

1043
9214
6/11/2
0 45/17/pt. 2

PRIVATE WELFARE AND PENSION PLAN STUDY, 1971

DOCUMENTS

DEC 22 1971

THE LIBRARY
KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON

LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

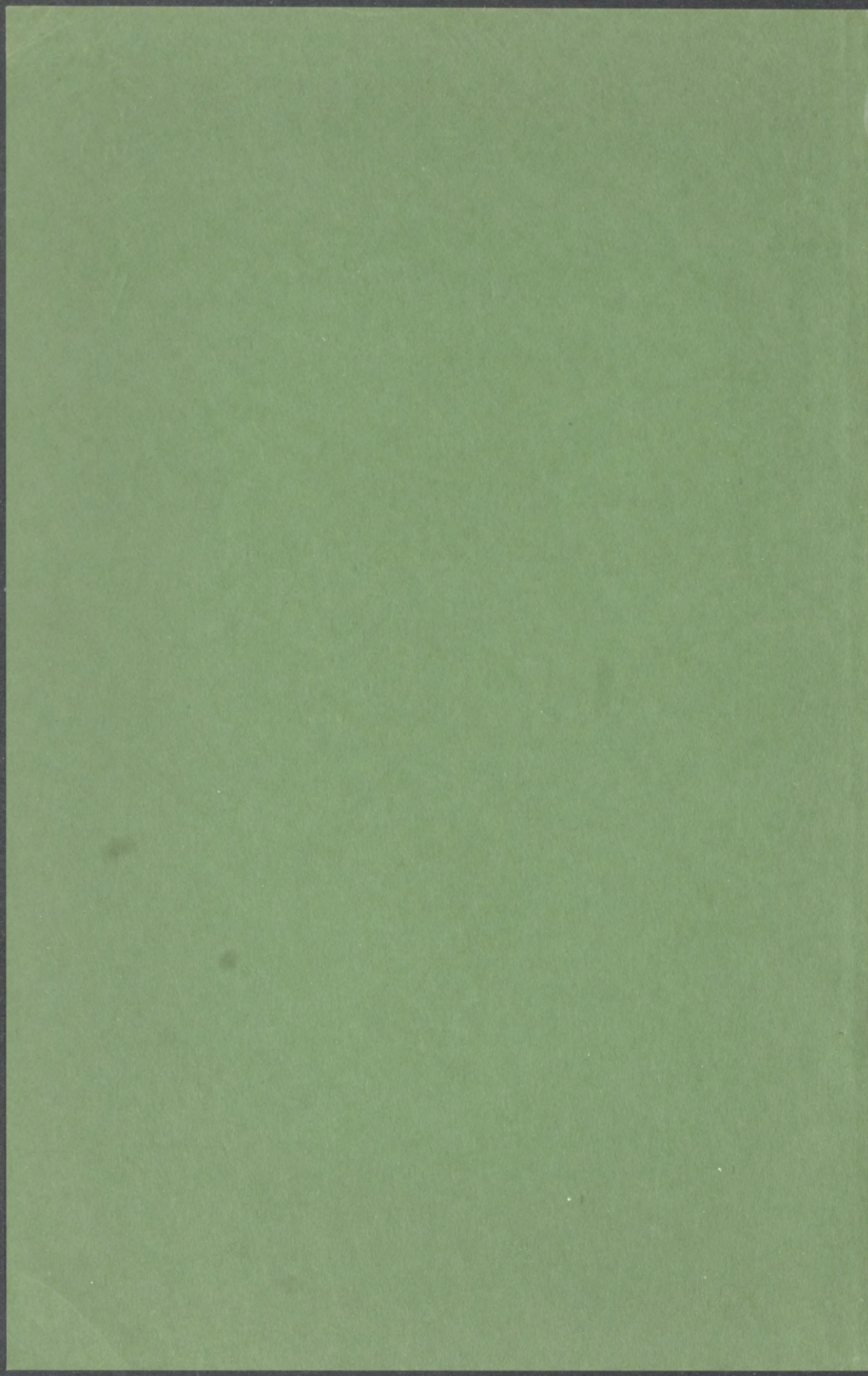
EXAMINATION OF PRIVATE WELFARE AND PENSION PLANS
(PURSUANT TO S. RES. 33, SECTION 4)

OCTOBER 12 AND 13, 1971

PART 2



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



PRIVATE WELFARE AND PENSION PLAN STUDY, 1971

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)

OCTOBER 12 AND 13, 1971

PART 2



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

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1971

66-500 O

COMMITTEE ON LABOR AND PUBLIC WELFARE

HARRISON A. WILLIAMS, Jr., New Jersey, *Chairman*

JENNINGS RANDOLPH, West Virginia	JACOB K. JAVITS, New York
CLAIBORNE PELL, Rhode Island	PETER H. DOMINICK, Colorado
EDWARD M. KENNEDY, Massachusetts	RICHARD S. SCHWEIKER, Pennsylvania
GAYLORD NELSON, Wisconsin	BOB PACKWOOD, Oregon
WALTER F. MONDALE, Minnesota	ROBERT TAFT, Jr., Ohio
THOMAS F. EAGLETON, Missouri	J. GLENN BEALL, Jr., Maryland
ALAN CRANSTON, California	ROBERT T. STAFFORD, Vermont
HAROLD E. HUGHES, Iowa	
ADLAI E. STEVENSON III, Illinois	

STEWART E. McCLURE, *Staff Director*

ROBERT E. NAGLE, *General Counsel*

ROY H. MILLENSON, *Minority Staff Director*

EUGENE MITTELMAN, *Minority Counsel*

SUBCOMMITTEE ON LABOR

HARRISON A. WILLIAMS, Jr., New Jersey, *Chairman*

JENNINGS RANDOLPH, West Virginia	JACOB K. JAVITS, New York
CLAIBORNE PELL, Rhode Island	RICHARD S. SCHWEIKER, Pennsylvania
GAYLORD NELSON, Wisconsin	BOB PACKWOOD, Oregon
THOMAS F. EAGLETON, Missouri	ROBERT TAFT, Jr., Ohio
ADLAI E. STEVENSON III, Illinois	ROBERT T. STAFFORD, Vermont
HAROLD E. HUGHES, Iowa	

GERALD M. FEDER, *Counsel*

MARIO T. NOTO, *Special Counsel*

MICHAEL GORDON, *Minority Counsel*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

TUESDAY, OCTOBER 12, 1971

	Page
Munroe, Douglas, director of personnel, Anaconda Co., accompanied by T. E. Tatem, assistant secretary and assistant treasurer, pension plan administrator; W. F. Mayer, assistant administrator, and Robert Armstrong, consulting actuary, with George B. Buck, Consulting Actuaries, Inc., New York City, N.Y.-----	396
Kent, G. P., vice president, employee relations, Western Union, accompanied by R. C. Hostetler, vice president and general counsel; R. Wishart, chairman of the board, George Buck & Co.; and V. Tobin, George Buck & Co.-----	408
Whitaker, Jack F., president, Whitaker Cable Co., accompanied by Bernard D. Craig, Esq., Levy & Craig, 916 Walnut Street Building, Kansas City, Mo., and Jack L. Mahurin, vice president, Meidinger & Associates.-----	440
Garfinkel, Arthur K., co-counsel, Retirement Fund of Retail Shoe Employees, accompanied by Joseph Bienenbaum, trustee and chairman; Jack Maltz, trustee and assistant chairman; Theodore Wiley, co-counsel; and Jerome M. Simon, administrator-----	460
Butler, J. Godfrey, senior vice president, D.C. Transit System, Inc., accompanied by Manuel J. Davis, special counsel, D.C. Transit System, Inc.-----	516
Fisher, Merle R., vice president, compensations and benefits, Bank of America National Trust & Savings Association, accompanied by Gordon E. Hillegas, assistant vice president coordinator, employee benefits.-----	559
Van Vliet, J. W., director, audits and insurance, the great Atlantic & Pacific Tea Co., Inc., accompanied by Darrell V. Stiffler, Jr., national director, personnel and industrial relations, A. & P., and Charles P. O'Connor, attorney at law, Morgan, Lewis & Bockius, Washington, D.C.-----	566

WEDNESDAY, OCTOBER 13, 1971

Spahn, William H., director, New York Hotel Trades Council and Hotel Association of New York City, Inc., pension fund, accompanied by Martin Levenson, vice president and associate actuary of Martin E. Segal Co.-----	586
Baker, Hon. Howard H., a U.S. Senator from the State of Tennessee.-----	598
Bland, William L., assistant secretary, Genesco, accompanied by J. G. DeLacey, vice president and secretary, and W. C. O'Connor, head of Legal Department, Genesco, and Sanford Litvack, Esq., of Donovan, Leisure, Newton & Irvine, corporate counsel, and Blackburn G. Hazelhurst and David Parsons of Hazelhurst Associates.-----	599
Zimmerman, Robert G., assistant secretary and assistant treasurer, F. W. Woolworth Co., accompanied by Christopher J. Hoey, employee relations counsel; John K. Armstrong, counsel for F. W. Woolworth Co., and Henry J. L. Fortuin, Jr., senior vice president, and Philip C. Mower, assistant vice president, Marsh & McLennan, Inc., actuaries.-----	722
Boekenheide, Russell W., corporate director of personnel of the Kendall Co., accompanied by William D. Sullivan, manager, corporate insurance and pensions department.-----	805
Palmer, George A., Jr., retired vice president of Joseph Horne Co., Pittsburgh, Pa., accompanied by H. V. Cochrane, vice president and treasurer; George A. Palmer III, personnel director; Joseph Swain, Esq., corporate counsel; and J. E. Dwyer, pension plan consultant, Peat, Marwick & Mitchell -----	843

IV

	Page
Fletcher, N. H., assistant treasurer, Uniroyal, Inc., accompanied by Myron Kalish, general counsel, Uniroyal, Inc., and Henry J. L. Fortuin, Jr., senior vice president and actuary, Marsh & McLennan, Inc.-----	851
Cameron, James, vice chairman, profit-sharing committee, Winn-Dixie Stores, Inc., accompanied by Shepard Bryan, general counsel-----	861

STATEMENTS

Baker, Hon. Howard H., a U.S. Senator from the State of Tennessee----	598
Bland, William L., assistant secretary, Genesco, accompanied by J. G. DeLacey, vice president and secretary, and W. C. O'Connor, head of Legal Department, Genesco, and Sanford Litvack, Esq., of Donovan, Leisure, Newton & Irvine, corporate counsel, and Blackburn G. Hazelhurst and David Parsons of Hazelhurst Associates-----	599
Boekenheide, Russell W., corporate director of personnel of the Kendall Co., accompanied by William D. Sullivan, manager, corporate insurance and pensions department-----	805
Butler, J. Godfrey, senior vice president, D.C. Transit System, Inc., accompanied by Manuel J. Davis, special counsel, D.C. Transit Systems, Inc.--	516
Cameron, James, vice chairman, profit-sharing committee, Winn-Dixie Stores, Inc., accompanied by Shepard Bryan, general counsel-----	861
Fisher, Merle R., vice president, compensations and benefits, Bank of America National Trust & Savings Association, accompanied by Gordon E. Hillegas, assistant vice president coordinator, employee benefits-----	559
Fletcher, N. H., assistant treasurer, Uniroyal, Inc., accompanied by Myron Kalish, general counsel, Uniroyal, Inc., and Henry J. L. Fortuin, Jr., senior vice president and actuary, Marsh & McLennan, Inc.-----	851
Garfinkel, Arthur K., co-counsel, Retirement Fund of Retail Shoe Employees, accompanied by Joseph Bienenbaum, trustee and chairman; Jack Maltz, trustee and assistant chairman; Theodore Wiley, co-counsel; and Jerome M. Simon, administrator-----	460
Javits, Hon. Jacob K., a U.S. Senator from the State of New York-----	394
Kent, G. P., vice president, employee relations, Western Union, accompanied by R. C. Hostetler, vice president and general counsel; R. Wishart, chairman of the board, George Buck & Co.; and V. Tobin, George Buck & Co.-----	408
Munroe, Douglas, director of personnel, Anaconda Co., accompanied by T. E. Tatem, assistant secretary and assistant treasurer, pension plan administrator; W. F. Mayer, assistant administrator, and Robert Armstrong, consulting actuary, with George B. Buck, Consulting Actuaries, Inc., New York City, N.Y.-----	396
Palmer, George A., Jr., retired vice president of Joseph Horne Co., Pittsburgh, Pa., accompanied by H. V. Cochrane, vice president and treasurer; George A. Palmer III, personnel director; Joseph Swain, Esq., corporate counsel; and J. E. Dwyer, pension plan consultant, Peat, Marwick & Mitchell-----	843
Spahn, William H., director, New York Hotel Trades Council and Hotel Association of New York City, Inc., pension fund, accompanied by Martin Levenson, vice president and associate actuary of Martin E. Segal Co.-----	586
Van Vliet, J. W., director, audits and insurance, the Great Atlantic & Pacific Tea Co., Inc., accompanied by Darrell V. Stiffler, Jr., national director, personnel and industrial relations, A. & P., and Charles P. O'Connor, attorney at law, Morgan, Lewis & Bockius, Washington D.C.--	566
Whitaker, Jack F., president, Whitaker Cable Co., accompanied by Bernard D. Craig, Esq., Levy & Craig, 916 Walnut Street Building, Kansas City, Mo., and Jack L. Mahurin, vice president, Meldinger & Associates-----	440
Zimmerman, Robert G., assistant secretary and assistant treasurer, F. W. Woolworth Co., accompanied by Christopher J. Hoey, employee relations counsel; John K. Armstrong, counsel for F. W. Woolworth Co., and Henry J. L. Fortuin, Jr., senior vice president, and Philip C. Mower, assistant vice president, Marsh & McLennan, Inc., actuaries-----	722

ADDITIONAL INFORMATION

	Page
Articles, publications, etc.:	
"A History of the A. & P. Retirement Plan," the retirement plan adopted by the Great Atlantic & Pacific Tea Co., Inc.-----	573
Pension trust agreement between F. W. Woolworth Co., and Irving Trust Co., as trustee for the benefit of employees of F. W. Woolworth Co.-----	739
"Prohibited Transactions," provisions of Internal Revenue Code----	734
Retirement plan for Employees of F. W. Woolworth Co.:	
As amended through January 1, 1958.-----	774
As revised January 1, 1971.-----	790
Text of agreement between Genesco, Inc., and Securities and Exchange Commission concerning restrictions of employee stock purchase plan and special stock purchase plan.-----	709
The retirement fund of Retail Shoe Employees.-----	475
Whitaker Cable Corp. employees' pension trust, as last amended December 1, 1968.-----	447
Communications to:	
Noto, Mario T., special counsel, Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, from:	
Griswold, Mary B., administrative assistant to the president, Whitaker Cable Corp., Kansas City, Mo., October 1, 1971.-----	436
Randolph, Christopher F., staffmember, Subcommittee on Labor of the Senate Committee on Labor and Public Welfare.-----	437
Wade, Roy, Winn-Dixie Stores, Inc., October 8, 1971.-----	868
Williams, Hon. Harrison A., Jr., a U.S. Senator from the State of New Jersey, chairman, Committee on Labor and Public Welfare, from James Cameron, Winn-Dixie Stores, Inc., Jacksonville, Fla., November 3, 1971.-----	875
Exhibits (submitted by the Genesco Corp.):	
Exhibit A, companies and divisions.-----	607
Exhibit B, Genesco retirement plan.-----	610
Exhibit C, bridge amendment—Kress pension plan.-----	640
Exhibit D, IRS approval bridge amendment.-----	650
Exhibit E, Kress pension plan forms.-----	652
Exhibit F, affidavit, John T. Choate.-----	657
Exhibit G, Affidavit, Richard D. Tucker.-----	659
Exhibit H, Kress managers dismissed, 1971, with shrinkage involved.-----	661
Exhibit I, affidavit, C. Harvey Williamson.-----	663
Exhibit J, Affidavit, Leonard K. Guiler.-----	665
Exhibit K, minutes Kress pension committee.-----	667
Exhibit L, completed form P-1.-----	673
Miscellaneous:	
Comparison of severance pay benefits and values of vested pensions payable at age 65.-----	415
Pension study: Form P-1 (S. Res. 360) received from D.C. Transit System, Inc. employees retirement plan.-----	526
Joseph Horne Co. pension plan earnings.-----	850
Pension study: Form P-1 (S. Res. 360) received from the Genesco retirement plan.-----	674
Pension study: Form P-1 (S. Res. 360) as submitted by the Kendall Co., Walpole, Mass.-----	811
Part III—Pension study: Form P-1 (S. Res. 360) received from Western Union.-----	419
Part IV—Pension study: Form P-1 (S. Res. 360) received from Western Union.-----	424

PRIVATE WELFARE AND PENSION PLAN STUDY, 1971

TUESDAY, OCTOBER 12, 1971

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

The subcommittee met at 10:05 a.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams (presiding), Eagleton, Javits, Schweiker and Stafford.

