in high demand.

Part of the reason for it is the pension plan. But I will say, getting back to your point, that I contributed a certain percentage of my income and the company contributed a certain percentage to the pension plan. I have really forgotten what the numbers are. I didn't really give the matter an awful lot of thought.

Senator JAVITS. But you did put money into it yourself?

Mr. NICHOLS. Yes.

Senator JAVITS. And you did get that back?

Mr. NICHOLS. Yes; I got that back.

Senator JAVITS. But not what they contributed to your account?

Mr. NICHOLS. No; that's correct.

Senator JAVITS. So, though you didn't give it much thought, it was a factor in the aggregate compensation?

Mr. NICHOLS. Yes.

Senator JAVITS. You didn't look forward to it with any great expectation of realizing it, but it was a factor. You knew you were contributing and they were contributing?

Mr. NICHOLS. Yes. I think the point is that now I am beginning to think more about it and I think many more of us are, because the situation is changing.

Senator JAVITS. So you think it would be desirable, I gather, to have some regulation of pension plans which would at least assure a person like yourself some benefit?

Mr. NICHOLS. Yes; I certainly do.

Senator JAVITS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Mr. Nichols' experience has been discussed with one of his employers, General Electric, and we have a communication to special counsel for the committee, which I will include in the record at this point. It describes, as Mr. Nichols did, just how the plan works and why he was not included in the vested rights.

(The information subsequently supplied follows:)

GENERAL ELECTRIC

GENERAL ELECTRIC COMPANY, 570 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022
Phone (212) 750-2000

CORPORATE
EMPLOYEE
RELATIONS

July 20, 1971

Mr. Mario T. Noto
Special Counsel
Subcommittee on Labor
United States Senate
Washington, D. C. 20510

Dear Mr. Noto:

This responds to your July 14, 1971 letter and our phone conversation with your staff associate Mr. Roy Wade with respect to your invitation to appear before the Subcommittee on or about July 27, 1971, on the case of Mr. Guy Nichols. Mr. Nichols, a former General Electric employee has informed the Subcommittee of "alleged hardships" resulting from inability to qualify for a pension under the General Electric Pension Plan.

In the event that Mr. Nichols does testify before the Subcommittee, we would appreciate having this letter and its attachments introduced into the record. At the present time, we do not plan to attend the hearings since the facts show conclusively that under the even then, most liberal vesting provisions of the pension plan, his failure to vest 9-1/2 years of credited service under the pension plan was due to his voluntarily leaving the Company.

As pointed out in Attachment A, even if Mr. Nichols had been laid-off for lack of work at the time of his resignation, he would have received up to 6 months pension credit and satisfied the vesting provision then existent - age 40 - 10 years service.

In connection with Mr. Nichols' 1962 resignation from the Company, it is interesting to note that just a few months prior thereto he had been offered a better job in Evendale at a rate approximating that reportedly offered by the new employer - and also at a rate close to that paid to him when he was finally rehired at Valley Forge, 2-1/2 years later.

Also attached for your information in connection with your investigation of vesting provisions is a brief outline - Attachment B - of General Electric's record of voluntary improvements.

If you have any additional questions, please contact me.

Sincerely,

E.S. Willis

ESW:mec
Encl.

Resume on Mr. Guy H. Nichols

General

Born - November 9, 1921 - Detroit, Michigan
Attended secondary schools - Haverill, Massachusetts
Graduated 1947 - Worchester Polytechnic Institute
with B.S. in Mechanical Engineering.

General Electric Service

June 17, 1952 - Hired in Pittsfield, Massachusetts -
Ordinance Department as "Engineer" - Salary $5,500.

Jan. 2, 1962 - Resigned from Ordinance Department to accept a job in Baltimore, Maryland with the Glen Martin Company. At time of resignation he had become "Product Assurance Engineer" - Level 11 - Salary $13,500, - on Mark II Polaris Missile Guidance Project. Salary at Martin reported to be $15,000.

Received General Electric Pension Plan Refund of $2,670.62.

(In October, 1961, Mr. Nichols had been offered a higher paying job (Level 12) as "Engineer - Intertial Equipment" in Unmanned Space Craft Section in Evendale, Ohio - but this offer was rejected. He said in connection with his resignation that the Glen Martin job offered a "better opportunity".)

May 25, 1964 - Rehired by General Electric in the Manned Orbitting Laboratory Department (MOLD), Valley Forge, Pennsylvania as a "Reliability Engineer" - Level 11 - Salary $15,408.

Mid June, 1969 - Government MOLD program cancelled. Employee received notice of pending layoff 6/30/69. Salary at that time $19,420. Last day worked Valley Forge - 8/8/69.

August 11, 1969 - Transferred to Aircraft Engine Group, Evendale, Ohio as "Engineer - Reliability & Safety" - Level 12 - Salary $19,420.

March 31, 1970 - Laid-off for Lack of Work.

June 11, 1970 - Resigned from the Company by:

(1) Electing lump-sum separation payment -
(Income Extension Aid) Received - $2,138.31.

(2) Withdrawing Pension Plan contributions plus interest - $1,744.09.

Additional Comment

At the time he quit the Company in 1962, to go to the Glen Martin Company, the vesting provisions of the General Electric Pension Plan required 10 years service and age 40 or 15 years service. If he had been laid-off then (and remained on lay-off) he would have been able to vest since he met the age 40 requirement and he would have been credited with up to 6 months service on layoff, sufficient to satisfy the 10 year service requirement. At the time of resignation, he had accumulated 9-1/2 years of credited service under the Pension Plan.

Attachment B

General Electric's Record on Vesting

General Electric's Pension Plan was adopted in 1962. The major improvements made in 1946 included a vested right to a pension at normal or optional retirement date to participants who left the Company's service after age 50 with 20 years of service. The following table shows the continual liberalization in vesting provisions of the General Electric plan:

Effective Date	Provision for Full Vesting
1946	Age 50 and 20 years of credited service
1950	20 years of credited service
1955	20 years of credited service or age 45 and 10 years of credited service - whichever is earlier.
1961	15 years of credited service, or age 40 and 10 years credited service - whichever is earlier.
1963	15 years of credited service, or age 35 and 10 years of credited service - whichever is earlier.
1966	10 years of credited service.

From this steady liberalization of vesting in the General Electric Plan, it is quite apparent that the General Electric Company believes in the desirability of vesting and in continuing to make improvements as appropriate.

July 20, 1971

mec

The CHAIRMAN. Our next witness is Mr. R. K. Roby. Mr. Roby, your home is Latrobe, Pa.

Mr. ROBY. Yes, sir.

The CHAIRMAN. We are pleased to have you come to the committee meeting this afternoon and we are anxious to hear your experience.

STATEMENT OF R. K. ROBY OF LATROBE, PA., FORMERLY EMPLOYED BY AMERICAN CYANAMID CO.

Mr. ROBY. My name is R. K. Roby. I live at 720 Brinker Avenue, Latrobe, Pa.

My statement concerns the closing of the plant.

American Cyanamid Co., closed its Latrobe, Pa., plant in January 1970. I had been plant manager since 1948 and supervised the shutdown of this plant. It was a small industrial facility with 107 hourly and 13 salaried employees. Unfortunately we were a one-product plant; namely, electric blasting caps. The national market for explosives and caps has undergone major technological changes in recent years and sales decreased to the point where the company's management decided manufacturing operations were no longer feasible at this location.

Closing a plant is an emotional experience and it is extremely difficult where practically all the employees have long service records and there is a bleak outlook for new jobs in local industries.

There were 107 hourly employees on the payroll when the closing of the plant was announced in November 1969. Layoffs and resignations reduced this to 94 employees when the plant was closed in January 1970.

From this group: 24.5 percent now receive pensions, 7.5 percent will receive a pension when they attain age 55, and 68 percent receive nothing.

Cyanamid pension plan gives an employee a vested right after age 50 and 15 years of service or a combination of age and service that totals 65 years. Unless age 50 is attained no pension is granted. A vested right will give an employee the following benefits:

1. A pension for the rest of his life after age 55.
2. Free life insurance up to $2,000 based on his years of service.
3. Medical expenses of $2,500 for the employee and for each of his dependents.
4. The right to convert the comprehensive medical benefits and group life insurance to individual policies by prepayment of the premiums without submitting to a physical examination. The monthly costs for converting medical benefits were recently increased from $12.50 for single and $20 for family coverages to $20 for single and $40 for family. Life insurance premiums vary from $1.25 per month to $2.75 per month based on the age of the pensioner.

The average actual pension payments to the hourly employees will be less than $100 per month. The prepayment of medical coverage, which all but three pensioners elected, reduces the take home pay accordingly. The average service for hourly employees receiving pensions is 29.7 years.

There were 22 employees each with over 20 years of service between the ages of 40 and 46. This group was hurt the most with the plant

closing. None was eligible for any pension benefits. These employees were bitter and complained that the money the company had put aside for their pensions should be refunded to them. They claimed that pensions were a part of the bargaining when negotiations were concluded with the local union and that the cost of pensions was a part of the final settlement. If they had known the plant would be closed down, they would have prevented ratification of the working agreement and insisted on an increase in hourly rates in lieu of a pension plan or changes in the plan. They believed the plant was closed to avoid pension payments.

Practically all of the hourly employees searched for new jobs. They had varying degrees of success as shown below:

Four found better jobs; 16 found similar jobs at about the same pay; 23 found poorer jobs; seven retired; 17 have not found work and are still looking; two died; and 25 unknown.

Severance pay was granted to all hourly employees on the payroll at the closing date. It varied from 3 weeks with 3 years service to 12 weeks pay to employees with 20 or more. Several quit before the closing date to accept jobs in other plants and lost their severance pay.

The salaried group of 12 employees, I have excluded myself, show seven eligible for pensions and five not eligible. The approximate average pension is $143 and the average service is 31 years. Severance pay to the exempt employees in this group was from 6 months at full and 6 months at half pay to 7 months at full and 15 months at half pay. Most of the exempt employees had signed a contract with a 6-month notice. For the nonexempt employees the severance varied from 2 months at full and 6 months at half to one-half month pay to an employee with short service. The plant accountant, age 49, with over 17 years of service refused a transfer to another Cyanamid location for justifiable family reasons and he received nothing. Considering age, service, responsibility, and severance to other employees, the treatment to this fine accountant was not fair.

When a plant closes and the employees are without a job, many problems arise particularly for the employee over age 40. He may have children in college or he may have difficulty adjusting to a new job or to unemployment. Skills in one plant cannot be transferred and in most cases those who find new jobs generally receive less pay, are subject to layoff, lose their status as senior employees and probably have to perform unaccustomed physical labor. After reviewing the hardships connected with the closing of the Latrobe plant, I have the following recommendations concerning company pension plans:

1. That an employee earn a vested right after 10 years of regular service.

2. That company medical insurance plans be continued for employees with vested rights at the company's expense until the employee finds employment with similar coverage. If this is not practical, then I suggest a flat coverage of medical costs up to $5,000 for the employee and each of his dependents.

3. Life insurance continuance without physical examination at rates not to exceed $1.25 per thousand dollars of coverage.

4. Tax incentives to corporations who provide liberal pension payments to employees in the lower-income brackets.

The CHAIRMAN. That is certainly a complete and detailed accounting of what happened at this American Cyanamid plant.

Was that located in Latrobe?

Mr. ROBY. Yes.

The CHAIRMAN. Yours was probably one of the hardest jobs. You had to represent American Cyanamid in closing out the plant?

Mr. ROBY. That is right.

The CHAIRMAN. So all of this statistical analysis is more than just a statistical analysis to you. These are the human stories of the families whose termination you had to supervise.

Mr. ROBY. That is right. I imagine you can multiply this by the number of plants that have closed down in the country and find similar results. Cyanamid's plan is not too bad if you have a vested right. I am covered with a vested right. I elected for early retirement. I have been treated very well and have no complaint.

The CHAIRMAN. You mentioned the accountant here. In order for him to receive the combination of service and time he had to stay with the company and go to another plant.

Mr. ROBY. Yes; he would have had to stay with the company and go to another plant to get a vested right; that is right.

The CHAIRMAN. How much service did he have?

Mr. ROBY. Seventeen years.

The CHAIRMAN. With that there was no vesting at all?

Mr. ROBY. No vesting at all.

The CHAIRMAN. What was the first vesting opportunity?

Mr. ROBY. It would be at age 50.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Thank you.

I have two questions, but first I want to thank you very much for helping us with the details and facts on this problem.

You have noted that 68 percent of those who were prospective beneficiaries of the plan got nothing. That is on the first page of your statement.

Mr. ROBY. That is right.

Senator JAVITS. Can you give us any idea of the average length of service of that 68 percent?

Mr. ROBY. It would be over—it would be 20 years or more, yes. Seventy-five percent of the employees or over had been there more than 10 years.

Senator JAVITS. I must say that is a very shocking figure. That is what the contract said, but it is shocking to me that that expectation should have been so massively dashed.

The other thing I would like to ask you concerns a statement which you made which to me is so critical in this whole matter. You say, "They"—meaning the employees—"claimed that pensions were a part of the bargaining when negotiations were concluded in the local union and that the cost of pensions was a part of the final settlement. If they had known the plant would be closed down, they would have prevented ratification of the working agreement and insisted on an increase in

hourly rates in lieu of a pension plan or changes in the plan. They believed the plant was closed to avoid pension payments."

Could you expand on that at all? What I am trying to ascertain is this: Even though the employer pays the tab into a fund, the employee considers that part of his compensation and takes that into account in determining whether he is getting whatever may be a fair break?

Mr. ROBY. I think so. We had about two-thirds of our plant that were girls and one-third men. The hourly employee never was much concerned about a pension until he got to be about 40 or 45. Then they wanted to know what a vested right meant to them. We had a pension change in 1968 where the plan was modified and extended and where we got more credit for the years of service we had spent on the plan.

At the end of the negotiations we considered that a part of the package. I participated in the negotiations. The people that we talked to, the older employees, were real pleased because we were increasing the benefits to them. Prior to this change in the pension plan you had to have 2 years of service and be age 35 before you became a member. Then at the last change they gave you credit for all the years you spent with the company after you had served a 2-year apprenticeship.

Senator JAVITS. When they accepted this as part of the package, was anything at all said about the possibility that the plant would shut down or terminate or that they would be locked out of the plan as a result?

Mr. ROBY. We were always quite concerned about our plant. We knew that we were the smallest of four plants in the country making this product. We were well aware of the impact and the changes in the explosives industry. We talked about this in negotiations. We may have held wage settlements down somewhat by doing it because we couldn't price ourselves out of the market.

I believe that we inferred, if not actually said, that pensions were a part of the cost of the package. I know I inferred that to the employers and I was plant manager.

Senator JAVITS. Was anything said in that same connection that that part of the package might go out the window if the plant closed, or wasn't that considered at all?

Mr. ROBY. I don't think we said that in so many words, no.

Senator JAVITS. That is my impression. My impression is that that item is not mentioned in the fine print and workers are suddenly caught by surprise, although there it is as big as life in the contract.

Mr. ROBY. Even though you tell workers there is danger of the plant closing during negotiations they believe you are just kidding them. They say "He doesn't mean that. It can't happen to us."

Senator JAVITS. Thank you very much.

The CHAIRMAN. Thank you, Mr. Roby.

We have no further witnesses this afternoon. Tomorrow morning we will reconvene at 10 o'clock.

At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

(The material referred to follows:)

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
JENNINGS RANDOLPH, W. VA.
CLAIBORNE PELL, R.I.
EDWARD M. KENNEDY, MASS.
GAYLORD NELSON, WIS.
WALTER F. MONDALE, MINN.
THOMAS F. EAGLETON, MO.
ALAN CRANSTON, CALIF.
HAROLD E. HUGHES, IOWA
ADLAI E. STEVENSON III, ILL.
JACOB K. JAVITS, N.Y.
WINSTON PROUTY, VT.
PETER H. DOMINICK, COLO.
RICHARD S. SCHWEIKER, PA.
BOB PACKWOOD, OREG.
ROBERT TAFT, JR., OHIO
J. GLENN BEALL, JR., MD.

STEWART E. MCCLURE, STAFF DIRECTOR
ROBERT E. NAGLE, GENERAL COUNSEL

United States Senate
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

July 14, 1971
SPECIAL DELIVERY

Mr. Patrick Ward
Assistant Treasurer
Studebaker Worthington Corporation
530 Fifth Avenue
New York, New York

Dear Mr. Ward:

On March 1, 1971, by Senate Resolution 35, the U.S. Senate ordered the Senate Subcommittee on Labor to conduct a study of the private pension system in the United States, with special emphasis upon the need for protection of employees covered by these funds.

As you were advised on July 7, 1971, by a staff member of the Senate Subcommittee on Labor, Mr. Lester J. Fox of South Bend, Indiana, had informed the Subcommittee of alleged hardships resulting from inability to qualify for a pension under your pension plan. These were discussed with you in order to ascertain appropriate explanation in response to the difficulties recited.

The complainant has been invited to testify before the Subcommittee on Labor on or about July 27, 1971, on hearings to be held pursuant to the Senate study of private pension plans. It will be for the purpose of presenting the problem alleged.

Accordingly, the Subcommittee on Labor similarly invites your organization to designate a representative to appear to testify with respect to your pension plan benefits relating to Mr. Fox, and matters alleged by the complainant. It would be appreciated if you would indicate expeditiously whether you will appear. In the interim, please forward a copy of the pension plan and such other publications which you issue relating thereto. Your assistance is appreciated.

Sincerely,

Mario T. Noto
Special Counsel
Subcommittee on Labor

MTN:eph

Studebaker Worthington Inc.

July 23, 1971

Mr. Mario T. Noto
Special Counsel
Subcommittee on Labor
United States Senate
Washington, D. C. 20510

Dear Mr. Noto:

I have received your letter relative to the hearings you will hold on or about July 27th, in regard to the Studebaker Pension Plan. As you may know, the company has from time to time complied with various legislature requests to appear before committees investigating ramifications of the discontinuance of Studebaker automative operations in 1963. In the last such hearing held in South Bend, Indiana by Senator Hartke in May, 1971, Mr. C. M. McMillan, former Vice President of Industrial Relations of Studebaker Corp., appeared before the Senate's hearings and presented the facts leading up to said discontinuance and related pension problems in 1963. At this time, we also furnished copies of the various plans that were affected by the discontinuance of this part of our business.

Accordingly, we believe that the public record is complete relative to this matter. We do not believe that a further appearance would be of any material assistance to you as it would merely be a repetition of that testimony presented heretofore. Therefore, we do not wish to designate someone to appear in response to the allegations of Mr. Lester J. Fox at this time. Nonetheless we appreciate your invitation.

Very truly yours,

Patrick A. Ward
Assistant Treasurer

PAW:sg

(Whereupon, at 3:30 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, July 28, 1971.)

PRIVATE WELFARE AND PENSION PLAN STUDY, 1971

WEDNESDAY, JULY 28, 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 10 a.m. in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr., chairman of the committee, presiding.

Present: Senators Williams, Javits, and Schweiker.

Subcommittee staff members present: Mario T. Noto, special counsel; and Michael Gordon, minority counsel.

The CHAIRMAN. Our subcommittee hearing will come to order.

We will continue our subcommittee hearing on the broad subject of private pension plans.

This is the second day of hearings by the Senate Subcommittee on Labor concerning the problems and the hardships which workers in the United States experience with private pension plans.

Yesterday, we heard a case where a man, after having worked for 27 years for one employer and when personal hardships forced him to leave the company at 46 years of age, forfeited all pension benefits because the pension plan which covered him required vesting of benefits at age 50. Other witnesses also testified of long years of devoted service to their employer, only to find that when the time came to receive the pension benefits to which they had been led to believe they were entitled, the benefits were not to be had because there were no moneys in the pension fund.

Each of yesterday's witnesses described the different problems and causes which result in the denial of pensions. However, they left little doubt that there is need for corrective legislation to prevent their tragedies from being passed on to those who still look forward to pensions after the fulfillment of a working life. Workers have a right to receive the full pension benefits for which they have worked hard and which they have earned.

Today we continue our hearings, and again we shall hear testimony from workers who, because of deficiencies or inequities in pension plans, are not receiving retirement pensions which are rightfully theirs.

Our first witness this morning will be Iris Kwek.

Thank you very much, Mrs. Kwek, for being with us.

STATEMENT OF MRS. IRIS KWEK OF DETROIT, MICH., EMPLOYEE OF THE ANACONDA CO.

Mrs. KWEK. I want to thank you, Senator, for having these hearings. I had written you several months ago after seeing an article in the Detroit News regarding the proposed bill by yourself and Senator Javits. At that time I had no idea that the company I was working for was going to be closing in Detroit.

As I said, it is through seeing your article in the paper that this has come about.

My name is Mrs. Iris Kwek, and I live at 14893 Greenview in Detroit. My employment is being terminated at the end of August from the Anaconda branch in Detroit.

They have no vested-rights pensions. I have worked there 30 years with continuous performance. I started in 1941 in the billing department, and I have worked there continually.

The idea of vested rights when you are 19 years old is something that—actually, I don't think I knew what the word was. Even by the time you are 25, you are young and you are not thinking about these things. But 15 years ago the automotives in Detroit started this term "vested rights" and pensions started taking on meaning when the unions were negotiating to have this put into their contracts.

In the automotive industry the office employees are included in the unions as well as the factory workers.

The company, about this time, passed out a folder to the employees giving us a résumé of the insurance benefits we were getting and also of the pension plan and various other little things that we were getting and what they considered fringe benefits. I think the company called it our second paycheck. That seemed to be the term they were using.

But all along we knew in the back of our minds that the company had a good pension plan, supposedly. But, as I said, until you get older, this vested rights just doesn't mean much to you until you hit 35, and then you start realizing that this is an important feature. It was about this time that I realized that the Anaconda Co. did not have vested rights in their pension plan.

Things went on. I kept staying with the company, knowing that they had a tremendous pension plan. I just kept thinking that possibly they would put the vested rights into their plan.

In 1968 the union negotiated a vested-rights pension plan for the hourly employees in Detroit, and the salaried employees were elated, thinking that by the next year the company surely would give this to their salaried employees. But they didn't. They gave the employees a stock plan. I think it was in 1969.

It was quite a generous stock plan, but they still ignored the vested rights. I don't know which would have cost the most. But at my age the vesting would have been more important than a small stock plan, which I did accept at that time.

As I said in the first letter I wrote, Senator, I had just mentioned that this pending legislation would be a good thing because so many companies don't have vesting.

But then in May the company came around with a letter saying that they were closing part of the Detroit operations and they would

transfer some of the men and some of the other people would be laid off and that a few people would be retired. There were very few retired except in the mill. I think there were quite a few men in the mill, but they were covered by vested rights, so their pensions were given to them.

The company did offer me severance pay, which they evidently felt was adequate to take the place of a vested-rights pension. I had asked for the vested-rights pension in lieu of the severance pay, because I felt at my age a small lump sum of money would certainly not take the place of a pension which I had been looking forward to all these years.

After listening to some of the hearings yesterday, the pension that the Anaconda Co. gives is very generous. I can cite you an example.

The salary that I make now in a 10-year period, at which time I could have retired—I would have had 42 years service with the company. I would be getting approximately a $100-a-week pension, give or take a few dollars, which I think was more than any of those that were mentioned yesterday.

This was paid completely by the company. This was noncontributory by the employees. So anybody who stayed with the company any length of years, this was an incentive to stay. It certainly was an incentive on my part to stay, even though I had thought after working 30 years I might like to go into something else or stay home a few years or do something else. But I made up my mind that I would stay with the company because of this tremendous pension, knowing that my husband and I could certainly use this when we retired.

But, as I said, the company closed part of their operations. They lost some of their holdings in Chile this year, and they claimed they had to retrench. And they were taking some of their operations and consolidating them.

I found out since that the Anaconda Co. has a large office in Toronto, Ontario. The Canadian Government—I couldn't find out the exact year—but in Canada the Canadian Government has passed a similar law to what you are proposing.

As I said, I couldn't find the year it was passed. But I know it has been in effect at least 2 years. The office employees in the Canadian end of this company are protected with vested rights, as are all the factory workers or hourly people in the United States, because they were given vesting through the unions.

But it is the salaried employees in the United States who have no protection. You don't think you need it until something like this comes along. This has been an old, established company, and you just never think that their economic stability is going to come to a point where they will have to retrench.

This has been their motto, that they were an old, large company and reliable, and the employees just stayed and stayed until they got this quite generous pension.

The CHAIRMAN. How long would you have to stay?

Mrs. KWEK. Longer to get the pension?

The CHAIRMAN. To get the pension.

Mrs. KWEK. If this economic situation had not come up, I would have had to stay until I was 60. They would consider that an early

retirement. I would have had 42 years of continuous service with the company. They would have let me retire at 60. I am now 48.

It is hard to admit age. Anyway, that is 12 more years.

Senator JAVITS. This is a real exercise of courage, Mrs. Kwek.

Mrs. KWEK. Believe me, outside of my husband and my mother, there are not too many people I have discussed this with.

Anyway, I am 48, so that means I would have had 12 more years of continuous service. That would have been 42 years, and then I would have gotten this pension.

I was projecting this. At my salary I get now, as compared to—they have a formula. Up to $7,800 they contribute 1.3 percent. And after that they contribute 1.5, and then multiply that by—the maximum years of service they will use is 35.

So, as I said, I was projecting what my salary would have been in 12 years that I would be getting, at least $100-a-week pension, which I think is quite tremendous.

But what good is it if you don't get it?

Senator JAVITS. Mr. Chairman, may I ask a question at this point?

The CHAIRMAN. Certainly.

Senator JAVITS. Mrs. Kwek, do you consider yourself and your husband a middle-class family?

Mrs. KWEK. Yes; because we are good managers, I think. We have no children. I have worked ever since I was 18, and my husband has worked ever since he was that old. And I think we have probably done well with what we have.

I would say we are middle class; yes.

Senator JAVITS. You are certainly not a poor family?

Mrs. KWEK. No; and, as I said, I think we have more than most people for our income.

Senator JAVITS. The reason I asked you this question is that it is thought so often that legislation like the one we are discussing is for the poor. Here is a situation in which a tremendous injustice is being carried out on the traditional American middle class working family.

Would you agree with that?

Mrs. KWEK. Yes.

As I said, my husband works for the city of Detroit and he has only worked there, I would say, 5 or 6 years. So the pension plan that he has gone into, by the time he retires, will not be that tremendous. As I say, that is partly why I thought I would continue working and between the two pensions we would be able to live nicely.

Senator JAVITS. Very comfortably?

Mrs. KWEK. Not lavishly, but nicely.

Senator JAVITS. You felt the pension benefit was an important aspect of your working for the company in terms of what you were going to get out of it?

Mrs. KWEK. I would say it is the only reason, except the monetary value of getting paid—naturally they paid me all this time. I felt the pension was the incentive for my staying, since I have only been married 10 years and during this time it is difficult to work and keep a home. The pension was the greatest thought in my mind.

Senator JAVITS. Did you go over all of this fine print at the time you thought that?

Mrs. KWEK. As I said, vesting per se really didn't come into prominence until the automotive companies started stressing this. From 40 years of age and 10 years service is what they have for their employees.

I have several relatives who work in automotive offices. I think they brought this into prominence.

Senator JAVITS. Did you realize at the time that you were figuring the pension benefit was an important aspect of your compensation, that you would have to work until you were 65 for the same company in order to get it?

Mrs. KEWEK. Sixty. They have cut that down. They prefer you to work until 65. But, because of the years of service I had already accumulated, I would have retired at 60.

Yes; I was aware of this. The people that I work with are all aware of this also.

In the last 4 years some of the women friends of mine who have quit, for various reasons, either have adopted children and quit working or have older husbands and have left the company—I had a friend who left last year. She was 49. I think she had 28 years with the company, and she received nothing.

Senator JAVITS. You were personally willing and happy to continue with this company until you would actually get your pension?

Mrs. KWEK. Oh, yes; 6 months ago, in fact, the office manager was talking to me. And he asked me if I was going to continue working. And I said yes. I said, "I feel with the large pension benefit I have no recourse but to work, and I enjoy working."

If I wasn't working there, I probably would have been working somewhere else if I could get a job at my age.

Senator JAVITS. And you have now been severed not for cause? You have just been severed because they say economic conditions make it necessary?

Mrs. KWEK. Actually, I am still on the payroll—or will be, hopefully, until the end of August.

Senator JAVITS. But you are being severed——

Mrs. KWEK. Oh, yes. I was notified the 12th of May, I think it was.

Senator JAVITS. But that is not for cause?

Mrs. KWEK. Oh, no.

Senator JAVITS. Wasn't there kind of a little comic opera bit about the inquiry of this committee and what ensued?

Mrs. KWEK. Oh, yes.

Senator JAVITS. Will you tell us a little about that?

Mrs. KWEK. For 2 months they literally ignored me, although I continued to go to work every day and do my work. Many of the employees who were being severed were taking tremendous times off.

But one afternoon they called me into the office, and the plant manager said, "Mrs. Kwek, something has come up." I said, "Oh, would you like me to price or do something for you?"

I took my tablet in there. He said, "No. We found a job, and we will be able to retain you."

I was amazed. After 2 months of literally ignoring me—he said, "Yes. Would you want to consider taking the job?" I said, "Certainly."

You know that at my age and with this severance pay, which they considered quite adequate—It probably is. But by the time the Govern-

ment takes the tax off it—I even checked with the Internal Revenue, and it is not even a capital gain.

Anyway, this was a Friday afternoon. So he said, "Well, I will talk with you Monday, and I will let you know more of the details, whether the wage scale will be the same." I said, "Well, even if it is less, I have no recourse but to accept it."

Monday he was busy at a meeting. So Tuesday I rang his secretary, and I asked if I could speak to Mr. Frost. And I went up to his office. And he looked at me as if to say, what did I want?

I asked him if he had come to any conclusions on this job, what it would entail. He said, "Oh, the whole thing has fallen through."

This was somewhere around the time that the company in New York had been contacted by the Senate subcommittee.

Senator JAVITS. You had been invited to testify before you had this call?

Mrs. KWEK. Yes, I had.

Senator JAVITS. And then after you had gotten the request to testify, you were invited to appear and the suggestion was made that you could have another job. Is that right?

Mrs. KWEK. Right.

Senator JAVITS. Then did you tell us that you would not testify?

Mrs. KWEK. Well, I said, "How could you testify against the company that you were working for?" I mean, I just couldn't do that.

As I said, I have nothing against the company, really. I have tons of friends that I still associate with that I have worked with. It is a friendly type of place where I work, as I said, plus that fact that over the years it is this pension that has really held me there.

Senator JAVITS. And then your job was kind of snapped out from under you, and then you decided you would testify?

Mr. KWEK. Yes. I said, well, then, I had no recourse.

He made me feel as if the whole thing had just been sort of a hoax.

Really, it is quite a traumatic thing to do somebody—to hire and fire you the same day after 30 years and then take it away again—because the whole weekend I was thinking that things were going to work out fine. I had a good night's sleep for the first time in a month, really.

I don't know whether women get more emotional over these things than men. I don't think so after seeing some of these men testify yesterday. I think they were very emotional.

Senator JAVITS. They certainly were.

When you were offered the job, did you tell the manager that you would or wouldn't testify? Did you discuss your testimony?

Mrs. KWEK. No. He did not discuss this with me at all.

Senator JAVITS. No mention was made of it?

Mrs. KWEK. No.

Senator JAVITS. It was your decision that you would not testify?

Mrs. KWEK. Yes. I felt you have got to have some loyalty to a company after 30 years. They have been paying my salary all this time.

Senator JAVITS. I think you have loyalty to your company, and I don't think you are testifying against the company.

Mrs. KWEK. No. I am testifying against this system.

Senator JAVITS. That is exactly right.

Mrs. KWEK. And these are the words of two of my—I hate to call them bosses—but two of the officials who were extremely elated at my being invited down here. They did not know this until last Friday.

The CHAIRMAN. Who was elated?

Mrs. KWEK. Two of my immediate superiors. I don't know whether I should—I can give you the names, but I don't know whether I should.

The CHAIRMAN. They are in the same situation?

Mrs. KWEK. Because one of these men is in his early forties, and the other in his late thirties. These people are so elated that somebody is going to do this, because the shortcomings of this pension plan are well known to all the salaried employees, especially because in the last few years, as I said, some of these older women, for one reason or another, have left the company, with nothing.

Senator JAVITS. What is this pension board that we read about that could have given you a deferred pension if it wanted to? Who is on that board? Do you know?

Mrs. KWEK. I don't think anybody in Detroit. I think the pension is probably, per se, controlled by the Anaconda Co. in New York.

Senator JAVITS. As far as you know, it is in the corporate offices?

Mrs. KWEK. Yes; I think so.

Senator JAVITS. And you don't know the rules by which it operates, do you, as to whether it will give you a vested right or not?

Mrs. KWEK. No.

I think when they were broached on it, they said they could not afford to give their salaried employees a vested-rights pension

Last night I picked up one of the Washington papers, and they are still a profitmaking organization according to the paper I bought at the newsstand last night.

Their quarterly earnings were in the millions this year.

Senator JAVITS. You don't begrudge them their earnings, Mrs. Kwek, just so long as they take care of their workers?

Mrs. KWEK. No, I don't. If it is not profitmaking, you are not in business for long.

Senator JAVITS. Mr. Chairman, may the record show that in this particular case the corporation in question, to wit, the Anaconda Co., in answering our pension study form P–1 failed to give us any information on part III, the benefits and forfeitures, and so forth.

May it also show a very interesting condition in the funding of this plan, for which they furnished information in form P–1.

I would like parts III and IV included in the record.

(The information referred to follows:)

Part III. Data on Benefits and Forfeitures

(Where records of the Plan are unavailable, estimate if necessary but indicate if the figure is an estimate.)

19. A. Specify the total number of persons who have participated in the Plan since 1950 or since the Plan's establishment if that date is later than 1950 ..... Not Available

B. Specify the total number of persons who have participated in the Plan within the past 5 years ..... Not Available

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20. A. Specify the total number of participants who received benefits since 1950 or since the the Plan's establishment if that date is later than 1950:

(1) Normal retirement _____)
(2) Early retirement _____)
(3) Disability retirement _____) 6,126 through December 31, 1969
(4) Death Spouse's Pension)
(5) Other _____

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement ..... 200 (estimated)

C. Specify the total number of participants within the past 5 years who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement ..... 120 (estimated)

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21. A. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for any reason (include those who retired and/or died) ..... Not Available

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for reasons other than normal or early retirement ..... Not Available

C. Specify the total number of participants within the past 5 years who left the scope of the Plan for any reason (include those who retired and/or died) ..... Not Available

D. Specify the total number of participants within the past 5 years who left the scope of the Plan for reasons other than normal or early retirement ..... Not Available

22. Specify according to the following categories the total number of participants, regardless of their age, who left the scope of the Plan without entitlement to any retirement benefits:

A. Since 1950 or since the Plan's establishment if that date is later than 1950 ..... Not Available

B. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 15 years service under the Plan ..... Not Available

C. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 10 years service under the Plan ..... Not Available

D. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 5 years service under the Plan ..... Not Available

E. Within the past 5 years ..... Not Available

F. Within the past 5 years with more than 15 years service under the Plan ..... Not Available

G. Within the past 5 years with more than 10 years service under the Plan ..... Not Available

H. Within the past 5 years with more than 5 years service under the Plan ..... Not Available

I. Within the past 5 years due solely to voluntary separation ..... Not Available

J. Within the past 5 years due solely to failure to meet continuous service requirements ..... Not Available

23. Specify according to the following categories the average age of participants who left the scope of the Plan without entitlement to retirement benefits:

A. Within the past 5 years with more than 15 years service under the Plan.... Not Available

B. Within the past 5 years with more than 10 years service under the Plan.... Not Available

C. Within the past 5 years with more than 5 years service under the Plan..... Not Available

24. Average monthly pension payable to all types of pensioners then in receipt of benefits:

A. Indicate the average monthly benefit paid to retirees 5 years ago.
(1) Normal _____ (2) Early _____ (3) Disability 12/31/64 - $ 64.46

B. Indicate the average monthly benefit paid to retirees within the last year. 12/31/69 - $116.61
(1) Normal _____ (2) Early _____ (3) Disability _____

Part IV. Funding Status Data

25. Specify the following (give the latest figures):

A. Total assets of Plan (at cost, book, and market value):

(1)	(2)	(3)	(4)
_____	$30,641,000	$33,814,000	12/31/69
(Cost)	(Book)	(Market)	(Date of latest evaluation)

B. Total liabilities for all accrued vested benefits (include benefits vested under vesting, early retirement, disability retirement and normal retirement provisions, and give present dollar value) $107,000,000 (approximate) — 1/1/70 (Date of latest evaluation)

C. Total value of all accrued benefits, treating all such benefits as if they were vested (give present dollar value) $123,722,000 — 1/1/70 (Date of latest evaluation)

26. A. Provide a concise description of the actuarial methods, factors and assumptions used in determining contributions or premium payments under the Plan (indicating specifically the assumption used with respect to the rate of employee termination for reasons other than death, disability, or retirement).

See attached Appendix A from January 1, 1970 actuarial report. As indicated, a discount for turnover is taken by including in the valuation only those covered employees who have 5 or more years of service. (No discount for turnover is taken with respect to such employees in the valuation.)

B. Except for mult. ..ployer plans, specify the total number of years (identifying each year) since 1950 or since the Plan's establishment if that date is later than 1950, in which the employer did not make contributions to the Plan, or reduced his rate of contributions to the Plan, indicating concisely the factors which dictated this result.

None - the Company has made contributions to the Plan each year since its establishment and these contributions have been in amounts at least sufficient to meet the funding requirements under the Pension Agreements as specified in 10. (A)(2) of this form.

C. If a multiemployer plan, list those employers who are delinquent in their contributions to the Plan as of the date of this study, the duration of the delinquency, the steps, if any, taken by the Administrator in this respect, the total amount of delinquent contributions, and the total number of currently contributing employers.

Not Applicable.

27. A. Indicate the total amount ($ value) of loans made by the Plan fund which are outstanding as of the date of this study (exclude investments in government, corporate and other bonds)..... None

B. Indicate the total amount ($ value) of loans made by the Plan fund which are outstanding as of the date of this study which were made without collateral being provided by the debtor..... None

C. Indicate the total amount ($ value) of loans made by the Plan fund which are in default as of the date of this study---------- None

D. Indicate the total amount ($ value) of loans made by the Plan fund which are in default and which have been written off as uncollectable as of the date of this study---------- None

E. Indicate the total amount ($ value) of debt owed by the Plan fund_____ None

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28. A. List and identify all employers contributing to the Plan fund (including any employer controlling such an employer, controlled by such an employer or under common control with such an employer) in whom the Plan fund has invested its assets, or with respect to whom the Plan fund has made a loan, guaranteed a loan, or pledged its assets within the past 5 years. Indicate the amount and date of such investment, loan, pledge, etc., for each employer listed.

None.

B. List and identify all officers or employees of the union whose members are covered by the Plan with respect to whom the fund has invested its assets or made a loan, guaranteed a loan, or pledged its assets, within the past 5 years. List and identify any corporation, joint-stock company, mutual fund, etc., which such officer or employee owns or in which he has controlling interest, with respect to whom the fund has invested its assets or made a loan, guaranteed a loan, or pledged its assets, within the past 5 years. Indicate the amount and date of such investment, loan, pledge, etc., for each officer or employee listed, or of each entity owned or controlled by him.

None

29. Indicate what percentage of corporate stock at current market value held by the Plan as of the date of this study was purchased directly from the issuer or owner ..... None

30. Specify the following:

A. The average amount of administrative costs charged to the Plan for the last 5 years ..... None

B. The ratio (percent) of current administrative costs charged to the Plan to total fund assets calculated at current market value ..... None

C. The ratio (percent) of total administrative costs charged to the Plan for the last 5 years to the total income earned by the fund during the last 5 years ..... None

D. The ratio (percent) of total administrative costs charged to the Plan for the last 5 years to the total amount of benefits paid out by the Plan during the last 5 years ..... None

31. A. Indicate what percentage of total Plan fund assets at current market value as of the date of this study has been invested in arrangements intended to provide funds for housing or other social-economic improvement programs ..... None

B. List and identify each such program in which the Plan fund has invested and the amount of the investment at current market value ..... --

THE ANACONDA COMPANY
PENSION PLAN FOR DAY'S PAY EMPLOYEES

APPENDIX A

Statement Of Actuarial Method And Assumptions
Used For Valuation

Actuarial Method

The principal funding method used in the valuation is the accrued benefit method (the "unit credit" method as set forth in Part III(D) of the Bulletin on Section 23(p)(1)(A) and (B), issued by the Internal Revenue Service under date of June 1, 1945).

All of the benefits provided by the Plan are valued using this actuarial method, with the exception of the disability, spouse's and 75/80 benefits. The estimated cost of these benefits is determined on the "one-year term" cost method. A reserve is maintained for each such benefit equal to the accumulation of the unused one-year term costs, up to a maximum of five times the current cost.

Actuarial Assumptions

Interest:	4% per annum.
Death:	The Group Annuity Table for 1951, set back one year.
Turnover:	Employees with less than five years of service are excluded from the valuation as a form of turnover discount.
Retirement:	At age 65 or at the valuation date, if older than 65, but further asuming that 50% of the employees eligible for 60/30 retirement benefits will retire when first eligible for such benefits.
Disability:	Rate of disability - 1955 UAW-CIO Table. The benefit costed is the benefit payable before age 65, since the regular valuation includes the cost of the benefit payable after age 65. Mortality as to benefits payable before age 65 to disability pensioners is assumed to be in accordance with the 1944 Disabled Railway Employees' Mortality Table.
Provision For Expenses:	None.
Retirement Rates For 75/80 Pensions:	1% per year for eligible employees up to age 55, 1½% per year for eligible employees age 55 through 59, 2% per year for eligible employees ages 60 through 64. The benefit costed is the benefit payable before age 65, including the temporary supplement of $130 per month since the regular valuation includes the costs of the benefit payable after age 65.
Additional Assumptions For Spouse's Pension:	80% of eligible employees are assumed to have a spouse at the time of their death. It is assumed that the spouses will be three years younger than the employees.

Senator JAVITS. This plan covered their hourly workers. According to their own record, that plan apparently had $107 million in liabilities for all accrued vested benefits and $33,814,000 in plan assets as of December 31, 1969.

The $107 million figure is as of January 1, 1970.

Do you have the pension plan booklet which shows the composition of the pension board, Mrs. Kwek?

Mrs. KWEK. I don't know whether it is spelled out who the board is.

As I said, I have this folder here.

The CHAIRMAN. We have a copy of it and the Anaconda retirement plan.

Mrs. KWEK. Yes; I have that. But I don't know if it is spelled out who was on the board.

Senator JAVITS. In any case, Mr. Chairman, I ask unanimous consent that the record include the pertinent provisions which relate to the witness's testimony.

The CHAIRMAN. All right.