Committee staff members present: Mario T. Noto, special counsel to the subcommittee; and Michael Gordon, minority counsel to the subcommittee.

The CHAIRMAN. The Senate Labor Subcommittee hearings will begin.

Today, we continue hearings pursuant to S. Res. 35, of March 1, 1971, which directs the Subcommittee on Labor to investigate private pension plans in the United States with special emphasis on the need for protection of the workers covered. This is the second set of hearings on pension plans by this subcommittee in the 92d Congress.

During July, for 3 days we heard the public testimony of workers who had been participants in pension plans, but had failed to receive expected pension benefits. Because of inequitable or nonexistent vesting provisions, or inadequate funding, or lack of transferability of credits, or lack of reinsurance, these employees suffered irreparable losses of benefits.

We also learned that plan participants at times have no accurate knowledge or understanding of their pension benefits because of complex and technical booklets describing their rights and duties. As one witness testified, "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."

It is evident that these are problems of considerable magnitude and of serious concern. They are defects in the system which the Congress is bringing to light and which it must remedy. We must justify the reliance and belief of working men and women that at the end of their working lives, their expectations of pensions promised are not vain beliefs. We must transform the pension mirage into reality.

Our hearings today are in furtherance of our study, and we shall receive the testimony of employers and plan administrators. The subcommittee wishes to learn from these witnesses, the design, administration, and operations of various pension plans, and how effective

they have been or should be in fulfilling the promise of retirement benefits to employees. With their experiences in the structure and functions of pension plans, these witnesses can give the subcommittee an accounting of the various inadequacies of plans which impede the goals of the private pension system.

We welcome our witnesses today and assure them of our need for their cooperation, and of our appreciation for their constructive discussions of private pension problems.

Senator Javits certainly has been in the forefront of bringing the concern of the Nation, expressed through the Congress, to this whole area, and I would like to turn to him now.

OPENING STATEMENT OF SENATOR JAVITS

Senator JAVITS. Thank you, Mr. Chairman.

First, let me thank the chairman for calling the second set of hearings so promptly and throwing himself into it with the customary zeal which he displays in the work of the Congress.

Mr. Chairman, there is a current crisis of confidence in the private pension system and it ought not to surprise us. In the absence of essential regulation, it was only a question of time before the virtually unchecked discretion of employers, unions, and plan administrations would show up injustices. To have expected otherwise would attribute too much to the desire for self-reform in the pension industry. It would ignore the frame of reference of the last 20 years in which private pension plans have achieved an unparalleled growth, conditioning the industry—that is, the pension industry—to believe that this is due to lack of regulation.

Last July we heard testimony from long service employees who became “casualties” of the private pension system. In general, employers or plan administrators did not set out deliberately to deprive their employees of the pension benefits they had counted on. Instead, it was the nature of the plan itself—its eligibility requirements or its structure—which caused these personal tragedies.

Today and tomorrow we will hear from employers and plan administrators about the very plans that they designed and manage. We are here to learn the justification—if any—for those plan requirements or practices which have seemingly caused such hardship to workers.

In this regard, it was most disappointing to learn that the testimony of some of those witnesses actually had to be compelled through use of subpoena. In effect, this subcommittee was told that the pension plan was “none of our business.”

Let me set the record straight. Private pension plans are this subcommittee’s business; they are the Congress’ business; and they are the public’s business. The private pension system has been fostered directly by the collective bargaining policy of the National Labor Relations Act, and it is a tax-sheltered industry—estimated by some to be subsidized at the rate of \$3 billion annually.

This subcommittee, under authority of Senate Resolution 35, not only has the right but also the responsibility to conduct a searching inquiry into the reasons for the deprivations suffered by employees and to consider appropriate legislative remedy. There is no physician-

patient privilege applicable to employers and their pension plans, and no justification for the outright refusal of any employer voluntarily to cooperate with this subcommittee.

But the necessity of this subcommittee to resort to subpoena is symptomatic of the fact that the pension industry is accustomed to ineffective supervision.

And some of the evidence we hear today confirms this observation. For example:

One retirement plan has invested 48 percent of its assets in properties of the employer and was disqualified by the Internal Revenue Service because it paid more than fair market value for a piece of real estate owned by the employer.

Another plan of a major corporation is so substantially underfunded that if it were compelled to terminate today a debacle identical to that which occurred to the Studebaker plan in 1964 would take place—in which the vested rights of thousands of employees were virtually wiped out, and many had to take less than a third on the dollar.

Still other plans indicate that despite a high rate of forfeiture among longer service employees, they have determined not to install a vesting provision in the plan because they wish to discourage employees from leaving the company.

And, finally, one plan actually authorizes the trustees to invest plan funds in enterprises owned by officers of the employer, and the plan has done exactly that.

The general conclusion is inescapable: In the absence of meaningful regulation, a private pension plan can be designed and operated in almost any way—and many are designed and operated in ways directly in conflict with the interests of the worker, and therefore in conflict with the person whom the plan is supposed to benefit.

I remain more convinced than ever that every defect and abuse revealed by these hearings and the prior ones would be corrected by S. 2, the bill I have authored to set minimum standards for all private pension plans.

If nothing else, S. 2 would rationalize the private pension system and make the worker the primary focus of the system—which is what should have been the case all along, and what we thought we were doing all the time.

And, so, Mr. Chairman, I hope very much that, after completing our hearings, which are in the highest public interest, and on the basis of the evidence at the hearings, S. 2 or a comparable bill may be reported out very promptly. And I hope the pension industry will play a very positive rather than a negative role, because, it seems to me the weight of the evidence so far is certainly that this reform urgently needs to be made.

Thank you, Mr. Chairman.

The CHAIRMAN. We appreciate that, Senator Javits. It is certainly an excellent statement to set the framework for continuing the hearings.

Today and tomorrow, we broadly reach across the economy of our country, geographically and in terms of business activity.

We will start with representatives of the Anaconda Co.; following that, Western Union, Whitaker Cable and, finally this morning, the Retail Shoe Employees Union.

The first representative is from Anaconda.

Mr. Munroe, we certainly appreciate your appearance here this morning.

Senator JAVITS. Mr. Chairman, I think it would be useful, in connection with the appearance by each company, to note whether the appearance is voluntary. I understand Anaconda is appearing voluntarily.

STATEMENT OF DOUGLAS MUNROE, DIRECTOR OF PERSONNEL, ANACONDA CO., ACCOMPANIED BY T. E. TATEM, ASSISTANT SECRETARY AND ASSISTANT TREASURER, PENSION PLAN ADMINISTRATOR; W. F. MAYER, ASSISTANT ADMINISTRATOR, AND ROBERT ARMSTRONG, CONSULTING ACTUARY, WITH GEORGE B. BUCK, CONSULTING ACTUARIES, INC., NEW YORK CITY

Mr. MUNROE. That is right. I am glad to get that in the record, sir.

I am Douglas Munroe. I am the director of personnel for the Anaconda Co. I have here my colleagues: Mr. Tatem, assistant secretary and assistant treasurer of the company and plan administrator for the company; Mr. Walter Mayer on my far right, who is the assistant administrator of the plan; Mr. Robert Armstrong, who represents the George B. Buck Consulting Actuaries, Inc.

We are here to tell you what we can about our plan. Certainly there are no secrets that we have to hide here.

I have a short prepared statement which I would like to read, which I think would summarize and give the background for our plan and open the discussion. May I read it?

The CHAIRMAN. Certainly. We would appreciate that.

Mr. MUNROE. This is the statement of the Anaconda Co. to the Subcommittee on Labor, Committee on Labor and Public Welfare.

Some questions have been asked about the Anaconda Co.'s retirement plan for salaried employees.

It should be noted at the outset that the company, as well as other large employers with which it competes in the labor market, offers its employees a range of salary and related benefits. The "benefit package" for the salaried workers includes, among other things, straight salary, severance pay, vacation time, days off, sick leave, hospitalization, and other medical benefits, a stock purchase plan, tuition aid, disability benefits, group life insurance, and a retirement plan. The benefit package is applicable to all salaried employees. The eligibility for and the amount of such things as severance, disability, and retirement benefits depend in some measure on the amount of time that an employee has served with the company.

The company does not claim that the benefit package offered to its salaried employees couldn't be made more beneficial to such employees. Higher salaries, longer vacations, increased company contributions into the stock purchase plan, and increased rights under the retirement plan would all be desirable. The company does believe, however, that

it offers the best possible salary benefit package commensurate with its present financial condition. It also believes that its entire program compares very favorably with programs offered by other large corporate employers, both within and without the mining and metals industry.

The retirement plan portion of the benefit package is designed specifically to provide a benefit in old age for those who leave the employment of Anaconda at the end of their working life, which benefit is calculated on the length of service spent with Anaconda. Any employee may retire under the plan at the age of 65 with no minimum number of years of service required, and employees having at least 15 years of service with the company may retire at any time after attaining age 60. In addition, in event of disability, retirement on that basis is available to those over age 50 who have had at least 15 years of service with the company. The plan is not designed to provide benefits for those who leave the service of the company while still employable. The company does, however, make provision for the payment of severance benefits for those who do not qualify under the plan at termination of their employment.

The company believes that its retirement plan, which has been in effect since 1955, has been a significant factor in the lives of Anaconda employees. Since the end of 1957, the company has had in its employ 8,000 employees with 10 or more years of service. Of that number, 2,100, or approximately 26 percent, have retired under the plan and drawn benefits from it, 4,000, or 50 percent, are still employed by the company. The remaining 1,900, or approximately 24 percent, either died in employment or have left the service of the company prior to eligibility for retirement.

It has been asked if it wouldn't be desirable to amend the company's retirement plan to provide for so-called vesting, so that persons leaving the service of the company prior to being eligible for a pension at that time may, nevertheless, be able to look to the company for some kind of benefit at a later time, such as at age 65. The general matter of the improvement of pension benefits is under constant consideration by the company, and since the plan's inception, a number of improvements have been made.

The company has increased the first step of its benefit from one-half of 1 percent of the first \$4,200 to 1.3 percent of the first \$7,800; has extended the optional retirement provision of the plan to include early retirement and removed the requirement for approval by the retirement board for early retirement; has modified early retirement so that an employee who has attained the age of 60 with 35 years of credited service will receive the full accrued normal retirement benefit; has improved the reduction factor for early retirement benefit to a fixed 4 percent a year, and has provided a spouse's benefit in the event of death prior to retirement of a married employee who has attained age 55.

The particular matter of providing for the vesting of benefits after a specified number of years has also been considered, but no steps in this direction have been taken in view of the increased costs occasioned by past amendments and the substantial additional costs involved. For example, it has been determined that to provide for vesting of benefits

after 10 years of service would increase the company's prior service liability by \$6,781,000 and the annual cash contributions to the plan by \$890,000 or 8 percent. For the year 1971, on funding 5 percent of the prior service liability, the company's cash contribution to the plan is \$11,003,000. The total current annual cash contribution for funding all of the company's pension plans is \$21,354,576.

The company's retirement plan for salaried employees is administered by a committee of five members appointed by the company's board of directors, at least two of whom must be members of the board of directors. Subject to the supervision and control of the board of directors, the committee has the authority to issue rules and regulations with respect to the plan and to make determinations with respect to eligibility and other matters concerning the application of the plan to employees.

The company has established three trusts with three bank trustees to hold the assets of the plan, and the company makes contributions to the trusts monthly. The trustees are solely responsible for the investment and management of the trusts.

This is the background of our plan, Mr. Chairman, and we would be glad to answer any questions that you care to put to us.

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

I will start with a few questions and then turn it over to Senator Javits and see if we can cover the important points. I know we have a crowded schedule this morning.

First, your statement addresses itself in specifics to the pension plan for salaried employees?

Mr. MUNROE. That is right, Mr. Chairman.

The CHAIRMAN. And yet there are parts of your statement that go to the pension plan more broadly, is that right?

Mr. MUNROE. The total cost figure which we used there, \$21 million in 1971, would go to the total pension responsibility of the company.

You must understand that the salaried plan is independent of those that are negotiated with our unions, and also one that is effective in Canada for our Canadian employees.

Senator WILLIAMS. When you speak in terms of the cash contributions, you are talking about the plans broadly, or specifically the salaried plan?

Mr. MUNROE. Well, looking at page 2 of our statement, the fourth paragraph down, all of the figures in that paragraph apply to salaried employees pension funds, with the exception of the last. The \$11 million figure, that would be part of the \$21 million.

The CHAIRMAN. What is the \$21 million figure?

Mr. MUNROE. That covers the funding or the contribution for all pension plans of the company in 1971.

The CHAIRMAN. Dealing just with the pension plans of the salaried and hourly workers, is the key factor here vesting?

Mr. MUNROE. That would be certainly one of them.

The CHAIRMAN. As I understand, the salaried employees, to receive a normal pension benefit—now, this is not considering disability or the early retirement or reduced pension plan—for normal benefits, the employee must reach age 65, is that right?

Mr. MUNROE. No. A person with 35 years of service may receive a normal full pension at age 60.

The CHAIRMAN. And he must be working at that point?

Mr. MUNROE. That is correct.

The CHAIRMAN. Is that considered early retirement?

Mr. MUNROE. Yes, in terms of the plan's language, it is, yes.

The CHAIRMAN. I was talking about the regular full benefit. That is age 65?

Mr. MUNROE. Age 65 is correct.

The CHAIRMAN. The person must be working for Anaconda at that point?

Mr. MUNROE. That is correct.

The CHAIRMAN. And he must have had how many years of employment?

Mr. MUNROE. To get full service credit, 35 years.

Mr. TATEM. But he does not have to have any years of service to get the benefit. One year would be the minimum. At age 65, there is one year needed to get the benefit.

The CHAIRMAN. In other words, a person coming in at age 63 or 64 and going out in a year at age 65 would receive what kind of benefit?

Mr. TATEM. He would receive a benefit based on his age and his years of service.

The CHAIRMAN. This is one of the reasons why we were anxious for you to come in. Mrs. Iris Kwek—and I know you gentlemen are familiar with this—she testified, and we have had your statement informally that she was accurate. But, she told us that after 30 years of continuous employment with Anaconda, and at age 48, her service was terminated in August of 1971, and she was not entitled to any pension benefits.

Mr. MUNROE. That is correct.

The CHAIRMAN. Now, this, of course, raised a flag of concern here, and this deals with the question of vesting. And Senator Javits' bill, S. 2, addresses itself to exactly this point.

It would seem to me that somehow the structure requires our thoughtful attention and improvement. A short-term employee who just happens to be there at age 65 can receive benefits, and a 30-year employee receives none, even though living to age 65—

Senator JAVITS. Mr. Chairman, so the witness can answer the question fully, add to that the fact that it is entirely within the control of the company whether that employee continues or is out before 65. So the employee has no option.

Mr. MUNROE. That is certainly correct.

In reply to your question, I would refer back to our statement, wherein we say that the plan was designed to honor the long-service employee at the end of the working career. I cannot speak for those who did design the plan back in 1955, but I would say, looking at the plan and having worked with it a long time, that it was designed to do just that.

It did not contemplate vesting, nor did it contemplate terminations at earlier dates. In recognition of this fact, as we have said in the statement here, we have a severance plan which somehow or other fills

this gap, although it is not part of the pension trust in any sense of the word. This plan gets at this business that you are talking about. Those people primarily between ages 50 and 60, who terminate with considerable service, are granted what we call an informal pension, and these figures, these costs that are generated in this plan, are directly costed in the usual manner, the same as a payroll item. We have nearly a thousand of these people.

Now, the unfortunate part, again, of this plan is that the plan still does not reach down to Mrs. Kwek. It goes on the basis of a 50-20 formula, as far as we are concerned. If you are 50, and you have 20 years of service, you begin to participate in what we would call an informal severance pension.

Below 50, we simply pay these people what we consider to be, and have been told in industry, is a fairly generous allowance.

Mrs. Kwek, for instance, received 45 weeks of pay in August.