I think at this point, too, we will include our invitation to Mr. Walter Mayer, who is the assistant pension plan administrator of the Anaconda Corp., inviting him to appear, and his letter of reply, in which he states that the company will not appear to testify.

(The information referred to follows:)

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
JENNINGS RANDOLPH, W. VA.
CLAIBORNE PELL, R.I.
EDWARD M. KENNEDY, MASS.
GAYLORD NELSON, WIS.
WALTER F. MONDALE, MINN.
THOMAS F. EAGLETON, MO.
ALAN CRANSTON, CALIF.
HAROLD E. HUGHES, IOWA
ADLAI E. STEVENSON III, ILL.
JACOB K. JAVITS, N.Y.
WINSTON PROUTY, VT.
PETER H. DOMINICK, COLO.
RICHARD S. SCHWEIKER, PA.
BOB PACKWOOD, OREG.
ROBERT TAFT, JR., OHIO
J. GLENN BEALL, JR., MD.

STEWART E. MCCLURE, STAFF DIRECTOR
ROBERT E. NAGLE, GENERAL COUNSEL

United States Senate
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

July 14, 1971

Mr. Walter Mayer
Asst. Pension Plan Administrator
Anaconda Corporation
25 Broadway
New York, New York

Dear Mr. Mayer:

On March 1, 1971, by Senate Resolution 35, the U. S. Senate ordered the Senate Subcommittee on Labor to conduct a study of the private pension system in the United States, with special emphasis upon the need for protection of employees covered by these funds.

As you were advised on July 9, 1971 by a staff member of the Senate Subcommittee on Labor, Mrs. Iris Kwek of Detroit, Michigan, had informed the Subcommittee of alleged hardships resulting from inability to qualify for a pension under your pension plan. These were discussed with you in order to ascertain appropriate explanation in response to the difficulties recited.

The complainant has been invited to testify before the Subcommittee on Labor on or about July 27, 1971, on hearings to be held pursuant to the Senate study of private pension plans. It will be for the purpose of presenting the problem alleged.

Accordingly, the Subcommittee on Labor similarly invites your organization to designate a representative to appear to testify with respect to your pension plan benefits relating to Mrs. Kwek, and matters alleged by the complainant. It would be appreciated if you would indicate expeditiously whether you will appear. In the interim, please forward a copy of the pension plan and such other publications which you issue relating thereto. Your assistance is appreciated.

Sincerely,

Mario T. Noto
Special Counsel
Subcommittee on Labor

MTN:lt

66-500 O-71—pt. 1—17

THE ANACONDA COMPANY
25 BROADWAY, NEW YORK, N. Y. 10004

OFFICE OF
DIRECTOR OF PERSONNEL

July 23, 1971

Mr. Mario T. Noto, Special Counsel
Subcommittee on Labor
United States Senate
Committee on Labor and Public Welfare
Washington, D. C. 20510

Dear Mr. Noto:

This will acknowledge receipt of your letter of July 14, 1971 in which you invite The Anaconda Company to provide information about its Pension Plan and the settlement that we are making with Mrs. Iris Kwek of Detroit, Michigan, who will be laid-off in a permanent curtailment of operations of Anaconda American Brass Company in that city.

We are pleased to include a copy of the Anaconda Retirement Plan which is provided for all salaried employees of the company. In addition, we are sending you a section of our employee handbook in which the same information is communicated to our employees. We believe this is self-explanatory and that it clearly states how the plan operates.

Please be advised that a company representative will not appear to testify with respect to benefits to be paid to Mrs. Kwek.

Upon her termination she will receive $7034.40, which amount is based on her 30 years of service with the company. Under the Retirement Plan she does not qualify for a pension benefit at her present age of 44. You will note that the Retirement Plan does not provide a vested benefit of any kind until age 60 and then only with the accumulation of 15 years of service. The Anaconda plan, which is a non-contributory plan, has been in effect since January 1, 1955. Prior to that time there was no formal Retirement Plan.

If there is any additional information that you require, we will, of course, be pleased to cooperate. The Anaconda Company appreciates the importance of the study now undertaken by the Senate Subcommittee on Labor and will be pleased to do whatever it can to be of assistance.

Yours very truly,

Douglas Munroe,
Director of Personnel

Atts.

Retirement Security

Retirement Security

With proper planning, retirement can provide some of the most rewarding years of life. These years will be all the more enjoyable if they are relatively free from worry about money.

Anaconda has a number of employee benefits to help make your "golden years" more enjoyable.

. . . Retirement Plan

. . . Medical Benefits—the coverage for retirees is discussed under Medical Security in this section of the handbook.

. . . Savings Fund Plan—Your opportunity to accumulate a fund for use in your retirement is discussed elsewhere in this section.

. . . Social Security

The plan

Salaried employees not covered by any other pension or retirement plan agreement automatically participate in the Anaconda retirement plan, which has these main features:

. . . Regular monthly income

. . . Entirely paid for by Anaconda

. . . Flexible, with provisions adaptable to a variety of individual circumstances.

There are three types of retirement provided for under the plan:

Normal—the normal retirement date is the first day of the month after your 65th birthday. This is the date when you may expect to retire under normal circumstances.

Early—you may retire on the first day of any month after your 60th birthday, provided you have at least 15 years of credited service.

Disability—if you become totally and permanently disabled between the ages of 50 and 65 and have completed at least 15 years of credited service, the retirement board may approve a disability retirement. The retirement board will be governed in its decision by medical reports on your physical condition.

Retirement benefits vary according to the type of retirement. Two terms are used frequently in determining benefits.

(1) **Credited service** means how long you have continuously worked for Anaconda up to the first of the month following

your 65th birthday. You will receive credit for service after age 65 up to a maximum of 35 years. Employment prior to a break in service is not included, but you will receive credit for time spent in the U.S. armed forces, absences due to illness or injury, and most approved leaves of absence.

(2) **Final average salary** means your average annual salary, excluding commissions, bonuses, and special payments, received by you during the 60 calendar months immediately preceding your retirement.

With these definitions in mind, you will understand the benefit computations for each of the three types of retirement.

Normal retirement

1.3% of the first $7,800 of your final average salary

PLUS

1.5% of your final average salary in excess of $7,800 multiplied by your years of credited service up to a maximum of 35.

Your monthly retirement benefit will be 1/12 of the annual figure computed by this formula.

You may compute your own normal retirement benefit by using this formula:

	YEAR	MONTH
1. Your date of birth	_____	_____
2. Normal retirement date (first day of month after age 65)	_____	_____
3. Date of employment	_____	_____
4. Credited service equals #2 minus #3 (max. 35 years)	_____	_____
5. Average annual salary (last 60 months)	$	
6. a. 1.3% of first $7,800	$	101.40
b. 1.5% of remainder of average annual salary	$	
c. Add a. and b.	$	
7. Estimated annual benefit: #6c × #4	$	
8. Estimated monthly benefit: #7 ÷ 12	$	

Early retirement

When your early retirement application is approved and you have 35 years of credited service, your retirement benefit will be computed the same as a normal retirement based on your final average salary at your retirement date.

If you have less than 35 years of credited service (but at least 15), you have two options:

1. You may elect **early deferred** retirement with full monthly payments on the first day of the month following your 65th birthday.
2. You may elect **early immediate** retirement with monthly payments beginning immediately at an amount that is reduced by 4 percent for each year prior to age 65 that you retire.

In either case, the same basic normal retirement formula is used.

If you retire after age 65, your retirement benefit will be computed in the same manner as upon normal retirement, except that your years of credited service will be figured to your actual retirement date, but not in excess of 35 years. Your final average salary will also be figured as of the date of your actual retirement.

Disability retirement

To be eligible for disability retirement you must be totally and permanently disabled, must be between age 50 and 65, and must have completed at least *15 years of credited service*. Disability retirements must be approved by the retirement board.

If you meet these requirements, a disability retirement application will be processed for you during the second six months you are under salary continuation plan. If approved, your retirement benefit will be computed in the same manner as under normal retirement, based upon your years of credited service and final average salary at the time of disability.

Your disability retirement benefit will be included in the 70 percent of your base monthly salary guaranteed you during the second six months of salary continuation and during participation in long-term disability insurance.

The Anaconda retirement plan has several other provisions which allow for even greater protection for your dependents.

(1) **Spouse's benefit**—if you die after age 55 while still employed by Anaconda and you have 15 or more years of credited service, your spouse will be entitled to a spouse's benefit. Payment of this benefit is automatic, but you must have been married to this spouse for at least two years preceding your death.

The spouse's benefit is monthly life income in the same amount as if you had retired under an election of an optional retirement allowance specifying that 100 percent of your reduced allowance be paid to your spouse.

(2) **Optional retirement allowances**—you may elect an optional retirement allowance when you retire either

. . . at or after your normal retirement date

. . . at your early retirement date with retirement benefit payments to begin immediately upon your retirement.

If you elect an optional retirement allowance, you will receive a reduced benefit during your lifetime, and after your death your spouse or other dependent beneficiary will continue to receive the percentage of this reduced allowance that you selected until his or her death. Of course, your benefit will be automatically reduced if you choose the optional retirement allowance, since retirement income will then have to cover the expected lifetime of two persons.

You must make your election by filing written notice through your employee relations department at or shortly before your retirement date. Your elections will be canceled if you retire for disability, if you retire before age 65 on a deferred benefit, or if you die before age 65 and before retirement.

If your designated beneficiary dies before you retire, you may designate a new beneficiary or take your regular retirement benefit without the optional allowance feature. You may not change or rescind the option after you retire.

No rights or benefits are provided under the retirement plan if your service is terminated for any reason, including death, prior to your actual retirement. The only exceptions are if you have met the requirements for a spouse's benefit or have elected an optional retirement allowance and die following your normal retirement date.

Social Security

You will be able to collect social security retirement income when you retire at age 65. This will be in addition to any benefits received from the Anaconda retirement plan.

At least 3 months before you retire you should contact your social security office for information about your rights.

There are other social security benefits for which you may be eligible. These are discussed briefly in the appropriate parts of this section of this handbook. However, as benefits, eligibility requirements, and the social security tax rate are frequently changed by Congress, your best source of information is the Social Security Administration.

You and Anaconda share equally in the cost of Social Security.

Senator JAVITS. We may have to exercise subpena power in selected cases. But I hope very much that corporations which can help us will appear voluntarily.

I would like to emphasize, Mr. Chairman—although the Chair is extremely well able to speak for himself—that we are complaining against no one and finding moral fault with no one unless there is shown a fiduciary breach or dishonesty.

The CHAIRMAN. I certainly agree.

Perhaps this is a classical case. They stand on their plan. Their plan is rather clear. There is just plainly no vesting until retirement at age 60, with continuous service over the required number of years. That is the plan.

I think if they have company problems in arriving at a plan which will meet the needs of people, they ought to come in and tell us what their problems are.

Senator JAVITS. If we are going to frame legislation, I think it is in the highest public interest that we should know what their problems are, because it would be most ill-advised for us to make legislation which would be impractical, which would reduce the amount of a pension plan. That would be against the interests of the people we hope to protect.

The CHAIRMAN. Certainly.

Senator JAVITS. Thank you very much, Mr. Chairman.

Mr. Chairman, we seem to have a copy of their pension plan for salaried employees, so I think perhaps the whole thing might go in.

The CHAIRMAN. That will complete the record; yes.

(The information referred to follows:)

RETIREMENT PLAN FOR SALARIED EMPLOYEES

OF

THE ANACONDA COMPANY

SECTION I Definitions.

The following words and phrases, as used herein, have the following meaning unless a different meaning is plainly required by the context:

(1) "Company" means The Anaconda Company and any domestic Subsidiary which may be included in this Plan by designation of the Board of Directors of the Company.

(2) "Effective Date of the Plan" means January 1, 1955.

(3) "Subsidiary" means any corporation 50% or more of the outstanding capital stock of which is owned by The Anaconda Company and/or any one or more Subsidiaries.

(4) "Affiliate" means any corporation 25% or more of the outstanding capital stock of which is owned by The Anaconda Company and/or any one or more Subsidiaries.

(5) "Employee" means any salaried employee of the Company (not otherwise eligible for benefits under any other pension or retirement plan established by the Company or any Company hereafter merged with the Company or whose assets or a majority of the stock of which shall be acquired by the Company) including an officer, but not including any director who is not an employee, who is (i) a citizen of the United States, or (ii) regularly employed in the United States, or (iii) hired by the Company in the United States. For purposes of the preceding sentence, a person shall be deemed to be regularly employed in the United States if his employment in the United States is expected to continue for at least one year.

(6) "Credited Service" means the period of continous employment of any Employee in the service of the Company or any Subsidiary, domestic or foreign, prior to the date of his retirement calculated from the later of the date of first employment or the date of re-employment following any break in service. Credited Service with respect to any Employee shall include the (i) periods of service of an Employee with any company which shall be or has been merged with, or whose assets, or a majority of the stock of which, shall be or have been acquired by the Company or any such Subsidiary (ii) periods of service of an Employee with any Affiliate, and (iii) periods of service rendered by an Employee at the request of the Company in any activities relating to or affecting the interest of the Company or any Subsidiary. In the following circumstances, periods of absence shall not be considered a break in service and shall not be deducted in computing years of Credited Service. All participants under similar circumstances shall be treated alike.

(a) absence for service in the military forces of the United States, including the Coast Guard and Merchant Marine;

(b) absence due to sickness, accident, temporary shut-down or other unavoidable circumstances, insofar as any such absence and the length thereof is approved by the Retirement Board; and

(c) absence for education or for community service for periods not exceeding six months' duration; or absence for some other purpose, for periods not exceeding six months' duration, which is approved in advance by the Retirement Board as being of substantial benefit or importance to the Employee, the Company, or the community.

A leave of absence under the subsection (c) for a period in excess of six months which is approved by the Retirement Board shall not be considered a break in service, but any period of such absence in excess of six months shall not be counted as Credited Service.

(7) "Final Average Salary" means the average annual salary received by an Employee from the Company during the 60 calendar months immediately preceding an Employee's retirement under this Plan or the average annual salary received by an Employee during his five highest-paid consecutive calendar years of Credited Service, whichever is higher.

(8) "Salary" means annual salary on a regular and fixed basis excluding commissions, bonuses and any other special payments.

(9) "Board of Directors of the Company" means the Board of Directors of The Anaconda Company.

(10) "Retirement Board" means the managing board of this Plan as provided in SECTION VI hereof.

(11) "Actuarial Equivalent" means a benefit having an equivalent value when computed at the rate of interest and on the actuarial tables last adopted by the Retirement Board on the recommendation of the actuary retained by the Company for actuarial computations under this Plan.

(12) The masculine pronoun wherever used includes the feminine pronoun, unless the context clearly indicates otherwise.

SECTION II Time of Retirement.

(1) Normal Retirement Date.

The normal retirement date of any Employee is the first day of the month next following his attainment of age 65; at which time an Employee shall retire unless the Retirement Board has recommended his continued employment by the Company and such recommendation has been approved by the Chairman of the Board and the President of the Company, except that the continued employment of an Employee beyond age 68 must also be approved by the Board of Directors.

(2) Early Retirement Date.

Any Employee who has at least 15 years of Credited Service may retire as of the first day of any month prior to his attainment of age 65 at any time on or after attainment of age 60.

(3) Disability Retirement Date.

Any Employee who has not reached his normal retirement date but who has attained age 50 and has at least 15 years of Credited Service shall, if the Retirement Board finds that he has suffered a total and permanent disability, be retired from service as of the first day of a calendar month not less than 30 nor more than 90 days next following receipt by the Retirement Board of written application for disability retirement made

by the Employee or by the Company. Total and permanent disability means an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has continued for a period of at least 6 consecutive calendar months and can be expected to be of long-continued and indefinite duration or to result in death. In determining the nature and extent of any Employee's disability, the Retirement Board shall consider the report or reports of a physician or physicians appointed or approved by the Retirement Board who have examined such Employee with respect to such disability. The final determination of the nature and extent of such disability shall be made only by the Retirement Board.

SECTION III Eligibility for Benefits.

All Employees who retire pursuant to the provisions of SECTION II shall be eligible for retirement benefits under this Plan.

SECTION IV Retirement Benefits.

(1) Normal Retirement Benefit.

The normal retirement benefit payable on retirement on or after February 1, 1970 and at or after the normal retirement date shall be at an annual rate computed as follows: The aggregate of 1.3% of the first $7,800, and 1.5% of the balance of Final Average Salary, multiplied by the number of years of Credited Service up to a maximum of 35 years of Credited Service.

(2) Early Retirement Benefit.

(a) If an Employee retires with less than 35 years of Credited Service prior to his normal retirement date under the provisions of Paragraph (2) of SECTION II, such Employee at his option will receive, based on his Credited Service and on his Final Average Salary, (i) a normal retire-

ment benefit commencing at age 65, or (ii) a reduced amount of retirement benefit commencing at his early retirement date, which will be such normal retirement benefit reduced by 1/3rd of 1% for each month by which his early retirement date precedes his normal retirement date.

(b) If an Employee retires with 35 or more years of Credited Service under the provisions of Paragraph (2) of SECTION II he will receive, the normal retirement benefit commencing at his early retirement date.

(3) Disability Retirement Benefit.

(a) In case of retirement of an Employee prior to his normal retirement date under the provisions of Paragraph (3) of SECTION II, the Employee will receive a disability retirement benefit, computed as a normal retirement benefit based upon his Final Average Salary and his Credited Service at the time of his disability retirement commencing as of the date of his disability retirement; provided that there shall be deducted from such benefit any amounts which may be paid or payable on account of the same disability to or on account of the Employee as a result of premiums, taxes or contributions paid by the Company under any Workmen's Compensation Law, policy, or similar plan, whether self-insured or otherwise, (except fixed statutory payments for the loss of any bodily member), in such equitable manner as the Retirement Board shall determine.

(b) Once every year the Retirement Board may require any Employee who is receiving a disability retirement benefit and who has not reached his normal retirement date to undergo a medical examination by a physician or physicians satisfactory to the Retirement Board. Should any such Employee refuse to submit to such medical examination, his disability

retirement benefit shall be discontinued, and should his refusal continue for a year all rights in and to the disability retirement benefit shall cease. If the Retirement Board finds from such medical examination or otherwise that the disability of any such Employee who is receiving a disability retirement benefit and who has not reached his normal retirement date has been removed, his disability retirement benefit shall be discontinued and all rights in and to the disability retirement benefit shall cease. Despite the foregoing, if the Retirement Board finds that the disability of an Employee who has undergone a required medical examination has been removed, and if at the time of such finding the Employee has attained age 60, but has not reached his normal retirement date, he will receive a substitute benefit in an amount equal to the amount of retirement benefit he would have been entitled to receive on early retirement had he elected as his early retirement date the date his disability retirement benefit was discontinued and had he elected to have his early retirement benefit commence as of such date and had he then been working for the Company. Anything to the contrary in the provisions of SECTION I notwithstanding, in calculating the amount of such substitute benefit or any other benefit to which an Employee may at any time be entitled under this Plan, the period between his disability retirement date and the date his disability retirement benefit was discontinued shall be disregarded for purposes of determining the Employee's years of Credited Service and his Final Average Salary.

(4) Optional Retirement Allowance.

(a) An Employee may elect, by filing written notice with the Retirement Board as set forth in subparagraph (b) of this Paragraph (4), to convert the retirement benefit otherwise payable on his account upon retirement into a retirement benefit in a lesser amount payable to him during his life, and

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after his death payable during the life of and to his spouse or other dependent as his beneficiary designated by him at the time of electing the option. The amount of such reduced retirement benefit shall be computed in accordance with appropriate actuarial tables based upon the sex of the Employee and the beneficiary, their respective ages at the effective date of such election, and the percentage (100% or less) of the reduced benefit which the Employee specifies shall be paid after his death to the beneficiary.

(b) The election of an optional retirement allowance shall be made and be effective only as follows:

(i) If the Employee retires before his normal retirement date on an early retirement benefit commencing at his early retirement date, the election shall be made on or before, and shall become effective on, such early retirement date.

(ii) If the Employee retires on his normal retirement date on a normal retirement benefit, the election shall be made on or before, and shall become effective on, such date.

(iii) If the Employee continues in service beyond his normal retirement date, the election shall be made on or before his retirement under the Plan and shall be effective on such retirement or, in the case of a married Employee who is not survived by a spouse entitled to a spouse's benefit under Paragraph (5) (a) of this SECTION IV, on his death prior to such retirement.

(c) Any election of an optional retirement Allowance which an Employee may have filed shall be rendered null and void:

(i) If the Employee retires on a disability retirement benefit; or

(ii) If the Employee retires on an early retirement benefit deferred to commence at age 65; or

(iii) If the Employee dies prior to age 65 and also prior to his retirement under the Plan; or

(iv) If a married Employee dies after his normal retirement date but prior to his retirement under the Plan, leaving a spouse who is entitled to a spouse's benefit under Paragraph (5) (a) of this SECTION IV.

(d) If an Employee who has made an election of an optional retirement allowance dies after his normal retirement date but prior to his retirement under the Plan, his beneficiary surviving him shall receive the specified optional retirement allowance computed as though the Employee has survived and had retired under the Plan on the first day of the month coincident with or next following the date of death, except that the election shall forthwith be null and void if subparagraph (c) (iv) of this Paragraph (4) applies.

(e) If the beneficiary designated under an election of an optional retirement allowance dies before the Employee's retirement under the Plan, the Employee shall be treated as if such election had never been filed and such Employee may thereafter file a new election of an optional retirement allowance subject to all of the terms and conditions hereof.

(f) Once written notice of the election of an optional retirement allowance has been filed with the Retirement Board, such election may not be changed or rescinded by the Employee without the consent of the Retirement Board.

(g) No Employee after his retirement under the Plan may change or rescind an election of an optional retirement allowance hereunder.

(5) Spouse's Benefit.

(a) In the event of the death, prior to his retirement under this Plan, of a married Employee who has attained age 55 and who has at least 15 years of Credited Service, there shall be payable during the life of and to his spouse, if such spouse shall have been married to such Employee for not less than two years immediately prior to such Employee's death, a benefit in monthly installments computed as set forth in subparagraph (b) of this Paragraph (5).

(b) The amount of each installment payable pursuant to this Paragraph (5) shall be equal to the retirement benefit that would have been payable to the Employee if he had

(i) retired on the first day of the month next following the date of his death either (a) on a normal retirement benefit if such first day occurs on or after his normal retirement date or (b) notwithstanding the provisions of SECTION II (2), on an early retirement benefit (calculated in accordance with the provisions of SECTION IV (2) (a) (ii)) commencing on such first day if it occurs before his normal retirement date, and

(ii) made an effective election of an optional retirement allowance under SECTION IV (4) specifying 100% as the percentage and designating his spouse as the beneficiary for purposes of subparagraph (a) thereof.

(6) Benefits Payable under the Laws of a Foreign Country by reason of Termination of Employment.

In the case of an Employee who under any law (effective after December 31, 1966) of a foreign country is entitled to a benefit payable by reason of termination of service as an Employee within such foreign country and paid by or on behalf of the Company on account of such service, the annual amount of any benefit payable under this SECTION IV to such Employee or to his spouse, other dependent or other beneficiary shall be reduced by an amount equal to the Actuarial Equivalent of such termination benefit (to the extent attributable to payments made by the Company directly or by way of contributions, premiums or taxes or otherwise). Such Actuarial Equivalent shall be computed as of the date on which benefits payable under this SECTION IV commence.

(7) Method of Payment of Retirement Benefits.

Except as otherwise provided in this Paragraph and in Paragraph (3) above, annual retirement benefit shall be paid in equal monthly installments, with the last monthly installment being payable for the month in which the death of the Employee or beneficiary shall occur. The last monthly installment of the retirement benefit payable under this Plan, in the event of death of the Employee or beneficiary prior to the receipt of such installment, may be paid, in the discretion of the Retirement Board, to the surviving spouse or other dependent of such Employee or beneficiary. Where the amount of the retirement benefit payable to an Employee or a beneficiary is less than $120 per year, the Retirement Board, in its discretion, may pay such benefit quarterly, semi-annually, annually or in a lump sum which is the Actuarial Equivalent of such benefit.

SECTION V Termination of Service or Death prior to Retirement.

This Plan does not provide any rights or benefits to or on account of an Employee whose employment is terminated for any reason or whose death occurs prior to the time the Employee has actually retired under the Plan except as provided under Paragraphs (4) and (5) of SECTION IV.

SECTION VI Administration of the Plan.

(1) The general administration of this Plan and the responsibility for carrying out the provisions thereof shall be placed in a Retirement Board of five members to be appointed by the Board of Directors of the Company, at least two of whom shall be members of the Board of Directors of the Company.

(2) The Retirement Board shall hold meetings upon such notice and at such time or times as they may from time to time determine, and minutes of any action taken at any meeting of the Retirement Board shall be kept by the duly appointed Secretary thereof who must not be a member of the Retirement Board.

(3) Members of the Retirement Board who are not officers or employees of the Company shall receive such compensation for their services as the Board of Directors of the Company may determine. No bond or other security shall be required of any member in his capacity as such.

(4) Subject to the supervision and control of the Board of Directors of the Company, the Retirement Board may from time to time establish rules and regulations for the administration of this Plan and, except as in this Plan otherwise expressly provided, the interpretation of this Plan and the determination of any question as to the eligibility

for benefits and years of Credited Service of an Employee or any question whatsoever arising in connection therewith shall rest entirely with the Retirement Board.

(5) In administering the Plan, neither the Retirement Board or any member thereof, nor the Board of Directors of the Company or any member thereof, nor the Company or any officer or employee thereof, will be liable for any acts of ommission or commission, except for his or its own individual willful and intentional malfeasance or misfeasance. The Company, its officers and directors and each member of the Retirement Board shall be entitled to rely conclusively on all tables, valuations, certificates, opinions and reports which shall be furnished by an actuary, accountant, trustee, counsel or other expert who shall be employed or engaged by the Company or the Retirement Board.

SECTION VII Pension Trust.

(1) The Company may establish a pension trust or trusts with a trustee or trustees of its own selection in order to provide for the payment of the retirement benefits specified in this Plan. It shall be impossible by operation of this Plan or of any such trust or trusts, by natural termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement, or by any other means, for any part of the corpus or income of any trust fund to be used for, or diverted to, purposes other than for the exclusive benefit of Employees, retired Employees, or their beneficiaries.

(2) No Employee, retired Employee or beneficiary under this Plan or any other persons shall have any interest in or right to any part of the rights to the earnings of any such trust or trusts, or any rights in or to

or under any such trust or trusts or any part of the assest thereof, except and to the extent expressly provided in this Plan.

(3) The trustee or trustees selected for such pension trust or trusts shall be appointed by appropriate instrument or instruments executed by the Company and authorized by the Board of Directors of the Company, such instrument or instruments to contain such powers in the trustee or trustees as to investment or reinvestment, control and disbursement of the funds, securities and property deposited with and held by the trustee or trustees and such other provisions as said Board of Directors may approve. The Board of Directors of the Company may remove any trustee at any time upon reasonable notice and upon such removal or upon the resignation of a trustee said Board of Directors shall designate a successor trustee.

SECTION VIII Contributions by the Company.

The Company may make contributions to any pension trust or trusts established by it on such actuarial basis as the Company may determine, in order to provide the retirement benefits specified in this Plan, but the Company may for any reason discontinue, suspend, increase or reduce any such contributions.

SECTION IX Amendment to or Termination of the Plan in Whole or in Part by the Company.

(1) The Company reserves the right at any time, by action of the Board of Directors of the Company, to modify or amend or terminate the Plan, in whole or in part, subject to the provisions of Paragraph (1) of SECTION VII.

(2) No such modification or amendment of the Plan shall affect adversely the payment of any retirement benefits to any Employee theretofore retired under the Plan, or the rights accrued for the benefit of the Employees and their beneficiaries. Upon termination of the Plan, or upon complete discontinuance of contributions, all participants shall be fully vested in their rights under the Plan to the extent then funded. In the event of termination of the Plan, the funds

in any pension trust or trusts established by the Company shall be used, to the extent adequate, for the following purposes: First, to provide for the payment of retirement benefits to Employees theretofore retired under the Plan or their beneficiaries and, second, to provide for the payment of retirement benefits in an equitable and non-discriminatory manner to Employees who are not then retired under the Plan. In providing for the payment of any such retirement benefits upon termination of the Plan, the Company may, in its discretion, make payments directly from the remaining funds in any pension trust or trusts established under the Plan or charge any such remaining funds with the cost of purchase from any insurance company of annuities to provide benefits of the same amount.

(3) The provisions of this paragraph (3) shall apply to any one of the 25 highest paid Employees of the Company on any "commencement date" whose anticipated retirement benefit provided under the Plan at normal retirement date exceeds $1,500 per annum. "Commencement date", for purposes of this paragraph (3), shall mean the date the Plan became effective or the effective date of any amendment to the Plan which increases the benefits. In the event that during the first 10 years following a "commencement date" the Plan is terminated, the amount of the retirement benefit provided under the Plan for any one of the aforesaid Employees shall not be greater than the amount of benefit that can be provided by the largest of the following amounts:

(a) The Company's contributions (or funds attributable thereto) which would have been applied to provide the retirement benefit if the Plan as in effect on the day preceding such "commencement date" had been continued without change;

(b) $20,000; or

(c) The sum of (i) the Company's contributions (or funds attributable thereto) which would have been applied to provide benefits for the Employee if the Plan had been terminated on the day before such "commencement date", plus (ii) an amount computed by multiplying the smaller of $10,000 or 20 centrum of the average annual remuneration of such Employee during the last five years of service, by the number of years since such "commencement date". In the event that at any time during the first 10 years following a "commencement date" the full current costs under the Plan have not been met, then, until the full current costs are funded for the first time the amount of retirement benefit which shall be payable to any such Employee shall not exceed the amount thereof that would have been payable had the Plan been terminated when such costs were not met. Any excess reserves arising by application of the foregoing provisions shall be used and applied as provided in the Plan for the benefit of the other Employees or their beneficiaries under the Plan.

In the event that subsequently it should be determined by the Company that, pursuant to statute or ruling by the Commissioner of Internal Revenue, the provisions of this paragraph (3) or any part thereof are no longer necessary to qualify the Plan under the Internal Revenue Code, this paragraph (3) shall be ineffective to such extent withhout the necessity of further amendment of the Plan.

SECTION X Miscellaneous Provisions.

(1) Non-Alienation of Benefits.

To the extent permitted by law, no retirement benefit which shall be payable under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assigment, pledge, garnishment, encumbrance or charge.

(2) Certain Rights and Obligations.

This Plan shall not be deemed to constitute a contract between the Company and any Employee or a consideration for the employment of any Employee. Nothing in the Plan shall give any Employee the right to be retained in the employ of the Company and all employees shall remain subject to discharge, discipline or lay-off to the same extent as if the Plan had not been established. Any contributions made by the Company to any pension trust or trusts established under this Plan shall be voluntary, and the Company shall have no legal or equitable liability to make any such contributions.

(3) Incompetency or Minority.

(a) If the Retirement Board receives evidence that an Employee or beneficiary entitled to receive any payment under the Plan is physically or mentally incompetent to receive such payment and to give a valid release therefor, and another person or institution is then maintaining or has custody of such person, and no guardian, committee or other representative of the estate of such person has been duly appointed by a court of competent jurisdiction, the payment may be made to such other person or institution and the release of such other person or institution shall be valid and complete discharge for the payment.

(b) In the case of any payment due under the Plan to a minor, the Retirement Board, in its discretion, may direct the making of such payment to the minor or to any parent or relative of the minor or to the person with whom the minor resides.

(4) Construction.

The provisions of this Plan shall be construed and enforced according to the laws of the State of New York and all of the provisions of this Plan shall be administered in accordance with the laws of said state.

The CHAIRMAN. Thank you very much.

Rhea Johnson, Alfred St. Germain, and Robert Lengyel, are they here? Would you all come up, please? Who is chairman of this group?

Mr. JOHNSON. I think Mr. Lengyel will testify first.

STATEMENTS OF ROBERT LENGYEL, RHEA JOHNSON, AND ALFRED ST. GERMAIN, RADIO OFFICERS, AMERICAN RADIO ASSOCIATION, AFL–CIO

Mr. LENGYEL. Mr. Williams and Mr. Javits, my name is Robert Lengyel. I am 44 years old. I am an American seaman. I caught my first ship when I was 17 years old. I became a full book member in the American Radio Association in 1945, which provides employment and negotiates contracts for radio officers on American vessels. We are all radio officers.

I have been a member of the union since that time, never having taken a withdrawal card. From the time I caught my first ship until 1950 I shipped regularly. In 1950 I quit a ship in Tampa, Fla., by mutual consent with the captain in order to join the Marine Corps.,

I served overseas in North Korea and came out with a small disability. I took an honorable discharge in 1953 and for the next 7 years, until 1960, I went to college under the GI bill and I worked on a venture on shore which failed, trying to catch an anchor to windward just in case something happened to the industry.

In 1960 I made the decision that trying to get something started on the beach was hopeless and I would stay at sea the rest of my natural life. I have been on one ship since 1960 working for Matson, going to the islands.

That brings us up to what I am doing currently. Presently the whole merchant marine is on strike on the west coast. En route I managed to find a lovely woman and I have three children and today is the birthday of one of those daughters.

The CHAIRMAN. Congratulations.

Mr. LENGYEL. Thank you.

The CHAIRMAN. I wish you were being televised today, so they could see you. You should have been here yesterday.

Mr. LENGYEL. I qualify because of my length of service for the maximum pension the union has called normal A initially, which would give me 60 percent of my average base wage over the last 360 days of employment. This would give me approximately $720, I believe, if I were to be able to retire at this time. I am 8 years away from that possibility. I have vesting privileges. If I choose to invest, I could invest 60 percent of what I would retire at, which would give me a vested interest of $432 which I could collect when I became eligible for retirement.

So far, it looks as though I am a fat cat, that I have it made. That is fine until you start to look at the amount of money involved and what assumptions are that the actuary uses for making a plan actuarily sound. All of the figures I have and all of the information I have comes from two sources, records with the Government filed under the signature of the president of the union, and the secretary-treasurer and from contact I had with the Penn Mutual Life Insur-

ance Co. trying to get a comparative basis for what could be had in private industry and what we have on our so-called self-insured program.

In 1967 the unfunded liability of the plan came to $3,020,000 in the American Radio Association's west coast portion of an integrated plan. This is approximately one-third of the total plan and the figures are approximately—the east coast and the gulf coast contain roughly two-thirds of the total. So whatever I say here about the west coast would apply to the east coast and the gulf.

By 1970 the unfunded liability had risen from $3,020,000 to $7,091,500. The investment record of the plan, starting in 1967, was only 3.62 percent in 1967, 2.98 percent in 1968, 3.61 percent in 1969, and I was not yet able to get the reports for 1970. They calculate that they are going to use 3.5 percent for the total life term of the plan. One of the characteristics of the self-insurance program, in order for it to succeed, it requires that the investment success of the plan be superior to that obtained by regular life insurance companies such as Penn Mutual.

Second, our plan is regulated, as mentioned by Senator Randolph yesterday, requiring that all of the liabilities first be covered by gilt-edged securities, something with a low risk, low yield investment that very likely they will retain. Then if they have any surplus, they can invest it for a profit into higher risk and higher gain ventures.

Our union, in the report for 1971, the one I just acquired—we have almost all of our assets in common stock and we took a loss between the start of the year and the end of the year. We had in common stock $1,514,315 at the start of the year, and sold it for $1,332,862. So it seems to me that the main assets of the fund are the contributions being made by the companies. The companies, at this time, because of the status of the merchant marine—my union, for instance, control less than 330 jobs. The merchant marine itself at the start of the year, had only 706 privately-owned vessels, fewer than we had 100 years ago, and the chances are it is below the 700 figure now.

There is a continuing increase in unemployment in the merchant marine. Seamen are all over the beach. It will be difficult for them to qualify for certain aspects of their pension based upon the employment. If I continue to work, in spite of the fact that at this time I could have a vested interest, provided I left the industry completely and never again sailed as a radio officer on an American ship—that is the contingency. Otherwise, I can't vest. Whether I would or not is not really relevant because I am speaking for others as well as myself.

The CHAIRMAN. If you had vested, we would be able to check benefits.

Mr. LENGYEL. When I am 52, 8 years from now, provided I never again work as a radio officer in the merchant marine, I could possibly lose the top pension rating that I have, normally, because there is a requirement to get the very top in this group, you have to be employed 400 days in the last 2 years. You have to have what they call 400 days of covered employment in the last 2 years before you apply for retirement.

The shipping situation being what it is, and the number of jobs available, the union can't promise the men that much employment. With approximately 790 members and approximately 300 jobs, supposing one ship can support two men, it still comes out that there are

100 and some men that are not going to be offered sufficient employment.

There are other characteristics where men can be disqualified simply if they wait too long to get a permanent job. They may wind up holding sailing jobs where men take vacations simply because they have to go to work to eat. It is that simple. Our plan should be funded by the year 1992. So far I have indicated that the only real income seems to be the company contributions which have risen on the west coast to over $19 a day per man each day we work. That is $19 a day.

It was $16.35 at the start of this contract period about 2 years ago. The companies are currently—this figure of $19.12 actually reflects the deteriorating state of shipping in the American merchant marine. At the start of this period the rate was $16.35.

The agreement was that the companies would pay for the lifetime of this contract as they paid during the peak years of shipping. This ends next year. In the rise from $16.35 to $19.12 this indicates that a number of companies have failed or the number of vessels is no longer so great. The companies have had to pick up the difference to meet a certain national figure.

The CHAIRMAN. As anticipated, there is a vote in progress in the Senate. We will have to recess and return as soon as we can.

(Recess.)

The CHAIRMAN. We will pick up where we recessed.

Mr. LENGYEL. Essentially I have completed all of the figure aspects and before everything gets lost in figures, these come, as I stated, from the forms filed under provisions of the Landrum-Griffin Act with the Labor Department and can be purchased at 25 cents a sheet.

The year 1970 in particular has a complete actuary's report on the status of the funds, the funding method, and the qualifications, a complete and concise description of the plan.

I would like to enter that. I think it is very indicative of most of the Maritime Union pension plans, that there is a certain representation that this will reflect upon those others.

The CHAIRMAN. This will be what?

Mr. LENGYEL. This will reflect, in a parallel sense, what does occur in the pension plans of the other maritime officer unions.

The CHAIRMAN. What document is this that you have?

Mr. LENGYEL. The forms filed with the Government, D–2, filed by each union for any pension plan of that sort.

The CHAIRMAN. We have all of that information.

Mr. LENGYEL. You understand that I am a rank and file and active radio officer of considerable experience. I have no intention of retiring, but I do at this time have a vested interest. As a great many of those who entered the service in the merchant marine when I did——

The CHAIRMAN. You are currently employed? There is a strike.

Mr. LENGYEL. I am employed, but the ship is tied up because of longshoremen. They didn't do it because of me. On paper, the plan looks great. I have a vested interest, but I have some doubts as to whether, based upon the investment, success of the plan and the deteriorating financial state of the merchant marine and shipping, whether the money can continue to pour in at this rate. I have this concern in advance. Rather than waiting for the ax to fall, I felt I should say,

shouldn't you invest this way or that way in a more successful way? Actually, they could make more money in savings account.

I don't want to wait for that period and neither do those I represent who may be disqualified in the future. This is why I am bringing this aspect to the attention of your committee.

The CHAIRMAN. Your basic concern is with the funding of the plan as you understand it?

Mr. LENGYEL. Yes, sir. Then there is a moral objection that if I continue to work, I stand the risk of decreasing the amount of funded benefit I have, which is kind of screwy. If I do this, aside from the fact of what I have to do to vest——

The CHAIRMAN. We don't understand that up here.

Mr. LENGYEL. I qualify for a top pension called normal A. As a proviso to obtain this, there is a subsection A and B. I qualify for approximately $432 top at this point, to be collected starting at the age of 52 for life. If I continue to work and this particular ship I am on, lays up, or is sold, or I just get off from it for some reason and I ship aboard a vessel with a lower wage rate, they will calculate my percentage of pension on the different rate, plus if employment gets extremely rough—and it is pretty darned rough now—I could possibly not get 400 days of covered employment where employers contribute in a 2-year period prior to the time I apply and then I would drop down into a lower paying category than the normal A pension. I have it made now, with more than enough. In the fiduciary line, we have three union trustees and three management trustees, but there is no requirement that any of the trustees have investment experience, none whatsoever.

I recently ran in a special election, which I lost. I am a union dissident and activist and a member of an adversary group, but I believe that is a function of democracy. It is open. I lost the election and the man who replaced me—this is not personal, mind you, this is merely his function as an official in the union, as a trustee of the plan—has no investment experience whatsoever, and as I understand it, not even a knowledge of the language used.

This deals with the current problems I have which are going to increase as shipping continues and the merchant marine continues to deteriorate.

My two union members here may have paid for my high rate of pension qualification by not getting any themself, which I think is morally wrong. Whenever stuff is presented to the members of our union for ratification, there is always a pro but never a con as to why somebody should not vote for it, so the men more or less vote down the line. This is pretty typical.

As a member of the dissident group, I have received letters like this, and this fits in with what will be coming up from my two brothers. This is out of context, but it is valid and all too frequent.

See what I mean, Bob? What becomes of jokers like me? What happens to all this money that was to have been put into a retirement program for me? Am I not entitled to a small portion of this, at least? Methinks I have been a first-class sucker, and it is too late in the evening for me to repair the day's work as night is falling fast. Do you think I should write a person in the union dealing with pension and welfare, or just forget the whole thing and go on welfare? Guess that is about the last stop, isn't it Bob? Well, I think that would be my very last port of call, Bob. I never did ask for charity and I am not starting now.

Well, sir, you know we fight wars over this kind of stuff. My two union brothers are here at this point. I have nothing further reflecting upon myself as far as the future is concerned versus theirs which is current.

The CHAIRMAN. Mr. St. Germain, do you have anything to add?

Mr. JOHNSON. I think I will proceed, Senator, and he can supplement it. We have more or less arranged that. For the record, my name is Rhea Johnson. I am from Tampa, Fla.

Let me say, Senator, I am very happy to appear before this committee and very thankful. I will start off by stating that everything that I tell you I can support by documentary evidence, which I have with me. I have been a radio officer in the merchant marine since December of 1929. I joined the union in 1935, which is a couple of years after it was formed. I took a withdrawal card in good standing in March 1941 to go into the Army Air Force. At the time I had worked 1,762 days as a radio officer aboard ships in the merchant marine. I was released to inactive duty from the military hospital on the 9th of December 1951, and in February 1952, I applied for reinstatement in my union. It was denied. It was stated that I had been expelled for nonpayment of dues.

I was not readmitted to the union until 1957 and the plan at that time called for a minimum of 10 years' service at age 65. It has been changed. The union retirement plan has been changed many times since 1957. Since release to inactive duty in 1951, after reinstatement, I have worked aboard union contract vessels a total of 1,989 days, with paid vacation of 367 days, totaling 2,356 days.