Now, this is not in lieu of pension. Do not mistake me; we are not saying this is a pension. But, we are saying this is the amount of money we give our employees to help them get relocated so they can get out and find another job if they need it.

I would like to make it very clear that we do not—this is not a quid pro quo for a pension system. But, those people who are in the 50 and over group, who have more than 20 years of service, we calculate for them a pension based on our normal formula. And then we discount it back to age and service. So that, if we were to have a vesting situation in our pension, we might come out about the same place.

I think the bad part of what we do, or the thing we should correct in what we are now doing, by amending the plan, if we can find the money to do this, would be to structure this thing so that these situations, the Mrs. Kweks, and those people that are below, say, age 55, with long service, and caught up with the economic situation, would be given vested rights, so that at age 65, they could come back and say, "Here I am. I want my part of that pension trust." And we would like to do this.

Obviously, in our present situation—we have talked about this for several years now—with the company's present financial condition—and I am sure you're all aware what Anaconda is going through now—we have just simply had to defer it.

As you know, half a billion dollars of our assets have been expropriated in Chile. We have lost a principal source of income.

We are under great pressure from ecological sources for improvements in our plants, which require huge investments if we are to stay in business.

We have the largest labor settlements that we have ever experienced, and these all come at the same time.

Now we have established our own priorities, perhaps, in trying to place the money that is available for pensions where it probably is going to do the most good—for those that get a pension.

The CHAIRMAN. Before I turn to Senator Javits on this, I have just one thing.

On the cash contribution to the retirement plan for salaried employees, for each employee is there an annual cash contribution into the trust fund?

Mr. MUNROE. I would like to defer to Mr. Tatem.

Mr. TATEM. Well, we put in normal costs for each employee, and from our past service liability—we are putting in 5 percent of our past service cost for liability.

The CHAIRMAN. Is this computed in terms of the number of employees working on the job?

Mr. TATEM. Yes, sir. It is computed on the number of eligible employees we have who participate in the plan.

The CHAIRMAN. When did this plan start?

Mr. TATEM. January 1, 1955.

The CHAIRMAN. So, in Mrs. Kwek's case, she was there through the entire period up until her termination, from the beginning of the plan, and her employment was computed in terms of the cash contribution annually to the fund?

Mr. TATEM. Yes.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Thank you very much, Mr. Chairman.

The first question I would like to ask you is about the hourly workers and the Canadian workers. They do have vesting, do they not?

Mr. MUNROE. That is correct.

Senator JAVITS. What is their vesting?

Mr. MUNROE. 40 and 10, Senator.

Senator JAVITS. What is that?

Mr. MUNROE. That means after 10 years of service, and upon the attainment of age 40, they begin to get a vesting right.

Senator JAVITS. Well, they do not actually get any part of that—

Mr. MUNROE. There is a complicated formula in the contracts that spell this out. I am not that familiar with it, because I do not use it.

Mr. TATEM. At age 65 they would get it, Senator.

Senator JAVITS. Those contracts with the hourly workers and the Canadian workers were the result of collective bargaining, were they not?

Mr. MUNROE. That is true.

Senator JAVITS. And the salaried employee proposition was unilateral by the management?

Mr. MUNROE. That is right.

Senator JAVITS. The salaried workers are not organized, are they?

Mr. MUNROE. That is right.

Senator JAVITS. Now, I realize the problems of Anaconda, and I am going to come to that. As you all know, I think, I know a little bit about big business, so I'm not trying to lead you into something that is unfair to you. We do not want to discriminate against the rich either.

So, is it not a fact that you did consider applying in your own deliberations the same principles to salaried workers? Is that not correct?

Mr. MUNROE. Yes.

Senator JAVITS. And you say you rejected them because you cannot afford them?

Mr. MUNROE. That is right.

Senator JAVITS. If there were a reduction in benefits you could afford it, is that not so?

Mr. MUNROE. Probably so.

Senator JAVITS. And is that not really the issue that faces a company like your own? In short, what should you do in these situations? Should you make the pension available at the risk of some reduction in benefits, and then more people will enjoy it, or should you keep the situation of exclusivity—which is what it is, because you have the whole option whether to hire or fire, and the benefits—let's assume your benefits are fairly generous—only go to a relatively limited group. Is that not the real policy issue which faces you and other employers?

Mr. MUNROE. Yes. But, I think what we would like to point out here, Senator, is that over the years we have gradually modified and amended the plan for the purpose of improving it.

Each time we do this, of course, it becomes more expensive. Past service liability goes up every time you do this. And we are not going to say now that we will not bring vesting in just as fast as we can. We are trying to work it out now.

Senator JAVITS. Suppose the Congress gave you a prescription? Suppose the Congress gave you a period of time—say 10 years—in which to phase in? Or 5 to 10 years in which to phase in a new set of requirements? You would simply conform to them, would you not?

Mr. MUNROE. We would have to.

Senator JAVITS. That brings me to your assets and liabilities. According to your figures, your assets are \$66 million, in round figures?

Mr. MUNROE. \$68 million, I think.

Senator JAVITS. \$68 million. And your accrued actuarial liabilities are something in the order of \$176 million. Does this not put your retirees at the hazards of the solvency of Anaconda?

Mr. MUNROE. Well, the funding that is there covers those who are retired. In other words, the assets and the liabilities are about even for those who are actually in retirement.

Senator JAVITS. But, as to the others, you have not really deposited the funds?

Mr. MUNROE. That is correct.

Senator JAVITS. You had not really deposited with the trustees enough to cover the others, is that not so?

Mr. MUNROE. That is correct. I think that is true of most pension plans, Senator.

Senator JAVITS. That is what we are trying to find out.

You understand, sir, we are not here accusing you of anything.

Mr. MUNROE. I am just trying to fathom this thing with you because we consider this to be a very serious discussion. We consider what the Congress is doing here is something that we should all be interested in.

Senator JAVITS. Well, good. I am glad you feel that way, because, of all the people in this Congress who should not be sitting here in any accusatory way, you have the prime ones here. We understand the situation.

But this does not make it right in terms of the broad public interest, for you and the worker.

Now, really, what Mrs. Kwek illustrated—and she understood this, she was just a case in point—what she illustrated was the workers' point

of view. If you really depend on a pension—which most of them do not because the pension they are going to get from the employer could be cut off at any time—then you are really taking a big risk because it can be cut off so abruptly. And, if you do not depend on it, then the question is: Are you foregoing a real piece of what makes you work? This is the issue which she faced, and which workers face.

Again, I am sure she would be the first one to tell you she is not making any accusation. This is a case history and she is a very decent woman who came and wanted to be helpful, just as you are.

Now, the other question I would like to ask you is this, and to me critically important: Is it not a fact that you gentlemen—that is, your board or its agents—deal exclusively with what is or is not a disqualification for the pension because of a break in service?

Mr. MUNROE. Yes.

Senator JAVITS. Is that correct?

Mr. MUNROE. That is correct.

Senator JAVITS. Do you have any criteria to guide you?

Mr. MUNROE. They are spelled out in the plan, which is part of the committee's record. And we go by that by the letter.

Senator JAVITS. But you make the determination in your discretion? You can grant it or deny it in a given case.

Mr. MUNROE. I would say it is always interpreted as the plan was designed. In other words, the rules are spelled out. They are quite clear. The purpose of everything we do—I would say we lean over backward in our administration of this, is to protect the continuity of employment.

Senator JAVITS. But it is still in your discretion?

Mr. MUNROE. Yes.

Senator JAVITS. Is not the basis of this plan the idea that the employer is giving something to the employee? You deal with this differently than you deal with his wages and salary, is that not true?

Mr. MUNROE. That is correct.

Senator JAVITS. In other words, you are giving the employee something, and, if we should decide as a matter of public policy that this is as much as wages, as the wage he gets at the end of the week, then it would be a totally different ballgame as to the policy of the company?

Mr. MUNROE. I would certainly say "yes."

Senator JAVITS. And that is the real issue?

Mr. MUNROE. That is right.

Senator JAVITS. I'm glad you agree, because I think this is how we see it.

Mr. MUNROE. I would say that once you legislate this pension vesting, then you change the rules of the ballgame completely as far as the business approach to the problem is concerned.

Now, I would be concerned myself—and this is not an opinion of my company, but rather my own—that in legislating this, I would be concerned about the 40 million people that are not covered by pension plans today, the 40 million workers. I would also be concerned that the general level of the pension benefit would be reduced to the least common element in the pension picture, simply because of the fact that these marginal employers, people with marginal businesses, would not be able to go all the way.

If you just examine pension plans generally, you will find that the benefits range, when coordinated with social security, all the way from in the low 40's to 60 percent of the outgoing pay.

I think the legislation will have the effect of probably leveling that out at some lower figure, as you have pointed out, Senator Javits.

Senator JAVITS. But you will agree also that employers will have to compete with each other for workers?

Mr. MUNROE. That is right.

Senator JAVITS. And if a worker really found the pension plan meaningful, he might choose to go where wages were a little less but the pension plan was better; is that not true?

Mr. MUNROE. It is true.

Senator JAVITS. And, second, do you not think that we have a real crisis in this country of worker motivation? You employers are all having the same experience?

Mr. MUNROE. Yes.

Senator JAVITS. As to whether workers really want to work? And it would make a great difference in what they turn out at the end of the day; would it not?

Mr. MUNROE. I certainly agree with you. I think we have another consideration to deal with, too, which is: How much useful talent can we afford to have sitting on the sidelines in this country?

Senator JAVITS. That is one of the things worrying me the most, because I think we are really at the crossroads in this country as to whether you are seeing the decline of the United States, how we are going to get out of this trough, and really recapture the vigor and vitality which brought us to where we were but a few short years ago.

Now, just one or two questions, if you will bear with me.

We have the figures from you on page 2 of your statement as to those who left after having more than 10 years of service, but we do not have the figures on any less. Can you give us the figures from 5 to 10 years of service, as to the forfeitures in that interval?

Mr. MUNROE. From 5 to 10?

Senator JAVITS. Yes.

Mr. MUNROE. I would have to just make a quick addition in my head here, Senator, but I would say it is under 1,000.

Senator JAVITS. Under 1,000?

Mr. MUNROE. In other words, the great bulk of those that terminate, terminate within 5 years. Our total figure—the figures that we are discussing in our memorandum here are not coincident, or they do not coincide with the pension plan, simply because our records do not fall that way.

We started two different systems at different times. Therefore, we cannot say that one is the same as the other one when we make the comparisons. But, if you will bear with what we are trying to do here, we took the period of terminations that we have precisely recorded over a period of 13 years and used this as a means of getting into this question of turnover and what happens to people, at the suggestion of Mr. Muller when he was in New York. We discussed this briefly.

But we found in that period of time, when we normally employed somewhere between 8,000 and 9,000 salaried workers in the United

States, that we had 13,600 or roughly 14,000 terminations. You can keep that figure in mind. About 14,000.

Of these 14,000, 10,000 of them left us before they had 10 years of service. The remaining 4,000 stayed on for an extended period of time. And of that 4,000, about half went into the retirement program.

So that, if you want to look at it in total, you might say we had 8,000 people in our employ with more than 10 years of service over this 13-year period.

Senator JAVITS. Does that not somewhat tend to discredit the argument if you had vesting, you would have a very burdensome problem? The fact is that your people do stay relatively long periods of time.

Mr. MUNROE. I think we have very low turnover after looking at other companies. We have been plagued, if you will, by long service, if you want to look at it that way.

Senator JAVITS. So, vesting would not bear nearly as heavily on you, would it?

Mr. MUNROE. Hopefully not.

Senator JAVITS. Not from that record.

Now, the other thing I would like to ask you is this. Is not the real purpose of your plan to keep the worker on with the company until he is 65?

Mr. MUNROE. Yes.

Senator JAVITS. Rather than to see him change jobs?

Mr. MUNROE. That is right.

Senator JAVITS. And, does that not again raise the basic question as to whether a worker is entitled to his pension right and the freedom to be mobile, rather than to be locked into a company just because that little pension is dangling at the end of the rainbow?

Mr. MUNROE. Well, I have been director of personnel for a long time. I am not an expert on what motivates people. And while it might indicate that, I would not generalize, certainly.

Senator JAVITS. Certainly the nature of the structure of the plan would very clearly indicate that that is the company's purpose. And, you know, another thing you want to remember is that your salaried people are obviously not unionized?

Mr. MUNROE. That is correct.

Senator JAVITS. Yet you may find, as time goes on, unless you give them a better break in the pension plan, it would be a big inducement for them to unionize, when they look across the partition and see another guy is an hourly worker and he gets vesting.

Mr. MUNROE. We have been doing this a long time, Senator, looking across the fence and comparing noses and how we look and so on. But it must be recognized that also in the collective bargaining, there is a trade-off in wages. Benefits and wages are traded off. And, whether or not this is good or bad, I simply do not know. On both sides of the fence people seem to be somewhat satisfied.

We have not terminated a lot of people. We are not in the business of terminating people.

Senator JAVITS. You have given us your figures. Would you give us the accurate figures on the 5 to 10 years, for the record?

Mr. MUNROE. Certainly.

(The information subsequently supplied follows:)

THE ANACONDA CO.

TERMINATIONS OF SALARIED EMPLOYEES DURING A PERIOD 1958 TO DATE

Service accumulated before termination:	Number of employees
0 to 5 years.....	8,872
6 through 9 years.....	1,102
10 years and over.....	3,645
Total terminations.....	13,619

Senator JAVITS. The last question I have is about Canada, which passed a law respecting vesting. What effect did this have on you?

Mr. MUNROE. Actually, it is 45-10, I believe, in the province of Ontario where we are in business, in Toronto.

So, far, of course, the vesting only goes to service after the plan was in effect, which was 1965 or 1966.

This is a provincial matter in Canada. The provinces each have laws. British Columbia does not have one, and so on.

So I do not think it has made a great deal of difference to us.

Senator JAVITS. It has not made any real difference?

Mr. MUNROE. No.

Mr. TATEM. Vesting started right from the inception of the plan.

In this respect, Anaconda goes back to 1890. We did not put the pension plan in until 1955, and we had a tremendous past service liability as soon as we started our plan.

In Canada, it is a fairly new company and a fairly new operation, so we did not have this tremendous past service liability that we were faced with here.

Senator JAVITS. If I may interpret your testimony, what you are advising is that in whatever legislation we pass, we should make it as far as possible prospective? That is really what you are advising?

Mr. MUNROE. Absolutely.

Senator JAVITS. Thank you very much, Mr. Chairman.

The CHAIRMAN. I have just one or two points. I think we understand the company objective of encouraging people to stay with the company.

But I also believe, Mr. Munroe, that you suggested that if you could work out within the corporate finances, you would have the objective of vesting short of being there at the end of the line at 60 or 65.

Mr. MUNROE. I would say we would certainly like to do this.

The CHAIRMAN. Certainly this working all the way to age 60 for informal severance benefits and to 65 for full benefits, is a very heavy social cost to the employee, is it not, in terms of his freedom to follow the grandchildren, for instance?

Mr. MUNROE. I would like to make one other comment on that very subject, Senator.

That would be that it would bother me that vesting of prior service in an inflating economy such as we have, where the purchasing power of the dollar is constantly on the decline, that vesting of these sections of employment, so to speak, would result in greatly reduced pensions from a purchasing power standpoint.

You see, the way our pension plan works and the way plans of our type work, you get a current value pension at the time you retire. You get all of your service at the current going rate, whereas, if my service—for instance, I might comment that I got to be 60 a week ago, and I have 36 years of service. So I have been sweating it out a long time. But if I had taken the years that I worked for Anaconda and had severed my employment back there, say at the time of World War II, or something like that, that would be valueless to me today because of the rate, the value of that dollar would be very low. We recognize this problem in social security, you see, the constant need to stay with the purchasing power of the dollar.

Once you build these vesting segments into the pension, you freeze that man at that old rate. And I think this is something that should be looked at as you go along.

I do not know the answer to it. If we had a constant purchasing power here, we would not have that problem.

The CHAIRMAN. One final clarification. The company board of directors names the committee that has the authority to deal with rules and regulations and the case-by-case determination of eligibility; is that right?

Mr. MUNROE. That is correct.

The CHAIRMAN. And the investment policy is lodged exclusively with the trustees of the three trusts?

Mr. MUNROE. That is right.

The CHAIRMAN. And do we know who the trustees are?

Mr. MUNROE. The trustees in this particular plan are the Chase Manhattan Bank, the First National City Bank, and the Morgan Guaranty Trust Co. They are the three.

The hourly plans are trusted by the First National City Bank and Morgan Guaranty.

The CHAIRMAN. And the investment policy is lodged with them?

Mr. MUNROE. Yes.

The CHAIRMAN. Does your committee, or does your board of directors take part in investment decisions?

Mr. MUNROE. Not really.

Mr. TATEM. They do not at all. We have a general policy of having the trustees make all the investments. We never give them any advice on investments in the trust funds.

The CHAIRMAN. This is a kind of a blind trust, in a sense. They could even invest in Anaconda?

Mr. TATEM. They could. But most trustees have a policy of not investing in the company that owns the funds.

The CHAIRMAN. Do you know—and I think we have this, but to simplify it—what is the return on it?

Mr. TATEM. It is a little better than 5 percent.

The CHAIRMAN. This has been very helpful to me.

Senator JAVITS. To me, too.

I would like to ask you this question: You gave us an answer in your questionnaire to the question as to how many people have passed through the plan. On the hourly workers you could not give us any information. You said the information was not available.

Mr. TATEM. That is such a complicated thing, Senator, if you knew our hourly plan—we have operations in Montana, and a man is in to-day and he is out tomorrow. He gets continuity in the plan, but he is a "quit." He can go into the next one.

It is such a complicated one, and we had no statistics we could give you that would be meaningful.

Senator JAVITS. What about the salaried workers? What are the actuarial assumptions there?

Mr. TATEM. Bob, can you give them the actuarial assumptions?

Mr. ARMSTRONG. In determining cost and liability, it is based upon mortality, employment turnover, rates of disability, salary increase rates, and an interest rate. And the evaluation is a level-type method, projected level method of determining contributions.

Senator JAVITS. You are going to give us, then, the situation with respect to or from 5 to 10 years? If you could give it to us by years, we would appreciate it greatly.

Mr. MUNROE. Senator, if you will consider those figures we give you as not being all inclusive of the plan but, rather, the sample relating to the turnover; yes.

Senator JAVITS. We will understand.

Thank you very much.

The CHAIRMAN. I have one personal note.

Mr. Munroe, these are our white collar workers here on this committee. We have a blue collar gang, too, in the Senate Labor Subcommittee.

Mr. MUNROE. Are they organized?

The CHAIRMAN. We have been to Anaconda, and we have been to Butte, and I will tell you, we were treated just beautifully. It was a very helpful trip on another matter, on safety in the mines. Thank you company for that.

Thank you, gentlemen.

Mr. MUNROE. Thank you.

The CHAIRMAN. Now we have the opportunity to hear from the Western Union Co., Mr. Gerald P. Kent, Vice President for Employee Relations.

Mr. Kent, we appreciate your full cooperation with the committee.

STATEMENT OF G. P. KENT, VICE PRESIDENT, EMPLOYEE RELATIONS, WESTERN UNION; ACCOMPANIED BY R. C. HOSTETLER, VICE PRESIDENT AND GENERAL COUNSEL; A. I. CULLEN, VICE PRESIDENT AND COMPTROLLER; R. WISHART, CHAIRMAN OF THE BOARD, GEORGE BUCK & CO.; AND V. TOBIN, GEORGE BUCK & CO.

Mr. KENT. Thank you, Mr. Chairman.

Senator JAVITS. May the record show that Western Union appeared voluntarily as well and did not have to be subpoenaed?

Mr. KENT. Thank you, Senator Javits.

The CHAIRMAN. That is right, Mr. Kent.

Mr. KENT. I would like to introduce, if I could, the gentlemen who are with me.

My name is Gerald Kent, and I am vice president of employee relations of the Western Union Telegraph Co.

With me today I have as our actuaries, Mr. Robert Wishart, chairman of the board of George B. Buck, consulting actuaries, and who additionally happens to be chairman of the actuarial committee for the civil service retirement system and a member of the Treasury Department's advisory group on employee benefit changes.

With Mr. Wishart is Mr. Vincent Tobin, consulting actuary with George B. Buck.

Also with me are Mr. A. I. Cullen, vice president and comptroller of the Telegraph Co., and Mr. Richard Hostetler, vice president and general counsel for the Western Union Telegraph Co.

I would like to go through my prepared statement and lay some groundwork for questions on the part of you and Senator Javits.

We have previously filed form P-1, dated July 1, 1970, providing detailed information relating to the Telegraph Co.'s pension program. I would like to provide some additional background information and comment briefly on the effect upon the company and the users of our services if legislative proposals relating to private pension plans now under consideration are adopted.

The Western Union Telegraph Co. plan for employees' pensions, disability benefits, and death benefits (herein referred to as the general plan) was established on January 1, 1913. It was one of the first company-financed pension plans in the United States.

In addition to pension benefits, the general plan also provides for sickness and accident disability benefits. All full-time employees of the company are eligible to participate in the general plan, and 100 percent of the costs of all benefits payable thereunder are paid for by the company without any contribution from employees.

Over the years, pension costs have represented an increasing expense to the company. In 1913, pension benefits aggregating \$116,000 were paid to 301 retiring employees. At yearend 1970, there were approximately 11,700 former employees on the pension rolls receiving pensions under the general plan aggregating \$25 million annually. This means that based on 1970 revenues and pension costs, the company sets aside 6 cents out of every revenue dollar to pay for pension costs under the general plan.

In this connection, it is significant to note that the company has met its pension obligations in each of the 58 years during which the general plan has been in effect, counting both good years and bad. In the bad years, the pension was never reduced. During this period, the total amount of pensions paid out has aggregated almost a quarter billion dollars.

The company believes that this performance demonstrates both its commitment and ability to maintain an on-going pension program.

Under the general plan, pensions are payable as follows:

Any male employee upon reaching the age of 60 years, or any female employee upon reaching the age of 55 years, and whose term of employment has then been 20 years or more, may at his or her own request be retired from active service and granted a class A pension.

Any employee whose term of employment has been 20 years or more, and whose years of age and years employment total 80 or more,

may at his or her own request be retired from active service and granted a class 80 pension.

Any employee whose term of employment has been 30 years or more, and who has become totally disabled as a result of sickness or injury, other than by accidental injury arising out of and in the course of employment by the company, may at his or her own request be retired from active service and granted a class 30 pension.

The amount of the annual pension payable in each case is 1 percent of the employee's average annual pay during his highest paid 5 consecutive years of service, multiplied by his total years of service.

While the general plan technically does not contain a provision for vesting, its early retirement provisions are of far greater value to career employees. The normal retirement age is 67 for our union employees and 65 for our nonunion employees. However, a 50-year-old employee with 30 years of service (or an employee 54 years of age with 26 years' service) can retire at his option and receive a full pension payable commencing immediately without actuarial reduction. Similarly, male employees at age 60 and female employees at age 55 with 20 years' service may retire at their own election with full pensions. The payment of unreduced benefits under these conditions is a rather liberal feature compared to most other plans. Such early retirements have been exercised extensively in the company.

For example, in 1970 about 40 percent of all employees retiring on pension that year were under age 65. At yearend 1970, of our 23,000 employees, about 3,400, or 15 percent were eligible for full unreduced pensions.

Since 1950, a number of significant improvements have been made in the general plan:

In 1950, the method of computing company service was changed to take into account each completed day of service rather than just full years.

In 1954, a provision was made for permitting a break in service without a loss of credit for previous service.

Minimum monthly pensions have been increased from \$30 to \$100.

In 1958, the earnings period on which the amount of pension benefit is calculated was reduced from the 10 highest paid years to the 5 consecutive highest paid years.

Also in 1958, the class 80 pension was established.

In 1959, contingent beneficiary pension options were made available.

Formerly, in calculating pensions payable from the plan, deductions were made equal to various percentages of the employees' social security benefits. These deductions have been gradually reduced and were completely eliminated in 1970.

These improvements have cost the company a great deal. The average amount of monthly pension benefits paid to retiring pensioners has increased from \$65 for retirees in 1951 to \$230 for 1970 retirees. But as previously observed, the company has continued to meet its obligations and it intends to do so in the future.

The company also provides protection through an unusually liberal severance pay program for employees terminated due to force reduction after 2-years' service. We have prepared an analysis which shows that in the typical case, an employee who is terminated (and who is

not retiring on a pension under the general plan) is entitled to receive a lump sum severance payment which is larger than the present day value of the pension to which such employee would be entitled at age 65 under the general plan, assuming that the general plan provided for 100 percent vesting upon completion of 5 years' service. Said another way, the amount of severance compensation paid in the typical case, if deposited in a savings bank account earning $5\frac{1}{2}$ percent interest, would provide annual retirement income at age 65 in excess of the amount of the pension benefit accrued under the general plan prior to termination of service with the company.

Clearly, to the average terminated company employee, the right to severance compensation is more valuable than the right to a vested pension. This conclusion is further evidenced by the fact that a number of retiring employees who were eligible for pension have actually elected to waive their pension rights in order to qualify for severance compensation, an option which is available to all union employees.

Turning to the matter of funding, the company's independent consulting actuaries have estimated the amount of unfunded prior service pension cost at \$365.2 million as of June 30, 1970. From the plan's inception until 1955, pensions were paid on a pay-as-you-go basis. In 1955 we inaugurated a prefunding plan under which amounts equal to 50 percent of normal cost plus an amount representing interest on 50 percent of the present value of unfunded prior service costs were paid into the trust fund. Under the funding plan, the initial unfunded prior service cost amounted to \$86.8 million. During the period from 1955 to 1968, additional unfunded prior service costs of \$39.6 million were established as a result of plan improvements: \$3.6 million because of bridging of breaks in continuous service, and \$36 million from the gradual reduction of the social security offset provision. In addition, there was an increase of \$16.3 million as a result of changes in actuarial assumptions.

In view of mounting unfunded accruals under the funding plan, the company changed its policy and in July 1959, the management changed and commenced payment into the trust fund of an amount equal to 100 percent of normal cost plus interest on 100 percent of the present value of unfunded prior service costs. As a consequence of this change, a further increase in unfunded prior service cost in an amount equal to \$192.2 million resulted. Finally, in 1969, an increase of \$30.3 million resulted from the elimination of the social security offset.

The \$365 million amount as of June 30, 1970, therefore, is the sum of the initial prior service cost of \$86.8 million plus additional amounts of \$192.2 million for the change to 100-percent funding; \$16.3 million because of a revision in actuarial assumptions; and \$69.9 million because of benefit improvements. As a result of the change in policy, a ceiling has been placed on the unfunded prior service costs, assuming the absence of any further substantial benefit improvements.

Some interesting statistics were used by the subcommittee staff in pointing to the fact that our unfunded accrual was equivalent to 42 percent of the company's assets. Actually, as a result of a continuing expansion of the company, the frozen unfunded prior service cost of \$365 million now bears a relationship of 33.9 percent to company assets. With an increase from our present conservative 4-percent interest as-

sumption, to a rate of 6 percent, the unfunded prior service cost could be immediately reduced to \$275 million, or about 27 percent of the company's assets.

More significant, however, is the fact that the balance in the trust fund has increased from \$3.1 million at the end of 1955 to \$50.6 million at the end of 1970. During the same period, pension payments amounting to about \$200 million were paid to our retired employees. Between 1955 and June 1971, the relationship of the fund balance to liabilities has improved to where the fund represents 14.6 percent of the unfunded prior service cost as compared to 1.1 percent in 1955.

Moreover, on the basis of the relatively conservative interest assumption used in our actuarial determinations, we believe there is a good possibility that the assets in the trust fund will continue to grow at an average rate in excess of the assumed rate of 4 percent. This increased rate could be used to help liquidate the prior service cost in future years. For example, assuming a growth rate of 6 percent and no change in the company's annual rate of contribution to the trust, the liquidation could take place in as short a span as 35 years.

One other point should be noted: The company, being common carrier, is subject to regulation by the Federal Communications Commission. Under current FCC rules, all direct pension payments to retirees and all contributions to a pension trust fund are included in the company's cost of service for ratemaking purposes. Increases in pension costs, whether through reinsurance costs, increased benefits or other changes which require an increase in the amount of funding become, in effect, a direct additional cost to the rate payer. As a result, the FCC has promulgated extensive reporting requirements to facilitate continuing regulatory surveillance over the pension plans and related trusts of common carriers.

Included in these reports are data relating to changes in the funding instruments, the composition of the trust fund, and its relationship to actuarial liabilities, contributions to the fund, analysis of pensions paid and detailed information regarding other benefits and pensions paid.

Various proposals for pension legislation would prescribe, among other things, vesting provisions, funding of prior service costs, and reinsurance of unfunded prior service accruals for all private pension plans. I would like to comment briefly on the position of the company with respect to these features.

As demonstrated by the size and scope of our pension program commitment, the company believes strongly in the principle of an adequate, total compensation program which meets the needs and aspirations of its employees. The company is a labor intensive company as evidenced by the fact that 50 cents out of every revenue dollar goes to pay for salaries and wages or other employee-related benefits, including pensions. And we recognize that if we are going to continue to be a viable business enterprise—and we have every intention of doing that—we are going to have to continue to meet the needs of our employees, just as we have for the past 120 years during which we have been in business.

Accordingly, to the extent that these proposals which are currently being considered have the effect of strengthening our employee bene-

fit program, we would support them in principle. The real question for the Western Union Telegraph Co. is whether these proposals would strengthen our program or whether, in the long run, they would create more problems for our employees than they would solve.

To be specific, about 48 percent of our employees are presently associated with the business of handling telegrams which service represents about 28 percent of the company's current revenues. It is a fact, both here and abroad, that the usage of the telegram service has declined steadily over the past 20 years as customers have switched their record communication requirements to Telex, TWX, the recently introduced Mailgram, and other more modern services. This shift to the automated services has been in part caused by the rising price of the labor-intensive telegram. Adding to the cost of this service would require further rate increases which would only accelerate the decline of the telegram, thus costing many of our employees their jobs.

Further, one fact is inescapable: The company will continue to meet its pension obligations as long as it is in business. But, if these obligations should become so large, or if the constraints placed upon our flexibility in managing our resources to meet such obligations should become so acute that they jeopardize the viability of the enterprise, then no amount of vesting and funding legislation will substitute for the pension dollars which can no longer be paid because there are no corporate earnings to fund the obligations.

The company's employees have been represented by strong national collective bargaining agents for almost 30 years. Our total compensation package, of which the pension program is a single element, is the product of negotiations between the company and its employees. The elements of this package, of course, vary from the elements of other corporate compensation programs. It is likely that if we were starting today from scratch we would attempt to negotiate different approaches in certain benefit areas.

Nevertheless, the program which we have is a mature program which has served the needs of our employees well throughout the years. I have previously referred to the severance pay benefit situation at the company. Our most recent contract settlement resulted in substantial improvements in the level of severance pay. It would not have been possible for the company both to grant these improvements and to increase its contribution toward the cost of pensions. The fact is that our unions have never requested either vesting or funding.

The first problem then with the current proposals is that they will mandate or prescribe a portion of an employer's compensation program, thus removing from management and labor the flexibility they need to shape the available fiscal resources to the total employee requirements.

Because of the way individual companies have spent their available benefit dollars, the impact of such legislation will vary considerably. For instance, the company spends about 11.4 percent of its payroll dollars on pensions as compared with 6.8 percent for all public utilities and 3.3 percent for all manufacturing, as shown in the U.S. Chamber of Commerce employee benefit study of 1970. Similarly, the percentage of the payroll dollar spent by the company on severance pay was about three times greater than that spent by these two industry

groups. I should add here that between 1955 and 1970, our company paid out a total of \$7 million in severance pay payments.

The second problem with the current proposals from the point of view of the company is that they will impose a heavy cost burden.

We estimate that the combined effect of vesting, funding, and reinsurance proposals of the type presently under consideration before this subcommittee would be to increase the company's annual pension costs by a minimum of 25 percent. For example, we estimate that the addition to the general plan of a provision for 50 percent vesting after 5 years, increased to 100 percent vesting after 15 years, would cost in excess of \$600,000 annually. The increase in contribution for funding the current \$365 million unfunded prior service cost over a 40-year period would be \$3.8 million annually. Reinsurance of this prior service cost at an annual premium of 0.6 percent would add another \$2.2 million.

To require the company to assume this burden when it would be most difficult—if not impossible—to negotiate compensating reductions in other elements of its wage and benefit program is not only unfair, but in the long run could adversely affect public interest. Let us not forget that in the final analysis the only source of payment for improved wages and benefits is corporate earnings.