Coupled with the prior time, that is, prior to World War II, of 1,762 days, that brings us to a total of 4,118 day's employment. The union computes currently 200 days as a year of creditable retirement service. So in other words, I have over 20 years' service.

Upon application for retirement on January 4, 1970, I was informed that I had only 37 quarters creditable for retirement. That is a little bit over 9 years.

I would like to read to you the pension plan, just a small paragraph. I will be as brief as possible. This is dated 1958, after I was readmitted into the union. The provision for a reduced retirement is, A, 65 years of age. You must have pension credits for at least 10 years. This is the reduced retirement.

I am now excluded completely from earning any pension credits and I would like to read to you the latest revision of the retirement plan. It is taken out of context.

> That no employee shall receive pension credit for employment after he reaches age 65 except that employees who have at least 10 years pension credits on January 1, 1964.

There is the death sentence. How can you get 10 years' employment credits from 1956 to January 1, 1964? It would appear, just briefly, that where a union official is a trustee of a pension and welfare fund and is also a participant in the pension and welfare fund, that it might be alluded to putting a fox in the chicken coop to guard the chickens.

Now, if I may, I want to read, to substantiate what I went back over, the difficulty that I had in being readmitted to the union:

A check of our records back to 1939 indicated that Rhea Johnson, who at that time was living in Highland Park, Ill., was expelled for nonpayment of dues on August 23, 1939, but I cannot find any evidence in any of our records anywhere that you took a withdrawal card as you insist in your letters.

This has been going on 5 years, trying to get back in my union. This was dated on January 8, 1957. When I located the withdrawal card, which had been lost, I sent a photostatic copy to them. The secretary-treasurer signed this, Bernard Smith, who, by the way, is still currently the secretary-treasurer, and also a union trustee of the pension and welfare fund.

On June 4, 1957, the second paragraph:

There has been considerable misunderstanding between you and this office, but I must assure you that I have never heard or received any petition for your reinstatement until early 1956. I cannot find any record of any correspondence prior to that time and I can only assume that such previous correspondence relative to your reinstatement must have taken place with some other office than this one. The first letter received by this office from you is dated February 21, 1956. However, now that your records have been substantiated by your submission of your withdrawal card, there is no question but that we can straighten this matter out.

The withdrawal card is dated March 1941. I could go into the technicalities of the yo-yo fashion of this pension and welfare fund, but I don't want to burden you any further. If there are any questions you would like to ask, Senator, I will be very happy to answer them.

The CHAIRMAN. This is a complicated situation. I am sure I don't understand it. But as I read my notes here and from your hurried description, it looks as though the plan was designed to keep you out.

Mr. JOHNSON. Definitely, sir. Everything known to mankind. Attorneys wrote this and they did a beautiful job. I am not the only one, sir.

The CHAIRMAN. During this period when you wanted to be a radio operator, 1951 to 1956, were you working at your trade elsewhere?

Mr. JOHNSON. Senator, most of the time I had to resort to fishing to support my family. It was tough.

The CHAIRMAN. Then you got back into the union?

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. And you have worked steadily since 1956?

Mr. JOHNSON. Yes, sir, right along. I am still an active member of the union. But this is the death clause. I could work until I was 90 years old, because it disenfranchises me from even starting over again.

In other words, they say, "If you are past 65, drop dead." That is what I will do.

Would you like to hear just another little statement?

In the meantime, the union officials voted themselves into our pension fund. As Mr. Lengyel has testified, he can retire at 60 percent of his last 200 days of employment. It applies to them as well. He can retire at $440, he just testified.

We had a vice president who just retired with over $23,000. They don't contribute anything toward the pension and welfare fund except what we give them.

This doesn't add up. This is where the money is going.

The CHAIRMAN. Our next series of witnesses will deal with this.

Mr. JOHNSON. In closing may I make one remark?

If you are considering legislation, unless there are some penalty clauses to the legislation, and spelled out specifically and held as tightly as you hold banks, when you get union officials as trustees of a pension-and-welfare fund, you had better watch them. There should be some legislation, in my opinion, to exclude them.

The CHAIRMAN. What was that 1964 date? Who does that terminate, the date that you read to us?

Mr. JOHNSON. "An employee shall receive pension credit for employment after he reaches age 65, except that no employee who has at least 10 years of pension credit on January 1, 1964 * * * and who are age 60 or over."

There are all kinds of ways and means every time this plan is changed to disenfranchise people like myself who have been going to sea since 1930—that is 41 years—Senator.

I think I read to you that I have 4,100-and-some days of documented time aboard ships. I can prove it by the discharge of the Coast Guard and my licenses. Every one is right here.

This shows you, if nothing else, a design and purpose to defraud the rank and file member of his equity.

All I ask is this. The companies on the east coast for which I have been working in the last 3 or 4 years, have been contributing $12.15.

Is that correct?

Mr. LENGYEL. Approximately.

Mr. JOHNSON. $12.15 per day per man. That is my money. That is my equity. It doesn't belong to anybody else.

Lykes Brothers, for example, didn't contribute that money for the use of the union officials. That was part of my compensation, my vested right. It is that simple.

If you would like to get into another investigation at a future date and would like to prove fraud and embezzlement, I would be happy to come up.

The CHAIRMAN. Mr. St. Germain, I gather every situation is different here. What is yours?

Mr. ST. GERMAIN. I will be 65 shortly. I have had a laryngectomy, as you can see, one who has had his larynx removed because of cancer. And I now breathe through my neck and use a speaking aid which I have developed.

I was discharged from the Navy because of an injury in 1942. I joined the American Communications Association, which was the former name of the American Radio Association. I have been working for 28 years on board vessels in the Alaska fleet, to which I was assigned by the union.

With the exception of perhaps two or three instances when I went to work for the Army Transport Command, every job that I worked on had been assigned by the union. I have continued to pay my dues since that time, and I am still a member in good standing.

After I developed cancer in 1966, I wrote a letter to the secretary of our union and inquired regarding our pensions. I was informed that because I did not have sufficient time in during the 3-year period, that I would be denied a pension.

Furthermore, I learned that the companies to which I had rigidly been assigned did not count in the pension plan. No one had ever

informed me that I would not be covered by the pension plan. I continued to pay my dues.

After rehabilitation I went back to sea, and I was on one ship up until December 12, 1970.

Of course, under the rules of the union, I would not have time enough to get any time in for a pension.

I have worked continuously on board ships, aboard vessels of the salmon industry. And even in my work with the Radio Corp. in the Radio Marine Division I was on board ships that went out to sea on trial runs from the dock.

That is about all I have to say.

I have nothing against the union. The only thing I have a feeling against is the system. I feel that they should have informed me. Had I been informed that I would not participate in the pension fund, I certainly would not have continued paying the high dues year in and year out.

The present dues now with funds are $340 a year.

That is about all I have to say, Senator.

The CHAIRMAN. On this question of dues, what are the dues that you pay for, the operation of the union? Or are part of the dues to be a contribution to the pension fund?

Mr. ST. GERMAIN. No. The dues are paid to the operation of the union and the salaries of the officials.

The CHAIRMAN. On this other question of the contribution to the fund, as I understand the other two witnesses, for every day of work there is a contribution from the company to the fund.

Am I right on that?

Mr. LENGYEL. Yes, sir.

Mr. ST. GERMAIN. That is right.

The CHAIRMAN. When you work on a ship, is there a contribution from your work to that fund?

Mr. ST. GERMAIN. That is right.

The CHAIRMAN. Even though you cannot possibly get a pension?

Mr. ST. GERMAIN. That is correct.

And the present system right now, I think, is $19 a day.

The CHAIRMAN. In other words, your work generates money into the fund, and yet you cannot participate in the fund?

Mr. ST. GERMAIN. I cannot participate in the fund.

Mr. JOHNSON. That is exactly it, sir, exactly.

The CHAIRMAN. I know we have been helped, and I think I understand your testimony.

Mr. ST. GERMAIN. Senator, if I might say one thing here, it is right in line with your line of work here.

I am president of the American Cancer Society for the northern part of my area, in California. If you could be with me to visit the hospitals, as I do, and visit these people who have had laryngectomies, they are worrying about the future and one thing and another. And they find out that they have no other income except social security.

I think the work you are doing is wonderful.

Thank you.

The CHAIRMAN. Thank you very much.

Senator JAVITS. We are certainly glad to have heard you.

The CHAIRMAN. The American Radio Association is to be represented here by Mr. Strichartz, Mr. Shuman, and Mr. Steinberg, as I understand it. Mr. Strichartz is the principal trustee of the ARA.

Would you introduce yourselves?

STATEMENT OF MORRIS HARVEY STRICHARTZ, TRUSTEE, PENSION PLAN, AMERICAN RADIO ASSOCIATION

Mr. STRICHARTZ. My name is Morris Harvey Strichartz. I am a trustee of the ARA pension plan. I am a union trustee on that plan. I am an official of the American Radio Association, AFL–CIO, which is the small union representing ship-radio officers.

Every cargo vessel, including tankers, carries only one radio officer. The number of passenger ships—they used to carry more than one, but there are only three or four pssenger ships left in the U.S.-flag merchant marine. The total number of ships in the U.S. merchant marine has declined.

Of course, we are a small union. In the division of labor in that union, I am the union official and the union trustee who interests himself in the pension and welfare regulations with a view to providing benefits for radio-officer members.

The interest of the union is to provide the maximum benefits that can be provided with actuarial soundness.

I will confine my testimony today to the remarks of Mr. Johnson.

It was 10 minutes before our testimony today that I was informed that Mr. Lengyel and Mr. St. Germain would appear.

I ask leave of the committee that the record be kept open so that we can file data in comment on the testimony of Mr. Lengyel and Mr. St. Germain. Will that be possible?

The CHAIRMAN. Yes. How much time do you need?

Mr. STRICHARTZ. If we can get the transcript, 2 or 3 weeks.

The CHAIRMAN. It certainly would be helpful to pull this all together as soon as possible.

(The information subsequently supplied follows:)

SUPPLEMENTAL STATEMENT OF AMERICAN RADIO ASSOCIATION, AFL–CIO, WITH RESPECT TO TESTIMONY BY ROBERT LENGYEL

Mr. Lengyel lets the cat out of the bag early in his testimony, when he refers to his contacts with Penn Mutual Life Insurance Company as the basis for much of his information. As Mr. Lengyel has noted on the record, he has run for office in the American Radio Association, on more than one occasion, and has made an issue of his interest in having outside life insurance companies—the one he continually mentions is the Penn Mutual—operate and administer the Plan. Mr. Lengyel refers to our Plan as a so-called self-insured program. This is a misnomer. The ARA Pension Plan and the ARA–PMA Pension Plan are, however, self-administered by the Trustees of the Employers and the Union. Prior to the pension program being established, the alternative method of utilizing the facilities of life insurance companies for administration was investigated. The level of costs and the resulting benefits that could be provided, in that manner, were found to be less than could be provided by a self-administered plan.

Inasmuch as the phrase "self-insured" is not applied to a pension program, he must be referring to the ARA Welfare Plan, operated on a self-administered and self-insured basis, which provides death benefits, medical coverage and other benefits for the covered employees. In the case of the welfare plan, our experience, after having had administration of the welfare program handled by an insurance company (the John Hancock Life Insurance Co.) was that we could,

by going "self-insured", provide greater benefits to covered employees. This is precisely what happened when the Plan went self-insured.

Mr. Lengyel next refers to the investment record of the Plan, giving percentages for the years 1967, 1968 and 1969. The percentages he gives constitute not the investment record but only the interest return of the Plan. The investment record of a Plan does not reflect itself in the interest earnings, but rather by the *long-term* appreciation of the equities held by the Plan. We have been advised by our investment consultants that a reading of the investment record of a pension program cannot be taken in one, two or three years of performance. However, Mr. Lengyel either thoroughly misunderstands, or misstates, the operation of the fund when he says that we had in common stock $1,514,315 at the start of the year, and sold it for $1,332,382.

With respect to Mr. Lengyel's testimony as to the value of investments in common stocks it suffices to say that the figures quoted represent only a portion of our portfolio and that over the long term the entire portfolio has shown a net gain. As the Committee Members know, the stock market fluctuates, and the market value of various equities fluctuate with it, depending on the point in time when the reading is taken. However, these ups and downs are not important to a pension plan which can hold stocks for the long pull.

Although, concededly, Mr. Lengyel qualifies for a substantial pension benefit at the present time, he complains that he can have a vested interest, only if he leaves the industry completely and never sails again as a Radio Officer on an American ship. Otherwise he cannot vest. This is exactly correct, but there is no cause for complaint here. The definition of "vesting" is quite clearly the retention of an interest in a pension program after one covered leaves employment under the program. Vesting presupposes leaving the industry, as an active Radio Officer, or as an active steel-worker, or as an active Senator, or anything else. What is he complaining about? The important consideration is that in this respect the ARA's Plan does provide venting and that we have sought to insure that our membership receive the benefits earned and not merely a promise.

He similarly asserts that the high pension that he now qualifies for might be decreased, because there is a requirement for 400 days of employment in the last two years prior to retirement for that class of pension. It should be noted that this required 400 days can include vacation days as well as up to 30 days of disability in the hospital and up to another 30 days on out-patient illness in a year. Approximately 150 days per year of service on a Dry Cargo Vessel, and 133 days on a Tanker, plus vacation, is all that he would need to sail per year to accrue 400 days of credit in each two years. One must be, not a normal member of the work force of an industry, but a genuine casual to achieve less service than this.

Mr. Lengyel is correct in stating that the Union cannot promise the men that much employment, due to the decline of the U.S. Merchant Marine, which is beyond our control. However, as a responsible labor organization, the American Radio Association has recently instituted a work-sharing program which will enable all Radio Officers (other than casuals) to obtain at least the 133 to 150 days of employment each year required to retain eligibility in the highest category of pension.

Mr. Lengyel is wrong in stating that the only real income of the Plan is the contributions of the companies; there are also the earnings of the reserve funds, which are considerable, and up to recently have more than covered the cost of the benefits which have been paid by both East Coast and West Coast Plans, as well as the reserves themselves. The record, however, should reflect the correct contributions being paid by our Contract Companies, which is $19.42 per day to the West Coast Plan and $12.15 per day to the East Coast Plan.

It should also be noted that our Union has been a leader in the fight to provide for funding over a specific period of time.

Mr. Lengyel states that we could make more money in a savings account. This might be true, *as to the amount of interest earned*, but our investment consultants assure us that we would then have no hedge against inflation in that the value of the fund would remain constant rather than rising with the inflating economy.

In spite of the fact that the union has secured funding and sought to assure the security of the membership by providing for vesting and preventing unwarranted disqualification, Mr. Lengyel, nevertheless, registers what he calls a "moral objection" that he would stand the risk of decreasing the amount of benefit he says he is eligible to receive because our pension benefits are based on the rate of wages in the last year of employment of the retiring Radio Officer. In view

of the fact that the history of the American economy has been one of rising wages, for many years, and that there is no immediate anticipation that wages will decline, or that unions will negotiate wage scales downward, this would appear to be an unfounded misgiving on Mr. Lengyel's part. In this respect, he also cites as a complaint that the union and management trustees are not required to have investment experience. It is precisely for this reason that professional advisors are retained by the trustees who provide the necessary expertise required for the management of pension funds.

Perhaps the fact that Mr. Lengyel has in the past been a candidate for union office lends some insight into his motives for attempting to discredit the very plan which has secured his retirement benefit. Mr. Lengyel states that he is entitled to a normal A Pension, which would yield him $720 monthly. If he has the credit he claims, it would appear that this should not be a cause for complaint on his part, but for rejoicing. However, this is not the case. To search for his reasons is not for us. We would note, however, that since the misgivings of Mr. Lengyel in all cases seem to result from anxieties that cannot be satisfied in a statement such as this; perhaps they result from his political aspirations within the Union. We do not believe that Senate Hearings should become the sounding-board for disappointed office seekers in union elections. We will not comment further.

SUPPLEMENTAL STATEMENT WITH RESPECT TO TESTIMONY OF ALFRED ST. GERMAIN BY AMERICAN RADIO ASSOCIATION, AFL–CIO

With respect to Mr. St. Germain, it should be noted that when he claims that he has been working for 28 years on board vessels in the Alaska fleet, this does not mean that all these vessels were covered employment. Mr. St. Germain states that he was "assigned to" these vessels by the Union. This is simply not so. Our procedure, in keeping in touch with where a man is, is to require that he obtains a "clearance" to any jobs that he takes. These clearances are given to a man on an "Assignment Slip". However, when a man receives a job in a non-union company, with which the Union has no contractual relationships, the clearance is simply a record of his whereabouts. It does not constitute an assignment to that employment, because there is no relationship whatsoever between the company and the union, and the company would not accept assignment of anybody from the union.

The problem in the case of Mr. St. Germain is that he did, in fact, go to work ashore in employment that was not covered employment. As their employee, he was working on shore-side and import vessels in the Alaska canning industry, and, as we have stated this was not covered employment. Mr. St. Germain's statement confuses two concepts; he states that he has paid his dues all of this time but has not gotten pension credit. The Committee should be clearly aware that pension credit is not accorded Radio Officers based on payment of dues but simply on the basis of time of covered employment aboard vessels of covered companies, and in the case of past service credit, their predecessor companies.

The ARA Pension Plan and the ARA–PMA Pension Plan has what is known as a "break rule", which provides that men, who do not remain part of the continuing work force of the industry, have their past service credit cancelled after any three year period in which they do not accrue 200 days of credit, which credit is computed by including vacation days, and by including also certain time in hospital and time on an out-patient basis. Mr. St. Germain was apparently informed by the Secretary-Treasurer when he made a preliminary inquiry, that he had been out of the maritime industry for five years and his past service credits were consequently probably cancelled as a result of the operation of this break-rule. There is no way of according Mr. St. Germain credit for work in another industry (the Alaska canning industry), which is not part of the U.S. flag merchant marine, and which is not now, nor ever have been covered employers participating in our pension plans.

Mr. St. Germain's complaint that he was not informed that the time involved would not count, is simply not valid. He knew when he was working under a union contract, and when he was not; it reflected itself in the wages and working conditions that he enjoyed. Jobs under union contract are clearly identifiable otherwise than in the conditions on the job, and there was no deception involved. Mr. St. Germain,

like all other radio officers, was continually informed of the provisions of the ARA pension plan. They were published and circulated in 1956 at the outset of the plan, and were made available in subsequent reissues. This included the provisions of the break-rule, which apparently Mr. St. Germain feels has affected him adversely.

The CHAIRMAN. Just that last statement that men who are employed generate money into the fund, and there is no hope, they say, of ever getting a pension vested in their favor, would be interesting.

Mr. STRICHARTZ. I will comment on that statement. That is one of the statements I am prepared to comment on.

The CHAIRMAN. That one I would like to clear up right away.

Is that possible?

Mr. STRICHARTZ. Without going into the charges made, it is a fact of life of every pension plan, including the Social Security System—my wife's sister just died at the age of 66, having contributed to the Social Security System since it went into effect in 1937. The only thing that was payable was death benefits of $255, I believe.

Every pension plan assumes, the actuaries advise me, that there will be some employees who will not continue to pension age. In fact, if you have a vested pension plan, the assumption is that there will be some employees who will drop out even before the point they are vested.

Let's assume that you set vesting at 5 years. There will be some employees who will drop out after 2, 3, or 4½ years. During that entire period contributions are made for all employees in the unit. They are not made to a benefit account for each individual.

A pension program is a pooled affair, where all contributions are made into a pooled fund and payments are made based on the actuarial assumptions.

One of the assumptions is that there will be some who will die before they collect benefits. Another assumption is that there will be some who sever.

The CHAIRMAN. Of the three men here, one claims that under the actuarial assumptions he is way ahead if he quits now.

Mr. STRICHARTZ. Mr. Lengyel is so poorly informed that he doesn't know that he could quit now and receive either a normal B pension of $360 a month, which we pay after 20 years of service at any age, or he could receive an early normal A pension, which is discounted at 6 percent a year for each year that he is younger than age 52, if he has 7,200 days of service.

So assuming that he is discounted something like 46 percent, we will say, for the whole 8 years—although we break it down to a half percent a month—he would get 52 percent of the $720 amount that he mentioned.

A calculation tells me that is around $374 or $376. That would be right now.

The CHAIRMAN. Did you know that, Mr. Lengyel?

Mr. LENGYEL. Yes, sir. I knew that.

Mr. STRICHARTZ. Nobody wants Mr. Lengyel to leave, because it adds spice to the democratic life of the union to have his opposition.

I knew Bob Lengyel before he went into the Marines and after he came out of the Marines. And he went directly into the military service, as it is my understanding. If I am not mistaken, he came directly out and went back to sea.

Therefore, credit for military service, which Rhea Johnson, for example, is asking for, would apply to Mr. Lengyel. In the case of Mr. Johnson—and I am prepared on that, sir—Mr. Johnson has entirelly different circumstances.

I have prepared the bedrock facts, not the allegations. There are some very sharp allegations that are made in the sheet that was issued by the committee, and I am prepared with—everybody has documents, and they are all prepared to give them—I am prepared with documentary evidence on some of these sharp statements.

I think it would make more sense and give you a more coherent picture if I went through the facts of our pension program and on Mr. Johnson, so that you get the picture as it is and you know what you are doing.

You are interested in legislating on facts. Bad facts you have to legislate against. If the facts are not as represented, you still will have to legislate in certain areas, but possibly not in those areas.

I want to say this. We are not prepared to testify at this time on the broad objectives of the committee. But we note, for example, that the committee is going after exactly what our union has gone after.

We have been engaged in a running battle with the steamship companies on the question of funding since 1966, earlier than most unions. We have been fighting for some kind of reinsurance on past-service liability, the past-service credits that your committee is considering a pooled Government agency to fund, which we look very hopefully for.

We would hope, by the way, that it could be made available to all of American industry. It is especially necessary for industries that are in decline, either due to a lapse of Government policy in fostering the merchant marine or to a changing technology.

There are companies that must go the way of the albatross, go the way of the glassblower, or the buggy whip manufacturers.

Certainly the past-service liability of those plans should be funded or, if not funded, a reinsurance of the unfunded portion should be provided. And we would certainly welcome it.

(The following information was subsequently supplied by Mr. Strichartz:)

As to Mr. Johnson's complaint about not being able to accrue credit, a few historical notes on the development of the ARA Pension Program and the ARA–PMA Pension Program: At the outset, our program required 10 years of service in its first year, increasing a year at a time, and scaled up to requiring 15 years of service in the fifth year. This was done in order to permit immediate retirement for those who were at the advanced age of 65 at the outset of the Plan. However, actuarial computations were made on the basis of retirement after a minimum of 15 years' service, and after five years this had become the requirement. The Rules were all established on an objective basis, not to qualify or disqualify any one person but to provide a fair and equitable basis for qualifying of all those who were truly active and truly part of the work force to be covered by the program. In 1964, the Pension Program was improved in many respects. The provision that pension credit not be earned after age 65, which Mr. Johnson refers to, was placed into effect, in order to provide a sound basis for the fund. The practical arrangements that were made at the time which are referred to in the Regulation, were simply designed so that those, who at the time of the change had at least 10 years pension credit, might have an opportunity to continue accruing pension credit after age 65 until they had achieved 15 years of credit, the minimum time necessary for a pension. This was designed to provide the opportunity for achieving a pension to those, then in the work force,

who were within sight of a pension but who would lose it if these special provisions were not made. No individual was in the minds of the Trustees when this was done, but the entire group, as a category.

As to the particular facts of the case of Rhea Johnson, we might note our objection to the circulation of the statement by the Committee staff summarizing his statement, including many of his contentions, as if they were facts. This was done prior to his testimony and without any opportunity of a representative of the plan or the union to hear or comment on his contentions, although we had clearly stated our intention to be present to testify before the Committee when he did. We do not feel that this statement, which we understand is not being admitted into the record, should be considered to have the status of a Committee document and would ask that this type of approach be avoided in the future.

Mr. STRICHARTZ. With respect to Rhea Johnson, I would like to point out that in spite of all the flamboyant alleged facts that he has given, these are the bedrock facts that we have in our files, sir.

Mr. Rhea Johnson between 1930 and 1940 worked in covered employment for the steamship companies supporting this plan a total of 7 days in 1930 and 29 days in 1940.

I beg leave to offer the specific details for the record at the same time we comment on the other matters.

In 1941 Mr. Johnson worked 21 days.

In 1937 Mr. Johnson joined the union. There was a mixup as to whether he was expelled. But we have the records that indicated that he was expelled.

How this occurred, we don't know. But Mr. Johnson did not come forward with a reinstatement card until 1957.

But let me show you what the sequence of events was.

In 1941 he took a withdrawal, and we will accept the withdrawal card he submitted, on its face. In March, 1941, he did not—I repeat "not"—go into the Air Force. Mr. Johnson went to work in a civil service draft-deferred job as an instructor for the Army Air Force.

It was not until 1943 that Mr. Johnson was drafted into the Army.

In December of 1941 he shipped out for a few days—I think something like 28 days.

Counting the time from the date he last shipped out, Mr. Johnson was 15½ months in civilian employment ashore, not for a steamship company. It was 15½ months before he was drafted into the Army Air Force.

Our rules provide that a man must go directly into military service——

The CHAIRMAN. Where do you get this Army record?

Mr. Johnson, were you in the U.S. Army?

Mr. JOHNSON. Sir, let me clarify that.

Mr. STRICHARTZ. Excuse me, sir. Would you like me——

Mr. JOHNSON. I have tried to clarify that for these people several times.

The CHAIRMAN. We have you in the Air Force.

Mr. JOHNSON. That is right, Army Air Force.

What happened was I got notice of induction. When you get notice of induction, you move, so I took a withdrawal card.

When I went to the induction station, they were short of communications instructors. And a lieutenant colonel sitting right there said, "You can be of more value to the service, and we will defer you if you will take a 6-month contract with the Army Air Force as an instruc-

tor—subject to the draft as long as you accept this civil service job"—which I did. I took it twice.

In the interim I took a ship out between the two contracts and I went direct from the civil service instructor's job directly into the Army Air Force as a second lieutenant.

But there is no savings clauses in here, and the main objective purpose of this original plan was, if you were inducted into the service—and I certainly was given notice of induction. Now he is trying to say that I worked—or they all tried to say that I worked for another outfit that was not covered by union contract.

This is true. Civil service is not.

And he alludes to prior World War II. There was very few steamship companies that were covered by any covered employment, because there was no pension plan.

But these union officials that are sitting here give themselves credit back to 1925 for all noncovered employment, but they want to deny us, the rank and file, the same privilege. This is my objection.

They are the ones that make the pension and welfare-fund plans. I can go through the thing methodically and show you.

Mr. STRICHARTZ. Am I to be permitted to finish my statement? I was interrupted, sir.

The CHAIRMAN. I just wanted to get one fact clear.

It was the U.S. Army Air Force?

Mr. JOHNSON. Yes.

Mr. STRICHARTZ. Now, our rules provide a man coverage for all days of required military service directly subsequent to employment by a participating company, provided he makes application to register for covered employment not more than 120 days after discharge and inspection.

Your committee has three rules.

The situation with respect to this claim for military service is simply that there was a 15½-month gap between the last time he worked and his induction into the Army Air Force, and intervening employment was not in covered employment, but in a civil service draft-defered job.

Senator JAVITS. Do you deny that it was patriotic employment?

Mr. STRICHARTZ. No, sir.

Senator JAVITS. You do not?

Mr. STRICHARTZ. I do not.

The next we heard of Mr. Johnson—he makes all kinds of allegations of having contacted us. Having had 64 days of prewar service aboard covered employment aboard ships of predecessor companies—there were not a few, but a large list of predecessor companies—Mr. Johnson then—the next time we heard of him he was on a union contract ship. He left it without making any effort to join the union or pay any dues in 1953. He worked 11 days in covered employment. He apparently got himself shipped out of Tampa. As I said, he left the job without joining the union. Again in 1954 he worked 86 days in covered employment and again left without joining the union. He makes many allegations. I will not refer to his allegations. I will just tell you what we have in our records.

Late in 1955 the union promulgated in advance the information about the pension plan that was being set up. We put this on the air in our union press broadcast and anybody can copy it who knows Morse code and that is anybody who is a radio officer. We put it in our publications. We notified people that there would be military service credit and past service credit. We posted copies in our union halls. It was general knowledge.

Now, in setting up the plan—this is what is important, in setting up the plan it was necessary to make actuarial studies of what could be done with the money available. It is customary to provide some type of past service credit for existing employees. There had been tens of thousands of radio officers with service during World War II and prior to that—we went back to 1925 in past service credit and that is longer than any other plan. In setting this plan up we had to have the actuary evaluate how much time we were liable for and this was done for the existing work force. We could not have covered the tens of thousands—understand that there were something like 1,100 men in this group—we could not have covered the tens of thousands. There wouldn't have been enough money. We would have to have had a pension benefit of $1 a month.

Early in 1956 we promulgated this information and then we heard for the first time from Mr. Johnson. His first letter of March 8, 1956, asks for reinstatement. We responded to him that our records indicated that he had been expelled and he would have to come back as a new member. It was not until March 1957 that he, not we found, his withdrawal card—and this is where your committee summary is defective. I assume it is based on what Mr. Johnson told you.

At the end, the summary says "the union's activities are questionable in claiming never to have received Johnson's withdrawal application and then to have 'found' an application dated at the end of the period required to earn prior service credits."

It was not we who found it. We have a letter here from Mr. Rhea Johnson in 1957, after he got off—he says "I left the Santa Clara Victory in New Orleans" and he left that ship on March 7, 1957. We have a letter saying "Reference to your letter dated January 8, 1957, please find enclosed a photostatic copy of my withdrawal card from ARA which clearly shows I was in good standing at the time."

We received this in March 1957—now, he had left the ship on March 7. On March 13, he had already written a letter and Mr. Bernard L. Smith, the secretary-treasurer, responds, "You came forward with the withdrawal card and we will honor it and we hope this clears the thing up and we will reinstate you retroactive to the first of the year."

Senator JAVITS. That doesn't change the facts, does it? In other words, the fact that he discovered it later doesn't change the substantive fact that he was not a member who was disqualified when you told him he was. Is that his fault?

Mr. STRICHARTZ. But he never came forward, sir.

Senator JAVITS. He doesn't have to come forward if it was a fact. Suppose he never came forward?

Mr. STRICHARTZ. It was a fact that he was on withdrawal, sir. He did not invoke the rights of a withdrawal member to be reinstated until

1956 and he didn't come forward with any indication that there was such a document until 1957.

Senator JAVITS. That is your——

Mr. STRICHARTZ. Excuse me, sir, but he alleges he found this and had it in 1956 and we have a statement from him to this effect.

Senator JAVITS. With all due respect, sir, the question is what are the substantive facts? The fact is that he was a member entitled to what he was asking for. That is the substance. When it was discovered doesn't invalidate it.

Mr. STRICHARTZ. He never called this to our attention. I say, sir, that Mr. Johnson's self-serving statements that he tried from 1951 to 1956 to return to the union and to the industry are not correct. I say that the people he quotes—one of them is dead, but prior to his demise he denied it. He was present at meetings at which this was discussed. I say, sir, that he—that the union became a national union and consolidated as a national union in 1946. He took a withdrawal from one of the locals of a predecessor organization of the ARA in 1941 and the records of that local were not available.

(The following information was subsequently supplied by Mr. Strichartz:)

Mr. Johnson was also less than candid with the Committee with respect to his withdrawal card from the Union. Correspondence which we are entering into the record (submitted herewith), shows that Mr. Johnson himself does not claim therein that he came forward with his withdrawal card in the 1951 to 1956 period that he now alleges he did. The fact is that this correspondence states that his mother found the withdrawal card in 1956, but that he nevertheless did not present it until 1957, the first time that the Union had any awareness of its existence. Mr. Johnson did not withdraw from the American Radio Association in 1941, but from a local of a predecessor organization. The ARA was willing at the time (1951–1957) to recognize withdrawal cards from these predecessor organizations, but did not have the records of all of the locals. It is only reasonable to assume that a man who has a withdrawal card in 1956 will not wait one year to come forward and present it for reinstatement.

Nevertheless, one substantive fact should be kept in mind, and that is that a withdrawal card does not mean that one continues as a member of the Union, but simply that one may come forward at some future date, present the withdrawal card and take the affirmative steps that are required for becoming reinstated in the Union. This Mr. Johnson did not do, despite all his self-serving claims. There was no record of his having made any effort to rejoin the Union until early in 1956, when he commenced the correspondence that was finally concluded when he presented the withdrawal card in 1957, and was immediately reinstated.

There are literally hundreds and thousands of former Radio Officers who have such withdrawal cards, and at the time when Mr. Johnson was seeking to return to the Union we were recognizing any and all of these, but the affirmative step of presenting the card had to be taken by the person desiring reinstatement. This step Mr. Johnson did not take until 1957, after the Pension Plan had been established. The important point is that a member need only have been engaged in covered employment for 200 days during the period 1/1/51–6/30/56 to have prevented a break with respect to his prior service. During this period where Radio Officers were in demand because of the Korean War an alleged dispute over a withdrawal card was most certainly not the circumstance which prevented Mr. Johnson from accruing the necessary time. It seems abundantly clear that Mr. Johnson's inability to qualify for a pension does not lie with any abuses or defects which is the subject of this hearing, but rather, from his own lack of initiative.

Johnson statement that his withdrawal card had been lost by him.

RHEA JOHNSON
163 S. WEST STREET
FORT FLORIDA U.S.A.

Apl 20, 64

Dear Jim:

Long time no see long time no hear!

Just back from a trip and have put in for my retirement and am having some trouble with Bronstein. He says that I do not have the required time from Jan 1, 1951 to Jun 30 1956. This is quite true, but as you remember there was a reason for it.

You remember in Dec 1951 I was released to inactive duty from the Air Force. In 1953 (Feb) I applied thru your Office for re-instatement into the Union. I could not find my withdrawal card at the time and Smitty left me hanging on the hook until 1956 when my Mother found my withdrawal card in some old records and forwarded it to me.

In the meantime, 1953 I got the Beaver State here in Tampa and reported same to you upon arrival at New Orleans, I road her to Galveston and Ted asked me relinquish the job and that he and you both would do all you could to get me back into the Union. Funny thing, if I'd sit back and said "no sir, you guys are not re-admiting me fast enough into the Union and so I'll keep this damn permanent job"., then I'd have been a "phoney" and "Fink" and everything in the book. Because I got off, I only have 110 working days in covered employment durning 1951 to 1956. The same thing happened at Norfolk, in 1954 I got the "Burco Trader" here in Tampa when we got back to Norfolk from Europe, Joe Rubin asked me to respect the Union hiring hall. I did, I got off and now I am being penalized for it. Some outfit?

I have not been feeling too,well Jim and am home on a trip off the SS Garden State and so put in for retirement and get this jolt. Please write Bronstein and Smitty for me will you? Are you on the Air? If so when and what frequencies?

73'

Rhea Johnson

WA4YY

cc Floyd Kepting

First Presentation of Withdrawal Card

5100 South Westshore Blvd.,
Tampa 11, Florida

Mr. Bernard L. Smith
Secretary-Treasurer
American Radio Association

Dear Brother Smith:

Reference your letter to me dated January 8th 1957. Please find enclosed a photostatic copy of my withdrawal card from the ACA which clearly shows I was in good standing at the time. If necessary, I still have my union book which indicates that all dues and strike assessments ets were paid up at the time this withdrawal was issued.

In view of the above, I cannot reconcile the old records reflecting that I was expelled from the union for non-payment of dues and I sincerely hope that the records will be corrected accordingly.

I left the S/S Santa Clara Victory in New Orleans, [3/1/57] informed Brother Crowney and am now awaiting for another assignment.

I am sending Brother Crowney (spelling sorry, Crowny) a copy of the above mentioned photo-stat.

Yours Sincerely,

Rhea S. Johnson

Rhea Johnson

ARA PENSION PLAN

ARA-PMA PENSION FUND

270 Madison Avenue - New York, New York 10016 - MU5-2142

February 28, 1968

Rhea S. Johnson
5100 South Westshore Blvd.
Tampa 11, Fla.

Dear Mr. Johnson:

In accordance with the instructions of the Trustees, we have completed processing of your request for certification of pension credits, and are returning documentation submitted by you, herewith.

Our calculations show that you have a total of 33 quarters credit and/or 1879 days through December 31, 1966.

This letter may be used as basis for claiming credit through December 31, 1966, if and when you desire to retire or in claiming any other benefit provided by the Pension Regulations, such as vesting, survivors benefits, etc.

A copy of the Plan rules is attached. These regulations must be complied with, to protect your past service credit.

Very truly yours,

J. M. Bronstein
Administrator

Enc.

Pre-W.W.II Time

ARA PENSION PLAN

ARA-PMA PENSION PLAN

SUMMARY AND CALCULATION SHEET

Name RHEA JOHNSON Soc.Sec.No.

Date of Birth Age at time of Pension

Work Record Summary:

	EAST		WEST		OTHER*				EAST		WEST		OTHER*		
	Days	Qts.	Days	Qts.	Code	Days	Qts.		Days	Qts.	Days	Qts.	Code	Days	Qts.
1930	7				7	11	—	19							
1931	—							19							
1932	—							19							
1933	—							19							
1934	—							19							
1935					7	76	1	19							
1936					7	164	3	19							
1937					7	190	3	19							
1938					7	365	4	19							
1939					7	93	1	19							
1940	29	—			7	41	1	19							
1941	28	—						19							
19								19							
19								19							
19								19							
19								19							
19								19							
19								19							
19								19							
19								19							
19								19							
19								19							
19								19							
19								19							
19								19							

TOTAL QUARTERS 164 days 7= 940 13 quarters

* Explanation to Code OTHER Coverage

1. Vacation Time Chargeable to ARA Plan
2. Vacation Time Chargeable to ARA-PMA Plan
3. Time In-Hospital Chargeable to ARA Plan
4. Unfit Periods Chargeable to ARA Plan
5. Time In-Hospital Chargeable to ARA-PMA Plan
6. Unfit Periods Chargeable to ARA-PMA Plan
7. Co's. other than those listed - Appendix A
8. Creditable Time in Military Service
9. Time Spent as Union Official
10. Miscellaneous - Explain

TOTAL QUARTERS CREDIT

East	West	Other	
			Allocation Other Qts.
			TOTALS

Equal to _____ Years Credit

MONTHLY PENSION - Total $ _____ -ARA $ _____ -ARA-PMA $ _____

① K. Johnson American Bureau of Shipping – The Record

Pre-W.W. II Time

QUALIFYING TIME				FOR PLAN USE ONLY	
COMPANY	SHIP	DATE ON PAYROLL	DATE OFF PAYROLL	DAYS	1/4s
O ~~INLAND STEEL~~ DONOSTOWN S.S. (G.L.)	S.S. HARRY CROFT	4-25-30	5-5-30	11	
E.C. ~~WESTERN SS. Co~~ Detroit & Cleveland	S.S. WESTERN STATES	5-6-30	5-12-30	7	
OUT NOT LISTED AMER BUR SHIP	S.S. MATTHIOT	5-13-30	5-23-30	11	probably fishing vessel
OUT ~~ATLAS BROTHERS~~ NOT LISTED ABS. or Co.	M/V HARRIET	6-1-30	9-25-30	117	
OUT NOT LISTED A.B.S. JAMES ADAMS	M/S VIGILANCE	11-10-30	12-31-30	52	
OUT NOT LISTED ABS JAMES ADAMS	M/S VIGILANCE	1-1-31	1-16-31	16	prob. fishing vessel
OUT NOT LISTED ABS or Co. JOHNSON FISH Co	M/V BARRACUDA	4-25-32	10-27-32	186	prob fishing vessel
OUT Not Listed ABS or Co. JOHNSON FISH Co.	M/V BARRACUDA	11-1-34	12-31-34	61	prob fishing vessel
OUT not listed ABS or Co JOHNSON FISH Co	M/V BARRACUDA	1-1-35	1-3-35	3	prob fishing vessel
OUT not listed ABS or Co JOSEPHINE HARTFORD	M/S. VAMARIE	2-5-35	2-28-35	24	
OUT ? not listed ABS	M/V BALMY DAYS	3-12-35	4-13-35	33	
OUT JOHNSON FISH Co	M/V BARRACUDA	5-10-35	8-9-35	92	
O SOUTH ATLANTIC SS ~~STRACHAN S.S. Co.~~	KSUA S.S. GEORGIAN	10-17-35	12-31-35	76	
O SOUTH ATLANTIC ~~STRACHAN S.S. Co~~	S.S. GEORGIAN	1-1-36	4-2-36	93	
O SOUTH ATLANTIC	S.S. SHICKSHINNY	5-4-36	7-13-36	71	
O SOUTH ATLANTIC	S.S. FLUOR SPAR	3-4-37	4-25-37	53	
O SOUTH ATLANTIC	S.S. TULSA	6-16-37	7-24-37	39	
OUT MERCHANT MINERS	S.S. DORCHESTER	8-3-37	9-6-37	35	

(2) R. Johnson

QUALIFYING TIME				FOR PLAN USE ONLY	
COMPANY	SHIP	DATE ON PAYROLL	DATE OFF PAYROLL	DAYS	1/4s
O TEXAS Co	S.S. NEW JERSEY	10-30-37	12-31-37	63	
O TEXAS Co	S.S NEW JERSEY	1-1-38	11-10-38	314	
O TEXAS Co	S.S. CALIFORNIA	11-11-38	12-31-38	51	
O TEXAS Co	S.S. CALIFORNIA	1-1-39	3-15-39	74	
O TEXAS Co.	S.S. NEW YORK	4-2-39	4-20-39	19	
OUT NOT LISTED ABS GORDON MACLEAN (no co.)	M/S STARLING	7-21-39	8-19-39	30	proving fishing vessel
O AZTEC PETROLEUM TRADING CORP (~~OIL Co~~)?	M/S AZTEC	3-27-40	4-17-40	22	
ROU Socony Vacuum ~~GULF OIL Co~~	R.O.U. won election March 1940 S/S MOBILGAS	5-9-40	7-12-40	65	OUT
ROU Socony Vacuum ~~STANDARD OIL~~?	S.S. COMET	9-2-40	9-25-40	24	OUT
E LYKES BROS.	S.S. CHESTER VALLEY	10-10-40	11-7-40	29	
ATLANTIC REFINING ~~CITY SERVICE OIL~~	M/S SHARON	11-20-40	12-8-40	19	
E SEABOARD SS — HON. STANDARD FRUIT Co	S.S. CEIBA	11-21-41	12-18-41	28	
OUT FISH Co. FLA.	MARY ANN	5-8-52	12-31-52	238	
OUT FISH Co FLA.	MARY ANN	1-1-53	4-18-53	108	
E STATES MARINE	S.S. BEAVER STATE	4-19-53	4-29-53	11	

Part. ~~Pen~~ W.W.II Time

ARA PENSION PLAN

ARA-PMA PENSION PLAN

SUMMARY AND CALCULATION SHEET

Name RHEA S. JOHNSON Soc.Sec.No.