In summary, Western Union does not oppose funding or vesting in concept; however, because the various proposals ignore the fact that pensions are but a single element in the total benefit package and because of Western Union's unique history, we do oppose legislation mandating these changes at this time. The effect of such legislation would be to remove from management the flexibility it needs to manage its fiscal resources in response to the compensation and benefit requirements of its own group of employees. Particularly critical, in our case, is the fact that we are, so to speak, locked into an extremely expensive matured wage-benefit pattern and the company cannot unilaterally adjust that pattern because a high proportion of wage-benefit costs are subject to collective bargaining.

Because the proposed legislation, in essence, would establish new levels of greatly increased costs, any future improvements in our plan and total benefit program will be most difficult to realize. Further, since such costs are passed on to the rate paying public, any sudden substantial increase therein could very well be contrary to the public interest. Mandating such increased costs by statute, obviously, would remove such public interest questions from the consideration of the FCC, the company, and the employees' representatives.

(Information supplied for the record follows:)

EXHIBIT 1

COMPARISON OF SEVERANCE PAY BENEFITS AND
VALUES OF VESTED PENSIONS PAYABLE AT AGE 65

The following table sets forth a comparison of the discounted value of a deferred "vested pension" commencing at age 65 and some typical severance benefits paid under a schedule in effect at Western Union since 1952.

<u>Age</u>	<u>Years of Service</u>	<u>Annual Wages</u>	<u>Monthly Pension if 100% Vested</u>	<u>Severance Pay*</u>	<u>Present Value of Vested Pension**</u>
35	10	\$ 8,500	\$ 71	\$3,106	\$1,078
40	6	7,200	36	1,108	734
40	15	7,200	90	4,708	1,835
45	6	8,000	40	1,231	1,101
45	10	11,000	92	4,019	2,533
50	15	8,500	106	5,558	3,976
50	20	8,300	138	8,619	5,177
50	25	8,400	175	11,954	6,565

* Effective July, 1971, these amounts are 50% higher for employees represented by the United Telegraph Workers in the event of layoff due to transfer of work, reduction of office hours or office closures.

** Based on an annual interest assumption of 5 1/2%.

Mr. KENT. I have attached the exhibit, which I think you have, which shows a comparison of severance pay to the present value of the vested pension. We have displayed the information by age and by various lengths of service, and you see in comparing the two right-hand columns, gentlemen, that the severance pay feature provides more money to the employee who is terminated as a result of company action than a vested pension would today.

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

First, I wonder if I could understand a little better the company attitude about the payments to employees on retirement through a pension plan. You speak of the expenses, matured wage benefit pattern. This is called a benefit, but philosophically, is not a payment to an employee upon retirement of a monthly amount under a plan really basically wages, deferred wage payments?

Mr. KENT. I think philosophically I would regard everything that accrues to an employee as all part of what he gets for working.

The CHAIRMAN. This is not a gratuity?

Mr. KENT. Far from it. We do not intend that philosophy.

The CHAIRMAN. With respect to your total costs here—and you are suggesting, hypothesizing on page 12—are you speculating in terms of Senator Javits' bill?

Mr. KENT. The figures we have used here are based on various reports of what the committee may or may not propose.

The CHAIRMAN. And you are estimating—

Mr. KENT. Based on these assumptions what our costs would be.

Senator JAVITS. There is an error in that, you know. The error is that you say, for example, you estimate that the addition in the general plan of a provision for 50 percent vesting after 5 years, increased to 100 percent vesting after 15 years—the error is that under my bill you vest at the rate of 10 percent a year. You start with 10 percent. You do not start with 50.

Mr. KENT. This was one of the proposals. We did not take and price out every one of them, Senator.

Senator JAVITS. I do not know of any such proposals.

The CHAIRMAN. Well, now, on the accounting and the financial impact on the company, are these figures gross figures, or net? Are they before or after the tax accounting on these contributions to the fund?

Mr. KENT. This would total some \$6 million additional cost, for the funding, the underfunded prior service cost, and the reinsurance. That would come to \$6 million. And we would have the vesting of \$600,000 annually.

The CHAIRMAN. How would that reflect in your tax picture?

Mr. KENT. It would impact income totally. We are not in a taxpaying posture at the moment.

The CHAIRMAN. If you were paying taxes, this would be business expense?

Mr. CULLEN. Yes.

The CHAIRMAN. And it would reflect as a gross figure. And then as a net, it would be less than this, because it would be a reduction through accounting for tax purposes?

Mr. CULLEN. That is correct, Senator.

The CHAIRMAN. What is the financial position of Western Union right now, by the way, in terms of income and taxes?

Mr. CULLEN. We are presently not in a taxpaying position due to loss carryovers and accelerated plant depreciation. We anticipate being in a tax position in subsequent years. We do not know exactly when that may be at the moment.

Senator JAVITS. Right now your operation is profitable, is it not?

Mr. CULLEN. Yes.

The CHAIRMAN. Mr. Kent, on page 11 you say "it is likely that if we were starting today from scratch, we would attempt to negotiate different approaches in certain benefit areas."

If you were beginning—and I will say this has to be one of the pioneer private pension plans in the country—

Mr. KENT. The plan started in 1913.

The CHAIRMAN. What do you mean, you would attempt to negotiate different approaches? From this long experience, what are these different approaches?

Mr. KENT. I think one of the different approaches might well be—and 1913 is a long time ago, and even 1950 is a long time ago—and I think it is fair to say that companies, when they started out, pretty much regarded pensions as something that was a reward, which came—and I say "reward"—for long years of faithful service. And we have seen it change in this country, for the good, I think, where the employees are more mobile; they are able to move from job to job. And probably if you were starting from scratch today you might very well build in a feature of vesting and portability. But that is the benefit of hindsight.

Having started in 1913, and having gotten where we are today, to suddenly try to change those rules for our particular company poses a real financial burden.

It would seem in some respects, Mr. Chairman, and Senator Javits, that the portability and vesting in the whole employment period, is social security. Here we have a good example of portability and vesting after certain requirements.

So I would say that if we were starting from scratch, that might be one thing we would recognize, because times have changed. They have not changed significantly for Western Union. We still have a long service career type employee. But this is one change that has taken place, and it is a result of the progress in our country.

The CHAIRMAN. Thank you.

Senator JAVITS. It is clear, is it not, that if you let a person go, even though he has had many years of service but has not attained one of the three plans, he gets nothing. Is that not so? Except for what you claim is the severance pay? And I will get to that.

Mr. KENT. Under the retirement plan, if they are dismissed and are not eligible for a pension, as we outlined—

Senator JAVITS. Here is a fellow who writes a letter dated September 6, 1971. I do not have his permission to release it, but it is a letter which came in.

After 29 years with the Western Union Telegraph, I have been force furloughed, reduced, with thousands of others. Those who were lost their 80 point pension, yet are too young to collect Social Security. Those who have their points

are being pensioned off. We have an option to take severance pay or to wait up to four years for pension. I would have been able to get my pension in September of 1972. But, being furloughed, I can only accumulate one point a year instead of two.

Mr. KENT. Based on what you have just told me, the employee who was FFR'd—and this is an old Western Union term meaning “furlough force reduced,” or laid off—and if she had, she would have these options available to her.

No. 1, she would be entitled to 90 weeks of pay as severance pay. If her layoff—and I do not know the situation—if her layoff was due to a transfer of business, office closure, she would be entitled to another 50 percent under the terms of the most recent contract we negotiated with the UTW. So she would get some 90 weeks plus 50 percent more in severance pay.

Now as far as retirement, Senator Javits, if she—I believe she said she would have reached her 80 points in the fall of 1972. Was that what you read?

Senator JAVITS. Yes.

Mr. KENT. Under our policy as it exists, this woman can acquire up to 4 years of age and 6 months of service to qualify for the class 80 pension.

So what I am suggesting is that if we—we look at that specific case, it occurs to me that with the ability to acquire 4 years of age and 6 months of service, that she would in fact be eligible for her class 80 pension in the fall of 1972.

Senator JAVITS. You see, the whole case you make for providence in this plan is that you give severance pay, which if invested, you claim, can produce as much as they could get if they were “vested.” But is it not a fact that if a person is thrown out of a job, severance pay is absolutely essential to keep body and soul together, except for unemployment compensation? And you give them severance pay not to assure their future but to make them able to make the immediate transition?

Mr. KENT. That is right.

Senator JAVITS. It does not really serve the same purpose?

Mr. KENT. That is true. But I am making the point about the amount of severance pay in the case we are talking about.

Here is a person who would be getting 140-some-odd weeks, almost 2½ years, or more.

Senator JAVITS. Your feeling is that the amount of severance pay goes beyond the relocation equation?

Mr. KENT. I think it does, Senator.

Senator JAVITS. Mr. Chairman, I would like to introduce into the record, so we can have the whole picture, the answer of Western Union to the questionnaire insofar as it shows how many people went through the plan. And the various periods of time served in the company without getting any benefit from the plan. That is part III of the questionnaire.

The CHAIRMAN. That will be included in the record at this point. Senator JAVITS. Fine.

(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..... 67,800*
- B. Specify the total number of persons who have participated in the Plan within the past 5 years..... 45,800*

* Partly estimated.

- 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 | 17,519 * | * Represent total retirees. |
| (2) Early retirement | | Breakdown by classification |
| (3) Disability retirement | | not readily available. |
| (4) Death | N.A. | |
| (5) Other | N.A. | |

- 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..... -0-

- 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..... -0-

- | | |
|---|---------|
| 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)..... | 58,700* |
| 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..... | 45,800* |
| 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) | 20,200* |
| 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..... | 16,000* |

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..... 45,800*
- 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..... 3,300*
- 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 2,600*
- 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..... 1,100*
- E. Within the past 5 years..... 16,000*

- F. Within the past 5 years with more than 15 years service under the Plan..... 1,100*
- G. Within the past 5 years with more than 10 years service under the Plan..... 900*
- H. Within the past 5 years with more than 5 years service under the Plan..... 400*
- I. Within the past 5 years due solely to voluntary separation..... 13,000*
- J. Within the past 5 years due solely to failure to meet continuous ^{it} service requirements. Data not readily available, but is estimated that
total number would not exceed 1% of total average work force.
 * Partly estimated.

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..... 46.6*
- B. Within the past 5 years with more than 10 years service under the Plan..... 37.2*
- C. Within the past 5 years with more than 5 years service under the Plan..... 31.7*

* Partly estimated.

24. A. Indicate the average monthly benefit paid to retirees 5 years ago.

(1) Normal \$183 (2) Early \$199 (3) Disability \$61
 Represents employees added to pension roll during valuation yr. ended
 6-30-65.

B. Indicate the average monthly benefit paid to retirees within the last year.

(1) Normal \$227 (2) Early \$215 (3) Disability \$330
 Represents employees added to pension roll during valuation yr. ended

The CHAIRMAN. The way you described that, I assume this shows the forfeiture?

Senator JAVITS. Yes; the past, which in this particular case is enormous. You have got, for example, in the last 20 years, over 3,000 employees who had more than 15 years of service who under the plan got nothing out of the retirement plan.

The CHAIRMAN. Could I ask—do they pick up this severance?

Mr. KENT. This is what I would like to add, if I could, gentlemen. In our answers to your question 22, if we take a look at what happened, the number leaving the plan since 1955 is reported as 45,800 people, which is a lot of people. Out of that 45,800, there were 1,900 deaths, people who received death benefits under our life insurance program. And 5,200 people received severance pay. And that left us then with 38,700 people who left the plan voluntarily and received nothing. But it is interesting to note—

Senator JAVITS. All were separated?

Mr. KENT. Right. So 38,700 out of the 45,800 did not get anything. But 85 percent of the 45,000—38,800 of those people had less than 5 years' service at the time they left.

If we go to the experience in the past 5 years, we had 16,000 people leave the plan. There were 500 deaths; 1,000 people received severance pay; and there were 14,500 people who left the plan, who quit. Again, 85 percent of that number.

Senator JAVITS. Is it not true, therefore, all you are proving is that, if we did have some rule like the one contained in my bill, you vest something only after 5 years, then it is not all that much of a financial burden to you?

Mr. KENT. What I am suggesting, though, is that it does not cover—it does not get to the example that our gross figures seem to indicate, that these are long-service people who are going out at the top with nothing. Of the people who go out from under the plan, 85 percent have less than 5 years of service, and vesting is never going to help those. Some of them will get some vesting after—

Senator JAVITS. Still, there are some 3,000 who had long terms of service, over 15 years, and got nothing out of it?

Mr. KENT. They got severance pay.

Senator JAVITS. But we have a big argument on that. It has a totally different purpose and comes at a totally different time in one's life. And you agreed to give them that. You agreed to give them both the retirement and the severance pay, except that the retirement does not do anything for them.

Mr. KENT. Senator, we have never agreed to give anybody both. It is their option.

Senator JAVITS. They know they are going to be beneficiaries of a retirement plan.

Mr. KENT. They have an option: either the retirement plan or severance pay. Not both.

Senator JAVITS. But they know they have that option.

Mr. KENT. Yes.

Senator JAVITS. That is correct. All I am pointing out is you cannot have it both ways. The fact is, if it is not too much of a burden, then we might as well try to make the option a real one, because the option

only exists if they would have a right to vest. Otherwise, it does not exist. It is not a real option.

And, if it is not too much of a burden, then why should we not recognize it and codify it with you as we would with anybody else? You fellows are saying it will break you, but if it is not that much of a burden—you point out, according to your own figures, it would not break you.

Mr. KENT. I would only answer that in this way, Senator Javits. Would the cost of vesting break us? It is doubtful. Could we use that money some other way to a greater advantage for both the long-term good of the employees and the long-term good of the company? Probably, in terms of capital, plan expansion, and our capital requirements.

This is the problem that we have at the telegraph company with the proposal. I said earlier, if we were starting today, I think you are right. What our problem is, how do we keep the machine going for almost 12,000 people who are on retirement and continue to make our business grow, to be able to support new jobs and continue to pay the benefits?

Senator JAVITS. Those are valid considerations. All I am pointing out is, we have to strike a balance. And what I am trying to get at is that our approach is not necessarily invalidated by the considerations you raise.

Sure, we would have to strike a balance. That is our duty. We do not want to put you out of business. That would be ridiculous—for the employee, for the country, for you, for your stockholders. They are entitled to consideration, too.

But all I am trying to demonstrate is that we are not talking about such a crushing proposition that, right on the face of it, cannot be done.

I would like to ask you one other thing. It is a fact, is it not, that your accrued liabilities are very much underfunded, would you not say? Whether you can afford to do it is not the question. But, are they not seriously underfunded?

Mr. KENT. I would have to answer emphatically "no." And I guess to speak further on that point, if you would like, I could have Mr. Wishart, who is chairman of the board of the actuary, George Buck Consultants, respond further, if you would like.

Mr. WISHART. Senator, I am not sure what you mean by "underfunded." They do have a very large outstanding past service cost which they have only recognized in the last several years. In other words, the management of the company prior to this time thought funding was not a necessity. They thought that Western Union would continue ad infinitum. But, since 1913, they have always paid promised pensions. They never cut them during the depression. And the management prior to that time felt that it was not necessary, as some other companies felt, to fund pension plans.

However, the management has now taken a different tact, and they have made progress in funding.

It would be a matter of time. At the present time, with the \$365 million outstanding past service costs, that is a very considerable amount. But they are making progress to take care of that.

Senator JAVITS. Of course, even in my own bill, we give you 40 years to fund. And, of course, the company feels that even that is too onerous.

That is, it is a fact, is it not, that the danger is in a situation like this, if anything happens to Western Union, leaving aside the equities of whether people did or did not have a right to expect their pensions, if something untoward would happen to the company, you have another repetition here of Studebaker.

The fact is you simply could not pay out except a very minor percentage on the dollar. That is true, is it not?

Mr. WISHART. Yes, it is. Many employees would get nothing from this pension plan if the company were to go out of business entirely, no question about that.

Senator JAVITS. We know you cannot have each dollar deposited to cover future liabilities. We know that ourselves. It is a question of degree.

But, this does seem to us to be a plan which, you know, suffers very seriously in that regard. At least, it seems to me. I will not say "us." I am giving my own view.

Mr. KENT. As I mentioned earlier, Senator, our position in discussing this is how else might we use the same money more productively to further secure the future of our employees. That is all.