Date of Birth 9/4/07 Age at time of Pension

Work Record Summary:

5V - 9/4/59
61 - 9/4/69

12-31-66
9-6-67
3-27-59

	EAST		WEST		OTHER*				EAST		WEST		OTHER*		
	Days	Qts.	Days	Qts.	Code	Days	Qts.		Days	Qts.	Days	Qts.	Code	Days	Qts.
1954	73	1	11		6	11		19							
19	3		184	1	6	15		19							
19	61	1						19							
19	127	2	51	1	1	8		19							
19	115	2			1	5		19							
19	186	4			1	22		19							
1966	64	1			1	9		19							
19	23	1			1	23		19							
19	194	4			1	14		19							
19	184	3						19							
19	146	3			1	26		19							
19	111	2			1	28		19							
19	203	4			1	4		19							
19	244	5	201			193		19							
19	20							19							
19	182							19							
19								19							
19								19							
19

R. Johnson

ARA PENSION PLAN

ARA-PMA PENSION PLAN

270 Madison Ave., New York, N. Y. 10016

APPLICATION FOR CERTIFICATION OF PENSION CREDITS

INSTRUCTIONS: Fill out and submit to Pension Plan Office with supporting proof: all documents supporting claim for pension credit. Evidence of date of birth must be included with application (birth certificate, baptismal report, naturalization papers, military service record, early school records, are examples of such proof). All documents will be returned when the certification process is complete.

PLEASE TYPE OR PRINT ALL DATA.

Name RHEA SMITHSON JOHNSON 5100 South Westshore Blvd., Tampa 11, Florida

Social Security No. [redacted] Z. No. 154-719 D1

Home Address 5100 South Westshore Blvd., Tampa 11, Florida

Date of birth 4 Sep 07 Date First Sailed as Radio Officer Apl 29, 1930

Old License O.K. [illegible]

SERVICE IN ARMED FORCES OF THE UNITED STATES
(Attach photostat of discharge)

Branch of Service USAF Date Began 31 Mar 43 Date Ended 9 Dec 1951

I hereby apply for certification of the pension credits due me based upon information and qualifying time set forth. I certify that the foregoing information on reverse hereof or any attachments hereto is true and correct and I agree that if I have misrepresented the facts, the Pension Plan Trustees are free to declare me ineligible to receive pension benefits.

RHEA JOHNSON
5100 S. WEST SHORE
TAMPA 11, FLORIDA U.S.A.

Signature Rhea Johnson Date 26 February 1967

INSTRUCTIONS: Follow carefully, as applications WILL BE RETURNED for re-filing if not filled out in accordance with instructions.

1. Make no entries in the 2 right hand columns marked "For Plan Use Only."

2. Separate time by individual calendar years. Start each year on Jan. 1 or your first date of employment, end it on Dec. 31 or last date of employment. SKIP A LINE BETWEEN CALENDAR YEARS.
EXAMPLE: if you were on a ship from Nov.15, 1958 to Mar.15, 1959, enter Nov.15-Dec.31 under 1958, then SKIP A LINE and enter Jan.1-Mar.15, under 1959.

3. Enter no period unless you were paid for every day of it:
EXAMPLE: if you were on a ship all during a year except for a personal leave of the first ten days in July, enter Jan.1-June 30 and July 11-Dec.31, for that year.

4. Attach proof of service for credit being claimed, such as Coast Guard Discharges, Discharge Book, Pay Vouchers, FCC Licenses, letters on company stationery signed by a company official, etc.

QUALIFYING TIME				FOR PLAN USE ONLY
COMPANY	SHIP	DATE ON PAYROLL	DATE OFF PAYROLL	DAYS 1/4s
Inland Steel	SS Harry Croft	25 Apl 30	5 May 30	11
Western SS Co	SS Western States	5/May 30	12 May 30	7
S???	SS Matthiot	1?12 May 30	23 May 30	11
Atlas Broters	M/V Harriet	1 June 30	25 Sep 30	117
James Adams	M/S Vigilance	10 Nov 30	16 Jan 31	68
Johnson Fish Co	M/V Barracuda	25 Apl 32	27 Oct 32	186
" "	"	1 Nov 34	3 Jan 35	64
Josephine Hartford	M/s Vamarie	5 Feb 35	30 Feb 35	24
??	M/V Balmy Days	12 Mar 35	13 Apl 35	33
~~Johnso Fish Co~~	~~M/V Barracuda~~	~~10 May 35~~	~~9 Aug 35~~	~~92~~
Strachan SS Co.,	ss Georgian	17 Oct 35	2 Apl 36	167
South Atlantic	SS Shickshinny	4 May 36	13 Jul 36	51
" "	SS Fluor Spar	4 Mar 37	25 Apl 37	53
" "	SS Tulsa	16 Jun 37	24 Jul 37	39
Merchant Miners?	SS Dorchester	3 Aug 37	6 Sep 37	35
Texas Co	SS New Jersey	30 Oct 37	10 Nov 38	377
~~" "~~	~~SS California~~	~~01 Nov 38~~	~~18 Mar 39~~	~~135~~
" "	SS New York	2 Apl 39	20 Apl 39	18
Gordon MacLean	M/S Starling	21 Jul 39	19 Aug 39	30
(Oil Co) ???	M/S Aztec	27 Mar 40	17 Apl 40	22
Gulf Oil Co	S/S Mobilgas	9 May 40	12 Jul 40	65
~~Standard Oil ???~~	~~SS Comet~~	~~2 Sep 40~~	~~25 Sep 40~~	~~24~~
Lykes Brothers	SS Chester Valley	10 Oct 40	7 Nov 40	29
City Service Oil	M/S Sharon	20 Nov 40	8 Dec 40	19
Standard Fruit Co	S/S Ceiba	21 Nov 41	18 Dec 41	28

(Note: As more space will be needed, attach extra sheets in same format. Extra sheets available at all Port Offices or by mail request.)

ARA- PMA Pension Plan
APPLICATION FOR CERTIFICATION OF PENSION CREDITS
(Continued)

Company	Ship	Date on Payroll Days	Date off	1/4s
Fish Company Fla	Mary Ann	8 May 52	18 Apl 53	346
States Marine	SS Beaver State	19 Apl 53	29 Apl 53	
A. L. Brubank	SS Burco Trader	10 Oct 54	3 Jan 55	86
L. Fraser	M/V Romana	27 May 55	15 Jun 55	
Merrit-Chap-Scott	M/V Bable	23 Jun 55	13 Jul 55	
Fish Company Fla	M/V Mary Ann	21 Jul 55	24 Feb 56	
Fraser SS Co.,	M/V Lewis Fraser	25 Feb 56	7 Jun 56	
American Oil	SS R. F. McConnell	18Jun 56	15 Aug 56	6161
Merrit-Chap-Scott	M/V Cable	23 Aug 56	14 Sep 56	
Fraser SS Co.	SS Evangline	24 Oct 56	18 Dec 56	
Pope & Talbott	SS Santa Clara Vic	1Jan " 57	7 Mar 57	56
Prudential SS Co	SS Fordham Vic	22 Mar 57	27 May 57	67
Lykes SS Co.	SS Sue Lykes	1 Jan 58	15 Mar 58	74
American Oil	SS Amoco New York	20 Apl 58	24 May 58	35
Lykes SS Co	SS James Lykes	4 Nov 58	6 Jan 59	64
Tracy Coal Co ??	SS Michael Tracy	16 Jan 59	23 Jan 59	8
Keystone SS Co	SS Gaines Mill	12 Apl 59	18 Jun 59	68
Peninsular SS Co	SS Valley Forge	29 Jul 59	9 Nov 59	104
Keystorn SS Co	SS Murfreesboro	7 Mar 60	17 Mar 60	11
Central Gulf SS	SS Green Island	30 May 60	22 Aug 60	85
Gulf Coast	SS Martha Mac	2 Dec 60	16 Jan 60	46 (assigned by ARA)
Lykes SS Co	SS Aimee Lykes	9 Feb 61	14 Apl 61	65
American Foreign	SS American Starling	5May61	10 Jul 61	67
Bulk Transport	SS Cottonwood Creek	31Aug61	12 Dec 61	104
Central Gulf	SS Green Point	9 Mar 62	7 Jul 62	121
Lykes Bro SS Co	SS James Lykes	5 Oct 62	14 Dec 62	71
States Marine	SS Garden State	8 Apl 63	10 Aug 63	125
" "	SS Garden State	2 Nov 63	13 Feb 64	104
Lykes SS Co	SS Howell Lykes	9 Oct 64	4 Feb 65	119
Battery SS Co	SS Glory of the Sea	30Sep65	19 Dec 65	81
Lykes SS Co	SS Jean Lykes	9 May 66	18 Feb 67	286

Note: Photostats of Draft Cards, Induction Notices, orders for active Military Duty have been furnished the Administrator of the Pension Plan. Any additional information will be furnished upon request.

Mr. STRICHARTZ. The important thing about this is that even if he had been reinstated Mr. Johnson would not be entitled to the big hunk of credits he is looking for. He is looking for pension credit based on his military service and he did not go directly into military service and he did not come back directly from military service. All we have is the series of vehement protestations that Mr. Johnson makes, and he may well be convinced after saying this often enongh that this is so.

But I point out that during the qualifying period Mr. Johnson didn't work in covered employment except for two short periods in 1953 and 1954, and then he failed to join the union—each time he left without being heard from.

I would like to point out something further, Senator. That is that the period Mr. Johnson alleges we did not let him come back in was precisely the one period in our existence when we were desperate for manpower. It was the Korean war period when vessels were being delayed for lack of radio officers, when the president of our union was on the air with Admiral Cochrane in spot announcements around the country sponsored by the Maritime Commission asking former radio officers to return to man the ships. It was the period when we were advertising in newspapers and we were desperate for men. He could have come back and worked and we would have grabbed him with both hands. In fact, when he finally did come he came back during the Suez crisis and we got him out.

The point about the thing is that irrespective of anything else, Mr. Johnson did not attempt to work as a radio officer. While he gives an impressive number of days, the days that he cites include a large amount of time not in covered employment or time not in employment with predecessor companies but on fishing vessels, on nonunion companies, on unorganized companies. It is not true that military service is being denied to people. We have had applications from 45 radio officers for military service. It has been granted to 27 of them. Nine of these 27 are out on pension. The other 18 are certified for pension. It is simply not true that the statements that Mr. Johnson makes have any validity.

This is not a plan designed to avoid making payments. It is a plan to make payments.

Now, I would like to point out something else, sir. Mr. Johnson's shipping record is such that even if everything he said is true, had he been a regular employee, a continuous radio officer, he would today have accrued 16½ to 17 years of service time toward pension credit, certainly by his 65th birthday next year, after which a pension credit may not be accrued, and be eligible for something like $250 a month pension.

Senator JAVITS. Sir, may I just note for the record that this committee is not here to try cases between pension payers and pension receivers. We are trying to learn all we can from case histories. One thing is very clear and that is that the provision of S. 2, my bill, which would issue a certificate indicating the vesting of a pension right, if done in this case and filed with a pension commission, would certainly have avoided these tremendous disputations of fact which are raised on both sides.

Mr. STRICHARTZ. I would like to say with respect to our plan, sir, that your committee has been interested in what proportion of those

who are covered in employment and who leave the industry receive pensions. I had the following prepared.

Our plan began in 1956. It covers roughly a thousand men. Leave out the first 5 years because there were very few people who retired on pension in that period. But in the 10-year period from 1962 to 1971—and actually it is a 9½-year period—333 radio officers withdrew from covered employment; 271 of them withdrew with pensions. There are now 294 on pension. Some of them had retired earlier.

Now, 39 were expelled for nonpayment of dues. These were men with a negligible amount of time because anybody with any amount of time certainly sees to it that he stays at least until he can vest his pension.

Our pension plan provides for vesting after 15 years. This is not 15 years calculated at 365 days. This is 15 years calculated at 50 days per quarter or 200 days per year, and that includes vacation time.

Right now a man sailing on a freighter for 150 days a year gets a year's credit, four quarters, including his 50 days of vacation, approximately. He gets a year of credit.

We do not break service lightly. To avoid a break in service all that we require is 200 days in each 3 years. That is 200 days calculated similarly; a man has only to get roughly 50 to 60 days a year, with his vacation, and there is no break in service. All of his past service credit is calculated in the same manner. The problem is the same no matter what rule you make—and we think we have the most lenient rule with respect to break in service; certainly 200 days in 2 years, including vacation, which means roughly 150 days of shipboard time or 160 or 165—under the old vacation schedule—certainly there is not another industry in America that provides continuity for casuals earning as little credited time.

Senator JAVITS. Is it a fact that he must work every year for the period you say and that if he misses in his 14th year he gets nothing at all?

Mr. STRICHARTZ. No, sir. At the end of each year you look back 3 years and if he has 200 days of credit time—and this includes not only work aboard vessels and vacation, but it includes as much as 30 days disability in hospital and an additional 30 days disability on under outpatient care. If he has that 200-day showing in any 3 years he does not break.

Now, with respect to Mr. St. Germain, we are not prepared to comment but I know Al St. Germain for many years and it is hard to believe that his situation is as desperate as he says.

We will take a look at his situation and see what the facts are in the case. But if in any 3-year period after 1956 a man failed to accrue 200 days credit he broke; after 1961, when we established vesting, once a man has achieved a vested position of 15 years—after 1961 there was no break, nohow. In short you did not have to continue to meet even this lenient 200 day requirement—you do not have to earn this time. After 1961, you are vested when you have 15 years.

Now, with respect to the comment of Mr. Lengyel that in order to vest he has to cease being a radio officer, this is the definition of vestings.

When you cease work in an industry, your rights to a pension under it are vested.

Senator JAVITS. I was interested in what you lost if the service is broken during the 15 years.

Mr. STRICHARTZ. In any one year you do not lose it. But if at the end of any 3-year period—and it is a rolling 3 years. If a man at the end of 1968 didn't have 3 years in 1966, 1967, and 1968 he loses past service credit unless he has achieved more than 15 years, in which case he is vested.

Senator JAVITS. In other words, you are giving us the point at which his service breaks.

Mr. STRICHARTZ. We would welcome anything that is done legislatively to apply vesting earlier, to apply portability. We have made an effort to achieve portability with the other union in our field. It is a smaller union. We have taken the initiative and as of this time it hasn't been done. But anything that is done legislatively for portability within industry or for portability throughout all of American industry, we would certainly welcome that. We are not here to quarrel on this thing.

With respect to the military pension, as I said, 45 applied and 28 were granted military service. Nobody was granted military service who spent 15½ months between the time they last shipped out and the time they went into the Army and then spent 10 or 12 years between the time they got out of the Army and—no, not 10 or 12 years. In the case of Mr. Johnson it was about 5 years before an effort was made to rejoin.

I repeat that any statement I have made can be substantiated. Some of it is history, the history of the Korean war shortage and the history of the shortage of radio officers during the Suez period. It is all history.

Mr. Johnson had only to come forward and say "I want to ship anyhow." A nonmember receives as much pension credit for covered employment as a member. We don't send people aboard ships to cadge dues from them or anything like that. If they come forward and want to become a responsible part of our union we welcome them.

When Mr. Johnson finally came forward and said "Hey, I am on withdrawal and here is my withdrawal card," we said, "Welcome back." But even before that, sir, we got him out in 1956, a full year before that. Yet Mr. Johnson didn't continue shipping. He hasn't shipped much in the whole subsequent period. He has something in the neighborhood of 10 years of total shipboard time. Although the figure he gives you for the contributions at this time are high, the $12.10, I believe it was, the fact is that most of the time that he cites the contributions were in the neighborhood of $1 or $1.50 or $2 or $3. I would say that what Mr. Johnson is asking, in asking for a pension, is that we put aside in our reserve—and we have a pensioner's reserve—that we put aside something like $60,000 to $75,000 in pension reserve to provide him with a pension of $4,200 a year based on the fact that he worked in covered employment for something under 2,000 days and based on the fact that during those 2,000 days we may have gotten $4,000 in the pension reserve.

(The following information was subsequently supplied for the record by Mr. Strichartz:)

Mr. Johnson alleges a great many more days of shipboard time than he has put forward in his application (copies of which are submitted herewith). In point of fact, no pension program of any industry covers the work that is done

just anywhere and everywhere in an industry, but covers only work done for companies covered by the program, or predecessor companies. In the case of the ARA Pension Plan and the ARA–PMA pension, there are a considerable number of such companies. Mr. Johnson's employment time for companies that were covered companies or predecessor companies, is considerably less than he claims. This is because he is adding the days of employment with companies who were and are in no way related to the industry pension program. No industry sets up a pension program designed to cover anybody who just worked anywhere. It provides benefits for covered employees. In according past service credits the employers and Unions make certain provisions that relate to time prior to the establishment of the pension program. But in no event does an employer make provision to pick up the pension liabilities of other employers who neither participate in the plan, and who never subsequently commence such participation. If as a result of Mr. Johnson's attempt at confusing the facts, we were to give a pension to a man who has not qualified for one, the money for it would have to come from somewhere; it would have to come from the reserves available for payment of benefits to men who had worked in covered employment, resulting in a diminution of their benefits.

It should also be noted that Mr. Johnson is less than candid in his response to the Chairman's question "During the period when you wanted to be a radio operator, 1951 to 1956, were you working at your trade elsewhere?". His answer is not responsive, but he attempts to give the impression that he was only "fishing." The fact is that Mr. Johnson's shipping in that period included employment as Radio Officer, on two ARA contract vessels. Had he so desired, during that period of extreme Radio Officer shortage, he would have had substantially full employment offered him.

The last point which should be cleared up is with respect to Mr. Johnson's erroneous statement that the Union Officials contributed nothing to the Plan "except what we give them." The fact is that contributions are made by the Union as a contributing employer in the same manner, and to the same extent that the contributions by the covered steamship companies are made.

Mr. STRICHARTZ. Now, we can take that $60,000 to $75,000 and give it to him but if we do we are going to have to take it from somebody else, possibly from Mr. Lengyel. We didn't tailor this plan to take it or give it. It is based on actuarial computations, competent actuarial consultation. Incidentally, I am not at all competent in the field of investing but we feel that if we are to get anywhere on legislation the committee should take cognizance—nobody can object to a political candidate—it should take cognizance of the fact that some people would use these hearings as a sounding board for their internal Union political objectives.

Now, I have a couple of other facts that I would like to point out to you, sir, and they are pertinent. That is that Mr. Johnson has not been before this forum alone. Mr. Johnson has been considered by the trustees on about four reviews. Mr. Johnson contacted the New York State Banking Department which has jurisdiction over our plan. They reviewed our plan in 1966 and any merits that Mr. Johnson's case may have had were not seen by the banking department. He then went to the U.S. Labor Department, Office of Veterans' Reemployment Rights, in Atlanta, Ga. They intervened. We went through the wringer again. We provided all the facts. One reason we are well prepared today is that Mr. Johnson is a perennial letterwriter and seeks all these forums and we must meet him before these forums and give this information.

In 1968 he asked our Baltimore agent to intervene. In 1967 he asked our New Orleans port agent to intervene. On each of these occasions a review was made; there was another time—the Washington AFL–CIO Maritime Committee was asked in 1969 to intervene. In 1969 he also requested the U.S. Secretary of Labor to intervene against our

plan. It was all so that he could get a pension. I think it is significant for you to note, gentlemen, that he got back in 1957, and lo and behold, on September 25, 1957 he sent a letter asking "What additional time is required before I am eligible for same," pension.

If you are interested in the details of our plan, of our funding, we would be glad to supply them. I am ready to answer questions.

The CHAIRMAN. We have to go to the Senate floor. We would appreciate it if you will submit anything you want to submit and we will have it for our committee study.

Mr. STRICHARTZ. Do you want me back this afternoon, Mr. Chairman?

The CHAIRMAN. No.

Senator JAVITS. The witness asked for 3 weeks so we had better be sure that the record will be kept open for that long. Shall we give him 2 weeks?

The CHAIRMAN. Would 2 weeks be adequate?

Mr. STRICHARTZ. Two weeks from the time I get the transcript. I assume that will be in 2 or 3 days.

The CHAIRMAN. We will reconvene at 2 o'clock with the other witnesses that were scheduled. We have to carry over two from this morning.

Thank you very much.

(Whereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

The CHAIRMAN. We would like to go a little out of the announced order on this afternoon's hearings. William Blair and Samuel Frederick may make their statement now.

We are asking again for the cooperation of Mr. and Mrs. Bernard Russ and hope that their schedule will permit this change of order.

Gentlemen, we are pleased to have you appear before the committee and help us in our studies. Who would like to proceed first?

Senator SCHWEIKER. Mr. Chairman, I appreciate your calling Mr. Blair and Mr. Frederick out of order so that we can hear from our Pennsylvania constituents. I think that in telling their story these two men will represent the sad tragedy of the pension system in the United States. I think this is a sad commentary on our times. I will let them tell their story, but I think it is typical and shows the relevancy of the hearings.

The CHAIRMAN. Thank you, Senator Schweiker.

STATEMENTS OF WILLIAM BLAIR AND SAMUEL FREDERICK, OF BEAVER FALLS, PA., FORMER EMPLOYEES OF INGRAM-RICHARDSON MANUFACTURING CO.

Mr. FREDERICK. In the first place I went to work for the Ingram-Richardson Co. on June 6, 1909. I worked for this firm for 51 years and 8 months. The company was sold out to the Park Electrochemical Co. in 1967. They operated the plant for a couple of years and then proceeded to liquidate the company. They junked the equipment and sold the buildings, as I understand.

Our pension which, according to the article of agreement of the sale—the Park Electrochemical Co. was to assume responsibility for the pension and the retirement insurance, which they took care of up until July 1970. Why it was shut off I never found out. I contacted the company and got no reply.

Then later on I got a letter that greeted me this way: "It just occurred to us that maybe you would like a lump-sum settlement." Well, of course I did not go for that because I figured that when you settle for a lump sum with anybody your insurance is in jeopardy. So we had a meeting at the union hall and it was rejected unanimously. Then the checks continued up until July of 1970. The last check was written on the 27th and we received it on the 29th. Since then we have received no checks.

During 1968 we only received 11 checks for the year. How this was accomplished was this way: originally the checks were issued and we received them on the first of the month. The ensuring checks would come probably on the 7th one month and the next month on the 14th and the next month on the 21st, and so on into the next month. At the end of the year we received our W–2 forms which gave us the amount which equaled exactly 11 checks.

During 1969 we got 12 checks but we did not receive any W–2 form. Now, why the pension was stopped I do not know, but I know we have not had anything since last July 1970. I have contacted Mr. Schweiker, Mr. Scott. Mr. Nader, the Labor Department, and they tell me there is no Federal agency that has any authority to enforce the provisions of any pension. The only recourse an individual might have would be through the courts. Therefore, we appealed to the union and it is now in their hands.

That is all I have to say.

The CHAIRMAN. Senator Schweiker, do you have any questions?

Senator SCHWEIKER. Why not let Mr. Blair tell his story?

Mr. BLAIR. Senator Williams and Senator Schweiker, I started to work April 21, 1933. I worked until June 1967. I was then laid off. I had 34 years. The company was being closed, so I signed for my pension in October. I received two checks for 1967, November and December. In 1968 I received 11 checks. In 1969 I received 12 checks. In 1970 I got six checks, and that is the last I got. The last check I got was July 29, 1970. I have not received any more checks since.

I then turned it over to the union representative and they took it to court. That is as far as I know about that.

All we were getting was $55 a month. We had about 80 men who had over 30 years. One man had 49 years and he was not old enough to get a pension. He could not get a pension unless he was 65 years old. We had 80 that had over 30 years that did not get a thing.

That is about all that I have. I am the youngest pensioner there is right now and I am close to 70. The men who are on pension are anywhere from 70 to 94 years old and they are not getting anything.

The CHAIRMAN. During your long period of employment what did you understand your pension rights were as they developed and accrued? I assume at some point they were vesting during this long period of employment. What did you think you were going to get?

Mr. BLAIR. That is the reason I stayed where I was to get a pension. I was getting enough seniority when I became old enough to get a pension that I thought I would get one.

The CHAIRMAN. What did you think the number of years of service was that would create your pension right, a benefit upon retirement?

Mr. BLAIR. We had it in the contract.

The CHAIRMAN. What was the contract?

Mr. BLAIR. You had to be there 30 years and age 65.

The CHAIRMAN. Did you have that?

Mr. BLAIR. I had 34.

The CHAIRMAN. And you were 65?

Mr. BLAIR. I was 65. I just got under the wire. I was 65 in June and I signed up in October and I collected 2 months for that year. That was 1967. I thought my pension would continue every month.

The CHAIRMAN. What do you mean, you got under the wire?

Mr. BLAIR. For the pension, because they were closing down. They were liquidating. This company was liquidating. You see, they liquidated in 1967 and I became 65 in 1967.

The CHAIRMAN. They were sold out when they were liquidated? Was it liquidated at that point or did they sell out to another company.

Mr. FREDERICK. The company was sold in 1965.

Mr. BLAIR. The company was sold in 1965. They sold to Park Electrochemical in 1965.

The CHAIRMAN. And then Park Electrochemical liquidated in 1967?

Mr. BLAIR. That is right.

The CHAIRMAN. When did you reach 65?

Mr. BLAIR. In 1967. I was 65 the 25th of June.

The CHAIRMAN. I see what you mean by the wire. You reached age 65 in June and the company closed in October?

Mr. BLAIR. That is right.

The CHAIRMAN. What was your period of service, Mr. Frederick? When did you reach 65?

Mr. FREDERICK. I was 65 on the 31st day of December 1960, and I worked until the 13th day of January 1961.

The CHAIRMAN. So there is no doubt about your having a vested pension.

Mr. FREDERICK. I did not think so.

The CHAIRMAN. You had 30 years and you had reached 65 and the company had not closed at that point. It had not even been sold at that point.

Mr. FREDERICK. That is right. I was in on the sale as a stockholder. One of the founders of the company and I bought the stock. That is why I had the articles of agreement on the sale pertaining to the responsibility for the pension and insurance.

The CHAIRMAN. How many pension checks did you get before they stopped completely?

Mr. FREDERICK. I got two checks a month, one for $55 and one for $12.91, which was my compensation for my 45 years on salary.

Mr. BLAIR. I got 31 checks all told.

The CHAIRMAN. How much was the monthly payment?

Mr. BLAIR. $55, that is all they paid. That was the highest you could go, $55 a month for 30 years service. You got $55 a month. I know

there are 80 men that have over 30 years. One man that I worked with in particular had 49 years. I worked with him, I would say, 31 years on practically the same job. He did not get a thing because he was not old enough. He had 49 years with the company.

The CHAIRMAN. When it was proposed to you that you might want to take a lump sum settlement of your claims, what was the amount of money that was suggested for lump sum settlement?

Mr. FREDERICK. Mine was only 17 months.

Senator SCHWEIKER. Seventeen months' pay was the settlement? What was yours?

Mr. BLAIR. I think it was $1,900. But the union has gone over that again, I mean the staff representative. They have taken that up again and there is a change in that now. I do not know just the outcome of that yet. I will know when I go back home, but I do not know just yet.

Senator SCHWEIKER. Mr. Frederick, I would like to come back to something you mentioned to me earlier. I understood you to say that you had in writing some kind of a contract or agreement from your former boss about your pension rights and so forth. Did I understand that correctly?

Mr. BLAIR. Yes.

Senator SCHWEIKER. That your former employer when he sold out gave you some kind of letter of agreement or assurance; is that right?

Mr. FREDERICK. Yes; the article of agreement states in there——

Senator SCHWEIKER. I think that is very important. What was it and what did it say?

Mr. FREDERICK. It said in there that the Park Electrochemical assumed the responsibility for the pension and the insurance, that is, the retirement insurance. Everybody was entitled to—I think the hourly rate people, of which I was a victim the last 3 years that I worked for them—have $55 a month and a thousand dollars insurance.

Senator SCHWEIKER. From whom? Was it to be addressed to you?

Mr. FREDERICK. Yes.

Senator SCHWEIKER. From whom? Who wrote it?

Mr. FREDERICK. The article of agreement was written up I imagine by the attorney, Dan Evans, for Ingram-Richardson Co.

Senator SCHWEIKER. This was an article of agreement for the sale of the company?

Mr. FREDERICK. Yes.

Senator SCHWEIKER. As I recall, because of your long service your boss had given you some shares of stock so you were then in on the article of agreement, so you owned an article of agreement guaranteeing you a pension which was cut off?

Mr. FREDERICK. That is right.

Senator SCHWEIKER. I think the record ought to show that.

That is all the questions I have.

The CHAIRMAN. You do not have that agreement?

Mr. FREDERICK. I sure do.

The CHAIRMAN. Do you have it here?

Mr. FREDERICK. Yes. Do you want me to get it?

The CHAIRMAN. Yes.

Senator SCHWEIKER. Yes, I think this is the nub of the question. Which paragraph refers to this?

Mr. FREDERICK. The red line on there.

Senator SCHWEIKER. Is this the part where it says, "No claim or liability arising from pension liabilities of Ingram-Richardson to employees or ex-employees shall be charged," and so forth, "except for any amount of monthly pension payments payable to hourly employees," and so forth, and as to which Ingram is in default?

Mr. FREDERICK. That liability fund that is referred to was the money that was held in escrow by the bank to take care of any unrevealed debts. The pension that the Park Electrochemical was liable for was the pension and insurance. If they were not, why in the heck did they pay it all these years?

Senator SCHWEIKER. Who was holding the money in escrow?

Mr. FREDERICK. The Pittsburgh National Bank, the Beaver Falls Branch.

Senator SCHWEIKER. What has happened to that escrow fund?

Mr. BLAIR. We do not know. We would certainly like to know. Maybe we would not have this trouble.

Senator SCHWEIKER. I wonder if we could make a copy of this for the record.

Mr. FREDERICK. Yes, I would like to have that back because that is the original.

Senator SCHWEIKER. We will make a copy.

The CHAIRMAN. If you are going to remain here for the next hour or so we will have it back to you.

(The information referred to follows:)

ESTABLISHED 1901

INGRAM-RICHARDSON *Manufacturing Company*

FABRICATORS AND PORCELAIN ENAMELERS OF STEEL AND ALUMINUM

AREA CODE 412 Phone: 843-3220

BEAVER FALLS, PA.
15010

Certificate # 271

June 2, 1965

TO THE STOCKHOLDERS OF INGRAM-RICHARDSON
MANUFACTURING COMPANY:

Since the last Annual Meeting of Stockholders, the Officers and Directors have been diligently negotiating for the sale of the Company as a going concern. A contract has been entered into with Park Electrochemical Corp. of Flushing, Long Island, New York, by the terms of which that company has been given an option to buy all of the capital stock of the Company from the Stockholders, and an Option and Purchase Agreement and an Escrow Agreement have been executed by the Company setting forth in detail the terms of sale. A copy of each is enclosed herewith.

The price per share for stock is $28.12\frac{1}{2}$, of which $15.46\frac{1}{2}$ will be paid forthwith in cash and $12.66 will be held in escrow for a period of six months to protect the purchaser from unkown claims against the company as defined in the attached Agreements. Management knows of no such claims and hopes that none arise. Expenses of and compensation to the Escrow Agent will be payable from the Escrow Fund.

The enclosed Agreements have been approved by your Company's Board of Directors and both Management and the Board of Directors believe that the price offered for the stock is a fair price. If you accept this offer, we will appreciate your prompt acceptance by forwarding your stock certificates duly endorsed, with your signature guaranteed by your bank or broker and accompanied by the enclosed Letter Agreement, filled in and signed by you, directly to the Union National Bank of Pittsburgh, Escrow Agent, Beaver Falls, Pa. Unless at least 85% of the shares are in the possession of the Escrow Agent before June 15, 1965, we are advised that the purchaser will withdraw its offer, which it has the right to do.

INGRAM-RICHARDSON MANUFACTURING COMPANY

By J. F. Ingram
President

Union National Bank of Pittsburgh
Park Electrochemical Corp.
Ingram-Richardson Manufacturing Company

Gentlemen:

In connection with the Option and Purchase Agreement by and between Park Electrochemical Corp. and Ingram-Richardson Manufacturing Company and the Escrow Agreement among the aforesaid corporations and The Union National Bank of Pittsburgh, the undersigned stockholder of the said Ingram-Richardson Manufacturing Company do hereby deposit in escrow with the aforesaid Bank certificate or certificates numbered _____ for a total of _____ shares of capital stock of the said Ingram-Richardson Manufacturing Company under the Aforesaid Option and Purchase Agreement and Escrow Agreement both dated May 29, 1965, and the undersigned does hereby authorize the aforesaid Bank as Escrow Agent to deliver the aforesaid certificate or certificates to Park Electrochemical Corp. against payment therefor under and in accordance with the terms of the said agreements, when, as, and if the said Park Electrochemical Corp. elects to exercise the option granted to it under the said agreements.

The undersigned warrants that the aforesaid shares hereby deposited are owned by the undersigned who has full right power and authority to sell, assign, and transfer the same and to deposit the same under the said Agreements, and that there are no liens, encumbrances, or claims existing against the said shares so deposited, the undersigned hereby adopting, approving and confirming the aforesaid Agreements and becoming a part thereto with the same force and effect and to the same extent as if the undersigned had personally signed said Agreements as options to Park Electrochemical Corp. of the said shares in the place and stead of or in addition to the aforesaid Ingram-Richardson Manufacturing Company.

Very truly yours,

Samuel J. Frederick

66-500 O-71—pt. 1—21

ESCROW AGREEMENT

MADE AND ENTERED INTO this 29th day of May, 1965, by and among INGRAM-RICHARDSON MANUFACTURING COMPANY, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter reffered to as "Ing-Rich"), with its place of business at Beaver Falls, Beaver County, Pennsylvania, PARK ELECTROCHEMICAL CORP., a corporation duly organized and existing under the laws of the State of New York (hereinafter referred to as "Park"), with its principal office at 33-40 Prince Street, Flushing, County of Queens, New York, and THE UNION NATIONAL BANK OF PITTSBURGH, a national banking corporation, having an office in the City of Beaver Falls, Beaver County, Pennsylvania, and duly authorized to conduct a banking and trust business (hereinafter referred to as "Escrow Agent").

W I T N E S S E T H:

WHEREAS, concurrently herewith Ing-Rich and Park have entered into an Option and Purchase Agreement, a copy of which is hereto attached and made a part hereof, covering an option for the sale of all or a major part of the capital stock of Ing-Rich to Park; and

WHEREAS, the services of an Escrow Agent are required for the purposes herein more fully described, including the receipt and delivery of stock of Ing-Rich, the payment of a portion of the purchase price to stockholders, and the holding of a portion of said purchase price to protect Park against certain liabilities of Ing-Rich.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained and intending to be legally bound hereby, the parties hereto have agreed together as follows:

1. Simultaneously with the execution of this Agreement or promptly thereafter, there shall be delivered to the Escrow Agent certificates for not less than 5,000 shares of the issued and outstanding capital stock of Ing-Rich, the certificates for which shall be in form for transferring, together with authorizations from the holders of such shares to deliver such shares to Park when, as and if the option granted to Park under that certain Option and Purchase Agreement being executed simultaneously herewith, a copy of which is hereto attached and hereby made a part hereof is duly exercised by Park and payment for such shares is made by Park to the Escrow Agent under the said Option and Purchase Agreement and under this Escrow Agreement. There shall also be delivered to the Escrow Agent by the holders thereof any other shares which stockholders of Ing-Rich may decide to deposit hereunder, subject to said Option and Purchase Agreement and subject to this Agreement. The Escrow Agent shall hold such shares as may be deposited with it hereunder subject to the terms of this Agreement and subject to the terms of the said Option and Purchase Agreement.

2. In the event that Park shall exercise the option granted to it

determine under and in accordance with the said Option and Purchase Agreement, the Escrow Agent shall deliver to Park, against payment of the purchase price therefor as set forth in this Agreement and in the said Option and Purchase Agreement, the shares deposited with the Escrow Agent, represented by certificates duly endorsed for transfer, with signatures guaranteed by a bank, trust company or authorized broker, and with all appropriate transfer stamps duly affixed thereto.

3. In the event that Park does not exercise its option prior to the expiration thereof as set forth in the said Option and Purchase Agreement, or in the event that after Park has exercised the said option and thereafter withdraws said exercise pursuant to any right granted to Park to do so, whether under this Agreement or under the said Option and Purchase Agreement, then the Escrow Agent shall return the said certificates of stock to the persons who deposited the same.

4. The purchase price of the said shares shall be the sum of Two Hundred Twenty-five Thousand ($225,000.00) Dollars for all of the issued and outstanding capital stock of Ing-Rich, or a proportionate part thereof for such shares as may be deposited hereunder and as to which Park shall exercise the said option. The said purchase price for shares deposited hereunder shall be paid by Park on the closing date as defined in the said Option and Purchase Agreement, in the event that Park exercises the said option as aforesaid.

5. Simultaneously with the deposit of any certificates for shares of stock hereunder, the person depositing such certificates shall execute and deliver to the Escrow Agent a letter, in form annexed hereto, approving, adopting and confirming the terms and provisions of this Agreement and of the said Option and Purchase Agreement, which original letters shall be delivered by the Escrow Agent to Park in the event that Park exercises said option and pays for said shares of stock. Park shall furnish copies of such letters to the Escrow Agent.

6. Ing-Rich has designated LOUIS W. INGRAM, E. A. SAHLI, and J. F. INGRAM as a Stockholders Committee to act for and on behalf of themselves and all other persons depositing stock with the Escrow Agent for sale to Park under the terms of this Agreement and the consent or action of said Committee or a majority thereof shall be binding upon all depositing stockholders of Ing-Rich, and Escrow Agent shall require the written acceptance of the terms of this Agreement and of the Option and Purchase Agreement by all depositing stockholders before accepting their stock under the terms thereof. Depositing stockholders agree that in the event of the resignation, withdrawal or incapacity of any member of the Stockholders Committee, the other two (2) shall have full power and authority to designate a successor and notify the Escrow Agent and all depositing stockholders and Park of their action. Any communication to the Stockholders Committee shall be addressed to the Committee in care of Evans and Hood, Beaver Falls, Pennsylvania.

7. Upon receipt by the Escrow Agent of the purchase price of any and all shares deposited hereunder, the Escrow Agent shall pay to each depositing

stockholder fifty-five (55) percent of the purchase price of the shares of such stockholder and shall retain for a period of six (6) months from the closing date as defined in said Option and Purchase Agreement the balance of said purchase price, during which time the said Escrow Agent shall apply and pay any necessary part of the said fund (Liability Fund) so remaining in its possession as follows:

(a) Escrow Agent shall pay any liability of Ing-Rich which does not appear on the list of liabilities prepared and certified by auditors selected by Park as the liabilities of Ing-Rich appearing on the books of account of Ing-Rich as of the date of such audit, a copy of which list will be delivered to all the parties hereto within five (5) days from the date hereof. Any additional liabilities incurred since the date of said audit in the ordinary course of business of Ing-Rich and arising out of transactions entered into subsequent to said date shall not be chargeable to the Liability Fund. Escrow Agent shall also not be liable to pay any liabilities not appearing on said list as of the date of said audit provided that such liabilities have been disclosed in writing by Ing-Rich to Park within seven (7) days after receipt by Ing-Rich of the aforesaid list of liabilities. In any event the Liability Fund shall not be charged with claims or liabilities arising out of product warranties and guarantees. Also the Liability Fund shall not be charged with miscellaneous claims or liabilities in individual denominations of not more than Three Hundred Fifty ($350.00) Dollars each, even if such claims or liabilities do not appear on the aforesaid list of liabilities and even if such claims or liabilities have not been disclosed by Ing-Rich as hereinabove set forth, provided that the total aggregate amount of such claims or liabilities does not exceed Five Thousand ($5,000.00) Dollars. No claim or liability arising from pension liabilities of Ing-Rich to employees or retired employees shall be chargeable to the said Liability Fund, except for any undisclosed amount of monthly pension payments payable to hourly employees on or before May 7, 1965 past due and as to which Ing-Rich is in default. The words "liability" or "liabilities" shall be deemed to mean and are hereby defined as any item which would normally appear on the right hand side of a normal balance sheet or financial statement under the heading "Liabilities", exclusive of capital and surplus. The foregoing definition shall control the meaning of the said words so defined for purposes of this subparagraph of this Agreement, except for such items normally considered to be liabilities, but which are specifically excluded as such in this Agreement. Without limiting the generality of the foregoing, the parties agree that the word "liability" or the word "liabilities" as used in this subparagraph of this Agreement do not and shall not include losses not yet actually incurred in connection with uncompleted contracts on the closing date or outstanding quotations or orders in process on the closing date. Notwithstanding the foregoing, the parties specifically agree that any back-charges not disclosed to Park on either the list to be delivered to Ing-Rich or in writing by Ing-Rich to Park within the time aforesaid shall be considered undisclosed liabilities payable out of the Liability Fund, regardless of anything herein contained to the contrary.

(b) Escrow Agent shall not admit or pay any claim without the consent of the said Stockholders Committee which shall have the right to defend against any such claim, provided that any lien against any of the property or assets of Ing-Rich arising out of such claim shall be banded at the expense of the Liability Fund. The expense incurred by the Stockholders Committee in defending against any claims covered by this Escrow Agreement shall be borne by the selling stockholders and shall be paid from the Liability Fund, together with the claim itself, if it is ultimately determined that such claim is a just and proper claim.

(c) Escrow Agent shall pay any and all proper claims based upon or arising under or out of the said Option and Purchase Agreement.

(d) No claim received by the Escrow Agent after six (6) months shall be recognized.

(e) The Liability Fund shall not be charged for any claim or liability resulting solely from acts or omissions of Park or Ing-Rich or their officers, agents or employees taken or omitted to be taken by them after the closing.

(f) At the end of the six (6) months' escrow period, if no claims covered by the terms of this Escrow Agreement or the said Option and Purchase Agreement, are outstanding and unpaid, Escrow Agent shall first deduct its expenses and reasonable compensation for its services and shall distribute the balance among the depositing stockholders of Ing-Rich in proportion to the number of shares deposited. If at the end of said period one or more claims covered by the terms of this Escrow Agreement are outstanding and unpaid, the Escrow Agent shall continue to hold an amount sufficient to pay such claims and such additional amount as the Stockholders Committee shall deem necessary, if any, for the cost of defending against said claims and shall distribute the balance pro rata as above set forth, and after the payment or final disposition of all clains and expenses shall make like distribution of any funds then remaining in its hands.

(g) Escrow Agent shall have no liability to Ing-Rich or Park or any depositing stockholder of Ing-Rich for any payment made by it at the direction of the Stockholders Committee, but Park shall be notified in advance of all payments which Escrow Agent has been directed to make by the Stockholders Committee, and of all distributions to depositing stockholders, and Park shall have the right to object thereto and contest the making of any such payment.