There are other ways of investing that kind of money in plant modernization and equipment that can take us to become a more profitable organization, and to the extent that this reflects back on our ability to pay, why, it is a question of how the company is going to utilize its money.

Senator JAVITS. I realize that. But, again, some balance has to be struck, with \$48 million in fund assets and \$414 million in accrued liabilities, if my arithmetic is correct, you get to something like 12 per cent coverage.

You may be asking the employees, who have had generally represented to them that they have a pension, to run far more of a risk than they should. I mean, it is a question of balancing these equities, and that is what this legislation would be all about.

Mr. Chairman, I ask the unanimous consent that part IV of their P-1, which is the funding status, may also be inserted at this point in the record.

The CHAIRMAN. That will be included.

(The information referred to follows:)

6/30-70.

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) \$47,679,214 (2) \$47,679,214 (3) \$48,185,146 (4) 6-30-69
 (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) \$304,000,000 6-30-69

No vesting. Figure includes early retirement, disability retirement and normal retirement. (Date of latest evaluation)

C. Total value of all accrued benefits, treating all such benefits as if they were vested (give present dollar value) \$414,000,000 6-30-69

(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).

Note 26 A:

- (1) Mortality table for period after service retirement:

Combined Annuity (Modified and Makehamized)
 rated back two years.

- (2) Actuarial assumptions for period before retirement include factors for:

Mortality
 Termination of employment
 Earnings progressions

These factors were developed by the actuary
 and are on file in the Plan office.

- (3) Eligibility factors for retirement are:

Class A. Age 60 and 20 years service for men.
 Age 55 and 20 years service for women.

Class 80. 20 years of service if the total years
 of age and years of service are 80.

Class 30. 30 years of service if totally disabled.

For negotiable employees, retirement is assumed
 to be mandatory at age 67. For non-negotiable
 employees, retirement is assumed to be manda-
 tory at age 65.

- (4) Assumed interest rate is 4% compounded annually.
- (5) The value of the investment includes an adjust-
 ment of the book value of the common stocks by
 write-up formula.

Note 26 A (continued):

RATES OF EMPLOYEE TERMINATIONS FOR REASONS
OTHER THAN DEATH, DISABILITY AND RETIREMENT

<u>Negotiable Employees</u>			<u>Non-negotiable Employees</u>	
<u>Age</u>	<u>Men</u>	<u>Women</u>	<u>Men</u>	<u>Women</u>
20	.20000	.30000	.16000	.24000
25	.10000	.24500	.08000	.19600
30	.05000	.14000	.04000	.11200
35	.03100	.08875	.02000	.06656
40	.02300	.04625	.01000	.03238
45	.01225	.02563	.00500	.01638
50	.00313	.01156	.00250	.00603
55	.00313	.00717	.00090	-0-
60	.00313	.00717	-0-	-0-

The above rates apply to the fourth and subsequent years of employment. Higher rates of terminations are assumed in the first three years of employment.

- 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.

The Company has always met the contribution recommended by the actuary.

- 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

-
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.
-

-
30. Specify the following:

- | | |
|---|---|
| A. The average amount of administrative costs charged to the Plan for the last 5 years. | N |
| B. The ratio (percent) of current administrative costs charged to the Plan to total fund assets calculated at current market value. | 0 |
| 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. | N |
| 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. | E |
-

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.....

4.3%

- B. List and identify each such program in which the Plan fund has invested and the amount of the investment at current market value.....

F. H. A. Title 2 Insured Mortgages

\$ 71,789

V. A. Section 501 Guaranteed Mortgages

226,501

General Employee Benefit Trust - Special Purpose Funds. These funds are participating in F. H. A. and V. A. mortgages through various banks. Details are not readily available

1,431,806

1,629,095

The CHAIRMAN. In part IV, question 25, this question of the accrued benefits and the figure of \$414 million—the question is: “Total value of all accrued benefits; treating all such benefits as if they were vested, give present dollar value.”

Would you amplify your understanding of how your response to that question was formulated, Mr. Wishart?

Mr. KENT. That is question 25?

The CHAIRMAN. Yes. Perhaps I’m asking the wrong man. I thought Mr. Wishart was in charge of that department.

Mr. WISHART. I do not have your question clearly.

The CHAIRMAN. Do you see the question? And do you see the company answer?

Mr. WISHART. Yes.

The CHAIRMAN. What does that assume, “as if they were vested”?

Who answered the question, Mr. Kent?

Mr. KENT. The answers were prepared by our management of employee benefits, in cooperation with Mr. Tobin.

Vince, you were a part of this.

Mr. TOBIN. Senator, if I might, the answer to this question, the \$414 million—is that what you are addressing yourself to?

The CHAIRMAN. Yes.

Mr. TOBIN. That is simply the sum of unfunded prior service costs, which is what we actually determined.

The CHAIRMAN. What is your rate of forfeiture? What is realistic here on what you will have to pay out?

Mr. WISHART. I think the answer you are looking for, sir, is that, if the plan were terminated today and all benefits accrued to date were paid, a cash value equal to which their benefits would be, then we would need \$414 million. We only have \$50 million. That is the position of the pension plan to date.

Is that your question?

The CHAIRMAN. If the company stopped right now, \$414 million would be due?

Where would a short-term employee figure in that?

Mr. WISHART. They would all get their pro rata share, depending upon their service. The pro rata on that would be set up—how much should we pay them for the years of service and their compensation to date? And that means that, if we paid everybody today, either a pension beginning at age 65 with a cash value of that pension for all service, we would need \$414 million. We only have \$50 million. So if the company terminated, went out of business, the employees would not get 100 cents on a dollar.

The CHAIRMAN. Now, referring to the figure above that, under part B, total liabilities for all accrued vested benefits—now, if the company stopped now, this would be the amount due to those who were eligible right then for pension payments?

Mr. WISHART. All those who are presently actively employed and have not retired but have the option of retiring, plus all those presently on pensions. This is the amount of money we would need to pay them.

The CHAIRMAN. Retired, or at an age in service where they could retire?

Mr. WISHART. Yes.

The CHAIRMAN. And that figure is \$304 million?

Mr. WISHART. Right.

The CHAIRMAN. I have just one other question.

Mr. Kent, you said this whole pension question has not been part of collective bargaining. The unions have not included this in any way in bargaining demands?

Mr. KENT. That is not what I said, Mr. Chairman. What I said was that the matter of pensions are a subject of negotiations.

We had demands last time for an increase in the formula, to 1.5 percent, and so on, which we fended off at that time.

What I did say was that the question of vesting or funding has never been raised by the unions. In fact, you have got to understand a little bit of the background and the history of the company and the UTW, United Telegraph Workers, which is everything except New York City.

The emphasis is on job security. So one approach that the union and the company have taken over the years is that, if you are going to terminate a person, regardless of their service, you are going to pay a penalty; and the penalty is severance pay.

In the course of our last negotiations, we had a fairly comprehensive 5-year business plan to modernize Western Union Telegraph Co. and get it up to speed in becoming a real force in the communications industry in this country.

Now, what this means is that a lot of the old ways by which Western Union Telegraph business used to run are going to change. We have a lot of people in some of these areas who have service with us, and the unions concerned were not for a vested pension but, as a result of these changes in the technology, "We want these people to receive 150 percent severance pay or 50 percent over the present severance schedule." And I guess whether you want to call it severance pay money or lump-sum payment for services rendered, it is not any gift, Senator Williams. I want to make that clear. This is something we have learned.

But, if you want to call that severance pay payment a lump-sum settlement, recognizing that through no fault of their own, the times, the business, the thrust, the force of things have changed, and they are unemployed, out of work, here is the money that goes with it.

As I said in the case of a 30-year employee, this would be 98 weeks plus 50 percent more, and that has been the whole thrust and direction of the labor and management relationship between the telegraph company and its unions.

In New York City, it takes a different form. There they are not so much concerned because they are not affected in the same way as the little Western Union offices sprinkled all over the country.

The CHAIRMAN. Thank you very much.

Mr. KENT. Thank you.

The CHAIRMAN. Our next scheduled witness is the Whitaker Cable Corp. Mr. Jack F. Whitaker, president, and Mr. Bernard Craig, attorney for the corporation.

We note that Senator Eagleton is here to introduce his constituent from Missouri.

Senator EAGLETON. Mr. Chairman, it is my pleasure to introduce to the committee Mr. Jack F. Whitaker of Kansas City, Mo., the president of the Whitaker Cable Corp. I believe he is accompanied by his attorney and their corporate attorney, Mr. Bernard Craig, and another gentleman whom he will identify.

So as to clarify the record, the corporation was served with a subpoena on October 6, 1971. But, so as not to leave any negative implication that this corporation is here kicking and screaming against its will, I would like to recite these facts.

This corporation was interviewed by staff members on September 22, 1971, in Kansas City. At the time, there was an indication given that they might like to have Whitaker Cable testify. Fine.

On September 27, 1971, a letter was sent to Whitaker Cable inviting them to appear at these hearings. On October 1, the administrative assistant to the president of Whitaker Cable, a Mary Griswold, wrote this letter to the counsel for the Committee. I will read a portion of it.

"Since Mr. Jack F. Whitaker and our attorney, Mr. Bernard D. Craig, left early yesterday morning for a business trip to Mexico"—and then they later went on, I believe, to other places in Central America—"it is not possible to accept the invitation to appear to testify on October 12.

"If an invitation can be extended to appear to testify at a later date, I feel sure Mr. Whitaker would be most happy to do so, given sufficient notice to refresh his memory on 'all aspects' of the pension plan."

I submit, Mr. Chairman, this is a very reasonable letter, a very reasonable approach. These hearings have been going on. This is not the last day, as I understand it, that hearings are going to be held on pension plans.

The CHAIRMAN. Could I interrupt at this point, Senator?

Senator EAGLETON. Let me finish my statement, if I may, Mr. Chairman.

I understand hearings are going to be held at other dates. The president of the corporation and his attorney, who are two most knowledgeable about pension plans, were on a business trip in Central America. So, then a subpoena goes out to the corporation. It is served on October 6. And then these men are required to come back from their business trip to be here today, as if this was the now or never attendance date insofar as the hearings are concerned.

They were willing to testify. Miss Griswold said they were willing to testify. And I think that on hearings that are going to go for a period of time, important hearings on a very important matter, that a degree of courtesy can be extended to witnesses so that they can appear on a date that is convenient both to them and to the committee.

You have already heard from Western Union. If the schedule is accurate, you have many other witnesses, the Retail Shoe Employers, the D.C. Transit, Bank of America, the Great A. & P. Tea Co., Skelly Oil. You have got a full day of hearings, more than perhaps should be undertaken in any one day, because these are complex, detailed matters.

In fairness to the Whitaker Cable Co., I think that the record should show that they are now here.

I called Mr. Whitaker. I called you, Mr. Chairman. You were very kind and said, well, yes, in your judgment they could defer their testimony, but that reprieve was too late for the witnesses; they had already come back from Central America. They said, "Since we are back and working on the thing, we are going to be there on Tuesday." So, they are here.

But I do not want the implication to be that they are here over their dead body, that they have been uncooperative, recalcitrant, or anything of that type.

The CHAIRMAN. When the hardship came to me personally yesterday morning, I was in conference in Florida and my immediate reaction was that I could appreciate the hardship.

Mr. Whitaker, you were in Central America when you were notified that the company had been subpoenaed?

Mr. WHITAKER. Yes. Miss Griswold called me in Guatemala City to say we were being threatened with a subpoena and that, if we did not get back to testify—

It so happens that in our particular case we are in a relatively small company. Of those people that are knowledgeable about our pension trust, one of them retired on October 1, and my father, the original founder of it, passed away about 3 years ago. And, therefore, I was the only committee member really that had any experience with this over a full 10-year period of time. And to give it to our treasurer, who the subpoena was finally served on, who has been with us 6 or 7 years and is not fully knowledgeable about all the things that have transpired since this trust was originally set up—it seemed absolutely necessary that we appear.

We were a bit upset. We did not intend to say that we were not going to appear at all. It was just that it was most inconvenient because we were going to go onto Bogotá, Colombia, but we came back because we felt we had to be present. So we come in with a negative attitude right off the bat. That is that.

The CHAIRMAN. Well, there has been an inconvenience, I guess, and some misunderstandings. But we are willing to recognize this particular hardship, and here you are.

Senator EAGLETON. I am satisfied. I just want to make sure the record does not have any negative implications that this organization was in any way recalcitrant, uncooperative, cantankerous, whatever word might apply, insofar as trying to cooperate with this committee.

As far as I am concerned, it is a fait accompli; they are here, and let's be about the business of testimony.

Senator JAVITS. I think it is unfortunate they did not realize they could ask for an extension.

If you had asked for it, I would have agreed at once.

But you assumed once it is issued, that is it, which is a commendable attitude for a citizen.

Mr. WHITAKER. We did ask for an extension.

Senator JAVITS. Who did you ask?

Mr. WHITAKER. Mr. Noto.

Senator JAVITS. When did you ask for an extension?

Mr. WHITAKER. We wrote him a letter on October 1 saying it was most inconvenient for us to do this and we would be happy to appear at any other time.

Senator EAGLETON. I ask unanimous consent that the letter of October 1, from Mary Griswold to Mario T. Noto, be made part of the record at this time.

The CHAIRMAN. All right.

(The letter referred to follows:)

WHITAKER CABLE CORPORATION,
North Kansas City, Mo., October 1, 1971.

Mr. MARIO T. NOTO,
Special Counsel, Subcommittee on Labor, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

Dear Mr. Noto: Your letter addressed to Miss A. L. Taylor has been turned over to me for handling as Miss Taylor has retired as of October 1, 1971.

Since Mr. Jack F. Whitaker and our attorney, Mr. Bernard D. Craig, Sr., left early yesterday morning for a business trip to Mexico and Central America, it is not possible to accept the invitation to appear to testify on October 12. It was my understanding that you were apprised of this scheduled business trip when you were in our office.

If an invitation can be extended to appear to testify at a later date, I feel sure Mr. Whitaker would be most happy to do so, given sufficient notice to refresh his memory on "all aspects" of the pension plan.

Sincerely,

MARY B. GRISWOLD,
Administrative Assistant to the President.

Senator JAVITS. I agree with Senator Eagleton. You are here. We might as well go ahead. But I am told that at the end of September, or toward the end of September, you were advised about this date. At that time, you did not indicate any need for an adjournment and then subsequently you did. Is that right?

Mr. WHITAKER. Mr. Craig was in that meeting with Mr. Randolph, who came out.

Mr. CRAIG. Mr. Christopher Randolph. I stated to Mr. Randolph that Mr. Whitaker was going out of the country on an extended trip to Mexico, Central America, and South America, and that he would not be back in time to be able to testify on this matter, if he should be selected to appear.

At that meeting, Mr. Randolph did not state that this company would be selected to appear. He said that 1,500 companies had been sent the questionnaire; 1,300 had responded; 30 had been selected for interviews; and 12 would be invited to appear. But he did not say that Whitaker Cable Corp. would be one of them at that time.

Senator JAVITS. I regret very much that this has occurred.

I would like to ask, Mr. Chairman, that Mr. Randolph's memorandum of October 7, reporting on the meeting—which apparently had a difference in interpretation by you and by him—may be made part of the record.

It reads:

At the meeting's conclusion, Mr. Craig said that Mr. Jack Whitaker, President of the Whitaker Cable Company, would return from South America, October 10, 1971. He hoped this would not cause difficulties, if Whitaker Cable was asked to testify before the Subcommittee.

The CHAIRMAN. That will be inserted at this point.

(The information referred to follows:)

U. S. SENATE
SUBCOMMITTEE ON LABOR

MEMORANDUM

To: Mario T. Noto

October 7, 1971

From: Christopher F. Randolph

Re: Appearance of Whitaker Cable Corporation to testify before the Senate Subcommittee on Labor, October 12, 1971.