(h) In the event that either the Stockholders Committee or Park objects to any payment proposed to be made by the Escrow Agent out of the Liability Fund, then the Escrow Agent shall retain such funds and not make such payment until such time as either the parties agree thereto or the validity of such claim as against the Liability Fund is judicially determined; provided, however, that the Stockholders Committee has the right to direct the Escrow Agent to pay the amount of such claim to Park and thereupon be discharged from all liability for such claim.

8. Escrow Agent shall be entitled to reasonable compensation for its services hereunder and also reimbursement for any expense incurred by it hereunder.

IN WITNESS WHEREOF, this Escrow Agreement has been executed in triplicate the day and year first above written.

ATTEST:

F. B. Reese
Treasurer

INGRAM-RICHARDSON MANUFACTURING COMPANY

By J. F. Ingram
President

ATTEST:

Secretary

PARK ELECTROCHEMICAL CORP.

By Jerry Shore
Chairman of the Board

ATTEST:

THE UNION NATIONAL BANK OF PITTSBURGH

By

The CHAIRMAN. Thank you.

Mr. FREDERICK. We certainly appreciate your courtesy in having us here.

The CHAIRMAN. We are grateful to you.

Is Mr. Pasternak here, attorney for Park Electrochemical?

STATEMENT OF HARRY J. PASTERNAK AND JERRY SHORE, PARK ELECTROCHEMICAL CORP.

Mr. PASTERNAK. Senator, I am Harry Pasternak, and the gentleman on my right is Jerry Shore, chairman of the board of Park Electrochemical Corp.

While part of the narrative which has been stated to the committee by the two prior witnesses is quite accurate, part of it is also inaccurate.

I participated in the negotiations for the purchase by Park Electrochemical Corp. of the capital stock, or part of the capital stock, of the Ingram-Richardson Manufacturing Co. in 1965. That purchase was made from Mr. Fred Ingram and a group of people closely associated with him and represented the controlling interest of the stock at that time.

Subsequently, in individual purchases Park Electrochemical Corp. purchased the remaining stock until some months later they came to own 100 percent of the stock.

It is not, unfortunately for the pensioners, true that Park Electrochemical Corp. ever agreed to assume the indebtedness under the pension plan. The provision to which Senator Schweiker referred is a provision which has nothing to do with the pension plan, except to this extent.

There was an escrow fund set up by the sellers of the stock out of the money, the purchase price, for the stock to guarantee against any undisclosed, unpaid liabilities.

There was a representation, as I recall it—and I don't have the agreement with me. But I remember that quite well. There was a representation by the individual sellers that the liabilities of Ingram-Richardson were correctly stated in the financial statement which was submitted at that time.

This reserve fund was merely a guarantee so that if there were any other liabilities outstanding at that time, they would be paid if they were undisclosed out of that reserve fund in connection with the ultimate disposition of the reserve fund.

So, payments were made out of that reserve fund on October of undisclosed liabilities. And whatever moneys remained at the end of the escrow period went proportionately to those stockholders who had sold their stock and were entitled to it.

So, the paragraph to which Senator Schweiker was referred to by the prior witnesses really had nothing to do with the problem at hand.

The CHAIRMAN. So this question, then, it comes down to the disclosure by Ingram and Richardson of what they considered their liability under the pension plan?

Mr. PASTERNAK. Only for payments up to the date of the acquisition by Park of the capital stock of Ingram-Richardson Co.

In other words, they represented to Park that all the pension payments up to that date had been made and that if any pension payments had not been made up to that date, then they would come out of that reserve fund.

But for future payments the stockholders of Ingram-Richardson, the selling stockholders, did not make themselves liable for payments accruing under the pension plan when they sold the stock to Park.

On the other hand, Park, to the best of my recollection—and I am quite sure my recollection is accurate—did not guarantee payments or assume payments under the pension fund. They were stockholders, and that is all, of Ingram-Richardson.

The CHAIRMAN. There were people who had vested pension rights in Ingram-Richardson at the time of the sale, is that right?

Mr. PASTERNAK. There probably were, and I would like to mention this fact in that connection.

The Ingram-Richardson pension fund was adopted—the plan was adopted, I gather, sometime prior to 1954. At that time Park, of course, had no interest of any kind——

The CHAIRMAN. I am only talking about Ingram-Richardson.

Mr. PASTERNAK. Yes. So am I.

The Ingram-Richardson pension plan was adopted sometime prior to 1954, and we are not fully familiar with just what that situation was.

Mr. SHORE. It was effective November 10, 1954.

Mr. PASTERNAK. I gathered that there was a pension plan prior to this, but we don't have any information about it.

At that time the plan provided for funding with a life-insurance company when a man reached the retirement age.

As a matter of fact, there were some employees who received pensions under that funded agreement and who are still receiving those pensions.

Senator SCHWEIKER. An annuity with a life insurance company?

Mr. PASTERNAK. That is right, with the Equitable Life.

Senator SCHWEIKER. And the company purchased the annuity?

Mr. PASTERNAK. Ingram-Richardson purchased the annuity with Equitable Life.

At some time—and we don't know when—the pension plan became unfunded. When that occurred, we have no idea. We do know that it occurred sometime before Park became the stockholder of the Ingram-Richardson Manufacturing Co.

At the time that Park became the stockholder, I do assume—although I don't know—that there must have been some people who were pensioners and were receiving their payments.

I am sure the gentleman was mistaken and didn't intend to mislead you when he told you that the cash offer made to him represented only a few months of his pension. And I am sure he was quite mistaken, because I was the one who made the offer or caused the offer to be made to settle the pension obligations of those people who were entitled to pension on the basis of 50 percent of the computed value in 1969 of those pensions.

I believe—although, again, I am not certain—that the number of months which the gentleman referred to as "very few"—the number of

months that would have been covered amounted to somewhere between 40 and 45 months, and not the 6 or 7 months that he referred to.

I gather that from certain information that I have here with me.

Also, the statement that you were required to have 30 years in order to retire is unfortunately not true—or I should say fortunately not true.

I have the agreement in front of me. The agreement states, in paragraph 4: "Any employee who on or after November 10, 1954, shall have had at least 15 years continuous service and shall have attained the age of 65"—et cetera.

Now, this is an old pension plan. It is admittedly quite inadequate for modern days. There is no question about that. Nobody argues about that.

But this plan was in effect at the time that Park Electrochemical bought capital stock of Ingram-Richardson Manufacturing Co.

I might add—and I would like the committee to know this—that after the offer was made in 1969 of 50 percent of the commuted value at that time of those who were entitled to pensions—and the offer was made on an individual basis. Also, we wrote to each pensioner telling them that this was the offer and asking if they were willing to take it.

Apparently, they held a meeting and decided they wouldn't. Although we received a few letters in which people indicated that they would like to—one of whom, I might say, died within a month or two after that—that offer never became effective.

Subsequently, Mr. Witt, who is a New York lawyer, communicated with the company. And he and I sat down to try to negotiate a settlement.

Again I offered the 50 percent. And Mr. Witt, by the way, was representing the union. I offered 50 percent in settlement, 50 percent of the commuted value, with all payments up to January 1, 1971, plus 50 percent of the commuted value as of that date.

Mr. Witt refused to accept it. He made no counter offer. And a lawsuit was begun by the union in Pittsburgh, Pa., against Park Electrochemical—not against Ingram-Richardson.

We retained local counsel down there, and the lawsuit was continuing when Mr. Witt called me in late 1970.

We started to negotiate to try to get this matter disposed of. Unfortunately, I became ill and was out of my office for 2 or 3 months. When I returned, we continued our negotiations and ultimately arrived, about a month and a half ago, at a settlement, which was agreeable to the union, of 65 percent of the commuted value of the pensions as of January 1, 1971, with all payments up to the end of December.

An agreement was prepared and agreed upon between Mr. Witt and me. We sent it to the Pittsburgh counsel of the union. And, apparently, the individual members of the union were never informed, because the gentleman who sat here didn't seem to know about it.

That agreement is out for signature by the pensioners. If it is signed, Park will pay the money.

Now, we have, of course, taken the legal position, which I believe to be justified, that Park was never a party to the pension agreement or the union agreement and was not legally liable under those circumstances to pay these pensions.

That is, of course, the present situation. The litigation is pending. The offer is outstanding. It has been agreed upon, and we are awaiting signature by the individual pensioners and by the——

The CHAIRMAN. Was there any agreement in being for the payment of pensions on the part of Park at the time of the sale?

Mr. PASTERNAK. No.

The CHAIRMAN. Ingram's agreement was to fund the beneficiary when he reached 65. Is that it?

Mr. PASTERNAK. Apparently not. Apparently, that policy was in effect way back in 19— well, I am not sure of the date—but somwhere around the late forties or the early fifties.

Mr. SHORE. May I interrupt?

I have some facts from the company's records.

Apparently, the effective date of this original plan was November 1949. The effective date of this agrement is 1954.

We can reconstruct that the contract with the insurance company for funding was terminated in 1956. So, either between 1954 and 1956 or between 1949 and 1956 it was funded.

The funding was apparently discontinued, and I suspect it was because the company was not in good enough shape to fund it.

I suspect that based upon the history of the company's records. The company was in serious difficulty for many years prior to the acquisition of the capital stock by Park.

It is my opinion, frankly, that if Park had not bought this company or if Park had not bought the stock of this company and eventually taken over the management of the company, the company would not have lasted through a year. There would have been unemployment immediately. And, of course, the pensions would not have been paid at that time, either.

The CHAIRMAN. Between 1956 and when you bought this company, do you know how they treated pensioners when they reached their vesting point of 15 to 30 years and age 65? Did they at that point buy, out of current funds, an annuity for them?

Mr. SHORE. No; they did not. They paid the monthly payments out of their own cash reserves for that period.

The CHAIRMAN. This was out of operating expenses?

Mr. SHORE. Operating income or expenses.

The CHAIRMAN. It was an operating expense?

Mr. SHORE. Right.

The CHAIRMAN. Just as businessmen, wouldn't a company in that position be a lot fairer under today's system of operating to level with those employees and not let them go for 20 years thinking that they had in fact the dignity of a pension?

Mr. SHORE. Certainly, the plans that we have put into effect are fully funded. In all our companies our plans are fully funded, because we believe that in a pay-as-you-go approach—however, this was 1949, and I was not very knowledgeable about business in 1949.

There are clauses in this original agreement that, if you read them, you would recognize were something less than good legal currency. That is my opinion.

There was something about this original agreement that leaves something to be desired from a legal point of view.

In fact, there is a clause in here where the company could terminate this at its own discretion.

The CHAIRMAN. There are lots of pages and lots of paragraphs adding up to nothing of any hard value?

Mr. SHORE. Not really, I think the intention was very good. A good management, making a living in that town and making a serious effort to solve the problems of a business which, as it turns out, were not easily solvable. We have bought the capital stock of five companies that were all either bankrupt or in this kind of mess. We were considered fairly good at turning companies around.

We work very, very hard at this thing. The people work very hard. We couldn't do it. It was in bad shape for many reasons.

Item 19 in the amendment of the plan, "the company reserves the right to amend, modify, suspend or terminate the plan." That is not exactly legal currency, I would say. But certainly the company did everything it could and we certainly in Park management think, we have done everything we know how to do including, as it turns out—it's my opinion that we would be using funds to pay this settlement that don't belong to this company. It's my opinion, if we could weigh all the numbers, that we would find we were using Park's funds and not Ingram-Richardson's funds.

The CHAIRMAN. When you purchased, the only fund that was part of the sale to you and was earmarked for anything approaching pensions was the escrow fund for undisclosed liabilities.

Mr. PASTERNAK. That is right.

The CHAIRMAN. And you paid those as they appeared?

Mr. PASTERNAK. May I explain that Senator, because I handled that.

That escrow fund was put up for a very limited purpose. It came out of the purchase price of the capital stock. The purpose of the escrow fund was to make payment—and we couldn't do it. We had to get the bank to do it because the bank was the escrow agent.

It was to make payment for undisclosed liabilities of Ingram-Richardson and that is all. The fund had a limited period of time. I believe it was 1 year from the date of the closing of the contract. So, if during that one year any undisclosed liabilities were discovered they were to be paid out of that fund.

The fund had two purposes: One was to limit the liability of the selling group to the amount of that fund, and they contested that fund very severely; and secondly, to assure Park that up to the amount of that fund they would be secured against undisclosed liabilities. It had basically nothing to do with the pension fund and they made that quite clear when they said any undisclosed liabilities, because they did not carry the pension fund as a liability on their financial statement. Any undisclosed liabilities other than liabilities accruing under the pension fund after that date would be paid out of that escrow fund.

The reason for that language that Senator Schweiker read was that they wanted to make it clear that the pension fund was not an undisclosed liability, or the pension liability was not undisclosed, even though it didn't appear on this financial statement.

Those are the circumstances under which that language came in to the agreement.

Senator SCHWEIKER. Was this a contributory pension plan?

Mr. PASTERNAK. No.

Senator SCHWEIKER. It was?

Mr. PASTERNAK. It was not.

Senator SCHWEIKER. No contributions at all?

Mr. PASTERNAK. None at all.

Mr. SCHWEIKER. Fully paid by the company.

Mr. PASTERNAK. Unfortunately it wasn't fully paid. I wish it had been. It was supposed to be fully paid by the company, yes, sir.

Senator SCHWEIKER. When you folks acquire operations like this, which you have obviously done before, is it normal for you folks not to assume any pension liabilities? Is this a normal company practice and policy where you can take the assets of a company and take off a good part and say, "We shake ourselves out of any liability and we just buy the pluses?"

Mr. PASTERNAK. If we took the assets of the company I would agree with you. When a company buys the capital stock of another company it is not normal for that company to assume the indebtedness of the company whose capital stock it is buying. I say it's not normal. The normal procedure is that when you buy capital stock you buy capital stock and that is all you buy and that is all you assume.

Senator SCHWEIKER. Normal procedure for whom, for people who go in and skim the cream or for somebody who honors commitments?

Mr. SHORE. I don't think we can be properly accused of skimming the cream in this particular situation.

Senator SCHWEIKER. When you arbitrarily write off the lives of people who built the company, when you buy the assets of the company and leave the liabilities for somebody else?

Mr. SHORE. I don't think we can be properly accused of skimming the cream of that company which had been broke for several years. I am perfectly comfortable in saying to you that we made a contribution to that town and to that company to keep this company alive the way we did. We did everything we knew how to solve the problems of that company, everything we knew how.

I think our record and the history of our company is good. We are not skimmers of cream. As it turns out, I can assure you that if we could define the record carefully, we would not be skimming cream. There would be a lot of us in that company called Ingram-Richardson.

Senator SCHWEIKER. Is your company making a profit now?

Mr. SHORE. Yes, our company is making a profit and we are making a profit with companies that were in just the same condition that this company was in, by hard work.

Senator SCHWEIKER. Why wouldn't you recognize that there was some contribution that these old employees made to the whole system which you are enjoying? You picked up their company, but you don't want to assume liability for efforts and sweat they put into it? I don't buy that.

The real reason we have to write a pension law is just this kind of case right here.

Mr. PASTERNAK. Senator, may I clarify one comment here?

When Mr. Shore said they are making a profit now, that is not Ingram-Richardson or any part of Ingram-Richardson. That is Park Electrochemical Corp. which is making a profit and not either Ingram-Richardson or any part of Ingram-Richardson.

Senator SCHWEIKER. Well, it's the parent company. I think that is the trouble with the corporate structure right there. You take the best part of it and leave the worst go and say, "That is not our responsibility."

Mr. PASTERNAK. Senator, we don't do that.

Mr. SHORE. Senator, we took nothing of Ingram-Richardson. This company is making a profit——

Senator SCHWEIKER. Why did you buy it, then? If you took nothing, why did you buy it?

Mr. SHORE. Because we contributed something there. We contributed and tried very hard to solve the problems of a company that had possibly been in trouble for many years. I think that the system does work. We have about a thousand people working in our companies that probably would not be employed today. There are other Senators in this country who would so testify.

Senator SCHWEIKER. Is it company policy not to pick up the liabilities of any pensions when you acquire a company? Is that your normal company policy?

I can cite a lot of companies that don't follow that policy. Is that your company policy? This gets to the heart of the matter, what we are writing the law about. We are writing it to cover cases like this so they don't happen.

Mr. PASTERNAK. Senator, I don't know that the company had occasion to adopt any policy in that regard. I would say as a lawyer for the company that in view of the fact that the company has no legal liability to pick up that obligation, the company could be liable to its stockholders if it picked up a liability voluntarily and paid out money belonging to its stockholders. The individuals who made that payment would be liable unless you changed the corporate laws.

If those laws are changed, of course this company will obey them.

Senator SCHWEIKER. I think it is a sad commentary on the system that we have to write a law to recognize that a liability exists to the workers who built the company.

In this case you had a man who had 50-some years with the company. He was a foreman and really a part of management. Yet, here he is on $60-some dollars a month without a pension and will have to go to court to get his contributions which was somewhat on the management side of the fence, and not even recognizing that.

I think that is a sad commentary on the capitalistic system. I come from the business world myself and I think that is exactly why we need a law, unfortunately.

Mr. PASTERNAK. I would agree with you that we need a law. There is no question about it in my mind, that pensions, pension funds, should be handled in a different way than this agreement provides for them to be handled. But when it comes to the amount—I fully agree that there should be regulation of a great many things, not only pension funds, that are now unregulated by law, but in connection with the amount of this pension, in the case of Mr. Blair it's $55 a month which, I believe, is totally inadequate.

In the case of Mr. Frederick, it's $67.91 a month, which I also believe is totally inadequate.

Senator SCHWEIKER. I wouldn't disagree with you. I think it's inadequate. I am not pinning that responsibility on you folks. You didn't set it up. But the fact that it's so low——

Mr. PASTERNAK. May I interrupt?

Senator SCHWEIKER. The fact that it's so low means it would be so inexpensive to pick up and I think that is the tragedy of it.

Mr. PASTERNAK. The commuted value of the 30 or 40 people involved at the present time is over $150,000.

Senator SCHWEIKER. What were your company's net earnings for the year? The parent company?

Mr. PASTERNAK. I have no idea. Maybe Mr. Shore can tell you.

Senator SCHWEIKER. I am sure somebody has it somewhere, fellows. I hope we can find the company's net earnings.

I don't hear any answer to it.

Mr. SHORE. I know the net earnings. This is a public company. The net income last year was $700,000 after paying $700,000 worth of income tax.

Senator SCHWEIKER. I think the problem here is that when these acquisitions take place—granted other companies do it too—I am not saying you are the only ones. The whole attitude is, "We are picking up the stock and the devil with the people involved or the devil with the people who made the contributions. It's not our responsibility."

What was your rationale for stopping the payments in the middle of the plan?

Mr. PASTERNAK. Senator, may I make the comment, and I mean it in all sincerity. Here are a group of people who were working for a company which was going downhill very rapidly. This is my estimate, and I could be wrong, but I don't think I am—probably within a couple of years, if Park had not bought Ingram-Richardson, that company would have gone down the drain because they were losing money rapidly. Their management was inadequate and Park hoped that the company could turn this thing around and make a profitable company out of it.

If Park had been able to do it, there wouldn't have been any problem with the pensions. The employees would have received their pensions. If Park had not purchased it, the chances are they would have received nothing after a little while.

These employees worked for the Ingram-Richardson Co. for 38 or 40 or 50 years. They worked for Ingram-Richardson when Park owned the stock for a period of 2½ years. Is it fair to ask Park to pay pensions of people who worked for prior management for 38 or 40 or 50 years and under Park's management for 2 years?

Senator SCHWEIKER. I think that is part of the package when you assume a company, unless you subscribe to the corporate raider approach. If you subscribe to that, then it's not—but if you don't, then I think you have that responsibility.

Mr. PASTERNAK. Senator, maybe I wasn't brought up properly but as a corporate lawyer I do subscribe to the legalities of the situation and I try not to overlook the moralities. But you can't always, assuming for the moment that you are correct, Senator, in the moralities of the situation—I think we must recognize that there are certain other aspects of a public company and the question is whether

any officer of a public company has the right to pay out money when there is no liability on that company?

I think that is a very serious financial question for the officers involved.

Senator SCHWEIKER. You are speaking of legal liability. You surely don't mean a moral liability.

Mr. PASTERNAK. I would say if you have a couple of thousand stockholders and just one of them thinks that you have no right to recognize what a Senator thinks is a moral responsibility——

Senator SCHWEIKER. Here is a stockholder and you treated him the same way. He was a stockholder.

Mr. PASTERNAK. I am talking about a stockholder in Park, not of Ingram-Richardson. If one stockholder of Park comes to the conclusion that the officers had no right to make payments which they did, he can sue those officers for the full amount of those payments and would undoubtedly win that lawsuit.

The question is whether an officer of a corporation or a group of officers shall be held to a moral responsibility beyond a legal responsibility and if in complying with that moral responsibility he should make himself liable to individual stockholders to pay out of his own pocket the money that is due on pensions. I agree with you that there are some very moral aspects to this whole question of pension payments but I don't think it is fair to accuse Park of skimming the cream off the company when all it did was step in and try to run that company and make it profitable.

Senator SCHWEIKER. If it was in such bad shape as you say, why wouldn't it have been, from the dollars and cents standpoint—which obviously the transaction was looked at— better to wait until it underwent reorganization when you could have gotten it for less?

If you say this was the case why not wait until it went under reorganization when you could have gotten it for 10 cents on the dollar instead of 30 cents on the dollar? I can't believe there wasn't some good in it financially for you folks.

Mr. SHORE. I think there was a business reason here. This company was in the porcelain enamel business. We are knowledgeable in some contiguous businesses. We were building a plant in Indiana, in Shelbyville, Ind., to do the same sort of thing. We had developed a process to porcelain enamel pots and pans. You see them all over the country today. We developed that process. We took that process.

As we were moving that process to Indiana we saw the opportunity of keeping a work force, a cadre of people, together in Beaver Falls, Pa. We took the technology we had to this Beaver Falls, Pa., operation. There were eixsting technologies there. There were arts and trades there. We were looking to use that. So we took the technology we had and put it into that company and it served, we hope, the purpose of revitalization of that business.

As it turned out, unfortunately there was a fire in Chicago and we had the first demonstration of our product at the house ware show and that was a disaster in that the whole business came tumbling down. But we took something and put it into that company. We didn't take anything out of that company. We put technology, patents, new procedures and new machinery into that company in order

to vitalize it, in order to save time, in order to get this product on the way.

We did all these things and we tried to revitalize their existing product lines.

Senator SCHWEIKER. I think it is interesting that you ended up shutting down this particular plant and building a new plant. One is shut down and one is operating.

Mr. SHORE. I didn't make myself clear. I am sorry. I apparently didn't get it across to you.

We had built a plant and we started to equip it. We never fitted the plant out. Instead of doing the plant in Indiana, instead of completing that plant, we moved the machinery and equipment and the technology into Beaver Falls. Since Beaver Falls was already in business and had the technology for it, this is what we did.

Senator SCHWEIKER. I see the foreman shaking his head back there so there seems to be a little difference of opinion about that particular point.

Mr. SHORE. That may be.

Mr. PASTERNAK. I would like, if I may, to add this. Whether or not you let a company go into chapter 10 or 11 before buying its assets or buying the company or whether you buy it before it goes into chapter 10 or 11 is a question of business judgment. Park has done both. I know of one instance where Park took over a company prior to buying this company which was losing something like $20,000 a month. Park turned it around and made that company a good income-producing company.

The employees are there now. They are under a pension plan. Their pensions have been saved and the company has been saved. Park was hoping to do the same thing here. I couldn't do it. It wasn't able to.

The only answer, I think, to all of this is the very obvious answer that all pension plans should be funded and they should be funded from the very day that a man enters the employ of the organization. That would avoid any problems of——

Senator SCHWEIKER. We agree on that.

Mr. PASTERNAK. Of unfunding. The only trouble is that we are now looking with hindsight at something that happened in 1949 or 1950 or 1954. The whole climate of business and business morality and pension plans and everything else has changed so considerably over these years, just as the climate in the securities business and in other businesses in which the Federal Government has stepped in and forced laws which did away with abuses has changed. I don't see that Park Electrochemical Corp. should be chastised at this point for doing something in which it had no real serious part.

Senator SCHWEIKER. I think the issue boils down to simply the fact that some people in business transactions will not count as a cost of doing business the assumption of any liabilities on the part of their workers when acquisition takes place. They don't want to figure that as a part of the cost of acquiring a business. They figure they can get by without paying that price. Yet there are many companies that make that judgment. There are many businessmen that have as a regular policy that they do assume the liabilities of the workers and the pensions for the years of work.

I think it is interesting that some businessmen complain about Government interference, Government regulation of things, when actually the policy you enunciate is just an invitation for Government to come in and charge by law as a price of doing business for acquisitions that you have to assume the rights of pensioners.

I think it is fine to shrug your shoulders and say "That is not a cost of doing business," but you are simply putting the Federal Government in the position of regulating business, something that some businessmen seem to be concerned about.

I think to this extent that it is self-destructive to the business world and I think many businessmen recognize it. For that reason they wouldn't have a policy like that. That is a philosophical question.

Mr. PASTERNAK. I happen to be very much in favor of regulation in certain areas where there is not arm's length bargaining. I don't feel that the areas in which the Government has stepped in have hurt business at all. I think it has helped business because it has put the moral climate of business on a higher level than if you had free competition in those areas.

Senator SCHWEIKER. If you had had to pay full pension rights in acquiring this company, back pensions and all, would you have acquired the company?

Mr. PASTERNAK. We would have paid a much lower price to begin with.

Senator SCHWEIKER. I am saying if you had accepted the pension liabilities that had been accumulated, would you have acquired the company?

Mr. PASTERNAK. We hadn't thought about that but my guess is that if the problem was put to me I would have said, OK, let's figure what those liabilities are and take it off the price we are paying to these stockholders.

Senator SCHWEIKER. What the Federal Government will now say is, under all that will come out of this committee, you will have to pay that price before you acquire the company.

Mr. PASTERNAK. I think we have some constitutional problems there. I hope the Government can succeed in doing it but that is another field having nothing to do with what we are talking about now.

Senator SCHWEIKER. You will have to pay this as a cost of doing business. I think most businessmen do accept it as a cost of doing business, but some don't and we will have to legislate to require that those who don't, must do so. The same case has arisen in one of my home areas, when the Lee Tire Co. in Conshohocken, Pa., was taken over some years ago. I am knowledgeable of this subject where the same thing took place. The older employees went out the window and new owners came in and took the assets and said goodbye to anybody who contributed or helped to build the community or anything else. It is a moral issue that businessmen have to come to grips with and most do. Because some don't we are going to have to pass a Federal law.

I am so sorry to be so long, Mr. Chairman.

The CHAIRMAN. Do you have anything further at this point?

Senator SCHWEIKER. No.

The CHAIRMAN. This case certainly has so many classical elements that have made these legislative hearings look toward a new system.

Senator Javits has frequently said in our 2 days of hearings that we are here analyzing the system. This is a system that is inadequate to meet the pension needs of working people of this country. This whole case is a classical example of the need for some guides for a better system.

For example, reading from just one paragraph of the pension plan for the hourly employees of the Ingram-Richardson Co., paragraph 17 says:

> The Company expects to make any payments under the Contract or Trust Fund from time to time, in amounts determined by the Board of Directors, for the purpose of providing the benefits of the Plan.

When that plan was written maybe their motivation was of the very best. They fully expected to make payments. But as it turned out payments were not made and it was not a contract calling for a contribution to a fund that would be there for vested rights.

Of course we know this is true. We are going to include this portion of the agreement of Ingram-Richardson in the record at this point to show the kind of agreement that has led to the illusions of benefits on the part of so many millions of working people.

(The excerpt from the agreement referred to follows:)

* * * * * * *

CONTRIBUTIONS TO THE PLAN

16. There shall be contributions under the Plan by any employee.

17. The Company expects to make payments under the Contract or Trust Fund from time to time, in amounts determined by the Board of Directors, for the purpose of providing the benefits of the Plan.

18. In addition to the payments in Paragraph 17 above, the Company will transfer to the contract the entire value of the Trust Fund maintained under the Plan prior to January 1, 1954.

* * * * * * *

The CHAIRMAN. Let me ask you a hypothetical question.

I want to see how the law would apply in this hypothetical situation.

If payments had been made as expected by Ingram-Richardson into a fund, and when you bought the company there was a fund, the fund, I assume, would have been invested in some form of security. Is there any law that would have said to you, having purchased the company and its pension fund, how you would have to treat that fund in terms of its investment?

For example, could you have reinvested that fund in Park Electrochemical?

Mr. PASTERNAK. That would depend, I think, upon the terms of the agreement. I don't think—I am not sure—there is any specific law which limits the manner in which pension funds may be invested. I am not completely familiar with that field.

The CHAIRMAN. That is strictly hypothetical in this situation. Yet, often there are funds that are invested in a company, and there is particular allure to that investment when the company is in trouble. I think you gentlemen know that. This suggests to me another area where we had better be vigilant in understanding practices to see whether we have responsibility through law to make guidelines here too.

Mr. PASTERNAK. I think that is correct. It is very much like the State laws which require funds of banks, capital funds of banks, to be in-

vested only in certain types of securities. That might very well be a guide for the type of investments that pension funds are able to make.

As far as I know, in New York State—I don't know other States—there is no law which requires pension funds to be invested in any particular manner. If you violated what might be internal revenue regulations in connection with investment of those funds it is possible that there might be some penalty attached. This just occurs to me, but I am not sure at all of that conclusion.

The CHAIRMAN. Thank you very much, gentlemen.

Now we will turn to our schedule of this morning and call for Mr. and Mrs. Bernard Russ.

I am sorry, Mr. and Mrs. Russ, that we have had to change the order. You have been very patient, and we appreciate it.

Mr. RUSS. We appreciate being able to talk with you.

The CHAIRMAN. Mr. Russ, will you tell us where you folks are from and describe your experience to us?

STATEMENT OF MR. AND MRS. BERNARD RUSS, WANTAGH, LONG ISLAND, N.Y., FORMER EMPLOYEES OF COLUMBIA GAS SYSTEM SERVICE CORP.

Mr. RUSS. My name is Bernard Russ. I live on Henry Road in Wantagh, Long Island, N.Y.

I was employed with Columbia Gas System Service Corp. in New York City from February 1946 through September 1969. That is 5 months short of 24 years.

I started there right out of high school as a messenger and mail boy. When I left I was manager of the budget department. I had anywhere from eight to 10 people under me.

I started there, as I said, in 1946. I got drafted in 1950 and went to Korea. I came back in 1952 and started college in the evening under the G.I. bill.

As I progressed in college, I progressed at Columbia Gas. And I worked myself up to managing the budget department.

In January 1968, Columbia Gas announced to the entire New York office that they were going to relocate to Wilmington, Del., sometime in 1970. A whole year went by, and we thought we were going to relocate to Wilmington, Del.

Then, in the early part of 1969, I was informed that my department was going to be transferred to Columbus, Ohio, where the data-processing installation was.

We considered going to Columbus and we went out there in April of 1969 and spent the weekend looking at homes, and so forth.

We decided that we were shocked at the prices and it was not economically feasible for us to move. Where we live now we have a very low mortgage and very low interest rate—4½ percent. As a matter of fact, it would have doubled had I gone to Columbus, Ohio.

So I thought I really should look around and see if I could do better in New York. So I did, and I got a job starting at $2,000 more.

When I went back to management and told them that I wasn't going to Columbus, Ohio, that I had a job right now at $2,000 more, they made me an offer to go to Wilmington, Del., and they would match the present salary. But I was already committed, and I thought they should have made this earlier.

So I decided to leave Columbia. To be vested at Columbia Gas you had to have 10 years of service, but you had to be 45 years of age. I don't know what was so magic about 45.

I asked this many times, and I never got a suitable answer from them.

So I was not vested, simply because I wasn't 45 years of age, although I had almost 24 years of service. So I left, not being vested.

What also annoyed me—and I think this is an important point to bring out, when I left Columbia I was 1 month short of being 41 years old, so I had over 4 years to go before I was 45. When they know that you are not vested, they hold this over your head because they know the chances are you are not going to leave, that you really need this pension.

To add insult to injury, while I was leaving I heard that to lure the people into staying at Columbia until they left New York, they would give them 4 months' severance pay, and to those people who had over 10 years of service but were not 45, they would give them a special annuity. But it was done very discriminatorily and very hush-hush. Why, I don't know, because there was never anything in writing on it. I have never seen anything in writing on it.

When Columbia left New York, the people that did stay were sent a special letter telling them that when they became 65, they should notify Columbia Gas and that they would be given this special annuity.

Now, here is a case where they broke the rules to lure people to stay until they left New York City, which, again, I don't think is fair.

I realize that I can be vested in another company. I am still young enough to do that. But I have lost 24 years of my life, which I cannot accrue to another pension, which is an awful lot of years to put in and lose.

The company I am presently employed at—I just have to be there 10 years. There is no age restriction.

The CHAIRMAN. This is the disturbing part of that Columbia plan. It is years of service and reaching a certain age. Here you had only 10 years required and age 45, and you had 23½ years but hadn't reached 45.

Mr. RUSS. I think it is age discrimination, really.

The CHAIRMAN. I think it is more than that. I think there is the leverage to hold a man in.

Mr. RUSS. That is right.

I was annoyed that they didn't make the offer to me to go to Wilmington, Del. I had originally considered going. But they didn't make me the offer to go to Wilmington, Del., until after I informed them I was leaving. Then they made me the offer with $2,000 more.

But, as I said, I had already committed myself, and I felt that at least this way I could stay where I was.

The CHAIRMAN. Your present employment is with American Standard?

Mr. RUSS. That is right.

The CHAIRMAN. And this plan has years of service, but doesn't have the age requirement?

Mr. RUSS. That is right.

I might add that the pension at Columbia Gas was noncontributory, but every time you came up for a review for wages this was always considered part of the package. Since the pension was noncontributory, this was part of your second wage, so to speak. They considered this very strongly.

The CHAIRMAN. Mrs. Russ, what is your situation?

Mrs. RUSS. I also was employed at Columbia Gas, starting in September 1947 and leaving, of my own accord, in March 1964. I left there with 17 years of service, and I also do not have any pension rights.

I left because we were going to adopt children.

I feel there was age discrimination. I was only 34 years old at the time I decided to leave.

Mr. RUSS. Combined, we have over 40 years of service. And neither of us has anything to show for it, which is very unfair because many people came in long after we did, and I trained them on the job. On the day when they left New York City, these people who were 45 got a vested pension, and I didn't.

The CHAIRMAN. When do they get paid?

Mr. RUSS. When they become 65.

I asked them once why the age 45 was required or put on as a restriction, because there are so few people in the New York office who have over 20 years of service but are not age 45. I don't think there were even 10. I think the cost probably would have been negligible to cover these people. But they shrugged it off. I never got an answer.

The CHAIRMAN. How about severance pay? Did you lose out on that, too?

Mr. RUSS. I lost out on that because I did not stay until the day Columbia Gas left New York.

The CHAIRMAN. That is a traditional requirement for severance pay, to stay until the doors are actually closed?

Mr. RUSS. Yes. And I left a year before they left New York.

I wrote and asked for the annuity once I heard about it, this special annuity that they were giving people to keep them staying there. I asked for it. I wrote a letter to the chairman of the board, whom I knew personally. I got a very cold reply back from the vice president of employee benefits, saying that since I didn't stay until the very end that I wasn't eligible.

But the important part that I want to stress is that I left Columbia Gas strictly because they left New York. If they had stayed in New York, I never would have left, because I had a very nice job. I would have gotten a good pension. I was set. But for personal reasons I decided not to go with them, and I lost everything only because I wasn't 45.

Had they stayed, I had no reason at all to leave.

The CHAIRMAN. Here is another situation where we wrote, having learned of your experience, to Columbia Gas System Service Corp., now at Wilmington, inviting them to come here and make a statement or testify. They have written a letter that says that they would not

be testifying. They did want to reserve the right to respond in writing, and they will submit a statement.

These also will appear, and then we will await their statement.

(Copies of the letters referred to follow:)

U.S. SENATE,
COMMITTEE OF LABOR AND PUBLIC WELFARE,
Washington, D.C., July 14, 1971.

Mr. R. TAYLOR CLOUD,
Director, Employees Benefits,
Columbia Gas System Service Corp.,
Wilmington, Del.

DEAR MR. CLOUD: On March 1, 1971, by Senate Resolution 35, the U.S. Senate ordered the Senate Subcommittee on Labor to conduct a study of the private pension system in the United States, with special emphasis upon the need for protection of employees covered by these funds.

As you were advised on July 13, 1971, by a staff member of the Senate Subcommittee on Labor, Mr. Bernard N. Russ of Wantagh, New York, had informed the Subcommittee of alleged hardship resulting from inability to qualify for a pension under your pension plan. These were discussed with you in order to ascertain appropriate explanation in response to the difficulties recited.

The complainant has been invited to testify before the Subcommittee on Labor on or about July 27, 1971, on hearings to be held pursuant to the Senate study of private pension plans. It will be for the purpose of presenting the problem alleged.

Accordingly, the Subcommittee on Labor similarly invites your organization to designate a representative to appear to testify with respect to your pension plan benefits relating to Mr. Russ, and matters alleged by the complainant. It would be appreciated if you would indicate expeditiously whether you will appear. In the interim, please forward a copy of the pension plan and such other publications which you issue relating thereto. Your assistance is appreciated.

Sincerely,

MARIO T. NOTO,
Special Counsel, Subcommittee on Labor.

COLUMBIA GAS SYSTEM SERVICE CORP.,
Wilmington, Del., July 23, 1971.

Mr. MARIO T. NOTO,
Special Counsel, Subcommittee on Labor,
Committee on Labor and Public Welfare,
Washington, D.C.

DEAR MR. NOTO: I am enclosing herewith a copy of the official text of the Retirement Income Plan for Columbia Gas System Companies as amended to include Plan changes effective January 1, 1971. We are in the process of revising our benefit booklets and final drafts reflecting the current Plan are not yet available; however, I am including a copy of the booklet describing the Plan as it existed prior to the January 1, 1971 changes.

I appreciate your invitation to appear at the Subcommittee hearings beginning on or about July 27, 1971. My schedule precludes my being able to attend the hearings, but I would like to reserve the right to respond in writing.

Yours very truly,

R. TAYLOR CLOUD.

The CHAIRMAN. We certainly thank you for being with us and giving us the benefit of your testimony.

Mr. John Gojmerac and Joseph Wojnarowski are our next witnesses. We are very glad to have you both with us and we thank you for appearing. Both of you gentlemen are from Johnstown, Pa?

Mr. GOJMERAC. Right.

The CHAIRMAN. Mr. Gojmerac, do you want to state your experience to the committee?

STATEMENT OF JOHN GOJMERAC AND JOSEPH WOJNAROWSKI FORMER EMPLOYEES OF HAWS REFRACTORIES CO., JOHNSTOWN, PA.

Mr. GOJMERAC. Mr. Chairman and Senators, I am John Gojmerac of Johnstown. I have worked in the Haws Refractory from 1929. That would be a little over 42 years to this date. We have a pension plan down there that was functioning normally up until sometime in June, wasn't it, last year?

Mr. WOJNAROWSKI. Yes.

Mr. GOJMERAC. They were making payments of $95, and some were less, according to the former contracts. All of a sudden at the middle of the year they called us up to the office and said they would have to cut the pensions down, that the funds were going down low because they shut down two plants, I believe. One was at Lewistown and one was at Johnstown. They had about 13 members with age plus service on pension.

It was in January of this year when some of the older pensioners came to us with letters that they received from the bank in Johnstown, which said, "We are sorry that we cannot send your checks this month as the company has not forwarded any funds," and I think they said the money was down to around $200. We have not heard a word of the fund between the three trustees up until this year that there was no money in the fund.

So that leaves us with the plant that was shut down with about 20 men that would be eligible for pension that cannot draw a penny, 20 out of about 33. Besides, we have lost our vacations. We cannot get them until the next day we would work and the last word we had they closed up altogether last Friday at the last plant they had.

The CHAIRMAN. When did you go to work at the Haws Refractories?

Mr. GOJMERAC. In 1929.

The CHAIRMAN. You had an unbroken employment there until 1969?

Mr. GOJMERAC. That is right.

The CHAIRMAN. That is 40½ years.

Mr. GOJMERAC. Plus the 2 years I was carried on the seniority list, you know, after being laid off. Then I would have to renew my service with a registered letter after 6 months.

The CHAIRMAN. What did you consider your pension rights were while you were working there? What did you expect after you reached the retirement age?

Mr. GOJMERAC. I am not just speaking for my condition because I was the president of the local. I am talking about the rest too. But as far as I am concerned, when they shut down the first plant I was eligible to go on age plus service if I would have gone. But we were not given an option because I, being one of the three oldest—probably the oldest that was working then, or second oldest, was kept on to demolish the plant and move the equipment down to the other plant. Then they put us on a roster and gave us service of 7 years in the new plant. Our service covered for pension and vacation but we were just like new men down at the new plant.

The CHAIRMAN. How many years did you think you had to work there for this company to get a pension?

Mr. GOJMERAC. Well, the contract calls for it at 65. Where it is 60, I believe it is 60 if the place is shut down.

The CHAIRMAN. Aside from a plant shut down, how many years did you have to work for this company to get a pension?

Mr. GOJMERAC. Fifteen years and it was prorated up to 25 for a full pension.

The CHAIRMAN. But you got pension rights after 15 years with the company?

Mr. GOJMERAC. That is right. As far as shutting down, it was 55 years plus 20 years service, I believe, somewhere around there. I would have right now a combination of about 102 years age and service at that rate.

The CHAIRMAN. Let me ask you this, how about men older than yourself? Are they collecting pensions?

Mr. GOJMERAC. They stopped everything.

The CHAIRMAN. How about men that retired while you were working there? Did they collect pensions for any period of time?

Mr. GOJMERAC. Yes, they were keeping the pensions up until I would say around June or July 1970 sometime. Then they sent them letters. They called a committee together and they cut the pension down to half in order to make it last because the funds were running down.

The CHAIRMAN. How much was the pension? How much a month?

Mr. GOJMERAC. Well, some were $95 on the latest plant at that time. They were cut down to half, $47.50. Some were on at $60 from a good while back yet, years back. The top pension then, I believe, was $60. They were cut down to $30 or $28 and some cents.

Then as of this year in January, after we found out what happened we called a meeting with the company representative and the union and we went up there. We found out also that they did not pay one man of the other plant that they shut down, and they had about 30 men eligible for age plus service pensions for a year already before that.

The CHAIRMAN. The company stopped business altogether last week I understand.

Mr. GOJMERAC. One of the oldest employees we have, who is sort of a boss of the machine shop, told me that when I was leaving. I just ran into him. It was new to me to see him walking around on a workday. He told me that they had not even paid him last Friday, which was a regular payday.

The CHAIRMAN. How many plants does this company have?

Mr. GOJMERAC. I think we had three under this plan. The Kittanning plant was under this payroll; Canonsburg was one; Lewistown No. 7 yard, and No. 6 yard. Four plants were under this plan.

The CHAIRMAN. Are they all closed?

Mr. GOJMERAC. Right as of now they are.

The CHAIRMAN. What did you do at these plants?

Mr. GOJMERAC. I?

The CHAIRMAN. What was the work of the refractory?

Mr. GOJMERAC. They poured brick and things for electrical fixtures. I do not know what you call them. Anyhow, they poured them instead of casting them or pressing them out on a machine. That is the work they did at Seaboard. At Lewistown, they made silica for the

longest number of years. The two Johnstown plants made clay products. Canonsburg and Kittanning made clay products. Silica went out and they changed back to clay in just about all the plants. Now they are all out.

The CHAIRMAN. Mr. Wojnarowski, do you have anything to add?

Mr. WOJNAROWSKI. I was laid off in July of 1970 and I only had 22 years service. But I will be 65 February 22 next year. The reason I did not apply for social security when I got laid off was that I applied for unemployment compensation. That was $60 a week and I was entitled to 30 checks. If I had gotten the social security then a big percentage of my unemployment compensation would be deducted. I was waiting for there to be a recall and just kept on drawing unemployment checks. When they ran out, they put me on this new extension plan that they have in Pennsylvania for 9 weeks.

A couple of weeks ago that run out. My income is nil. You see, I would not be entitled to a full pension. I would be prorated. With just 22 years I would get just so much. I think it would come to around $40 a month or $35 or something like that.

The CHAIRMAN. When will you be collecting social security?

Mr. WOJNAROWSKI. I will be 65 on February 22. I am going to apply next week to give them plenty of time to get everything in order. I do not think I will get my first check until March of 1972. Otherwise I get the big sum of nothing. I have got a good sized vacation pay coming too, but I cannot get that unless I report for work 1 day, but now they are shut down so that money is gone.

The CHAIRMAN. Do you know anything about the company's situation and their financial position? Did they go into bankruptcy?

Mr. GOJMERAC. Not that we know of yet.

Mr. WOJNAROWSKI. As far as we know they closed up a few days ago.

Mr. GOJMERAC. We are not sure yet whether that is for good. We are told they shut down and they carried two watchmen at the other plant in Johnstown. They carried four and the last couple of weeks they laid off two. I guess it was over insurance that they had to have watchmen and now they have taken them off altogether.

The CHAIRMAN. At any rate, they did not create a fund for the payment of pension benefits.

Mr. GOJMERAC. That is right.

Mr. WOJNAROWSKI. We had a pension fund and they were supposed to pay so much an hour. They started with 7 cents an hour per man in 1950 or 1951. In every contract they have this raised up. The last one was 37½ cents an hour straight time and then about 15 or 16 cents more for time and a half. I think it came to 57 cents an hour per man a day for double time work.

As far as the pension fund is concerned, I have been trying to find out since the latter part of 1959 where the money is, is he putting it in or anything like that, and I never could get no answers.

The CHAIRMAN. Mr. Gojmerac, you were an official of the union and were in on the bargaining sessions.

Mr. WOJNAROWSKI. I was the secretary-treasurer.

The CHAIRMAN. You were both officials?

Mr. WOJNAROWSKI. Not of the pension funds.

The CHAIRMAN. No; of the union.

Mr. WOJNAROWSKI. The local.

The CHAIRMAN. You were in on the bargaining sessions when it came contract time?

Mr. WOJNAROWSKI. One time I was on it.

The CHAIRMAN. As part of the bargaining you were fighting for a larger contribution to the pension fund I assume.

Mr. GOJMERAC. That is right.

The CHAIRMAN. And you fought pretty hard?

Mr. WOJNAROWSKI. Right.

The CHAIRMAN. Did they resist you pretty hard?

Mr. GOJMERAC. You worked pretty hard for that too in the refractory plants.

The CHAIRMAN. Of course you do. But when you were around that table bargaining for your union contract, you were fighting for a larger contribution to the pension fund, I suppose.

Mr. WOJNAROWSKI. Now wait a minute, let me put it this way. Him and I did not have a word to say. Your vice president of the international was, like they say, the chairman of the negotiating committee for all of those. Then they had the regional director from each district. They were doing the negotiations.

The CHAIRMAN. The international? You were there at the meetings, wern't you?

Mr. WOJNAROWSKI. We were there.

The CHAIRMAN. Weren't they fighting for a bigger contribution at the hourly rate to the pension fund?

Mr. GOJMERAC. What we think, we should have been notified that the thing was going down like it was and not just drop a bomb out of the sky and say there was nothing there.

The CHAIRMAN. Did they resist when the union wanted it to go up so much an hour as the contribution to the fund? Did the company resist that? Did they fight that? Did they want to keep the amount down?

Mr. WOJNAROWSKI. No, no. I would say the opposite. I think they were glad. You see, that come out of the package.

Mr. GOJMERAC. It just came off the wages.

Mr. WOJNAROWSKI. Let me have the floor, please. Now, say the package was $4. They say, all right, this is going to include your wages, your insurance, your pension funds. That is going to be split, and then there will be so much for funeral leave, and so forth. The bigger amount they took out of that package for the pension fund the less we got an hour in rates. When that last one came up that they were supposed to take 50 cents, that total package was $4. Instead of us getting that, it was supposed to go to the pension fund. It was supposed to go.

The reason I say supposed to go, I do not know if a cent ever went into it. When I inquired asking them all this stuff some of them told me to keep my nose clean, that it was none of my business. Others said, "Yes, it is being put in there."

I said, "What do you mean by putting it in there?"

They said, "Well, the company is putting the money in."

I said, "How much?"

They said, "Well, what the company is supposed to put in there."

I said, "Show it to me. I know how many men are working overtime and stuff like that." But I asked, "Are you putting the proper figures into the fund, nobody knows that."

We did get a report about this pension fund, and our pension committee said they were 48 months behind. A short while later, I do not know how long, we heard they were 40 months behind. Lately I have heard that it was 18 months behind. What they mean by being 18 months behind I do not know. But if it is based on the money they were sending in when the men were working at $4 a day I do not see how they could figure they would be 18 months behind if they were only supposed to send $2 per man in there. We cannot get any figures.

With my being secretary-treasurer, if I goof up in sending the Internal Revenue our form and the one to the Labor Board they send it back and want a correction on it. If I make a penny mistake they want a correction on it. I have to put every penny in. But nobody believed they even had to report it. I think they are supposed to report it, but I do not know anything about it.

The CHAIRMAN. You told a very clear story. It is a sad case that you men are faced with, I will tell you that. That is why we are here working with you to correct the situation that you faced in your working period and now that you are at retirement age.

I am advised that this particular company had a responsibility under the law to report to the Department of Labor and their report shows they owe more money out of the fund than they had in the fund at the time of their last report. We have invited this company also to appear before the committee. I will include in the record the letter we wrote to the company and also their reply, in which they respectfully decline our invitation to appear at this hearing today.

(The letters referred to follow:)

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C., July 14, 1971.

Mr. E. E. SLICK, Jr.,
Haws Refractories Co.,
Johnstown, Pa.

DEAR MR. SLICK: On March 1, 1971, by Senate Resolution 35, the U.S. Senate ordered the Senate Subcommittee on Labor to conduct a study of the private pension system in the United States, with special emphasis upon the need for protection of employees covered by these funds.

Mr. John Gojmerac of Johnstown, Pa. has informed the Senate Subcommittee on Labor of alleged hardships resulting from his inability to obtain a pension under your pension plan. These were discussed with Ralph Maneval of your company in order to ascertain appropriate explanation in response to the difficulties recited.

The complainant has been invited to testify before the Subcommittee on Labor on or about July 27, 1971, on hearings to be held pursuant to the Senate study of private pension plans. It will be for the purpose of presenting the problem alleged.

Accordingly, the Subcommittee on Labor similarly invites your organization to designate a representative to appear to testify with respect to your pension plan benefits relating to Mr. Gojmerac, and matters alleged by complainant. It would be appreciated if you would indicate expeditiously whether you will appear. In the interim, please forward a copy of the pension plan and such other publications which you issue relating thereto. Your assistance is appreciated.

Sincerely,

MARIO T. NOTO,
Special Counsel, Subcommittee on Labor.

HAWS REFRACTORIES CO.,
Johnstown, Pa., July 23, 1971.

Mr. MARIO T. NOTO,
Special Counsel, Subcommittee on Labor, U.S. Senate Committee on Labor and Public Welfare, Washington, D.C.

DEAR MR. NOTO: In response to your letter of July 15, 1971, copy of same enclosed, we respectfully decline your invitation to appear before the Subcommittee on Labor on July 27, 1971, for the reason stated below.

The reason for Mr. John Gojmerac not being awarded a pension was that he did not qualify for a pension. This entire question has many times been before the pension officer of our company, the local union committee and officials, and more recently, the Regional Union Director. This presents an uneasy situation both for Mr. Gojmerac and for us. However, we are both bound by the Pension Fund terms which were approved by the Union and the Treasury Department and are presently binding.

We have enclosed a copy of the Pension Fund and Supplements along with copies of all correspondence on the matter. We feel that after reviewing supplement dated January 16, 1960 on Page 13, Paragraph 3, Section 13, and the enclosed correspondence, your conclusion will be in accord with ours and the various union officials.

Very truly yours,

E. E. SLICK, Jr., *President.*

The CHAIRMAN. Of course we are under a responsibility now to follow up on their filings under the law, and if they have not filed to learn why not, and perhaps we will have the further responsibility to subpoena them if we do not get a satisfactory response from them.

Mr. WOJNAROWSKI. There is another thing, but I do not know if it would be proper for this committee. They are 5 months behind. They have gotten the dues from the guys that are working. They are behind March, April, May, June, and July.

The CHAIRMAN. In checkoff?

Mr. WOJNAROWSKI. Yes, and they did not remit it. Now, they were behind on it last year in October, November, and December. So when I sent my monthly statement in to the international I put a note in there saying there was no checkoff. The next month there was still no checkoff. So finally in June I asked 2 months' checkoff for the months they were behind in 1970. Then a short while ago, the last day of June, I got a checkoff for 1 month, for the month of February.

Now they are behind March, April, May, June, and July. I wrote a letter again to the international, their secretary-treasurer. I put in red ink on top, "Behind. No checkoff received. Company behind 5 months in dues which they collected from the members and did not remit."

Here is how that works. The money is deducted from the workers. The checkoff and the check are sent to the international union here in Washington. They take their per capita tax out of there and send the balance to me, to the local union. They do not send the money to me from the company direct. It goes through the international union and from the international union to me. We have got $34 left.

The CHAIRMAN. How many people worked for this company?

Mr. GOJMERAC. When? You mean at the last count? I think it was about an average of 35 in each plant under the system that they were making them. At most, I think we ran around 100 men during the war period in each plant. I think the total they had at one time was about 324, and they were down to 54 at the last count.

The CHAIRMAN. Thank you very much, gentlemen.

We will recess until tomorrow morning at 10 o'clock.

(Whereupon, at 4:10 p.m., the hearing was recessed, to reconvene at 10 a.m., Thursday, July 29, 1971.)

PRIVATE WELFARE AND PENSION PLAN STUDY, 1971

THURSDAY, JULY 29, 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 10:20 a.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr., chairman of the subcommittee, presiding.

Present: Senators Williams and Javits.

Subcommittee staff members present: Mario T. Noto, special counsel; and Michael Gordon, minority counsel.

The CHAIRMAN. Come to order, please.

We will open the hearing today with the statement of Mr. Allen H. Sorenson. Mr. Sorenson, please.

STATEMENT OF ALLEN H. SORENSON, BOUNTIFUL, UTAH, FORMER EMPLOYEE OF S. H. KRESS & CO.

The CHAIRMAN. My notes tell me you made quite a journey today from Utah.

Mr. SORENSON. Yes, sir.

The CHAIRMAN. We certainly appreciate your making that long trip and coming here. The forum is yours and thank you.

Mr. SORENSON. I would like to say thank you to you and Senator Javits for the opportunity to appear before this committee today.

My name is Allen H. Sorenson. I reside at 385 South, 850 East, Bountiful, Utah. I was born in East Garland, Utah, May 18, 1924. In 1949 I graduated from Utah State University and joined S. H. Kress & Co. as a management trainee. I eventually managed several of their stores as well as heading up their national training program in New York. In all, I was in the employ of S. H. Kress & Co. 22 years. On April 1, 1971, my services were terminated. When informed of my termination I asked what the reason was, and Mr. Schultz, my regional manager, advised me I was being fired because of an inventory shrinkage. I refuted his reasoning by telling him that shrinkage had been less than the previous inventory had been in any year for the past 3 years. He then said, "I am firing you because of your inability to get sales." At that point, I told him that my sales decrease was no greater than any other merchant in downtown Salt Lake, that my volume was larger than our other Salt Lake store which had just opened in the new shopping center. My dollar-decrease was less than any of the other Utah stores even though my volume was considerably greater. He said that he was not interested in others' problems but

he felt that there was an opportunity in the Salt Lake store, and he said furthermore, "You have not completed some of the specific instructions that I gave you regarding store operation the last time I was in the store." I asked him to be specific; he said, "You have not changed your simplicity pattern and TV display. I informed him that he had told me that he would send additional Simplicity-pattern cabinets and that the two moves were related. I had not received the cabinets and it was impossible to complete.

The same day that I was fired he called Honolulu, Hawaii, within a day or two at least, he called there and fired the district man for S. H. Kress who had in excess of 35 years with the company. One week later they terminated the manager of our Seattle Pike Street store who had over 35 years service. On June 5, my office supervisor in the Salt Lake store was fired. The reason they gave her was, "Not suited for work." She had been with the company 21 years.

Moving backward a little bit, while I was in our New York office, I was aware of at least one study regarding our pension costs. At that time, President L. P. Johnson—this was shortly after GENESCO had taken control of the company—requested the personnel division to determine the costs of pensions for certain employees. These were people that were nearing retirement age and we determined the cost and related it back to their hourly rate, and a letter was sent out to the various district men, suggesting that these employees be retired early because of the cost to the company, and that their hourly rate would not justify the economics of them remaining in our employ. This policy I feel has continued since our pension was merged into GENESCO's plan on March 14, 1968. Practically all of our long-service employees in the company had been retired early, or dismissed for flimsy reasons for such as I was dismissed. Our pension fund had a 15-year and age-50 vesting. My age was 47 when I was dismissed.

The CHAIRMAN. Say that again.

Mr. SORENSON. 15 years and age 50.

The CHAIRMAN. All right.

Mr. SORENSON. The pension that I was working under required the employee to pay 3 percent of his annual salary up to $3,000, 6 percent over $3,000. The pension benefits at age 65 were equivalent to 1 percent for each year of service up to a maximum of 35 percent.

The CHAIRMAN. One percent of what?

Mr. SORENSON. Your highest annual salary.

The CHAIRMAN. The highest.

Mr. SORENSON. My pension certificate shows that based on my earnings as of March 14, 1967, it would have been $4,044 retirement. I have contributed to the plan with interest, approximately $4,850. The company's contribution to the plan is approximately $5,000. Since I have been terminated from the plan GENESCO has advised me that they are willing to return my portion of the pension with interest, but only if I will sign a statement showing that I resigned from S. H. Kress & Co. They refused to return their portion of the pension contribution.

One other thing that I might add was that 9 months prior to my termination when I was transferred to the Salt Lake store, a letter accompanied by personal history that read, "Attached is personal history for Allen Sorenson. Allen has done an excellent job of making

a profit and exercising controls in this district. I am sure you can reasonably expect the same performance."

The CHAIRMAN. What are you doing now, Mr. Sorenson?

Mr. SORENSON. I am employed by Stag's Drug in Salt Lake City as a receiving clerk.

The CHAIRMAN. How long had you participated in the Kress pension plan?

Mr. SORENSON. You have to be with S. H. Kress & Co. 10 years before you can participate in the plan. As I recall it, I joined in March of 1958, and participated through March 14, 1968.

The CHAIRMAN. There were no contributions of any kind by you or the company to a fund for your later retirement for those first 10 years?

Mr. SORENSON. No, sir.

The CHAIRMAN. Is that a customary procedure where there is an employee contribution plan?

Mr. SORENSON. I am not aware of other plans, so I can't state that. The plan I am currently under, you begin to participate and the company participates after 30 months of service. Under the plan that I am currently hoping to get into, vesting takes place after 6 years, and at the end of the sixth year you get 20 percent vesting, the following years 40, 60, and 80, and 100 percent after 10 years, also this plan provides that upon death, retirement, or total disability I have complete vesting. It also provides that when you attain age 45 you have complete vesting. So I feel that the plan that I am currently hoping to get into is very good. Somewhat different than the plan that I was orginally in.

The CHAIRMAN. When will you be eligible to begin participating in that plan?

Mr. SORENSON. I have been with the company now 3 months.

The CHAIRMAN. And you say that there you have to have 30 months before you can participate?

Mr. SORENSON. Correct.

The CHAIRMAN. You had exactly 10 years contributions under the Kress plan?

Mr. SORENSON. That is correct.

The CHAIRMAN. When did Kress become acquired by GENESCO?

Mr. SORENSON. In October of 1963.

The CHAIRMAN. Were you asked personally to estimate pension costs of employees?

Mr. SORENSON. No; this was handled by a different area of the personnel division.

The CHAIRMAN. When did that happen?

Mr. SORENSON. It was in the early 1964 months, or during 1964.

The CHAIRMAN. When was your employment terminated?

Mr. SORENSON. April 1, 1971.

The CHAIRMAN. By how many years were you short of vesting?

Mr. SORENSON. By 3 years. Now, our plan also provided that you could take an early retirement, however there was a penalty of 3 percent for each year that you elected to take early retirement. So, actually I could have retired at age 50, taken a 45-percent cut in pension rights, and still had a pension at age 50 and 6 months.

The CHAIRMAN. What would your percentage benefit have been at the early retirement at age 50?

Mr. SORENSON. Well, if I had attained retirement age it would have been $4,044.

The CHAIRMAN. At age 50?

Mr. SORENSON. No; that was at age 65.

The CHAIRMAN. What would your early retirement benefit have been?

Mr. SORENSON. It would have been 55 percent of that or roughly $2,200.

The CHAIRMAN. As a lump sum?

Mr. SORENSON. No; I would receive monthly benefits on that basis.

The CHAIRMAN. I don't understand that.

Mr. SORENSON. We have in our plan a schedule which doesn't show the monthly breakdown for payments.

The CHAIRMAN. What does that $2,000-plus figure represent?

Mr. SORENSON. That would have been my annual pension, $2,200 annually.

The CHAIRMAN. I see.

Mr. SORENSON. It would have been broken up into 12 equal payments.

The CHAIRMAN. You were just 3 years short of that?

Mr. SORENSON. That is correct.

The CHAIRMAN. After 21 years of service?

Mr. SORENSON. Twenty-two.

The CHAIRMAN. Twenty-two years of service. I understand from the statement that our investigator took in conversations with you, that this suggested a pattern to you of firing people who were close to retirement age.

Mr. SORENSON. This is correct. As I pointed out, since April 1, in my region alone, I know of four people who have been terminated who are reaching the critical age of either vesting rights or the retirement age.

The CHAIRMAN. Are you familiar with the nature of the fund and how it is invested?

Mr. SORENSON. Let me just read to you from our pension plan:

> How does the plan operate? The complete plan is set forth in a trust agreement signed by S. H. Kress & Co. and Manufacturers Hanover Trust Co. of New York which is the trustee acting on your behalf.

I am skipping one paragraph here.

> Your contribution, and those of the other employees and the company's contributions for retirement pension benefits are paid into the fund, held, managed, and invested by the trustees. Under the supervision of the pension committee funds are held in this trust fund for the benefits of employees participating in the fund, and cannot be used for any other purpose, and at your retirement the trustee will pay your retirement pension benefits from this fund.

The CHAIRMAN. Do you know how the money is invested by the trustee?

Mr. SORENSON. I do not. I currently understand that the money is no longer in that fund, that GENESCO since they have merged our pension fund into theirs, has sold the Kress real estate to the Kress pension fund so that they are able to use the pension moneys.

The CHAIRMAN. Say that again.

Mr. SORENSON. GENESCO has sold Kress real estate to the Kress pension fund so that they are able to use the money that has been set aside for our pensions.

The CHAIRMAN. And then does GENESCO pay to the fund as a lessee of the properties owned by the fund?

Mr. SORENSON. Yes, this is the way it operates. Now, the GENESCO fund is a noncontributory fund, and you must reach age 65, as I understand the fund, before you can get any benefits from it.

The CHAIRMAN. In other words, the plan was changed when the ownership changed?

Mr. SORENSON. Some 5 years later, yes. I understand that it has not been approved, or at least we have not been advised that the change has been approved by the Internal Revenue.

The CHAIRMAN. One more question before turning to Senator Javits, I don't understand the nature of your interest in the money that you contributed to that fund. This was on a withholding basis? From your salary?

Mr. SORENSON. Based on your annual salary, you could contribute—well, you were required to contribute a specific amount based on your average earnings for the previous year.

The CHAIRMAN. Then you own that outright, that part you contributed? The statement here suggests that you have not received it yet.

Mr. SORENSON. I have not received it yet because GENESCO refused to refund it until I send in what they call a cash disbursements sheet showing that I resigned.

The CHAIRMAN. Did you resign?

Mr. SORENSON. No, I did not resign.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Are you going to sue them to get your money back?

Mr. SORENSON. I have a lawsuit, yes.

Senator JAVITS. You have it pending?

Mr. SORENSON. Yes.

Senator JAVITS. How long has it been pending?

Mr. SORENSON. It was filed approximately 2 weeks ago.

Senator JAVITS. Have they answered yet?

Mr. SORENSON. They came back with a counteroffer of one additional week's pay.

Senator JAVITS. When you say that, is this a suit for severance pay or a suit for your pension contribution?

Mr. SORENSON. I was working under an employment contract at the time I was fired.

My employment contract specified that I give the company 30 days' notice before termination. They agreed to do the same. I did receive 30 days' severance, and our contract also provided we would get vacation pay based on company policy, and according to that, I did not get all my vacation pay either.

Senator JAVITS. But you are not suing for your pension contribution?

Mr. SORENSON. Yes.

Senator JAVITS. What have they answered to that?

Mr. SORENSON. I have had no reply.

Senator JAVITS. They did want you to sign the resignation before you get back what you yourself contributed voluntarily.

Mr. SORENSON. Yes, in fact I have the form here if you would like to see it.

Senator JAVITS. Yes, let's have the form.

Now, they had an absolute right to fire you, didn't they, except for the small amount that you might get in severance pay, is that right?

Mr. SORENSON. I think their reason was very petty.

Senator JAVITS. I understand that, but they had that right?

Mr. SORENSON. They had that right.

Senator JAVITS. They could have fired you 2 days before your pension vested, is that right?

Mr. SORENSON. Yes.

Senator JAVITS. Under the terms of the pension agreement you would be cut off?

Mr. SORENSEN. Yes.

Senator JAVITS. Isn't that a feudal system in your judgment?

Mr. SORENSON. It is.

Senator JAVITS. You are owned by the boss no matter how long you have worked, no matter how much you have accumulated. At the last minute, it's entirely up to him if he cuts you off and he doesn't have to give a reason, is that right?

Mr. SORENSON. That is right.

Senator JAVITS. Were you a member of any union?

Mr. SORENSON. No, sir.

Senator JAVITS. And you are a manager?

Mr. SORENSON. Yes, sir.

Senator JAVITS. You manage the other employees in the name of the employer?

Mr. SORENSON. Yes.

Senator JAVITS. Do you consider yourself a member of the great middle class?

Mr. SORENSON. I do.

Senator JAVITS. You don't consider yourself a blue collar worker?

Mr. SORENSON. No.

Senator JAVITS. You are not an agitator, are you?

Mr. SORENSON. I hope not.

Senator JAVITS. Would you consider this fair treatment for an employee who worked 22 years?

Mr. SORENSON. I would say not. If this had happened to one of my employees, I would have been bitterly disappointed and I would have gone to bat for that employee 100 percent.

Senator JAVITS. Now, when you were working all these 22 years, you knew all about your pension right?

Mr. SORENSON. I understand my pension very well.

Senator JAVITS. Was that a factor in your making the contract with the company, your remaining with the company, your accepting the compensation the company offered you?

Mr. SORENSON. Definitely.

Senator JAVITS. How often did you renew your contract?

Mr. SORENSON. We renewed that yearly.

Senator JAVITS. So you renewed that contract preliminary to firing, when?

Mr. SORENSON. It was August 1, 1970.

Senator JAVITS. Do you have your contract with you?

Mr. SORENSON. No; my lawyer has it.

Senator JAVITS. Is there anything in your contract about the company's pension fund?

Mr. SORENSON. Nothing.

Senator JAVITS. Because you were not contributing, it's noncontributory now?

Mr. SORENSON. That is correct.

Senator JAVITS. You stopped contributing 5 years ago when they changed the plan.

Mr. SORENSON. Yes. In other words, the benefits that we had accrued under the Kress plan were placed into the GENESCO plan as of March 14, 1968.

Senator JAVITS. So your contract said nothing about the pension plan but you had it in mind when you signed your new contract?

Mr. SORENSON. Definitely.

Senator JAVITS. As an important aspect of your compensation.

Mr. SORENSON. In fact, I knew if I reached age 50, and I had no doubt in my mind that I wouldn't reach age 50, I would be entitled to the benefits based on my retirement.

Senator JAVITS. Now, you said that the company sold Kress real estate to the pension plan, the fund. There is not necessarily anything wrong with that, is there?

Kress real estate is a pretty good investment.

Mr. SORENSON. Well, except the real estate that they have sold are all downtown properties and, of course, most downtown properties are deteriorating fast.

Senator JAVITS. You are making my point for me. What I wanted to emphasize is that this is completely self-dealing, in other words, they have the pension fund, and they did with it what they wanted. There is no arm's-length transaction; is that correct?

Mr. SORENSON. That is correct.

Senator JAVITS. But the real beneficiaries of the pension fund are not GENESCO, it's the workers.

Mr. SORENSON. Employees of the old S. H. Kress & Co.

Senator JAVITS. And they have nothing to say about it.

Mr. SORENSON. Absolutely nothing.

Senator JAVITS. They had nothing to say about the selling of Kress to GENESCO.

Mr. SORENSON. No; many of us at first would not exercise our options to settle at the price they offered for the company.

Senator JAVITS. That is your own stock.

Mr. SORENSON. That is correct.

Senator JAVITS. I must say, Mr. Sorenson, that you helped us immeasurably, because it does illustrate very clearly just how this whole system works, especially for the people considered to be the backbone of America.

Mr. SORENSON. I would like to add one thing: I knew that when I came up here I had nothing to gain insofar as my pension was concerned. But I felt it very essential that I do appear, that I try to help the generations that will follow so that some legislation might come forth that will protect all American workers.

Senator JAVITS. Mr. Sorenson, you believe, do you not, there should be some period of time a person has to work before he vests any pension rights; do you agree?

Mr. SORENSON. Yes, I feel that vesting is something that has to be in favor of both parties. If the contractual arrangement is not such that it will benefit both parties, then it's not good for either party.

Senator JAVITS. You don't object to the fact that if a person worked less than the—whatever would be a reasonable period of time—and he gets no pension benefits, you don't consider that to be unfair, do you?

Mr. SORENSON. No, I don't. I feel that in order to build the type of an organization that most businesses must have to progress and advance, that there must be something to hold that employee a short time.

Senator JAVITS. But 22 years is a pretty long stretch after which to be fired and be left emptyhanded, is it not?

Mr. SORENSON. Right.

Senator JAVITS. And this certainly affronts your conscience, and you believe it should affront the country's conscience?

Mr. SORENSON. I feel it should.

Senator JAVITS. One last question, Mr. Chairman. I think the record should note that notwithstanding this particular case history, the questionnaire responded to by GENESCO does not answer part III which would have given us information on just such forfeitures as are the situation before us.

I ask unanimous consent that part III of the questionnaire of GENESCO be made a part of this witness' testimony.

The CHAIRMAN. It certainly will be. As a matter of fact, the response to many of these questions is handwritten and somewhat illegible. But it all adds up to one thing, they say the information is not available.

Since they are in possession of all the information, this is not only unresponsive, it's an evasion.

The CHAIRMAN. Have you had dealings with the supervisor of retirement benefits, Mr. Safer?

Mr. SORENSON. No.

The CHAIRMAN. Do you know him?

Mr. SORENSON. No, all my correspondence has been with Mr. W. H. Bland.

The CHAIRMAN. Where is he?

Mr. SORENSON. He signed this letter as secretary of the S. H. Kress & Co. Pension Committee. W. H. Bland.

The CHAIRMAN. Where is he?

Mr. SORENSON. 111 Seventh Avenue North, Nashville, Tenn.

The CHAIRMAN. This is the same office in which Mr. Safer works.

Mr. SORENSON. In fact, during the weeks and months that followed the acquisition of S. H. Kress & Co., Mr. Bland was in and out of our office quite frequently obtaining personnel records from S. H. Kress & Co.

The CHAIRMAN. In answer to part 2 of our questionnaire, plan profile, the fourth question deals with funding. We provide for filling in the appropriate blank: "self-administered," "trust," "other," "insured," or "combination." They checked under funding that it is self-administered, and that it is a "trust."

You say the trustee is the New York bank?

Mr. SORENSON. At the time the plan was initiated under the Kress system it was Manufacturers Hanover Trust Co. of New York.

The CHAIRMAN. Was that changed with the acquisition?

Mr. SORENSON. We have never been informed that it has been changed. However, I do have one letter in my possession that possibly I should read to you. That was handed to me just as I left Salt Lake to come up here. It says:

> To persons receiving pension payments from the S. H. Kress and Company retirement plan: As you know, Manufacturers Hanover Trust Company of New York has been for many years the paid agent of the S. H. Kress & Company pension trust fund. Since it will be advantageous for the Kress pension trust fund to use the same paying agent used by GENESCO retirement pension fund, effective with the enclosed check dated January 1, 1970, your pension checks will be sent to you by the GENESCO Disbursing Corporation rather than the Manufacturers Hanover Trust Company.

So evidently it has been removed from that bank.

Senator JAVITS. Mr. Chairman, just by way of completing the record and as a basis for recalling this particular employer, I would like to point out the answer to question item 28 in our questionnaire which asks them to list and identify all employers contributing to the plan and in whom the plan has vested its assets. And they indicate that information is not available. Nevertheless, the staff, with the annual D–2 report on file with the Department of Labor got some different answers.

I ask this be identified for the record, and it is for the year ending December 31, 1970, file No. 020271 which can be set forth in the record. They list the contributions received from employers and identify all employers among those contributing, and I ask unanimous consent that the schedule—Schedule 1—be made a part of this testimony.

The CHAIRMAN. That will be done.

(The following was subsequently supplied for the record:)

U.S. Department of Labor
Form D-2
Revised 1965
(1967)

EMPLOYEE WELFARE OR PENSION BENEFIT PLAN ANNUAL REPORT FORM

Form approved
Budget Bureau Number 44-81115

0791

Enter file number which has been assigned by the U.S. Dept. of Labor

Annual Report for Year Ending 12 - 31 - 69 (Month) (Day) (Year)

See Book File

File No. WP- 020271

This form is prescribed by the U.S. Department of Labor for use by plan administrators in publishing, as required by the Welfare and Pension Plans Disclosure Act, annual reports of employee welfare or pension benefit plans. Use a separate form for each separate employee welfare benefit plan, and each separate employee pension benefit plan, as these terms are defined in the Act and for each plan combining welfare and pension benefits.

PLEASE ENTER INFORMATION FOR EACH ITEM. REFER TO INSTRUCTIONS BEFORE COMPLETING FORM. INSTRUCTION NUMBERS CORRESPOND TO ITEM NUMBERS ON THE FORM.

Mail two copies of the form completed in accordance with the instructions and two copies of each accompanying document to the Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C., 20210.

PART I—TO BE COMPLETED BY ALL PLANS

Part I—SECTION A

Except as Otherwise Indicated, All Items in Part I Should be Filled in or Marked "None" or "N.A." (Not Applicable) as Appropriate.

1. Name of Employer, Employer Association, or Employee Organization With Which Plan Is Identified: GENESCO, INC.
2. Street Address of Principal Office of Plan: 111 Seventh Ave., N. (Number) (Street) Nashville, (City) Tennessee (State) 37202 (ZIP Code)
3. Name of Plan (See page 3 of instructions): GENESCO Retirement Plan

Part I—SECTION B

1. Indicate by checking the appropriate box below the type of plan for which this report is being submitted:
   - [ ] a. Welfare Benefit Plan (Provides medical, surgical, or hospital care or benefits in event of sickness, accident, disability, death, or unemployment, through the purchase of insurance, or otherwise)
   - [X] b. Pension Benefit Plan (Provides retirement benefits by the purchase of insurance, annuity contracts, or otherwise, and includes any profit-sharing plan, savings and thrift plan, or stock purchase plan that provides benefits at or after retirement. Includes death benefits supplemental to a pension plan and retirement for age, service, or disability).
   - [ ] c. Combination of a. and b.
2. Check the category that best describes the groups covered by the Plan:
   - [X] a. All employees
   - [ ] b. Hourly rate employees
   - [ ] c. Salaried employees
   - [ ] d. Other (Specify):
3. Has the Plan been amended during the reporting year? [X] Yes [ ] No
4. Indicate by checking the appropriate boxes the types of benefits and the method of providing such benefits.

TYPES OF BENEFITS (1)	METHOD OF PROVIDING BENEFITS: Insurance Carrier, Service or Other Organization [1] (INSURED) (2)	Trust or Other Separately Maintained Fund [2] (SELF-INSURED) (3)	General Assets of Employer, Union, etc. (UNFUNDED) (4)
Medical	[ ]	[ ]	[ ]
Dental	[ ]	[ ]	[ ]
Surgical	[ ]	[ ]	[ ]
Hospital	[ ]	[ ]	[ ]
Disability income (Sickness and accident, etc.)	[ ]	[ ]	[ ]
Accidental death and dismemberment	[ ]	[ ]	[ ]
Death	[ ]	[ ]	[ ]
Unemployment	[ ]	[ ]	[ ]
Retirement (For age, service, or disability and including supplemental death benefits)	[ ]	[X]	[ ]
Other (Specify)	[ ]	[ ]	[ ]

[1] If any boxes in this column have been checked, applicable sections of Part III are to be completed.
[2] If any boxes in this column have been checked, applicable sections of Part IV are to be completed. (Do not include benefits provided through an insurance contract purchased by a Fund. These are to be reported in Column (2) as Insured.)

WASHINGTON, D.C. 20210
JUL 2 '71

[redacted]es have been checked only in Pa[redacted] Section B, Item 4, Column 4 (all benefits ar[redacted]nfunded). Part II is to be completed, and [redacted]6, 7, and 8 of Part I, Section B, ne[redacted] not be answered.

5. Indicate the total amount of contributions made to the Plan during the year covered by this report: (Show all contributions to the Plan, including insurance or annuity premiums, or subscription charges paid. Do not include dividends or retroactive rate refunds credited or unallocated benefits).

Employer(s) $ 489,348 Employees $ NONE Other $ 71,626

6. Enter the number of participants covered by the Plan during the year covered by this report:

a. Employed (or currently carried as active)	35,849
b. Retired employees	1,197
c. Total	37,046

7. If some of the benefits are unfunded, enter the amount of such benefits provided by the Plan during the year covered by this report. (Unfunded benefits are those provided solely from the general assets of the employer, union or other organization. They are not provided or funded through an Insurance Carrier or through the medium of a Trust or other Separately Maintained Fund) $ NONE

8. a. Was the Plan insured by a fidelity bond against losses through fraud or dishonesty during the reporting year? [X] Yes [ ] No

If Yes, what is maximum amount recoverable for loss caused by any person bonded thereunder? $ 5,000,000

Enter the name of the surety company Aetna Casualty & Insurance

If No, explain

b. Was there discovered during the reporting year any loss to the Plan caused by the fraud or dishonesty of any administrator, officer, employee of the plan, or other person handling funds of the Plan? [ ] Yes [X] No

If yes, list amounts of such losses, amount recovered for each loss from the bonding company, and amount recovered from the individual causing the loss. The individual causing the loss need not be identified in your answer. (If the amounts recovered do not equal the total loss sustained, explain)

Part II N/A

TO BE COMPLETED FOR COMPLETELY UNFUNDED PLANS ONLY

Information To Be Furnished by Plans Checking Boxes Only in Part I, Section B, Item 4, Column 4

Enter the following information for the unfunded benefits furnished during the year covered by this Report and during each of the 4 preceding years. Enter current reporting year on first line:

A. Welfare Plan Benefits

Year Ending (Month, Day, Year) (1)	Benefits Paid Under Plan (2)	Average Number of Persons Covered by the Plan (3)
	$	
	$	
	$	
	$	
	$	

B. Pension Plan Benefits

Year Ending (Month, Day, Year) (1)	Average Number of Participants: Total (2)	Nonretired (3)	Retired (4)	Total Unfunded Benefits Paid Under Plan (5)	Unfunded Benefits Paid to Retired Employees [1] (6)
				$	$
				$	$
				$	$
				$	$
				$	$

[1] Enter total in this column if it differs from amount in Column 5.

INSTRUCTIONS TO ADMINISTRATOR OF COMPLETELY UNFUNDED PLAN

The completion of PARTS I and II provides all the information required by the Act for an annual report of a Completely Unfunded Plan. The administrator of such a plan, after completing PARTS I and II, should execute and attach the signature and verification section in accordance with the instructions and mail two copies of the completed form to the Office of Labor-Management and Welfare-Pension Reports, Washington, D.C., 20210.

Part IV

t IV data for trust or other separately maintained fund are to be completed for a plan involving a trust or other separately maintained d. It also is to be completed for a plan which: (1) Has incurred expenses other than: (a) Payments for unfunded benefits or (b) Insure or annuity premiums or subscription charges paid to an insurance carrier or service or other organization; or (2) Has assets other than: Insurance or annuity contracts or (b) Contributions in the process of payment or collection.

Part IV—Section A
Statement of Assets and Liabilities

File No. WP-020271 3

of Plan GENESCO Retirement Plan

ar Beginning 1 (Month) – 1 (Day) – 69 (Year) and Ending 12 (Month) 31 (Day) 69 (Year)

ASSETS	End of Prior Year	End of Reporting Year
sh	$ 63,830	$ 18,217
ceivables:		
Contributions: (See Item 18)		
(1) Employer		
(2) Other (Specify)		
Dividends or experience rating refunds		
Other (Specify) Accounts Receivable	11,287	3,337
estments: (Other than real estate)		
Bank deposits at interest and deposits or shares in savings and loan associations		
Stocks:		
(1) Preferred	4,500	4,500
(2) Common	16,000	18,000
Bonds and debentures:		
(1) Government obligations:		
(a) Federal		
(b) State and municipal		
(2) Foreign government obligations		
(3) Nongovernment obligations		
Common Trusts:		
1) (Identify) Gesco Pooled Investment Trust - Market Value	51,805,764	40,008,896
2) (Identify)		
Subsidiary organizations (See instruction)		
Identify and indicate percentage of ownership by this Plan in the subsidiary)		
1) %		
2) %		
estate loans and mortgages		
ns and Notes Receivable: (Other than real estate)		
ecured		
Insecured		
Estate:		
perated	1,391,916	88,597
ther real estate Residual Value of Rental Properties - Estimate	200,000	200,000
r Assets:		
ccrued income		
repaid expenses		
ther (Specify) Lease Rights & Lease Contracts Receivable-Net	538,150	582,162
Total Assets	$ 54,031,447	$40,923,709
LIABILITIES		
ance and annuity premiums payable Liability to Terminated Employees	$ 1,367,521	$ 1,466,018
id claims (Not covered by insurance)		
unts payable Unearned Rent Income	1,308,855	44,945
ued expenses	11,029	13,441
liabilities (Specify)		
ve for future benefits Total Funds & Reserves	51,344,042	39,379,305
Total Liabilities and Reserves	$ 54,031,447	$40,923,709

[redacted] the total amount of fund assets (as valued on the Statement of Assets and Liabilities) which have ... security for loans or encumbered in any other manner ... $ NONE

Indicate total amount of liabilities (as included on the above prior year's Statement of Assets and Liabilities) liquidated or reduced, during the reporting year, without disbursement of cash. (See Instructions) ... $ 1,233.924

Indicate total amount of assets (as valued on the Statement of Assets and Liabilities) acquired during the reporting year, in any manner other than by purchase. (See Instructions) ... $ 389,602

Indicate total amount of assets (as valued on the above prior year's Statement of Assets and Liabilities) which, during the reporting year, have been disposed of in any manner other than by sale. (See Instructions) ... $ NONE

any employer contributions are overdue for 6 months or longer, enter the total amount of such arrearage here o the extent that such amount is known or determinable ... $ NONE

licate accounting basis by check. ☐ Cash ☒ Accrual

ns on a cash basis must attach a statement of significant unrecorded assets and liabilities.

ite basis of determining the amount at which assets listed in Part IV, Section A, Items 1 through 8, are carried and reported .....

17 a) Unearned Rent 1,233,924

b) Net Assets of Phoenix, Inc. Employees Pension Trust Fund combined with GENESCO Retirement Plan (I.R.S. approval letter dated 2/5/70) 320,207

~~Corrected figures~~ ~~43,395~~ ~~389,602~~

Part IV—Section B
Statement of Receipts and Disbursements

File No. WP- 020271 3

ıe of Plan GENESCO Retirement Plan

Year Beginning 1 (Month) – 1 (Day) – 69 (Year) and Ending 12 (Month) 31 (Day) 69 (Year)

CASH RECEIPTS		
Contributions: (Exclude amounts entered in Item 2)		
a. Employer (Schedule 1)	$ 489,348	
b. Employee		
c. Other (Specify)	71,626	
d. Total Contributions		$ 560,974
Dividends and Experience Rating Refunds From Insurance Companies		
Receipts From Investments:		
a. Interest	$	
b. Dividends		
c. Rents	65,000	
d. Other (Specify)		
e. Total Receipts From Investments		65,000
Receipts From Sale of Assets:		
a. Sales to parties-in-interest	$	
b. Sales to others		
c. Total Receipts From Sale of Assets (Schedule 2)		
Other Receipts:		
a. Loans (Money borrowed)	$	
b. Other (Specify) See Schedule II	1,618,136	
c. Total Other Receipts		1,618,136
Total Receipts		$ 2,244,110
CASH DISBURSEMENTS		
Insurance and Annuity Premiums Paid to Insurance Carriers and Payments to Service Organizations (Including Prepaid Medical Plans)		$
Benefits Provided Directly by the Trust or Separately Maintained Fund		1,115,026
Payments to an Organization Maintained by the Plan for the Purpose of Providing Benefits to Participants (Attach latest operating statement of the Organization showing detail of administrative expenses, supplies, fees, etc.)		
Payments or Contract Fees Paid to Independent Organizations or Individuals Providing Plan Benefits (Clinics, hospitals, doctors, etc.)		
Administrative Expenses:		
a. Salaries (Schedule 3)	$	
b. Allowances, expenses, etc. (Schedule 3)		
c. Taxes		
d. Fees and commissions (Schedule 4)		
e. Rent		
f. Insurance premiums		
g. Fidelity bond premiums		
h. Other administrative expenses (Specify)		
i. Total Administrative Expenses		
Purchase of Assets:		
a. Investments: (Other than real estate)		
(1) Purchased from parties-in-interest	$	
(2) Purchased from others		
b. Real Estate:		
(1) Purchased from parties-in-interest		
(2) Purchased from others	4,000	
c. Total Purchase of Assets		4,000
Loans (Money loaned)		
Other Disbursements: (Specify)		
a. Participants Withdrawals	$ 1,086,465	
b. Interest on Liability to Participants and Employee Contributions Refunded	84,162	
c. Total Other Disbursements		1,170,627
		2,289,653

Part IV—Section C

Supporting Schedules for Specific Items Shown
on Section B—Statement of Receipts and Disbursements

For Year Beginning 1 (Month) 1 (Day) 69 (Year) and Ending 12 (Month) 31 (Day) 69 (Year)

If more space is required, attach additional sheets properly identified. Show total of additional listings in space provided.