1. On August 17, 1971 at a staff meeting of the Private Pension Study Group of the Senate Subcommittee on Labor, the minority counsel, Michael Gordon, recommended further inquiry of the Whitaker Cable Corporation pension plan after review of their Form P-1. The Form P-1 disclosed: no vesting provision, plan disqualification by the Internal Revenue Service, substantial investment of the plan's assets in Whitaker Cable real estate.
2. At the telephone request of Staff Member, Christopher Randolph, on September 13, 1971, Miss A. L. Taylor, Vice President for Finance, Whitaker Cable Corporation, agreed to meet with Subcommittee members in Kansas City, Missouri on September 22, 1971 to discuss the pension plan of Whitaker Cable Corporation.
3. On September 13, 1971, a letter from Special Counsel of the Senate Subcommittee on Labor, Mario T. Noto, to Vice President for Finance, Miss A. L. Taylor, confirmed the meeting for September 22, 1971.
4. At 10 A.M., September 22, 1971 Subcommittee Staff Member C. Randolph, met with the following people at the offices of Whitaker Cable Corporation, 1301 Burlington Street, North Kansas City, Missouri: Miss A. L. Taylor, Vice President for Finance, Whitaker Cable Corporation, Mr. Bernard D. Craig, Attorney, Levy and Craig, who joined the meeting 30 minutes later.
5. At the beginning of the meeting, Mr. Randolph explained the interest of the Subcommittee in private pension plans and the nature of the Subcommittee study. He stated the primary reason for inquiry to Whitaker Cable pertained to the lack of vesting, plan entry requirements, the disqualification by the Internal Revenue Service, and the plan investments, as disclosed in the dates furnished by them in Form P-1.

MEMORANDUM to Mario T. Neto

page 2

6. Miss Taylor stated to Mr. Randolph, that due to the possibility of Whitaker Cable appearing before the Subcommittee on Labor, their attorney's presence would be necessary for the discussion. Miss Taylor deemed this important for reason that Mr. Craig would probably appear as representative of Whitaker Cable since Miss Taylor was retiring from the company October 1, 1971.

7. Pertaining to Mr. Randolph's inquiry, Miss Taylor stated the plan cannot afford vesting and feels all improvements should be applied to increased retirement benefits. The company believes that by their lack of vesting, an employee has a greater incentive to remain with Whitaker Cable Corporation.

8. The plan entry requirement of age 30 and 5 years of service was viewed as customary by Miss Taylor when the plan was established in 1943. She feels the age 30 requirement to be competitive with most pension plans today.

9. Mr. Craig explained the sequence of events behind the plan's disqualification by the Internal Revenue Service. In August 1965, the Whitaker Cable pension fund purchased the company office and land for \$703,000. In 1967, through a routine IRS audit of the company, an examining agent appraised this real estate at \$421,000 (date of purchase). The company objected and in 1969 the IRS reappraised the property at \$614,000 (date of purchase). On July 29, 1970, the plan was disqualified as of December 1, 1970. Under protest, the company paid to the pension fund \$89,000, the difference between the IRS appraisal of \$614,000 and the purchase price of \$703,000. The pension plan has been requalified as of December 1, 1971.

10. Mr. Craig explained the decision of the pension plan to invest in company real estate as a result of low returns (2% average over 15 years) from their trustee investments. The pension fund purchased Whitaker Cable real estate in a 10% lease-back arrangement. Mr. Craig believes there is no conflict of interest between the company's investment objectivity and the plan's benefit responsibility since this investment yields a higher return than previous investments.

MEMORANDUM to Mario T. Noto

page 3

11. At the meetings conclusion, Mr. Craig said that Mr. Jack Whitaker, President of Whitaker Cable, would return from South America by October 10, 1971. He hoped this would not cause difficulty if Whitaker Cable was asked to testify before the Subcommittee.

12. On September 27, 1971, Special Counsel to the Subcommittee on Labor, Mario T. Noto, sent a letter to Miss A. L. Taylor of Whitaker Cable Corporation, inviting the company to testify on October 12, 1971 at 10:00 A.M. before the U. S. Senate Subcommittee on Labor.

13. A letter dated October 1, 1971 from Miss Mary B. Griswold, Whitaker Cable Corporation, Administrative Assistant to the President, stated due to the fact that Mr. Jack F. Whitaker, and Mr. Bernard D. Craig, Sr., attorney, were on a business trip to Mexico and Central America, it is impossible to accept the invitation to appear before the Subcommittee on October 12, 1971.

Senator JAVITS. Again, I agree with Senator Eagleton. This thing can go on forever. Let us go on with the business.

Senator EAGLETON. Thank you, Mr. Chairman.

Thank you, Senator Javits.

The CHAIRMAN. Can we review who is with you?

STATEMENT OF JACK F. WHITAKER, PRESIDENT, WHITAKER CABLE CO., ACCOMPANIED BY BERNARD D. CRAIG, ESQ., LEVY & CRAIG, 916 WALNUT STREET BUILDING, KANSAS CITY, MO.; AND JACK L. MAHURIN, VICE PRESIDENT, MEIDINGER & ASSOCIATES

Mr. WHITAKER. This is Mr. Bernard D. Craig, our counsel, and a member of the board of Whitaker Cable Corp. And this is Mr. Jack Mahurin, who is our consultant, representing Meidinger & Associates on our pension trust.

I do not have a prepared statement, Senator. I was told if I did not have time to make a prepared statement, I would have to wing it. So that is what I will attempt to do.

Our pension trust was originally formulated by my father. It is completely funded by the corporation. It was founded in 1943.

My Father's philosophy and mine is that still the basic cell of civilization is the family and our corporate people are part of our family. There was a major concern as to what these people's benefits would be when they reached retirement, initially at the age of 65.

This plan originally was an annuity, and it was such up until 1954 when we changed it to the present trust plan that we have and appointed a trustee, the City National Bank & Trust Co., in Kansas City, who happens to be the largest holder of trusts in our area.

But the basic philosophy was still to provide additional money for those people that had given us long years of service.

As the plan now stands today—and I have some copies of it, and these are for the record. This is the plan as it now stands.

During the years from 1954 up until now, we have changed our trust whenever we felt that we could afford it. The original trust was on a basis of three-quarters of 1 percent. They had to be 30 years old and have 5 years of service before they could come into the plan.

It was revised from the three-quarter percent and the top of whatever the social security limit was, and we added a half a percent, we added one addendum to it.

We have later changed that to seven-eighths of 1 percent and six-tenths of 1 percent.

There was no vested interest when it first started. Now we have a vested interest at the age of 55, with 20 years of service.

We also have a disability vesting of 15 years.

Jack, you correct me if I go wrong.

That is principally the plan now.

I read Senator Javits' remarks here, and I feel like we were pretty much in the forefront, because much of our funding has been in real estate. If we had selected to go into a pool fund or mutual-type fund, at least the one that we looked at, over a period of 15 years we would have made for the fund less than 1 percent per annum. By investing

in real estate—and it so happens it was corporate real estate—our fund has averaged almost 9.5 percent a year.

Therefore, it seemed to us that this was proficient and good management to be able to earn this type of return. In fact, it permitted us, which I believe is unusual in a corporation our size, to not have any back service liability. It is completely paid up. That is also in our favor.

The survey or the report that was filed included in it the calculations of our 1969 evaluation as of December 31. I have before me a more recent one which is December 1, 1970. I would like to refer to certain items. Our unfunded past service liability is \$386. The present market value is approximately \$2 million. Our present value of liabilities, both present and future, is \$3,435,000. The present value of future normal costs is \$1,445,000.

And this \$3,445,000 anticipates an increase in wages for those people now in the trust to the age of 65; that, if we funded \$1,445,000 now, we would have them completely paid up through 65, taking into consideration they would have wage increases at whatever period of time and also would pay for the pension credits which should be earned as a result of service rendered between the current date and normal retirement.

We have a present annual covered payroll of \$3,330,000. We are paying in per year $4\frac{1}{4}$ percent on 540 people.

Our normal cost per year for this coming year will be about \$141,000. Over the past 11 years, the income on sales, Whitaker Cable has realized approximately 3 percent. If we converted this \$141,000 to profit before taxes, it would represent as at last year's profit, about 12 percent.

We have another problem in our particular area. We employ a high number of females, between 70 and 75 percent of our total employment. We have a great turnover, particularly at the younger ages, which makes it difficult to accrue much against their basic compensation. They have numerous reasons for changing jobs, moving out of town and all that type of thing. But we have a high turnover, particularly in the first 2 to 3 years.

We are kind of proud of what we have accomplished. We have done it all ourselves. This is not negotiated in any union contract. It covers all employees equally. The only statement that is even in any union contract is that, if we change it, they would like to be advised. And, of course, we have done this, and we have changed it four times, all to the benefit of the employees.

Senator JAVITS. Mr. Whitaker, whenever you are ready, I would like to ask you a question.

Mr. WHITAKER. Yes, sir?

Senator JAVITS. You say you have given us the amount of assets in the fund?

Mr. WHITAKER. Yes, sir.

Senator JAVITS. You spoke of corporate real estate. Is it not a fact that that corporate real estate is your own office building?

Mr. WHITAKER. Yes, that is part of it; sir. That is included.

Senator JAVITS. And that is most of it; it it not?

Mr. WHITAKER. At the present time, in real estate we have \$1,220,000, a million and a quarter dollars in real estate. And that building

was purchased by the pension trust for a mortgage of \$465,000, with a total value of \$703,000.

Senator JAVITS. Is it not a fact also that you were required to refund to the pension fund by the Internal Revenue Service as of December 1, 1970, the sum of \$89,000, on grounds that you paid for the property out of the pension fund more than it was worth?

Mr. WHITAKER. Senator, I do not know how frequently anyone has been accused by the Internal Revenue Service, but I would like for our attorney to answer that, because we do not think it is over yet. We paid it. We put the funds back. We are still contesting that.

Senator JAVITS. Mr. Whitaker, may I say—we will let your lawyer answer—but, may I say this to you again, you misunderstood me. I am not making accusations.

You are, I am sure, honorable people, hard working and have a devotion to the private enterprise system and to your workers. I do not doubt that.

My only point is that, in the absence of any regulation in this field—this is all I am pointing out—it is possible for an employer contributed pension fund to buy a building of the employer himself for a big piece of assets of the pension fund, and I do not think this is desirable, in the interests of the workers or in the interests of pension funds.

It does not mean that there is anything that is immoral or culpable about you. I want to make that very clear. I am just pointing out that this is the end result. There is nothing, obviously, to prevent you from doing that.

In normal fiduciary practice—and this is a fiduciary situation for the worker—this is very bad practice. But we have nothing on the books that says, “No.” And perhaps we need it. That is all.

I just want you to understand that there is no accusation, no question of moral fault, or anything else.

Mr. WHITAKER. Senator, you know, we still are trying to manage the fund to get the maximum return out of it. This building originally was mortgaged by the company. It was appraised at \$790,000. We have had a mortgage on it for \$460,000—60 percent, \$475,000, something like that. This property was sold for \$703,000.

I understand, I thank you, now, that there is a loophole, that this could be misused, and yet I think that we have to rely on the management ability of people to get the maximum return on what other moneys are coming in.

I understand what you are saying, but, still, where does good management play its part?

Senator JAVITS. Good management has to be reconciled with good trusteeship, Mr. Whitaker. In other words, the risk is too great for the value which the public gets out of the fact that you are earning at 9 percent—which you are very proud of, and I understand that—instead of 5 percent. The last witness testified they got roughly 5.8. That is a material difference in the plan.

The question we have to decide, however, is: Is it worth running that risk?

You happen to be a decent human being, and my guess is, just from looking at you and hearing you, that this is all right in a curbstome sense, but think of the barn door it opens when the assets of the fund

can go down the drain at the same time with a company. And most of them are very materially under-funded and the worker is left holding the bag. That is what we have to consider.

Unfortunately, we cannot make the rule just for you and not the same rule for others who could very seriously abuse it. That is the balance we have to hold.

So all I tried to demonstrate in your case is that this can happen.

Now, the worker is lucky in your case. You are decent people. But it can happen. And it is a loophole which I think we have to close.

But I will tell you, and I am very sincere about it, we are not finding any moral fault with you or anything like that—there is no rule on this subject. It has not been dealt with effectively, and I think we have to deal with it.

You may differ with me, which is perfectly legitimate. But there are no accusations. And, frankly, I am sorry, under the circumstances, that this subpoena business went wrong, because I'm sure you would have appeared voluntarily. You are not trying to hide anything. I am confident of that.

But it does not change my point that this is something we have to deal with. It is a reason for legislation dealing with fiduciary standards in the pension and welfare field.

If your lawyer wishes to speak, we would like to hear him.

MR. WHITAKER. I do not think it is necessary.

It is just a question that—we do not necessarily accept what the Internal Revenue Service tells us we have to do, and sometimes we have to stand up and be counted against that. And, therefore, we do not agree with the statement that they made, we do not agree, and we are going to have to take it to court. It is unfortunate.

Senator JAVITS. Whether you are qualified or disqualified for the deduction has nothing to do with it. The important point is that it illustrates that something can happen. And it is a door we have to close, in my judgment.

That is all.

THE CHAIRMAN. I think we had better clarify for the record just what the factual situation is.

Where do you stand with respect to IRS? I think this is one of the reasons why the Whitaker Co. was chosen to be a witness here because, in response to one of the questions, I believe it is shown that the IRS disapproved contributions to the fund.

Is that right?

MR. CRAIG. That is not correct, but I would like to comment on it.

THE CHAIRMAN. You are going to give us the factual situation?

MR. CRAIG. Mr. Chairman, the revocation for the exempt status of the pension fund was based on a very technical hybrid difference in the valuation of the property purchased, in the opinion of an appraiser for the Government and an appraiser for the company, for the pension fund.

In effect, the Government said the pension fund paid \$89,000 too much for the property in 1965, when this property was purchased by the pension fund.

It had been appraised in 1953—and this was in 1965 when the purchase took place—It had been appraised in 1953 by a wholly disinter-

ested party for the City National Bank, Alan Block, for \$790,000. And the bank made a loan on this property of 60 percent of that \$790,000 valuation of \$474,000, which mortgage was still on the property at the time that that pension fund purchased it, having been reduced somewhat—actually having been reduced once and reborrowed back up. And, at the time of purchase, it was \$442,000.

But the pension fund did not accept that valuation. They had an outside, independent appraiser by the name of Joseph Stern, a Master Appraisers Institute member, reappraise the property, and he appraised it at \$703,000, and that was the purchase price that was used.

Two or three years later, in 1967 or 1968, the Internal Revenue, in an audit, had an agent who appraised the property for \$421,000, which was less than the balance on the mortgage held by the bank. We protested that. The Internal Revenue Service hired an outside appraiser who appraised it at \$614,000, \$89,000 less than its \$703,000 purchase price paid.

We submitted to the Internal Revenue Service that within the meaning of section 503(b), on prohibited transactions, that this was not such a difference in the opinion of appraisers as to the value of real estate that it would justify the revocation of the exempt status of the pension fund. The difference is 12 percent.

A new appraisal was ordered at that time, and Vincent O'Flaherty, another member of the Master Appraisers Institute of Kansas City, made an appraisal, and he appraised the property as of August 12, 1965, at \$750,000, over the \$703,000. And he appraised it as of the then current time of January 1, 1970, at \$1 million.

Notwithstanding all these facts, the Internal Revenue Service invoked a prohibited transaction because the pension fund paid \$89,000 too much, and that was resolved by the company paying back that \$89,000 to the pension fund, under protest. And the Internal Revenue Service requalified the exempt status of the pension fund effective December 1, 1971, next to occur.

And so the pension trust is a taxable identity for this one year. At the end of the year, the pension trust will have to file an income tax return. There will be a tax liability. The tax will be paid. And then a suit will be filed to recover those taxes which will bring up the propriety of the ruling by the Internal Revenue Service for review in the court.

In our review of the cases, we have found no case to support the position of the Internal Revenue Service of declaring a prohibited transaction for paying too much for a piece of real estate, and especially where there was such a nominal difference in such purchase price of over \$700,000.

So the company has not acquiesced, or the pension fund either; they have not acquiesced. They have paid under protest and will seek a review of the validity of the revocation of the exempt status of the pension fund in the courts.

There was no question of moral turpitude or improper transaction. It was just a question of the value in their minds of real estate prices.

The CHAIRMAN. This did not go to any other question? The IRS evaluation does not go to another question of the propriety of the pension fund being invested in corporate property? It does not go to that question at all?

Mr. CRAIG. No, sir.

The CHAIRMAN. It was strictly a matter of difference of value of the property?

Mr. WHITAKER. Right.

The CHAIRMAN. I see. It is in limbo right now? The income derived by the pension fund is taxable at this point?

Mr. CRAIG. For one year.

The CHAIRMAN. Of course, the other payments, the annual payments made into the pension fund, the current payments by the company to the fund, they are a cost business?

Mr. WHITAKER. Yes.

The CHAIRMAN. And you would, of course, reflect that as a cost of business?