SCHEDULE 1

Contributions Received from Employers
(Detail of total shown for Item 1a. Statement of Receipts and Disbursements)

Name and Location of Employer (See Instructions) (1)	Contributions Received During Reporting Period (2)
See Schedule I	$
Subtotal from additional listing	$ 489,348
Total	To Item 1a. $

Receipts From Sale of Assets
(Detail of total shown for Item 4c. Statement of Receipts and Disbursements)

Category of Assets Sold (1)	Cost (2)	Book Value (3)	Gross Sales Price		Amount Received (Net) (6)
			Cash (4)	Other (5)	
	$	$	$	$	$
ubtotal from additional listing	$	$	$	$	$
tal	$	$	$	$	$

To Item 4c

Part IV—Section E
Trust Fund Pension Plan Data

of Plan GENESCO Retirement Plan

File No. WP- 020271

This section is to be completed to the extent applicable for those pension plan benefits funded through the medium of a trust.

mber of Participants: (as of 1-1-69)

a. Retired 900

b. Active (exclude those in 1c.) 38,812

c. Separated from employment with vested benefits 31

pe and Basis of Funding.—The methods of funding and determination of costs currently being used for the Plan are to be stated here. (See tructions.)

Entry Age Normal Cost - Frozen Initial Liability Method

tuarial Assumptions and Methods

Attach a statement of the actuarial assumptions and methods currently being used in determining the contributions. A copy of the ast actuarial report which includes such a statement in respect of contributions may be submitted in lieu of the foregoing. Any such state- ents or reports submitted as attachments should be appropriately identified. Where under the type and basis of funding, figures are entered Item 4, below, a further statement is required showing the actuarial assumptions and methods used in deriving the liabilities of the pension an, including a description of the precise meaning assigned to each of the terms of Item 4 below with respect to the amounts shown. (See tructions.)

Statement of actuarial assumptions attached ..... [X] Yes [ ] No

Actuarial report attached ..... [ ] Yes [X] No

nount of current and past service liabilities as determined by the last actuarial valuation:

(1) Total accrued actuarial liability including any past service or supplemental cost (Before any offset for assets entered in b.) ..... $ 74,692,987

(2) Current service or normal cost (Use the annual amount from the last valuation) ..... $ 2,382,990

Enter the amount of the applicable reserves ..... $ 59,057,811

ate of last valuation 1-1-69

ate the name and business address of the actuary or other person who made the valuation.

Name Alexander & Alexander

SIGNATURE AND VERIFICATION

File No. WP- 020271

: of Plan GENESCO Retirement Plan

Under 18 U.S.C. Section 1027 each person required to sign this report is personally responsible for the filing of such report and for any nent therein which he knows to be false or for knowingly failing to report facts required by this report to be disclosed.

Records providing in sufficient detail the necessary basic information and data from which the report and other documents filed may be d, explained or clarified, and checked for accuracy and completeness must be maintained and kept available for examination for at least ears after the date of filing the report. These records include vouchers, worksheets, receipts, and applicable resolutions.

This report shall be signed by the administrator in the space provided and the information contained in it (including sections, schedules, and documents attached) shall either be (1) sworn to by the administrator before a Notary Public or other officer authorized to administer oaths, certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with ac- d standards of auditing. If method (2) is used attach the accountant's certificate, which shall state facts indicating that the above require- , are met, and check this box:

☐ Certification described in (2) above is attached.

INDIVIDUAL SIGNATURE

he undersigned declares under the applicable penalties of law that he is Assistant Secretary (Title) of GENESCO, INC. (Employer or employee organization), which is the administrator, and he is uthorized to sign for and on behalf of the administrator and that the information in this report (including the information contained in any panying exhibit, schedules and attachments) has been examined by him and is to the best of his knowledge and belief, true, correct, and ete.

ign here Jimmie D. White

GROUP SIGNATURES

e undersigned individuals constituting the administrator of the plan, each for himself declares under the applicable penalties of law information in this annual report (including the information contained in any accompanying documents) has been examined by him and e best of his knowledge and belief, true, correct, and complete.

Title	Title
gn here	Sign here

VERIFICATION

Signed and sworn to before me—

Tennessee
of Davidson } ss

This 29th day of June (Month), 19[illegible]

Dallas C. Conklin
(Notary Public)

ONE TIME PAYMENT

CASH DISBURSEMENT VOUCHER

DIV. 3 4 | VENDOR NO. 10

Date _____

Amount of Check $ _____

A 1 16 17 Check Payable To ALLEN H. SORENSON 18 20 25 30 35 40

Street Address 41 45 50 55 60

B 1 16 17 Street Address 18 20 25 30 35 Zip Code 40

City and State 41 45 50 55 60

12 16 | 17 INVOICE NO. 24 | 25 PAY-DATE 29 (MO. | DAY | YEAR) PAY

ORP 32	33 GENERAL LEDGER ACCOUNT NO. 44 (Division Control | Account Number | Store Number | Sub. Class)	45 COST 53	54 RETAIL 61	62 DISCOUNT 67 (Anticipation Days | Anticipation % | Disc. %)	CODE 68	69 FREIGHT 74	To. Cod 75
				TOTALS					

Social Security # 529-22-5168

Termination Date 4-1-71

Plan S. H. Kress Co.

Location _____

Type of Payment:

- [x] Lump Sum
- [ ] Installment
  - [ ] Monthly
  - [ ] Quarterly
  - [ ] Semi-Annual
  - [ ] Annual

Reason for Leaving:

- [x] Resigned
- [ ] Retirement

✓ _____

I hereby request payment of vested amount in the manner as indicated above

_____

Personnel Manager

Approved: For Payment _____

Approved: For Account

Senator JAVITS. Common stock, Genesco, $63,486. That is in addition to the cash contribution from Genesco which is shown by the schedule. They seem to have very detailed information for the Department of Labor but none for us. So I think, Mr. Chairman, this may very well be one of the employers whose appearance we ought to insist on.

The CHAIRMAN. Agreed. That material will be included in the record. I might say we are including this Genesco one-time payment cash disbursement voucher. This is the voucher you would have to submit in order to be reimbursed for your contribution?

Mr. SORENSON. That is correct, sir.

The CHAIRMAN. I see that whoever helped you with this form under "reason for leaving," has checked the box "resigned."

Mr. SORENSON. The form as you see it is exactly as I received it.

The CHAIRMAN. I will include in the record, too, our July 22 letter registered to Mr. Paul Safer at 111 Seventh Avenue, Nashville, asking him to appear here. We did not receive a letter in reply, but we got a phone call, and, at that time, he declined the opportunity to testify. This we will include in the record, too.

Senator JAVITS. Thank you, Mr. Chairman. I want to join the Chair in thanking Mr. Sorenson. You have been very helpful and really patriotic in supporting us in dealing with similar situations. You have been very helpful in respect to this legislation.

The CHAIRMAN. Yes, you made a great contribution, and as I mentioned at the beginning, you undertook a long journey to help us and we appreciate it, Mr. Sorenson.

Mr. SORENSON. I appreciate having the opportunity.

The CHAIRMAN. We have no further witnesses scheduled for this morning and this will conclude our hearings for now. Of course, there will be other hearings which will be announced later.

During these 3 days of hearings we have heard the testimony of workers from all parts of this country, who have told us of their hardships and sorrows over the realization that pensions for which they had labored many years and believed to be theirs had turned into illusory promises. In relating their unfortunate accounts these witnesses were voicing the problems and inequities of many of their coworkers not only in the same plant or employment, but of many other coworkers in our country.

Through the stories of these witnesses the Congress has learned that there is a need for corrective legislation. They have verified the complaints which have poured into the subcommittee, and to many other Members of Congress. They establish that private pension plans have problems in lack of adequate vesting provisions, premature termination of plans, insufficient funding to meet pension responsibilities, and of the need for stringent fiduciary requirements.

Additionally these hearings have corroborated the many complaints that workers are not being given an understandable and accurate picture of what they are entitled to in their pension plans. Although they are led to believe that they will enjoy certain retirement benefits, they realize only too late that many of the promises are illusory or unreal. It is apparent that there is a need for employers, and pension plan administrators and trustees to inform workers specifically of the circumstances or conditions under which they may not receive pensions in addition to those which do in fact make them eligible.

The March 31, 1971, study, which I released together with Senator Javits, established that of 6.9 million workers who had been covered in 51 plans and had 11 years or more of service, only 4 percent or 253,118 workers received any kind of early or deferred retirement benefits. The witnesses who have appeared before this committee have brought to life the statistics represented.

The subcommittee will continue its study to determine similar and additional problems which may exist in our private welfare and pension plan systems and hopefully provide legislation to remove these hardships in our private pensions.

Senator Javits.

Senator JAVITS. Thank you, Mr. Chairman.

First, let me note the unusual diligence and degree of preparation by the chairman and by the staff in connection with these hearings. There is no question about the fact that legislation is essential in this field and we find required more every day by the testimony of witnesses.

Second, let me extend my appreciation to each witness who has appeared and who has traveled distances and in some cases taken the risk of personal loss or embarrassment by appearing, and I assure them that we deeply appreciate it. It will contribute greatly to the well-being of future workers and to the public interest. Also, if there is any way that we can—and I know the chairman feels just as I do—help them should they be embarrassed or threatened with any loss, we certainly would do so.

Finally, Mr. Chairman, it seems to me that it emphasizes the balance we have to keep in these hearings. On the one hand there are illusory expectations of the benefits to be attained through pensions. On the other hand, there is the absolute power of the employer to end those hopes at any moment, even almost minutes before the time for vesting in terms of retirement occurs.

This is a kind of a feudal system, it seems to me, over American workers, and I think we have the authority and indeed the duty to do something about remedying it by law.

We understand—and proposed legislation certainly reflects it—that there are many employees who will lose benefits through working a short time, and that there should be a proper threshold for the number of years of work before any benefits vest. But it seems highly unfair to men and women who have worked 15, 20, 25, 30 years or more and at the end, notwithstanding that the pensions are supposedly built in as an element of their compensation, they find themselves stripped of pensions by the sheer unilateral action of the employer or by the necessity for leaving the job for reasons which are really in many cases beyond their own control—just the facts of life.

Also, Mr. Chairman, people should not be under the impression that every penny of any conceivable liability should be funded. We know that that might reduce rather than increase the pension benefits and the number of plans. But some decent regard for the hazards of business as well as for the power of employers to merge funds, to merge companies, to terminate or liquidate companies, and to end plans. All this should be considered in respect to the funding. And we find no attention to that really as far as I have been able to see in what is alleged to be an actuarially sound approach to pension plans.

So, Mr. Chairman, I would conclude from what we have heard so far that while being eminently reasonable on all these issues and being eminently practical, there is an enormous amount of injustice which has grown up in the system, and legislation is urgently needed to correct it. We will be enormously helped by what we have heard in designing the proper legislation.

Finally, Mr. Chairman. I think that we really must have the testimony of employers. I note that the Chair has already expressed itself both with respect to inviting those who will appear voluntarily and also, if we have to, utilizing the subpena power of the committee in order to give us a complete record from those employers who may not wish to appear voluntarily.

Again, Mr. Chairman, I thank the Chair for the Chair's unfailing courtesy, cooperation, and splendid conduct at these very important hearings.

The CHAIRMAN. I appreciate that, Senator Javits, and I have felt, and I am sure the record will reflect that there is a unity of effort here at the membership level of this subcommittee and certainly at the staff level, too. This will be, I am certain, constructive and better for the entire committee membership and staff membership. Particularly I appreciate working with you day in and day out, and I expect to for many days to come.

Senator JAVITS. Thank you.

The CHAIRMAN. We will adjourn.

(Whereupon, at 11:30 a.m., the hearing was adjourned.)

66-500 O—71—pt. 1——24

APPENDIX

[From the Congressional Record, Monday, Apr. 5, 1971]

LABOR SUBCOMMITTEE PENSION STUDY

Mr. WILLIAMS. Mr. President, for some months the Subcommittee on Labor has been engaged in a study of pension funds. This study was authorized under Senate Resolution 360—91st Congress, second session, agreed to March 12, 1970—and continued by Senate Resolution 35—92d Congress, first session, agreed to March 1, 1971.

In connection with the study, a survey is being conducted of the operation of approximately 1,500 plans of the 34,000 pension plans registered with the Department of Labor under the Welfare and Pension Plans Disclosure Act.

The purpose of our study is to obtain an indepth and comprehensive understanding of the private pension system and its effect on the retirement expectations of the American worker. Since this work began, the committee has received a large volume of correspondence from people who thought they were going to receive a private pension but found out too late that they had no pension protection.

Some matters the subcommittee will be examining are the eligibility requirements for receiving pension benefits, such as age and service for vesting and continuous service requirements; the level of funding maintained to protect the worker's benefits; the extent of forfeitures; and the fiduciary standards followed by the plan administrators.

To date, more than 1,000 of the 1,500 plans sampled have responded to the survey. We are continuing our efforts to complete the survey; and analysis of the data by actuaries and accountants on loan from GAO is now in progress. As the survey and study continue, the subcommittee plans to conduct extensive hearings into the operations of pension plans where there is a record of workers losing their pensions or where the plan has been weakened by abuses.

In the interim on Wednesday, March 31, a Subcommittee on Labor Staff Analysis of some preliminary data on benefits and forfeitures relating to 87 private pension plans was completed and released.

This analysis, which represents a limited group of the 1,500 private pension plans included in the study of pension plans underway by the Subcommittee on Labor, contains information which I believe should be of interest to all of us who are concerned with the problems faced by older workers who are reaching retirement without adequate income protection.

I ask unanimous consent that my statement, the staff analysis and the survey form be printed in the Record.

There being no objection, the items were ordered to be printed in the Record, as follows:

STATEMENT BY SENATOR HARRISON A. WILLIAMS, CHAIRMAN, COMMITTEE ON LABOR AND PUBLIC WELFARE

Senator Javits and I have called this briefing in order to place before the public some background information about the operation of private pension plans.

The Committee is concerned about the private pension system and its ability to provide employees fortunate enough to participate in pension plans with a real promise of a supplement to social security.

In recent years older workers approaching retirement have faced nightmarish problems in receiving adequate retirement income. For many of them the spectre of sudden layoff, or job termination represents more than the loss of present income. All too frequently it can also mean the loss of pension credits built up

from long years of service—credits that can never be regained, even with a new job.

The Subcommittee's activity for some months has been directed to conducting a survey of certain private pension plans to determine present practices regarding vesting of benefits, the level of assets maintained for funding, the fiduciary standards observed in fund operations, benefits paid to participants, and the extent of forfeitures.

Private pension plans involve assets of $130 billion, a growth rate of $10 billion a year and 30 million participants. This survey includes 1,500 plans representing a significant sample of 34,000 private pension plans required to be registered with the Department of Labor under the Welfare and Pension Plans Disclosure Act, and is estimated to cover 60 percent of the participants, or more than 18 million workers.

Much of the analysis of the data is being done under the direction of actuaries and accountants assignd to the committee by the General Accounting Office. While cooperation from the plan administrators has generally been good, there is still a large number of plans that have not responded to the survey, or who have responded, but with information that needs further explanation. The magnitude of the project indicates that it will be some time before the survey is completed.

However, some preliminary staff analyses are significant enough to warrant presenting now. This data released today relates to benefits and forfeitures of a selected number of plans for the last 20 years. The materials have been distributed with appropriate explanations. As the introduction states, this is a preliminary analysis based on a limited sample. To this extent, the statistical results may change as more work is done, although the problems of retiring workers will remain. To summarize these results briefly, this sample is based on a study of 87 plans that completed the survey. The plans represent assets of $16 billion and some 9.8 million workers who have participated in these plans since 1950.

While this data, admittedly, must be viewed from a historical perspective some disturbing results have been shown. Overall, the data indicated that only 5% of all participants who have left since 1950 in 51 pension plans with 11 or more years for vesting have received a benefit, and only 16% of all participants who have left since 1950 in 36 pension plans with 10 years or less for vesting have received a benefit.

In terms of forefeitures, 92% of all active participants since 1950 who left the 51 plans forfeited without qualifying for benefits; 73% of all active participants since 1950 who left the 36 plans forfeited without qualifying for benefits.

The study also indicates that substantial numbers of workers who lost their pension benefits are long service employees. In the 51 plans, for every two participants who have received a normal, early, or deferred retirement benefit since 1950, one participant forfeited with more than 15 years service; for every one participant who received a benefit, one participant with more than 10 years service, forfeited, 3 participants with more than 5 years service forfeited, and 16 participants with 5 years service or less forfeited.

In the 36 plans, for every one participants with more than 15 years service who forfeited since 1950, 24 participants received a normal, early or deferred retirement benefit. For every participant with more than 10 years service who forfeited, 7 participants received such benefits; for every participant with more than 5 years service who forfeited, one participant received such a benefit; for every participant who received such a benefit, 4 employees with 5 years service or less forfeited. Even though the statistical results may change after further analysis and investigation, the essence of the problem—the worker's plight—remains. These statistics come to life in the poignant letters the Committee receives every day from workers trapped by the private pension plans systems. They come from every part of the country and tell us a tragic story. Some of the experiences are worth sharing with you. For example:

A man with 28½ years continuous employment at a paper mill lost his job and pension rights—as he put in his letter to me, "One day security—next day nothing for retirement."

A man who is now 64 years old with more than 15 years for the same company was laid off and could not find work. In applying for his pension he discovered that he was one year short of eligibility for full benefits. Since there was no qualifying job available, he could not get the one year needed in his pension.

A man employed for 25 years was terminated by his employers "because there were no more opportunities left for me with the company." The plan had no vesting provisions so he left with no pension.

All of these workers expressed the same common grievance—they all lost their pensions but they had no control over the economic forces that conspired to deny them pensions.

We will release data from other parts of the survey as soon as it is prepared. We intend to look into the whole matter of funding and vesting levels as well as party-in-interest transactions, interlocking trusteeship, or directorships and certain investment practices.

In this connection we have distributed a series of case examples that have been abstracted from our survey. The identity of the plan has been removed, but the data contained in the survey form has been presented to illustrate what we are looking for.

In addition to the survey, we have also started preparations for a series of hearings into some of the problems not suitable to analysis by questionnaire.

Introductory Comments by Senators Williams and Javits

We are releasing today preliminary statistical data compiled by the staff of the Senate Subcommittee on Labor, concerning one aspect of the Senate Labor Committee's study of private pension plans.

In mid-1970, we selected a random cross-section sample of private pension plans in the United States and sent out 1500 questionnaires to the administrators of the plans. The survey questionnaires are designed to elicit information on how private pension plans operate in this country and what benefits American workers derive from them. The questionnaires we received from the administrators of the plans are being studied by our subcommittee, and we expect to develop further information, to provide further analysis and to release to the public further results of this study.

As a preliminary step, the staff has analyzed and compared a limited sample of a group of plans providing no vesting or vesting after at least 11 years of service, and another group of plans providing vesting after ten years of service or less.

The limited study reported here compares the numbers of workers receiving benefits and vested rights with the number of workers who forfeited their rights to benefits. The study demonstrates that generally employees have forfeited their rights to benefits in numbers greatly in excess of those who have received benefits or vested rights, but that in plans with no vesting or more restrictive vesting, longer service employees lost benefits to a higher degree than such employees in plans with less restrictive vesting.

We recognize that these samples, which are only preliminary, are not statistically all-encompassing. In that sense, we know that the final results of our study may show some variance from the numbers and percentages we released today. However, we believe that even these samples should be of interest to those concerned with retirement income for American workers.

In an appendix to the staff analysis appear a number of case examples drawn from the survey which are illustrative of the kinds of problems and abuses being considered by the Subcommittee.

Staff Analysis: Preliminary Data on the Extent of Benefits and Forfeitures in Private Pension Plans in the United States

INTRODUCTION

One of the objectives of the U.S. Senate study into private pension plans is to determine the impact of private pension plans on participating employees. The study data of this analysis focuses upon the impact of those plans with no vesting or restrictive vesting provisions on employees with substantial periods of service who terminate their employment prior to qualifying for retirement benefits.

For the purpose of this analysis, "vesting" refers to the provision in the plan which gives to the employee a non-forfeitable right to share in the pension fund which covers him in the event of termination of his employment prior to retirement age. Although, in its literal sense, "vesting" has been sometimes construed to mean all types of nonforfeitable benefits, including normal, early or disability retirement benefits, for purposes of this report the term "vesting"

is intended to mean that on termination of employment prior to retirement, the employee has a nonforfeitable right to obtain a deferred retirement benefit based upon both the employer's and employee's contribution to the pension fund.

The purpose of this limited study is to examine and compare the historical activity of certain pension plans in terms of benefits and forfeiture rates. These analyses reflect a statistical comparison of the covered participants as between those who ultimately received benefits and those who did not and is based solely on information supplied by plan administrators in response to the survey form. No projection of any kind is made based on this data.

SAMPLING APPROACH

The entire sample of private pension plans randomly selected for study by the Subcommittee in July of 1970 consisted of 1500 plans, representing a broad and diverse segment of the pension industry. Questionnaires (Pension Study: Form P–1) were mailed to the respondents (plan administrators) selected in July and August of 1970.

Out of the 1500 plans, over 1,000 have responded. Of those who have responded, many have so far either refused to respond in whole or in part, have asserted that they are unable to respond in whole or in part, or have provided data which appears questionable on its face in connection with Part III of the survey form—covering data on benefits and forfeitures. As a consequence, many returns will require additional clarification and completion.

Accordingly, for purposes of analysis, a sample was constructed of data from a preliminary group of plans that furnished complete answers to Part III. In addition, in order to create as homogeneous a sample as possible, plans established after 1950 and profit-sharing plans were excluded.

The sample consists of two sets of plans, distinguished by the nature of their vesting provisions. The first set consists of 51 plans with total assets of $10 billion, ranging in size from plans with over 100,000 active participants, to plans with under 100 participants.[1] In this set of plans, no vesting or vesting with 11 years of service or more is provided (with some plans having additional age requirements[2] as well).

Industries in the sample are as follows:

Manufacturing	20
Communications	12
Finance	7
Oil	3
Gas	3
Wholesale and retail	2
Insurance	1
Maritime	1
Construction	1
Service	1
Total	51

No attempt was made to break down these plans by other characteristics, however, the sample covers both single employer and multi-employer plans,[3] insured and non-insured plans, and plans covering hourly-rated, salaried and all employees. The first set of 51 plans also include eight (8) "contributory" plans, *i.e.*, plans in which contributions are made by both the employer and the employees.[4]

[1] "Participant" was defined by Form P–1 as "any employee or former employee of an employee or any member of an employee organization who is or may become eligible to receive a benefit of any type from any employee pension benefit plan or whose beneficiaries may be eligible to receive any such benefit and included preparticipants where contributions were being made on their behalf as well as persons still eligible to receive benefits whose service is temporarily interrupted."

[2] In addition to length of service requirements for vesting of benefits, many plans also require that a minimum age be attained, *e.g.*, 15 years service *and* age 45. For purposes of this analysis, only the service requirements were considered; the age factor has not yet been separately analyzed.

[3] "Multi-employer" referring in this context to a collectively bargained plan to which predominately unaffiliated employers contribute.

[4] In tabulating forfeiture rates, "contributory plans present somewhat of a problem because it is almost invariably the case that terminating employees who withdraw their contributions will forfeit vested rights in the employer's contributions despite having otherwise satisfied the age and service requirements for vesting. Where the plan specifically indicated that forfeitures were created by these circumstances rather than by failure to meet age or service requirements, the figures furnished were eliminated from tabulation. Otherwise, they were specifically included.

The second set consists of 36 plans with assets of $6 billion, again representing a wide range in terms of participant coverage. The distinguishing characteristics of these plans are that they provide for vesting after ten years of service or less, regardless of age. Industries represented in the group are as follows:

Manufacturing	21
Oil	3
Gas	2
Utilities	1
Transportation	3
Publishing	2
Insurance	3
Construction	1
Total	36

Neither set of samples can as yet be assumed to be statistically representative of all industries in the survey.

This set also includes 14 contributory plans.[5]

It should be noted that many sets of forfeitures figures furnished by the plans in the sample were based on estimates, in which case a footnote explanation is contained within the appropriate table. These responses are tabulated exactly as reported.

ANALYSIS OF 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE

Table 1 depicts the overall comparison of the number of participants who have obtained retirement benefits from the 51 plans[6] since 1950 with the number who have forfeited.[7]

Out of a sample covering a total of 6.9 million participants since 1950, 253,118 or 4 percent have received any kind of normal, early or deferred vested retirement benefit. 4.8 million or 70 percent, without regard to length of service, have left these plans since 1950 without benefits. In terms of the 5.2 million active participants who left the scope of these plans since 1950, the total percentage who forfeited, regardless of length of service, is 92 percent, while the percentage who received benefits is 5 percent.[8]

Of the 4.8 million who forfeited without benefits, close to 4.1 million or 85 percent had five years service or less (Subtable 1–A). The impact of these plans on longer service employees is reflected in Subtable 1–B. For every two employees who received a benefit, one employee with more than 15 years of service forfeited. For every one employee who received a benefit, one employee with more than ten years of service forfeited, nearly three employees with more than five years of service forfeited, while 16 employees with five years service or less forfeited.

Table 2 compares the number of participants who have received vested rights on termination of employment prior to retirement since 1950 with those who have forfeited. Less than one percent of the 6.9 million employees since 1950 who have participated in these plans and the 5.2 million active employees who have left the plans since 1950 have received such vested rights—the precise number is 21,498.

As Subtable 2–A shows, for every one participant who received such a vested right, 223 participants forfeited without regard to length of service. Of these participants, five forfeited with more than 15 years service, 13 forfeited with more than ten years service, 33 forfeited with more than five years service and 186 forfeited with five years service or less.[9]

Table 3 provides the same comparisons as Table 2 except that it is limited to the experience of the last five years.

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[5] See footnote No. 4.

[6] For purposes of constructing this table, as well as the comparable tables for the sample of 36 plans, workers receiving disability retirement, death, and other forms of survivors benefits were excluded since receipt of benefits in these circumstances is not primarily conditioned on meeting age or service requirements. However, the total number of participants having received such benefits is provided in footnotes to the respective tables involved.

[7] The tables contained separate percentage calculations which indicate that there are participants still within the scope of the plan who may yet receive benefits.

[8] See technical note on page 372.

[9] For explanation of variations in totals, see technical note on page 372.

12,536 participants of 2.9 million participating in the last five years—or considerably less than one percent—have received vested rights on termination of employment prior to retirement. In terms of the 1.2 million active participants who have left the scope of these plans in the last five years, the percentage who received such vested rights is one percent.

By contrast, 991,111 participants, regardless of length of service, forfeited in the last five years. This constituted 34 percent of the 2.9 million participating in the last five years but 82 percent of all the active participants who left the scope of the plans.

As Subtable 3–A shows, the largest number of all of the participants who forfeited—835,589 or 84 percent—were in the category of participants with five years service or less. The forfeiture percentages by length of service for the remaining categories of participants are virtually similar to the corresponding forfeiture percentages for the last 20 years (See Subtable 1–A).

Subtable 3–B indicates that for every one participant in the last five years who received a vested right upon termination of employment prior to retirement, 70 participants forfeited without regard to length of service. Of these participants, two forfeited with more than 15 years service, five forfeited with more than ten years service, 12 forfeited with more than five years service, and 67 forfeited with five years service or less.[10]

ANALYSIS OF 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS

Table 4 depicts the overall comparison of the number of participants who have obtained retirement benefits from the 36 plans since 1950 with the number who have forfeited.

Out of a sample covering a total of 2.9 million participants since 1950, 242,510 or 8 percent have received a normal, early or deferred vested retirement benefit. 1.1 million or 38 percent, without regard to length of service, have left the 36 plans since 1950 without benefits. In terms of the 1.5 million who left the scope of these plans since 1950, the total percentage who forfeited, regardless of length of service is 73 percent, while those with benefits is 16 percent.[11]

Of the 1.1 million who forfeited without benefits, 897,797 or 80 percent had five years service or less (Subtable 4–A).

As indicated by Subtable 4–B, 24 employees received a benefit for every one employee with more than 15 years service who forfeited and seven received a benefit for every one employee with more than ten years of service who forfeited.[12] On the other hand, for every one employee that received a benefit, one employee with more than five years service forfeited and four employees with five years service or less forfeited.

Table 5 compares the number of participants since 1950 who have received vested rights on termination of employment prior to retirement with those who have forfeited in the 36 plans. Of the 2.9 million who have participated in these plans since 1950, only 3 percent (91,517 participants) received vested rights. Of the 1.5 million active participants who left the scope of these plans since 1950, only 6 percent (91,517 participants) received such vested rights.

As Subtable 5–A shows, for every one participant who received such a vested right, 12 participants forfeited without regard to length of service. Of these participants, ten had five years service or less. On the other hand, nine participants received vested rights for every one that forfeited with more than 15 years service, and two received vested rights for everyone that forfeited with more than ten years service. For every one participant that received a vested right, 2.5 forfeited with more than five years service.[13]

Of 1.8 million participating in the last five years, 38,037 participants, or 2 percent, have received vested rights on termination of employment prior to retirement. This number represents 9 percent of the active participants who have left the scope of the plan in the last five years—the highest percentage in this connection.

332,760 participants, regardless of length of service, forfeited in the last five years. This constituted 18 percent of the 1.8 million participating in the last five

[10] For explanation of variations in totals, see technical note on page 372.
[11] See technical note on page 372.
[12] Many plans in this particular sample reported no forfeitures for participants with more than 15 or 10 years of service. For those who did report such forfeitures, it is to be deduced that 10 year vesting or less was not applicable during the entire 20 year period reported.
[13] For explanation of variations in totals, see technical note on page 372.

years but 83 percent of the 400,000 active participants who left the scope of the plan in the last five years.

As Subtable 6–A shows, 267,583 or 80 percent of the total forfeitures had five years service or less while 65,177 or 20 percent had more than five years service. Subtable 6–B indicates that 80 employees received vested rights on termination of employment prior to retirement for every one employee who forfeited with more than 15 years service. Of these participants, 26 employees received such vested rights for every one employee who forfeited with more than ten years service. Again, employees who forfeited with more than five years service outnumbered those who received such vested rights by two to one.[14]

A COMPARISON OF 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS

As Table 7 demonstrates, while only five percent of the active participants who left the scope of the plan since 1950 obtained benefits in the 51 plans with no vesting or later vesting, 16 percent of such participants obtained benefits in the 36 plans in the earlier vesting sample.

To some extent, this is attributable to the larger number of participants in the 36 plans who received deferred retirement benefits based on vested rights obtained when they terminated employment prior to retirement. Only .03 percent of participants who left the scope of the 51 plans obtained such benefits, while .7 percent in the 36 plans obtained such benefits.

The percentages of those who forfeited with more than five years of service is fairly equal in both sets of plans (See Subtable 7–A).

Subtable 7–B shows that in the 51 plans for every two employees with more than 15 years service who received benefits, one employee forfeited, compared with the 36 plans where 24 employees with more than 15 years service received benefits for every one who did not.

A consistent factor is that roughly the same high percentages—in the 80th percentile—forfeit with five years service or less. (See Subtable 7–A).

A comparison of those who have received vested rights on termination of employment prior to retirement is shown by Table 8. Almost three times as many active participants left the 51 plans since 1950 as left the 36 plans, yet in the latter group, 91,517 obtained such vested rights, while in the farmer group only 21,489 obtained such vested rights—ratio of over four to one.

The experience of the five years is similar. Three times as many participants have received vested rights on termination of employment prior to retirement in the 36 plans as in the 51 plans, despite the fact that three times as many active participants left the 51 plans as left the 36 plans.

SUMMARY

The benefits, vested rights and forfeiture status of two discrete samples of private pension plans that completely answered Part III Pension Study: Form P–1 was examined. The first sample consisted of 51 plans that had no vesting provisions or vesting with 11 years of service or more. The second sample consisted of 36 plans with vesting after 10 years of service or less.

The principal preliminary results are:

(1) Four percent of all participants since 1950 in the 51 no vesting or later vesting plans have received normal, early or deferred retirement benefits; eight percent of all participants in the 36 earlier vesting plans have received such benefits.

(2) Five percent of all active participants since 1950 who left the plans have received normal early or deferred retirement benefits; 16 percent of all active participants since 1950 who left the 36 plans have received such benefits.

(3) 70 percent of all participants since 1950 in the 51 plans have forfeited without qualifying for benefits; 38 percent in the 36 plans have forfeited without qualifying for benefits.

(4) 92 percent of all active participants since 1950 who left the 51 plans forfeited without qualifying for benefits; 73 percent of all active participants since 1950 who left the 36 plans foreifted qualifying for benefits.

(5) Of the total forfeitures in the 51 plans since 1950, 85 percent were participants with five years service or less; of total forfeitures in the 36 plans since 1950, 80 percent were participants with five years service or less.

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[14] For explanation of variations in totals, see technical note on page 372.

(6) In the 51 plans, for every two participants who has created a normal, early or deferred retirement benefit since 1950, one participant forfeited with more than 15 years service for every one participant who received a benefit, one participant with more than ten years service forfeited, three participants with more than five years service forfeited, and 16 participants with five years service or less forfeited.

(7) In the 36 plans, for every one participant with more than 15 years service who forfeited since 1950, 24 participants received a normal, early or deferred retirement benefits; for every participant with more than 10 years service who forfeited, seven participants received such benefits; for every participant with more than five years service who forfeited, one participant who received such a benefit, four employees with five years service or less forfeited.

TECHNICAL NOTE

In several of the tables presented in this report, percentages in specific columns may not add up to 100 percent and totals may not correspond exactly to their components.

This is due to a number of factors. First, no attempt has been made to adjust the data for any possible overstatement or understatement in the answers to the survey form, except that where a report specifically so indicated, participants who were transferred into supplementary or new plans, with benefit rights intact, were excluded from the items relating to active participants who left the scope of the plans.

Second, as indicated in footnotes to various tables, participants who received disability retirement, death, survivors and similar type benefits were excluded from those items relating to participants who received benefits.

Third, in the contributory plans, participants who forfeited owing to withdrawal of their contributions rather than by failure to meet eligibility requirements were excluded from forfeiture figures. Otherwise there were specifically included.

Fourth, figures and percentages have been rounded when convenient to do so.

TABLE 1.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WITH BENEFITS AND FORFEITURES SINCE 1950 IN PLANS WITH NO VESTING OR VESTING REQUIRING 11 OR MORE YEARS OF SERVICE (BASED ON 51 PLANS WITH $10,000,000,000 IN ASSETS)

Participants, benefits, and forfeitures	Number	Percentage of—	
		Item (1)	Item (4)
(1) Participants since 1950	6,900,000	100	
(2) Active participants presently under plans	1,700,000	25	
(3) Retired participants presently under plans	210,289	3	
(4) Active participants since 1950 who left scope of plan [1]	5,200,000	75	100
(5) Participants who received normal retirement benefits since 1950	147,364	2	3
(6) Participants who received early retirement benefits since 1950	104,124	1	2
(7) Participants who received deferred retirement benefits based on vested rights since 1950	1,630	02	03
(8) Total participants with benefits (items (5), (6), and (7)) [2]	253,118	4	5
(9) Participants who forfeited since 1950 regardless of length of service [3]	4,800,000	70	29
(10) Participants who forfeited since 1950 with more than 15 years service	115,573	1.6	2.2
(11) Participants who forfeited since 1950 with more than 10 years service	280,018	4	5
(12) Participants who forfeited since 1950 with more than 5 years service	719,688	10	14
(13) Participants who forfeited since 1950 with 5 years or less service	4,000,000	59	77

[1] Includes those who received benefits, vested rights, or died.

[2] Excludes participants who received disability retirement, death, survivors, and similar benefits. The total number of participants receiving benefits of this nature since 1950 was 88,810.

[3] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 1A—RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES (ITEMS (9), (10), (11), AND (12))

Forfeitures	Number	Percentage of item (9)
(9) Total forfeitures since 1950	4,800,000	100
(10) With more than 15 years service	115,573	2
(11) With more than 10 years service	280,018	6
(12) With more than 5 years service	719,688	15
(13) With 5 years or less service	4,000,000	85

SUBTABLE 1B.—PARTICIPANTS WITH BENEFITS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (DERIVED FROM (8), (9), (10), (11), AND (12))

Benefits and forfeitures	Ratio [1]
(a) With benefits	1
(b) Forfeited regardless of length of service	19
(a) With benefits	2
(b) Forfeited with more than 15 years service	1
(a) With benefits	1
(b) Forfeited with more than 10 years service	1
(a) With benefits	1
(b) Forfeited with more than 5 years service	3
(a) With benefits	1
(b) Forfeited with less than 5 years service	16

[1] In terms of 1 participant who received a benefit.

TABLE 2.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED SINCE 1950 IN PLANS WITH NO VESTING OR VESTING REQUIRING 11 OR MORE YEARS OF SERVICE (BASED ON 51 PLANS WITH $10,000,000,000 IN ASSETS)

Participants, vested rights and forfeitures since 1950	Number	Percentage of—	
		Item (1)	Item (2)
(1) Participants since 1950	6,900,000	100	
(2) Active participants since 1950 who left scope of plan [1]	5,200,000	75	100
(3) Participants since 1950 who received vested rights on termination of employment prior to retirement	21,498	3	.4
(4) Participants who forfeited since 1950 regardless of length of service [2]	8,000,000	70	92
(5) Participants who forfeited since 1950 with more than 15 years service	115,573	1.6	2.2
(6) Participants who forfeited since 1950 with more than 10 years service	280,018	45	
(7) Participants who forfeited since 1950 with more than 5 years service	719,688	10	14
(8) Participants who forfeited since 1950 with 5 years or less service	4,000,000	59	77

[1] Includes those who received benefits, vested rights, or died.
[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 2A.—PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (FROM ITEMS (3) THROUGH (8))

Vested rights and forfeitures since 1950	Ratio [1]
(a) With vested rights	1
(b) Forfeited regardless of length of service	223
(a) With vested rights	1
(b) Forfeited with more than 15 years service	5
(a) With vested rights	1
(b) Forfeited with more than 10 years service	13
(a) With vested rights	1
(b) Forfeited with more than 5 years service	33
(a) With vested rights	1
(b) Forfeited with 5 years or less service	186

[1] In terms of 1 participant who received a vested right.

TABLE 3.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED WITHIN LAST 5 YEARS IN PLANS WITH NO VESTING OR VESTING REQUIRING 11 OR MORE YEARS OF SERVICE (BASED ON 51 PLANS WITH $10,000,000,000 IN ASSETS)

Participants, vested rights, and forfeitures in last 5 years	Number	Percentage of—	
		Item (1)	Item (2)
(1) Participants in last 5 years	2,900,000	100	----------
(2) Active participants in last 5 years who left scope of plan [1]	1,200,000	41	100
(3) Participants in last 5 years who received vested rights on termination of employment prior to retirement	12,536	.4	1
(4) Participants who forfeited in last 5 years regardless of length of service [2]	991,111	34	82
(5) Participants who forfeited in last 5 years with more than 15 years service	27,335	.9	2
(6) Participants who forfeited in last 5 years with more than 10 years service	63,894	2	5
(7) Participants who forfeited in last 5 years with more than 5 years service	155,522	5	13
(8) Participants who forfeited in last 5 years with 5 years service or less	835,589	29	70

[1] Includes those who received benefits, vested rights, or died.
[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 3A.—RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES IN LAST 5 YEARS (ITEMS (4) THROUGH (8))

Forfeitures last 5 years	Number	Percentage of Item (4)
(4) Total forfeitures last 5 years	991,111	100
(5) With more than 15 years service	27,335	3
(6) With more than 10 years service	63,894	5
(7) With more than 5 years service	155,522	16
(8) With 5 years or less service	835,589	84

SUBTABLE 3B.—PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (FROM ITEMS (3) THROUGH (8))

Vested rights and forfeitures in last 5 years	Ratio [1]
(a) With vested rights	1
(b) Forfeited regardless of length of service	79
(a) With vested rights	1
(b) Forfeited with more than 15 years service	2
(a) With vested rights	1
(b) Forfeited with more than 10 years service	5
(a) With vested rights	1
(b) Forfeited with more than 5 years service	12
(a) With vested rights	1
(b) Forfeited with 5 years or less service	67

[1] In terms of 1 participant who received a vested right.

TABLE 4.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WITH BENEFITS AND FORFEITURES SINCE 1950 IN PLANS WITH A VESTING REQUIREMENT OF 10 YEARS OF SERVICE OR LESS (BASED ON 36 PLANS WITH $6,000,000,000 IN ASSETS)

Participants, benefits, and forfeitures	Number	Percentage of— Item (1)	Item (4)
(1) Participants since 1950	2,900,000	100	
(2) Active participants presently under plans	1,400,000	47	
(3) Retired participants presently under plans	193,663	7	
(4) Active participants since 1950 who left scope of plan [1]	1,500,000	52	100
(5) Participants who received normal retirement benefits since 1950	128,328	4	8
(6) Participants who received early retirement benefits since 1950	103,223	3	7
(7) Participants who received deferred retirement benefits based on vested rights since 1950	10,959	4	7
(8) Total participants with benefits (items (5), (6), and (7)) [2]	242,510	8	16
(9) Participants who forfeited since 1950 regardless of length of service [3]	1,000,000	38	73
(10) Participants who forfeited since 1950 with more than 15 years service	9,931	3	7
(11) Participants who forfeited since 1950 with more than 10 years service	36,901	1	2
(12) Participants who forfeited since 1950 with more than 5 years service	220,203	7	15
13) Participants who forfeited since 1950 with 5 years service or less	897,797	30	59

[1] Includes those who received benefits, vested rights, or died.
[2] Excludes participants who received disability retirement, death, survivors and similar benefits. The total number of participants receiving benefits of this nature since 1950 was 71,309.
[3] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

TABLE 4A.—RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES (ITEMS (9), (10), (11), AND (12))

Forfeitures	Number	Percentage of item (9)
(9) Total forfeitures since 1950	1,100,000	100
(10) With more than 15 years service	9,931	9
(11) With more than 10 years service	36,901	3
(12) With more than 5 years service	220,203	20
(13) With 5 years service or less	879,797	80

TABLE 4B.—PARTICIPANTS WITH BENEFIT COMPARED TO FORFEITURE BY LNEGTH OF SERVICE (DERIVED FROM ITEMS (8), (9), (10), (11) AND (12))

Benefits and forfeitures	Ratio [1]
(a) With benefits	2
(b) Forfeited regardless of length of service	44
(a) With benefits	21
(b) Forfeited with more than 15 years service	7
(a) With benefits	1
(b) Forfeited with more than 10 years service	1
(a) With benefits	1
(b) Forfeited with more than 5 years service	1
(a) With benefits	4
(b) With 5 years service or less	1

[1] In terms of 1 participant who received a benefit.

TABLE 5.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED SINCE 1950 IN PLANS WITH VESTING REQUIREMENTS OF 10 YEARS OF SERVICE OR LESS (BASED ON 36 PLANS WITH ASSETS OF $6,000,000,000)

Participants, vested rights and forfeitures since 1950	Number	Percentage of—	
		Item (1)	Item (2)
(1) Participants since 1950	2,900,000	100	
(2) Active participants since 1950 who left scope of plan [1]	1,500,000	52	100
(3) Participants since 1950 who received vested rights on termination of employment prior to retirement	91,517	3	6
(4) Participants who forfeited since 1950 regardless of length of service [2]	1,100,000	38	73
(5) Participants who forfeited since 1950 with more than 15 years service	9,931	.3	.7
(6) Participants who forfeited since 1950 with more than 10 years service	36,901	1	2
(7) Participants who forfeited since 1950 with more than 5 years service	220,203	7	15
(8) Participants who forfeited since 1950 with 5 years or less service	879,797	30	59

[1] Includes those who received benefits, vested rights, or died.
[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUITABLE 5A.—COMPARE TO FORFEITURES BY LENGTH OF SERVICE (FROM ITEMS (3) THROUGH (8))

Vested rights and forfeitures since 1950	Ratio [1]
(a) With vested rights	1
(b) Forfeited regardless of length of service	12
(a) With vested rights	9
(b) Forfeited with more than 15 years service	1
(a) With vested rights	2
(b) Forfeited with more than 10 years service	1
(a) With vested rights	1
(b) Forfeited with more than 5 years service	2.5
(a) With vested rights	1
(b) Forfeited with 5 years or less service	10

[1] In terms of one participant who received a vested right.

TABLE 6.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED IN THE LAST 5 YEARS IN PLANS WITH VESTING REQUIRMENETS OF 10 YEARS OF SERVICE OR LESS (BASED ON 36 PLANS WITH $5,000,000,000 IN ASSETS)

Participants, vested rights, and forfeitures in last 5 years	Number	Percentage of—	
		Item (1)	Item (2)
(1) Participants in last 5 years	1,800,000	100	
(2) Active participants in last 5 years who left scope of plan [1]	400,000	22	100
(3) Participants in last 5 years who received vested rights on termination of employment prior to retirement	38,037	2	9
(4) Participants who forfeited in last 5 years regardless of length of service [2]	332,760	18	83
(5) Participants who forfeited in last 5 years with more than 15 years service	470	02	01
(6) Participants who forfeited in last 5 years with more than 10 years service	1,451	08	4
(7) Participants who forfeited in last 5 years with more than 5 tears service	65,177	4	16
(8) Participants who forfeited in last 5 years with less than 5 years service	267,583	15	67

[1] Includes those who received benefits, vested rights, or died.
[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 6A.—TOTAL FORFEITURES IN LAST 5 YEARS (ITEMS (4) THROUGH (8))

Forfeitures last 5 years	Number	Percentage of item (4)
(4) Total forfeitures last 5 years	332,760	100
(5) With more than 15 years service	470	.1
(6) With more than 10 years service	1,451	.4
(7) With more than 5 years service	65,177	20
(8) With 5 years or less service	267,583	80

SUBTABLE 6B.—PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (FROM ITEMS (3) THROUGH (8))

Vested rights and forfeitures in last 5 years	Ratio [1]
(a) With vested rights	1
(b) Forfeited regardless of length of service	9
(a) With vested rights	80
(b) Forfeited with more than 15 years service	1
(a) With vested rights	26
(b) Forfeited with more than 10 years service	1
(a) With vested rights	1
(b) Forfeited with more than 5 years service	2
(a) With vested rights	1
(b) Forfeited with 5 years or less service	7

[1] In terms of 1 participant who received a vested right.

TABLE 7.—A SIDE-BY-SIDE COMPARISON OF THE NUMBER OF PARTICIPANTS WITH BENEFITS AND FORFEITURES SINCE 1950 IB 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (TABLES 1 AND 4 COMBINED)

Participants, benefits, and forfeitures	51 plans with no vesting or vesting with 11 years of service or more			36 plans with vesting after 10 years of service or less		
	Number	Percentage of Item (1)	Percentage of Item (4)	Number	Percentage of Item (1)	Percentage of Item (4)
(1) Participants since 1950	6,900,000	100	----	2,900,000	100	----
(2) Active participants presently under plans	1,700,000	25	----	1,400,000	47	----
(3) Retired participants presently under plans	210,289	3	----	193,663	7	----
(4) Active participants since 1950 who left scope of plan [1]	5,200,000	75	100	1,500,000	52	100
(5) Participants who received normal retirement benefits since 1950	147,364	2	3	128,328	4	8
(6) Participants who received early retirement benefits since 1950	104,124	1	2	103,223	3	7
(7) Participants who received deferred retirement benefits based on vested rights since 1950	1,630	.02	.03	10,959	.4	.7
(8) Total participants with benefits (items (5), (6), and (7)) [2]	253,118	4	5	242,510	8	16
(9) Participants who forfeited since 1950 regardless of length of service [3]	4,800,000	70	92	1,100,000	38	73
(10) Participants who forfeited since 1950 with more than 15 years' service	115,573	1.6	2.2	9,931	.3	.7
(11) Participants who forfeited since 1950 with more than 10 years' since	280,018	4	5	36,901	1	2
(12) Participants who forfeited since 1950 with more than 5 years' service	719,688	10	14	220,203	7	15
(13) Participants who forfeited since 1950 with 5 years' service or less	4,080,312	59	77	879,797	30	59

[1] Includes those who received benefits, vested rights, or died.
[2] Excludes participants who received disability retirement, death, survivors, and similar benefits. The total number of participants receiving benefits of this nature since 1950 in the 51 plans was 88,810; in the 36 plans, 71,309.
[3] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 7A.—A SIDE-BY-SIDE COMPARISON OF THE RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES (ITEMS (9), (10), (11), (12), AND (13)) IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 1A AND 4A COMBINED.)

Forfeitures since 1950	51 plans		36 plans	
	Number	Percentage of item (9)	Number	Percentage of item (9)
(9) Total forfeitures since 1950	4,800,000	100	1,100,000	100
(10) With more than 15 years service	115,573	2	9,931	9
(11) With more than 10 years service	280,018	6	36,901	3
(12) With more than 5 years service	719,688	15	220,203	20
(13) With 5 years service or less	4,080,312	85	897,797	80

SUBTABLE 7B.—A SIDE-BY-SIDE COMPARISON OF PARTICIPANTS WITH BENEFITS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (DERIVED FROM ITEMS (8) THROUGH (13)) IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 1B AND 4B COMBINED.)

Benefits and forfeitures since 1950	51 plans ratio [1]	36 plans ratio [1]
(a) With benefits	1	1
(b) Forfeited regardless of length of service	19	42
(a) With benefits	2	24
(b) Forfeited with more than 15 years service	1	1
(a) With benefits	1	7
(b) Forfeited with more than 10 years service	1	1
(a) With benefits	1	1
(b) Forfeited with more than 5 years service	3	1
(a) With benefits	1	1
(b) Forfeited with 5 years service or less	16	4

[1] In terms of 1 participant who receive a benefit.

TABLE 8.—A SIDE-BY-SIDE COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED SINCE 1950 IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (TABLES 2 AND 5 COMBINED)

Participants, vested rights, and forfeitures since 1950	51 plans with no vesting or vesting with 11 years of service or more			36 plans with vesting after 10 years of service or less		
	Number	Percentage of		Number	Percentage of	
		Item (1)	Item (2)		Item (1)	Item (2)
(1) Participants since 1950	6,900,000	100	-------	2,900,000	100	-------
(2) Active participants since 1950 who left scope of plan [1]	5,200,000	75	100	1,500,000	52	100
(3) Participants since 1950 who received vested rights on termination of employment prior to retirement	21,498	.3	.4	91,517	3	6
(4) Participants who forfeited since 1950 regardless of length of service [2]	4,800,000	70	92	1,100,000	38	73
(5) Participants who forfeited since 1950 with more than 15 years service	115,573	1.6	2.2	9,931	0.3	0.7
(6) Participants who forfeited since 1950 with more than 10 years service	280,018	4	5	36,901	1	2
(7) Participants who forfeited since 1950 with more than 5 years service	719,688	10	14	220,203	7	15
(8) Participants who forfeited since 1950 with 5 years service or less	4,080,312	59	77	879,797	30	59

[1] Includes those who received benefits, vested rights, or died.
[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 8A.—A SIDE-BY-SIDE COMPARISON OF PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (DERIVED FROM ITEMS (3) THROUGH (8)) SINCE 1950 IN 51 PLANS WITH NO VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 2A AND 5A COMBINED.)

Vested rights and forfeitures since 1950	51 plans, ratio [1]	36 plans, ratio [1]
(a) With vested rights	1	1
(b) Forfeited regardless of length of service	223	12
(a) With vested rights	1	9
(b) Forfeited with more than 15 years service	5	1
(a) With vested rights	1	2
(b) Forfeited with more than 10 years service	13	1
(a) With vested rights	1	1
(b) Forfeited with more than 5 years service	33	2.5
(a) With vested rights	1	1
(b) Forfeited with 5 years service or less	186	10

[1] In terms of 1 participant who received a benefit.

TABLE 9.—A SIDE-BY-SIDE COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED IN THE LAST 5 YEARS IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (TABLES 3 AND 6 COMBINED.)

Principants, vested rights and forfeitures in last 5 years	51 plans with no vesting or vesting with 11 years or service or more			36 plans with vesting after 10 years of service or less		
		Percentage of			Percentage of	
	Number	Item (1)	Item (2)	Number	Item (1)	Item (2)
(1) Participants in last 5 years	2,900,000	100	-------	1,800,000	100	-------
(2) Active participants in last 5 years who left scope of plan [1]	1,200,000	41	100	400,000	22	100
(3) Participants in last 5 years who received vested rights on termination of employment prior to retirement	12,536	.4	1	38,037	2	9
(4) Participants who forfeited in last 5 years regardless of length of service [2]	991,111	34	82	332,760	18	83
(5) Participants who forfeited in last 5 years with more than 15 years service	27,335	.9	2	470	.02	0.1
(6) Participants who forfeited in last 5 years with more than 10 years service	63,894	2	5	1,451	.08	.4
(7) Participants who forfeited in last 5 years with more than 5 years service	155,522	5	13	65,177	4	16
(8) Participants who forfeited in last 5 years with 5 years service or less	835,589	29	70	267,583	15	67

[1] Includes those who received benefits, vested rights, or died.
[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 9A.—A SIDE-BY-SIDE COMPARISON OF THE RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES IN LAST 5 YEARS (ITEMS (4) THROUGH (8)); IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS (SUBTABLES 3A AND 6A COMBINED)

Forfeitures last 5 years	51 plans		36 plans	
	Number	Percentage of item (5)	Number	Percentage of item (4)
(4) Total forfeitures last 5 years	991,111	100	332,760	100.0
(5) With more than 5 years' service	27,335	3	470	.1
(6) With more than 10 years' service	63,894	6	1,451	.4
(7) With more than 5 years' service	155,522	16	65,177	20.0
(8) With 5 years' service or less	835,589	84	267,583	80.0

SUBTABLE 9B.—A SIDE-BY-SIDE COMPARISON OF PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (DERIVED FROM ITEMS (3) THROUGH (8)) IN LAST 5 YEARS IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 3B AND 6B COMBINED)

	51 plans, ratio [1]	36 plans ratio
(a) With vested rights	1	1
(b) Forfeited regardless of length of service	79	9
(a) With vested rights	1	80
(b) Forfeited with more than 15 years service	2	1
(a) With vested rights	1	26
(b) Forfeited with more than 10 years service	5	1
(a) With vested rights	1	1
(b) Forfeited with more than 5 years service	12	2
(a) With vested rights	1	1
(b) Forfeited with 5 years service or less	67	7

[1] In terms of 1 participant who received a vested right.

CASE HISTORY NO. 5

A large oil company with a pension plan that is 38 years old.

There are currently approximately 42,000 active employees and 6,500 retirees.

The plan's assets exceed $450 million.

This plan has 50 percent vesting after 15 years, increasing at five percent a year until there is 100 percent vesting after 25 years.

Of the 105,000 persons participating since 1950, more than 61,000 have left the scope of the plan with no benefits. Of that number, 13,430 had more than five years service and 3,680 had more than ten years service.

In the last five years, of 53,054 participants, 17,657 have left with no benefits, of whom 3,838 had more than five years service and 1,052 more than ten years service.

The total retirements since 1950 are less than 8,500.

CASE HISTORY NO. 18

This plan represents a large, collectively bargained fund in the hotel industry. The plan has been in existence since 1952.

The plan has failed to complete the forfeiture data requested by Part III of the P–1 survey form. The reason given for this failure is that the information is "not available." Yet in response to another question requesting the assumptions with respect to employee termination rates before retirement, a detailed table providing such termination rates is provided along with the notation that this data is "based on the experience during 12 years of operation of the fund."

CASE HISTORY NO. 33

A large communications company with a pension plan that is 58 years old.

There are currently approximately 57,000 active employees and 3,100 retired.

The plan's assets exceed $229 million.

This plan has full vesting at age 40 with 15 years service.

This plan has very high forfeiture rates. Prior to 1969, the plan had no vesting provisions. Of the 320,124 persons participating since 1950, more than 231,000 have left the scope of the plan with no benefits. Of that number, 5,800 had more than 15 years service, 12,741 had more than ten years service, and 31,419 had more than five years service.

In the last five years, of 152,028 participants, 108,035 left the plan without any benefits, of whom 2,284 had more than 15 years service, 4,592 had more than ten years service and 8,778 had more than five years service.

The average age of participants leaving this plan without benefits is as follows:

AVERAGE AGE

	Men	Women
Leaving within the last 5 years with more than 15 years service	43	40
Leaving within the last 5 years with more than 10 years service	39	36
Leaving within the last 5 years with more than 5 years service	35	31

Regarding investments, while the plan is prohibited by its own terms from investments in its own securities more than $11,000,000 has been invested in the last five years in its parent and subsidiaries.

CASE HISTORY NO. 37

A joint union-employer trust plan in the transporattion industry. The plan is 18 years old and has 314,000 active employees and 10,000 retired employees.

The plan's assets exceed $164 million.

This plan has no vesting provision but pays a retirement after 20 years service in 30 consecutive years. However, if the employee does not have a specified number of days employment within a three-year period, he will be considered to have a break in service.

This plan has failed to complete the data in Part III on forfeitures.

This plan has $800,000 in loans outstanding for which there is no collateral.

This plan has no appeal procedure for the denial of a benefit claim.

CASE HISTORY NO. 38

This is a pension plan of a major aerospace company. It was established in 1957.* The plan covers salaried employees only and has 36,903 active participants and 1,241 retired as of December, 1969.

Since the plan was established over 60,000 employees have participated with more than 20,000 employees having left the scope of the plan without entitlement to any benefit, over 5,000 of whom had more than five years of service.

In addition, the plan has approximately $349,000,000 in liabilities for accrued vested benefits, but the market value of its assets is only $273,000,000. This means that if the plan were to terminate today, employees with vested benefits would have no legal remedy to obtain all their vested benefits.

CASE HISTORY NO. 39

This is a pension plan of a large data processing manufacturing firm. The plan presently has 169,030 active participants and has been in existence since 1945.

One of the most interesting facets of this plan's operations is its investment of pension fund monies in unsecured loans to the extent of $41,171,580.

Of the 89,652 employees who left the scope of the plan since 1951, 82,326 have left with no entitlement to benefits (this figure excludes death). This plan has a ten year vesting requirement.

CASE HISTORY NO. 40

This plan is from a large manufacturer in the aerospace industry. The plan has been in existence for 26 years and prsently covers 46,000 active employees and 2800 retired.

The assets of the plan exceed $493 million.

The plan administrator has advised the Committee that the present employment figures represent a drop of more than 50,000 employees in the last few years.

This plan has a ten-year vesting provision, but did not provide answers to the forfeiture questions in Part III.

In addition, this plan had $1,811,000 in loans without collateral.

CASE HISTORY NO. 43

This pension plan is applicable to a large bank and its affiliates. The current plan has been in existence since 1954, superceding a prior plan established in 1941. There are 11,676 active participants.

*The plan was in existence prior to 1957, but in that year the changes in the plan were so great for purposes of this study, it is considered to have been established in 1957.

There are two interesting facts concerning this plan:

1. The plan failed to report its liabilities, indicating that such information was not available; however, it gave a detailed accounting of its assets.

2. Of an estimated 11,000 employees who left the scope of the plan since 1954, as estimated 8,400 forfeited benefits (over 1,725 of this number had over five years of service and 1,000 had ten years of service).

CASE HISTORY NO. 45

This pension plan is applicable to a large electrical power holding company. It has currently 11,765 active participants.

While this is a contributory plan which has been collectively bargained, the employees do not participate in the administration of the plan.

10,818 employees have left the scope of the plan since 1950. Over 50 percent have left without entitlement to benefits, and over 20 percent had more than five years of service.

CASE HISTORY NO. 47

This is a large pension plan in the communications industry covering many separate employers; therefore there are differing dates for when the plan was established for purposes of any one employer. However, the earliest participating employer date given is for 1937.

Of the approximately 277,000 participants in the plan since 1950, over 206,000 have left the scope of the plan and of that number 202,665 have left without entitlement to any vested benefit. Of the 202,665 over 17,000 had more than five years of service.

The plan has two provisions for vesting. The most liberal requires 15 years of service and, in addition, an age requirement of 40 years.

CASE HISTORY NO. 49

This pension plan of a major mining company was established in 1952. It currently covers over 15,000 active participants but has failed to provide complete data in response to Part III of the P–1 form.

Despite the employer having made contributions to the plan since 1952, the plan has only $33.3 million in assets, but $107 million in vested benefit liabilities. If this plan should terminate today, the assets of the fund would cover roughly one-third of the vested benefit liabilities, which would result in many participants with vested rights losing all or a substantial portion of their benefits expectations.

CASE HISTORY NO. 52

This is a pension plan of a large aerospace firm; it was established in 1955 and has over 105,904 active participants. The plan is collectively bargained.

Of the over 81,000 employees who have left, the scope of the plan since it was established, over 66,000 have left without entitlement to any benefit. None of the 66,000 had more than five years of service.

CASE HISTORY NO. 161

This is the plan of a major Southern utility company and has been in existence since 1944.

It has failed to fill out Part III of the P–1 form.

This plan is not audited by an independent licensed or certified public accountant at least once a year.

After 26 years of funding, the plan has accumulated assets of $66 million, but has vested benefit liabilities of $133.5 million. In other words, after 24 years of funding, it has only managed to accumulate assets to cover one-half of the vested benefit liabilities incurred.

If this plan should terminate today, substantial numbers of participants with vested benefit rights would have their benefit expectations frustrated.

CASE HISTORY NO. 177

This is the pension plan of a steel fabricating company in Pennsylvania. The plan has been in existence since 1950 and is collectively bargained.

The plan has $25.3 million in assets but $48.2 million in vested benefit liabilities. Assets on hand after 20 years of funding are only sufficient to cover a little over one-half of the vested benefit liabilities covered by the plan. If this plan should terminate today substantial numbers of participants with vested rights would have their benefit expectations frustrated.

CASE HISTORIES NOS. 193, 287, AND 208

These constitute three plans of three major corporations in the United States. The total assets in these three plans aggregates $260 million. All three plans have been in existence since 1950 and two of these plans were in existence as of 1940.

All three plans were unable to furnish any information on Part III. Indeed, all three plans claim that information for the last five years with respect to the total numbers of participants and the total numbers who have received vested rights was unavailable. This information is specifically required to be disclosed by Federal law—the Welfare and Pension Plan Disclosure Act of 1958.

CASE HISTORY NO. 255

This is the plan of a clothing manufacturer in New York. It presently covers 1,546 active employees.

The average age of the employees in this plan who forfeited with more than 15 years of service under the plan is 47.

The plan has $2.4 million in assets.

Approximately $400,000 of the fund has been invested in the securities of the contributing employer, roughly 20% of the plan assets.

CASE HISTORY NO. 280

This is the retirement plan of a major transit company operating in a large eastern city.

It has no vesting provisions whatsoever.

It has failed to complete Part III of the P–1 survey, the data dealing with benefits and forfeitures.

It reports $17.2 million in assets. It has failed to report the amount of vested benefit liabilities the plan has incurred, claiming that these figures are not available.

The report of this plan indicates that it has over $2 million in real-estate notes outstanding. This appears to represent a real-estate mortgage in the amount of $2.3 million held by the plan on properties of the transit company.

Although the plan is contributory, employees do not participate in the administration of the plan.

CASE HISTORY NO. 280A

This pension plan is a union-employer pension trust in the transportation industry.

The plan is 26 years old and covers 2,500 active employees and 947 retired.

This plan has assets in excess of $17 million.

There is no vesting provision. Retirement benefits are age 60 and 25 years service. The plan did not furnish forfeiture data.

The investment practices of this plan reflect that the $2 million of the plan's real estate notes are on property of the employer.

CASE HISTORY NO. 327

This is the plan of a major oil company in Oklahoma. It was established in 1944. Of some 8,000 participants who have left the scope of the plan since 1950, over 7,000 participants have forfeited without benefits.

2,000 of those who forfeited have more than five years of service; 1,000 forfeited with more than ten years service; 1,000 persons have received benefits since 1950.

The vesting provision requires 20 years of service.

The plan has $62.2 million in assets, $29 million in vested benefit liabilities and $31 million in accrued benefit values. The plan has twice as much money as it requires to pay all the vested benefit liabilities that have accrued. This plan has reported that it retained new actuaries in 1969 who determined that the plan was overfunded and insisted that no further contributions be made.

The president of this oil company is also a trustee of the plan as well as a director of the bank which is the corporation trustee for the plan and in which funds of the plan are deposited. However, it appears that the corporation trustee involved does not have investment discretion, investment decisions are made by professional investment advisors.

CASE HISTORY NO. 465

This is a pension plan of a midwest utility company and was established in 1950.

The plan has assets of $1.1 million. Of over 300 participants in the plan since 1950 only 37 have received retirement benefits. Of the 206 participants who have left the scope of the plan since 1950, 167 have forfeited.

In response to the question as to whether or not the company has failed to make any contributions to the plan in any of the years since the plan was established, the plan administrator responded that contributions were reduced in 1962 and thereafter by some $20,000 annual by virtue of "actuarial gains" due to employees leaving the company without vested interests.

CASE HISTORY NO. 569

This is the pension plan of a cable corporation in the Midwest. The plan has been in existence since 1943.

The plan was disqualified by the Internal Revenue Service on December 1, 1970 but the company protested the ruling.

It has $1.7 million in assets. Of this amount nearly $900,000 of the pension fund monies have been invested in securities of the company. That is, nearly 53% of the plan assets have been invested in securities of the employer who established the plan.

The report of this plan further indicates that the ratio on total administrative costs charged to the plan in the last five years to the total amount of benefits paid out by the plan in the last five years is in excess of 33 percent.

The report of this plan indicates that the president of the company, who is also on the committee administering the plan, is also a director of the bank in Missouri that invests the plan funds.

PENSION STUDY FORM P–1 (S. RES. 360)

PART I. IDENTIFICATION

1. A. Name of Plan.
B. Address of Principal Office of Plan.
C. Name of Administrator.
D. Name and title of individuals (s) who prepared response for this study:

PART II. PLAN PROFILE

2. A. Year of Plan establishment.
B. Is the Plan qualified by the Internal Revenue Service? (1) Yes ——— (2) No ——— If "No," explain.

3. A. Date employer contributions to the plan commenced (or reserves created).
B. Date initial benefit payments under the Plan were made (other than refund of employee contributions).

4. Funding.
A. Self-administered:
(1) Trust.
(2) Other (specify).
B. Insured (specify).
C. Combination (specify).

5. Type of Administration:
A. Employer or Employer Association.
B. Union.
C. Joint Employer-Employee Board of Trustees.
D. Other (specify).

6. Total number of current Plan participant as having the same meaning as in the Welfare and Pension Plans Disclosure Act, i.e., "any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee . . . pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit." However, specifically include any preparticipant who has not qualified for membership in the plan but with respect to whose service payment were made into the pension plan or fund. Also include any person whose service has been temporarily interrupted, e.g., persons on military leave, but who may still be eligible to receive benefits if their service is resumed. This procedure should be followed with respect to all subsequent questions involving the term "participant.")
A. Active.
B. Retired.

7. Check the category or categories that best describes the groups covered by the Plan.
A. All Employees.
B. Hourly Rate.
C. Salaried.
D. Other (specify).

8. Industry in which most of the participants are employed (check one):
A. Manufacturing.
B. Mining.
C. Construction.
D. Transportation.
E. Communications and Utilities.
F. Wholesale and Retail trade.
G. Finance, Insurance and Real estate.
H. Services.
I. Other (specify).

9. A. Is the Plan collectively bargained? (1) Yes— (2) No—.
B. Does more than one employer contribute to the Plan? (1) Yes— (2) No—.

10. A. Current employer contribution formula: (1) Fixed rate per hour, week or month or percent of payroll (specify). (2)— Other (specify).
B. Is this formula specified in a written collective bargaining agreement, plan, trust agreement or similar governing document? (1) Yes— (2) No—.
If "Yes," specify the document or documents in which the formula appears:
(a) Collective bargaining agreement.
(b) Plan.
(c) Trust agreement.
(d) Insurance contract.
(e) Other (specify).

11. Current benefit formulas (give data for service which would commence as of date of study).
A. Normal retirement.
B. Early retirement.
C. Disability.
D. Death.
E. Other (e.g., survivorship, temporary retirement, etc) (specify).

12. Age and service requirements for obtaining benefits.
A. Normal retirement.
B. Early retirement.
C. Disability.
D. Death.
E. Other (e.g., survivorship, temporary retirement, etc.) (specify).

13. A. Specify the requirements of the vesting provision, i.e., age, service, type of separation, etc.

B. What percentage of accrued benefits are initially vested?
C. After how many years are all accrued benefits vested?
D. Specify the vesting formula (including whether such formula has retroactive effect).
E. Specify any survivorship rights under the vesting provisions.
F. Specify whether any benefits in the event of illness (i.e., medical, surgical, hospital benefits, etc.) are provided to retirees under the Plan. Indicate the requirements for obtaining such benefits.

14. Does the Plan credit service with other employers or service with respect to other plans of the same employer? A. Yes— B. No—.
If "yes," specify the type of credit provided, i.e., partial, full, etc., and provide such other essential details as will clarify the arrangements (include data on any reciprocal arrangements entered into with other plans, including the identity of such other plans).

15. Does the Plan provide for employee contributions? A. Yes— B. No—.
If "Yes," specify that rate of such contributions, and indicate whether the Plan requires such contributions to be made as a condition of participation.

16. A. Specify the pre-participation service period required as a condition precedent to membership in the Plan (check one):
(1) None.
(2) 3–6 months.
(3) 1 year.
(4) 2–3 years.
(5) Over 3 years.
(6) Other (specify).
B. Specify the minimum age required as a condition precedent to membership in the Plan (check one):
(1) None.
(2) 18–21.
(3) 22–25.
(4) Over 25.
C. Does the Plan credit pre-participation service with respect to the Plan? (1) Yes— (2) No—.
If "Yes," specify the type of credit provided.

17. Specify the maximum age, if any, at which an employee is barred from membership in the Plan——

18. A. If the Plan contains a continuous service requirement, specify the period of time which will constitute a "break in service." (check one):
(1) Less than 1 year.
(2) 1 year.
(3) 2 years.
(4) Over 2 years.
(5) Other (specify).
B. Enumerate any other conditions which will constitute a "break in service."
C. Enumerate any circumstances recognized by the Plan which will serve to waive a "break in service."

PART III. DATA ON BENEFITS AND FORFEITURES

(Where records of the Plan are unavailable, estimate if necessary but indicate if the figure is an estimate.)

19. A. Specify the total number of persons who have participated in the Plan since 1950 or since the Plan's establishment if that date is later than 1950——
B. Specify the total number of persons who have participated in the Plan within the past 5 years——

20. A. Specify the total number of participants who received benefits since 1950 or since the Plan's establishment if that date is later than 1950:
(1) Normal retirement.
(2) Early retirement.
(3) Disability retirement.
(4) Death.
(5) Other.

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement——

C. Specify the total number of participants within the past 5 years who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement——

21. A. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for any reason (include those who retired and/or died)——

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for reasons other than normal or early retirement——

C. Specify the total number of participants within the past 5 years who left the scope of the Plan for any reason. Include those who retired and/or died)——

D. Specify the total number of participants within the past 5 years who left the scope of the Plan for reasons other than normal or early retirement——

22. Specify according to the following categories the total number of participants, regardless of their age, who left the scope of the Plan without entitlement to any retirement benefits:

A. Since 1950 or since the Plan's establishment if that date is later than 1950——

B. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 15 years service under the Plan——

C. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 10 years service under the Plan——

D. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 5 years service under the Plan——

E. Within the past 5 years——

F. Within the past 5 years with more than 15 years service under the Plan——

G. Within the past 5 years with more than 10 years service under the Plan——

H. Within the past 5 years with more than 5 years service under the Plan——

I. Within the past 5 years due solely to voluntary separation——

J. Within the past 5 years due solely to failure to meet continuous service requirements——

23. Specify according to the following categories the average age of participants who left the scope of the Plan without entitlement to retirement benefits:

A. Within the past 5 years with more than 15 years service under the Plan——

B. Within the past 5 years with more than 10 years service under the Plan——

C. Within the past 5 years with more than 5 years service under the Plan——

24. A. Indicate the average monthly benefit paid to retirees 5 years ago.
(1) Normal—— (2) Early—— (3) Disability——

B. Indicate the average monthly benefit paid to retirees within the last year.
(1) Normal—— (2) Early—— (3) Disability——

PART IV. FUNDING STATUS DATA

25. Specify the following (give the latest figures):

A. Total assets of Plan (at cost, book, and market value):
(1) (Cost)——
(2) (Book)——
(3) (Market)——
(4) (Date of latest evaluation)——

B. Total liabilities for all accrued vested benefits (exclude benefits vested under vesting, early retirement, disability retirement and normal retirement provisions, and give present dollar value) (Date of latest evaluations)——

C. Total value of all accrued benefits, treating all such benefits as if they were vested (give present dollar value) (Date of latest evaluation)——

26. A. Provide a concise description of the actuarial methods, factors and assumptions used in determining contributions or premium payments under the Plan (indicating specifically the assumption used with respect to the rate of employee termination for reasons other than death, disability, or retirement).

B. Except for multiemployer plans, specify the total number of years (identifying each year) since 1950 or since the Plan's establishment if that date is later than 1950, in which the employer did not make contributions to the Plan, or reduced his rate of contributions to the Plan, indicating concisely the factors which dictated this result.

C. If a multiemployer plan, list those employers who are delinquent in their contributions to the Plan as of the date of this study, the duration of the delinquency, the steps, if any, taken by the Administrator in this respect, the total amount of delinquent contributions, and the total number of currently contributing employers.

SPECIAL INSTRUCTIONS FOR INSURED PLANS IN CONNECTION WITH ITEM 25A

For plans funded in whole or in part through the medium of insurance contracts the asset value of the contract should be calculated as follows:

1. Group Annuity Contract, including Deposit Administration: Asset values reflected in the experience fund, including those applicable to retired lives.

2. Individual Insurance or Annuity Contracts: Cash value plus reserves for retired lives and paid-up benefits.

3. Group Permanent Contract: Asset values in experience fund, including those applicable to retired lives. If the contract is not experience rated, report cash values plus reserves for retired lives and paid-up benefits.

For the foregoing plans report book and market values only. If necessary, market values should be estimated but indicate if the figure is an estimate.

27. A. Indicate the total amount ($ value) of loans made by the Plan fund which are outstanding as of the date of this study (exclusive investments in government, corporate and other bonds)——

B. Indicate the total amount ($ value) of loans made by the Plan fund which are outstanding as of the date of this study which were made without collateral being provided by the debtor——

C. Indicate the total amount ($ value) of loans made by the Plan fund which are in default as of the date of this study——

D. Indicate the total amount ($ value) of loans made by the Plan fund which are in default and which have been written off as uncollectable as of the date of this study——

E. Indicate the total amount ($ value) of debt owed by the Plan fund——

28. A. List and identify all employers contributing to the Plan fund (including any employer controlling such an employer, controlled by such an employer or under common control with such an employer) in whom the Plan fund has invested its assets, or with respect to whom the Plan fund has made a loan, guaranteed a loan, or pledged its assets within the past 5 years. Indicate the amount and date of such investment, loan, pledge, etc., for each employer listed.

B. List and identify all officers or employees of the union whose members are covered by the Plan with respect to whom the fund has invested its assets or made a loan, guaranteed a loan, or pledged its assets, within the past 5 years. List and identify any corporation, joint-stock company, mutual fund, etc., which such officer or employee owns of in which he has controlling interest, with respect to whom the fund has invested its assets or made a loan, guaranteed a loan, or pledged its assets, within the past 5 years. Indicate the amount and date of such investment, loan, pledge, etc., for each officer or employee listed, or of each entity owned or controlled by him.

29. Indicate what percentage of corporate stock at current market value held by the Plan as of the date of this study was purchased directly from the issuer or owner——

30. Specify the following:

A. The average amount of administrative costs charged to the Plan for the last 5 years——

B. The ratio (percent) of current administrative costs charged to the Plan to total fund assets calculated at current market value——

C. The ratio (percent) of total administrative costs charged to the Plan for the last 5 years to the total income earned by the fund during the least 5 years——

D. The ratio (percent) of total administrative costs charged to the Plan for the last 5 years to the total amount of benefits paid out by the Plan during the last 5 years——

31. A. Indicate what percentage of total Plan fund assets at current market value as of the date of this study has been invested in arangements intended to provide funds for housing or other social-economic improvement programs——
B. List and identify each such program in which the Plan fund has invested and the amount of the investment at current market value——

PART V. INTERNAL ADMINISTRATIVE DATA

32. Does the Plan provide a booklet to each participant explaining the terms, conditions and procedures relative to the Plan? A. Yes— B. No—

33. A. Does the Plan provide the participant with an opportunity to request a hearing on his claim for benefits? (1) Yes— (2) No—
B. Does the Plan require a complete or partial denial of a claim for benefits to be put in writing? (1) Yes— (2) No—
C. Does the Plan provide for any appeal procedures with respect to a denial of a benefit claim? (1) Yes— (2) No—
D. If the Plan provides an appeal procedure, is it set forth in the booket described in question 32? (1) Yes— (2) No—

34. Indicate approximately how many claims were considered for each of the last 5 years—

35. Indicate whether the Plan utilizes the following (check all which are applicable) :
A. Professional administrator.
B. Corporate trustee.
C. Actuary (indicate qualifications)
D. Public accountant (indicate qualifications).
E. Attorney at law:
F. Investment advisor.
G. Other consultants (specify).

36. Are the Plan participants represented at any level in the administration of the Plan? A. Yes— B. No—
If "Yes," explain, and indicate how such participants are selected.

37. A. Specify the procedure for amending the Plan.
B. Indicate approximately how many amendments have been made to the Plan since 1950 or since the Plan's establishment if that date is later than 1950——
C. Indicate approximately the intervals at which the Plan is codified in a single document to incorporate all amendments——

38. If the Plan is administered by a group of individuals, e.g., board of trustees or committee, indicate whether the Plan contains a provision requiring regular periodic meetings of the group. A. Yes— B. No—
If "Yes," specify the period at which such group is required to meet.

39. Investment decisions are made by (check all that participate) :
A. Committee appointed by employer.
B. Committee appointed by union.
C. Joint employer-union board of trustees or committee.
D. Corporate trustee.
E. Investment adviser.
F. Corporate trustee or investment adviser with review by employer, union, joint board of trustees, or committees appointed by any of the foregoing.

40. Specify what formal restrictions, if any, limit the discretion of those persons charged with the responsibility for investing Plan assets (e.g., provisions with respect to diversification of funds, investment in securities of the employer, restrictions against investment in corporate stock, etc.)

41. Is the Plan audited at least once a year by an independent licensed or certified public accountants? A. Yes— B. No—

42. Has qualification of the Plan or exemption of the trust under the Internal Revenue Code ever been revoked or suspended? A. Yes— B. No— If "Yes," explain.

43. A. If the Plan is insured, list and identify :
(1) Any administrator, officer or employee of the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

(2) Any director, officer or employee of any employer contributing to the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

(3) Any officer or employee of the union whose members are covered by the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

B. If the Plan utilizes a corporate trustee, list and identify:

(1) Any administrator, officer or employee of the Plan who is a director, officer or employee of the corporate trustee.

(2) Any director, officer or employee of any employer contributing to the Plan who is a director, officer or employee of the corporate trustee.

(3) Any officer or employee of the union whose members are covered by the Plan who is a director, officer or employee of the corporate trustee.

44. Indicate the provisions for distribution of assets upon Plan termination, including the order of priorities for distribution under the Plan.

45. A. Specify any layoffs or closing of a plant, department or subdivision of an employer which resulted in more than 10 percent or more than 800 of the active participants in the Plan being separated from the scope of the Plan (give data for last 5 years and specify in each case the percentage and number of employees separated).

B. Of the total figure furnished in (A), specify the number which were Plan by virtue of a corporate acquisition, merger, consolidation, leave, etc., which resulted in termination of their prior plan? (1) Yes—(2) No—If "Yes," furnish the following details:

(a) Name of the predecessor corporation——

(b) Date of the acquisition, merger, consolidation, leave, etc.——

(c) Name of the terminated plan of the predecessor corporation——

(d) Date the plan of the predecessor corporation was terminated——

C. Indicate the percentage of participants ccrrently covered by the Plan who received vested rights under other plans of the same or a predecessor employer—

46. List and identify any compensated administrator, officer or employee of the Plan who also receives compensation as a director, officer or employee of the employer contributing to the Plan or as an officer or employee of a union whose members are covered by the Plan.

47. If the Plan is administered by a group of individuals, indicate how frequently within the last 5 years membership of the group has changed——

48. A. Specify the number of lawsuits within the last 5 years brought against

B. Or the total figure furnished in (A), specify the number which were beneficiaries——

B. Of the total figure furnished in (A), specify the number which were successfully resolved in favor of such persons or which were settled——

C. Of the total figure furnished in (A), specify the number of suits which were based claims for benefits——

D. Of the total figure furnished in (C), specify the number of suits which were successfully resolved in favor of such persons or which were settled——

E. With respect to all litigation not involving claims for benefits, specify the following:

(1) Title of the action (and court in which the action was brought)——

(2) Date——

(3) Law reporter citation(s) (if any)——

(4) Nature of issue——

(5) Outcome——

THE SENATE LABOR SUBCOMMITTEE STUDY OF PRIVATE PENSION PLANS—PRELIMINARY FINDINGS

Mr. JAVITS. Mr. President, last week the Senator from New Jersey (Mr. WILLIAMS) and I released the first preliminary findings of the Labor Subcommittee's study of private pension plans. The findings are now reprinted in the RECORD and they speak for themselves, but I would like to add a few comments of my own.

It is a rare thing to find a major American institution—private pension plans—built upon human disappointment—a shocking thing, and something which should

move us all to act with determination to make that institution deliver upon its promises.

Four years ago I introduced the first bill to require protection of American workers against unreasonable forfeiture of pension benefits under private pension plans. That bill, S. 2, is still the only bill now pending in the Senate on this subject.

If my bill had been law, the 719,688 workers—each with more than 5 years service—in the "no vesting" or late-vesting sample of plans would have received something, instead of nothing, from the $10-billion piling up in those plans for the last 20 years. Instead, of those who left employment under those plans in the last 20 years, only 5 percent got something, while 95 percent got nothing.

Even in the "earlier vesting" sample, in which 16 percent of those who left were protected from forfeitures, there were included in the balance 36,901 employees who worked more than 10 years and got nothing—not a large percentage of the whole, but human beings nevertheless, moving into their older years without the protection they should have had.

No doubt as this study proceeds further the statistics will be refined and amplified. But even as this first flash of daylight begins to reach into the long-hidden statistical truth of the private pension plan industry, it ought to be obvious that something is wrong, and that it needs to be set right.

My bill would, I believe, be a solution—certainly one which would do the job. Under it, a worker with 6 years of service would be guaranteed 10 percent of his earned pension rights, not subject to forfeit, and 10 percent more per year thereafter until 100 percent is "vested" after 15 years.

Obviously, there would still be forfeitures. Indeed, more than half might well continue to forfeit, but those would be the more "casual" employees, and no one with a substantial length of service—more than 5 years—would be completely out in the field.

We can argue—as no doubt we will—where to draw the line, but one thing is clear beyond question: As things now stand, only a relative handful of the estimated tens of millions of American workers under private pension plans will ever get anything from the plans on which they now stake their futures. And the solution is a minimum standard of vesting.

We have also seen in this report evidences of other weaknesses in the private pension plan system. One case describes a pension plan with 53 percent of its assets invested in the securities of the contributing employer. Others describe weaknesses in funding, and failure either to keep adequate records to disclose what is going on. Those are all problems which can and should be dealt with, and every one of them is dealt with in my bill.

But all the records in the world, all the funding in the world, all the disclosure in the world, will not produce benefits unless the plan provides for them, and unless the workers are protected against forfeiture.

The committee undertook this study at my suggestion over a year ago. The chairman and I, and our respective staffs, have moved it along quite a way. These initial disclosures make it clear beyond question we are on the right track, and I have no doubt that we can, and must, legislate in this field, in this Congress.

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