Mr. CRAIG. That is a little technical. If you would like to have me comment?

The CHAIRMAN. We would appreciate it.

Mr. CRAIG. For the one-year period, if a payment were made into the fund for the current service charge, due to the fact that the pension fund is not an exempt organization, it would not be deductible to the company. Therefore the company will not make the payment until after the end of the current year of disqualification.

The CHAIRMAN. I see. Because this is completely a corporate fund, it is not a joint labor-company fund, there is no obligation for you to make current payments into the fund?

Mr. CRAIG. No, sir. We can simply defer making a payment until December 1, 1971.

The CHAIRMAN. Are you under the trust indenture to make up for the payments?

Mr. CRAIG. No, sir.

Mr. WHITAKER. I think it would become a service liability.

Mr. MAHURIN. Yes, Mr. Chairman, that would be added back into the past liability service which was established, which they have already fully funded, with the exception of just a few hundred dollars, and they will amortize that over the future years of the plan.

The CHAIRMAN. In other words, the payments not made for this year of limbo because of the IRS ruling, will be paid in over a period of years? Is that what you are saying?

Mr. MAHURIN. Yes, sir. They are in the fortunate position of having an extremely stoutly funded program which permits them, under Internal Revenue Service guidelines and regulations, to skip making a payment at all during the year. But it will be paid over the future years of the plan.

The CHAIRMAN. Who is the trustee here?

Mr. WHITAKER. The trustee is not here. It is the City National Bank and Trust Co., one of the largest in Kansas City.

This gentleman here is with Meidinger and Associates, who are all consultants on our fund.

Mr. CRAIG. It is an actuarial firm.

The CHAIRMAN. And who administers the pension plan, Mr. Whitaker?

Mr. WHITAKER. They are the administrators. We make suggestions as to how they spend the money. We do not question that.

And on this particular item, we gave them a letter, that we thought this should be the purchase price.

The CHAIRMAN. So the bank is trustee and administers the plan, too?

Mr. WHITAKER. Yes.

The CHAIRMAN. I notice you are also a director of the bank?

Mr. WHITAKER. Yes; and my father was for 40 years before me.

The CHAIRMAN. Again, this just raises the question that Senator Javits dealt with completely, to guide us in our moving into an area where there are no national standards as we have in other areas where there is a significant repository of money, banking and insurance companies—well, the insurance company is not a national matter—but here this is a concern. There are no national standards dealing with the fiduciary aspects of these pension plans.

Mr. WHITAKER. Of course, we go where we know the people the best. We have been there for 50 years, and they have the largest trust department in Kansas City.

The CHAIRMAN. We have one of those booklets that describes the plan, I gather?

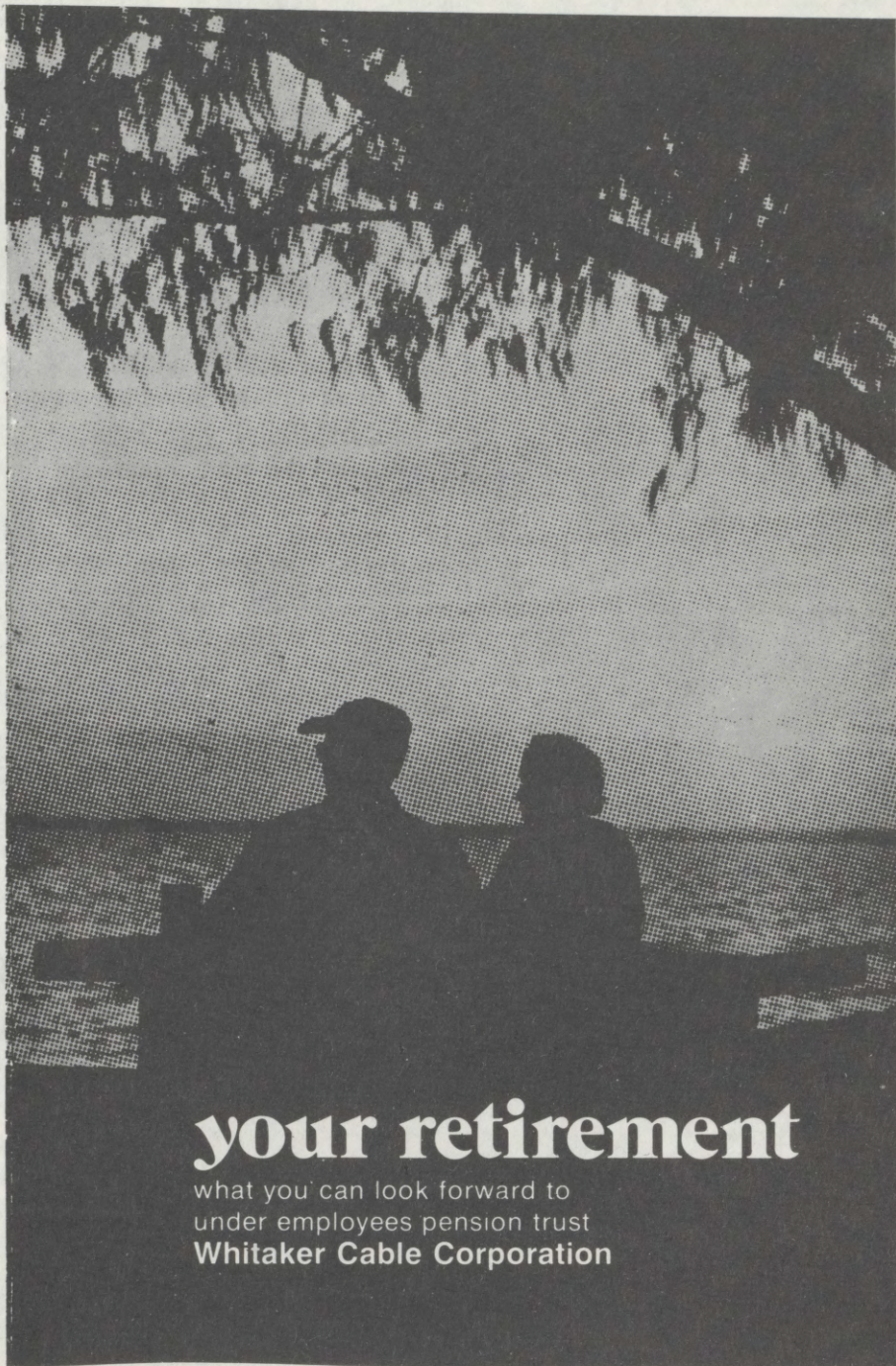
Mr. WHITAKER. Yes.

Mr. CRAIG. Mr. Chairman, do you desire more?

The CHAIRMAN. That cover looks attractive and makes me want to read the plan.

Mr. CRAIG. We offer the retirement plan of the Whitaker Cable Corp. into the record.

(The information referred to follows:)



your retirement
what you can look forward to
under employees pension trust
Whitaker Cable Corporation

foreword

The Whitaker Cable Corporation Employees' Pension Trust was originally adopted in December 1943. Amendments to the plan have been made as of December 1954; December 1957; December 1962 and December 1968. Each of these amendments have had the effect of improving either retirement or disability benefits for the participants.

The following brochure is based upon the plan as last amended December 1, 1968.

HOW FAR AWAY IS 65?

For most of us, the day seems a long way off when we'll be able to reach for the alarm clock, snap it off, grin to ourselves, turn over and go back to sleep. But just as surely as our youngsters are growing up, year after year, so is the day growing nearer when we'll reach retirement age.

NOW IT CAN BE AN EVEN HAPPIER, MORE CONFIDENT "LOOK AHEAD"

It's hard to imagine you're 65 until you are 65. But when you reach that age, statistics promise that, on the average, you'll still have a good 15 years of life left to enjoy.

One of your concerns, quite naturally, is "How am I going to enjoy these years, after my pay check stops?"

You may have even talked to an insurance man and found that at age 65, if you wanted to buy yourself an annuity income of \$50 a month for

life — to supplement your Social Security — you'd have to write the insurance company a check for something like \$7,500—if you are a woman even more. That wouldn't be easy for most of us.

And that's why you'll read about this pension plan of your company with such interest. It's going to take quite a few pages to tell you all about this new plan, to answer all the questions that are sure to pop up in your mind.

But right off, it's good to know that all the contributions to the plan are paid by the company. Not a penny toward the plan is deducted from your pay check.

All these company contributions will go into an irrevocable trust fund which will be invested by The City National Bank & Trust Company of Kansas City, as Trustee, for the exclusive benefit of you and all other employees eligible under the plan. The pension plan has been amended as of



December 1, 1968 to provide increased benefits for our employees whose full scale of earnings are not covered by social security benefits. The plan as thus amended is a continuation and broadening of the pension benefits originally provided under the prior Pension Trust of the Company which was in effect from December 1, 1943 (with prior Amendments), and of the modification of July 1, 1958, which has continued in effect up to the date of the 1968 Amendment.

The new Whitaker Cable Corporation Employees Pension Trust is a plan for you, so read all about it in the pages that follow. Take it home and let your family also read about the financial security arranged for your future if you continue in employment of Whitaker Cable Corporation.

WHO IS ELIGIBLE FOR BENEFITS UNDER THE PLAN?

Every full-time employee of the Company is eligible to become a participant in the plan on the December 1st next following his completion of five consecutive continuous years of service and his attainment of age 30. By a "full-time employee" it is meant an employee whose customary employment is for 5 months or more per year and for 20 hours or more per week.

An eligible employee must signify his acceptance of the benefits and terms of the plan by completing an application for participation furnished him by the Retirement Committee at

least 10 days before the date of his eligibility. Failure to complete such application at least 10 days before eligibility date (unless failure is not the fault of the employee) will delay the participation of the employee to the anniversary of the plan following his submission of application 10 days or more prior thereto.

WHEN MAY I RETIRE AND COMMENCE TO DRAW MY PENSION?

Generally speaking, an employee under the pension plan normally retires on the first day of the month following the month in which he attains the age of 65. This is termed the employee's normal retirement date. You will find as you read further in this booklet that you may retire earlier—after age 55 if you have completed 20 years or more of credited service, or should you be so unfortunate as to become totally and permanently disabled. The conditions surrounding the amount and payment of your pension under these various circumstances are set forth hereafter.



WHAT HAPPENS ON AN EMPLOYEE'S NORMAL RETIREMENT DATE?

He may retire and will then start to receive a pension for life, payable monthly.

Or, at the company's request, he may defer his retirement. In such case, the employee will not be entitled to receive his pension until he is retired at a later date. Service after normal retirement date may be terminated at any time by either the company or the employee upon 90 days' notice. The amount of his pension payable upon actual "late retirement" will be increased proportionately, however, on the basis of the value of a unit of pension at his actual retirement age compared with the value of a similar unit of pension at his normal retirement date. Such increase is termed an "actuarial increase."

Whether you retire normally at age 65, or whether your Employer requests and you agree to a continuation of your employment and you finally retire later, the amount of your retirement income can easily be computed. Here is what you do.

First decide what you believe will be your "compensation base" as set forth in full from the plan in Appendix A at the back of this booklet.

Multiply this amount by .875 of one percent. Now, look under TABLE I to determine, for the year you will retire, the limit of earnings subject to tax under the Federal Insurance Contributions Act. If your "compensation base" is greater than the amount shown in TABLE I, subtract the amount shown from your "compensation base" to determine the "excess" (that amount on which you will not receive social security benefits). For instance, if you will retire after 1971 but before 1979, your FICA limit of earnings would be \$6,000 and you would subtract that amount from your "compensation base" to determine the "excess", if any.

Next, multiply the "excess" by .6 of one percent.

Now, add the result you obtained by multiplying your "compensation base" by .875 of one percent to the result of multiplying the "excess" by an additional .6 of one percent. The result will be your expected ANNUAL PENSION CREDIT FOR EACH YEAR OF CREDITED SERVICE.

Next, multiply this amount by the "credited service" you should have by age 65. "Credited Service" may be determined according to the computations shown in Appendix B. The result of this final multiplication is your expected annual pension from the Whitaker Cable Corporation Employees' Pension Plan.

The formula is as follows:

$$\begin{aligned} &\text{Compensation Base} \times .875 \text{ of } 1\% = (a) \\ &(\text{Compensation Base minus } X^*) \text{ times} \\ &\quad .6 \text{ of } 1\% = (b) \\ &(a) \text{ plus } (b) = \text{Your annual pension} \\ &\quad \text{credit for each year of credit service.} \\ &\text{Your annual pension credit} \\ &\quad \text{times your credited service} \\ &\quad \quad = \text{Your annual pension.} \\ &\text{Your annual pension divided} \\ &\quad \text{by } 12 = \text{Your monthly pension.} \end{aligned}$$

*X equals the limit of earnings subject to tax under the FICA as determined from TABLE I.

TABLE I

LIMIT OF EARNINGS SUBJECT TO TAX UNDER FEDERAL INSURANCE CONTRIBUTIONS ACT

If an Employee attains age 65 . . .

His limit of earnings
subject to FICA for
purposes of this plan
is:

1969 to 1971.....	\$5,400
1972 to 1978.....	6,000
1979 to 1993.....	6,600
1994 to 2000.....	7,200
After 2000	7,800

HOW TO COMPUTE A NORMAL RETIREMENT PENSION

Suppose John Jones joined Whitaker Cable Corporation at age 25. His

salary was then \$3,000. He advanced normally. His base earnings during the five calendar years before he reached age 65 were as follows:

Age	Earnings
60	\$ 6,200
61	6,300
62	6,400
63	6,500
64	6,600
TOTAL	\$32,000

The average annual earnings for that period were \$6,400 which is taken as John's "compensation base." Since John had completed 5 years of service at age 30, when he became eligible for the plan, his credited service is 35 years from age 30 to age 65. John will retire in 1974, so the limit of earnings subject to FICA (from TABLE 1) is \$6,000. These are the essential factors in the computation of his annual pension. Remember, too, the percentage figures of .875% and .6 of 1% mentioned at the beginning of this section. We can now begin to determine John Jones' pension.

- (a) Take .875 of 1% of \$6,400 = \$56.00
 (b) From \$6,400 subtract \$6,000
 leaving \$400 "excess"
 Take .6 of 1% of \$400 = \$ 2.40
 (a) plus (b) = \$58.40

Jones' annual
pension credit for
each year of
credited service.

Next multiply \$58.40 by 35 years
 (of credited service) = \$2,044.00
 Jones' annual
 pension.

Divide \$2,044.00 by 12 = \$ 170.33
 Jones' monthly
 pension for life.

And this retirement income from the plan has been totally paid for by the company and is in addition to what Jones could get from Federal Social Security.

HOW WILL I KNOW WHAT MY TOTAL RETIREMENT INCOME WILL BE?

The amount of retirement income that you will be eligible to receive from Social Security will vary according to the number of years you have worked under the FICA program and according to your annual salary during those years. In addition, the laws governing Social Security payments have been rapidly changing over the past several years.

Therefore, so that each of the employees eligible under the plan can quickly note what their total retirement income might be from year to year, Whitaker Cable Corporation will furnish each eligible employee with an annual statement showing the computation of anticipated retirement income from the WCC Employee's Pension Plan as well as the anticipated income from Social Security. Thus each employee can review his total anticipated retirement income easily from a single annual statement prepared and furnished by the Company.



PENSION ON EARLY RETIREMENT

An employee may elect to retire of his own volition (or the Company may decide to retire the employee) at any time after he has reached age 55, provided he has completed 20 or more years of credited service.

If an employee does elect early retirement, his pension is first computed in the same manner as his pension would be if he were retiring at age 65, using, however, the last 5 years before early retirement for compensation base and credited service up to early retirement. The pension as so computed, however, is payable commencing at the employee's age 65.

Now the employee, however, may elect to have his pension begin as of the first day of the month following his early retirement date of the first day of any intervening month prior to his normal retirement date. In case of such election, the amount of pension to which he would be entitled, if he had waited until age 65 for it to commence, will be reduced actuarially to take into account the earlier payment of the pension and the life expectancy of the participant at the time he elects his pension to commence.

COMPUTING AN EARLY RETIREMENT "VESTED PENSION"

Suppose John Jones, for example, elects to retire when he reaches age 60. Suppose he has 30 years of credited service, (age 30 to 60). He is, therefore, eligible for an early retirement pension for he has met both the age and service requisites for early retirement.

Suppose Jones' five-year average annual earnings prior to age 60 have been the same \$6,400 used in our prior example:

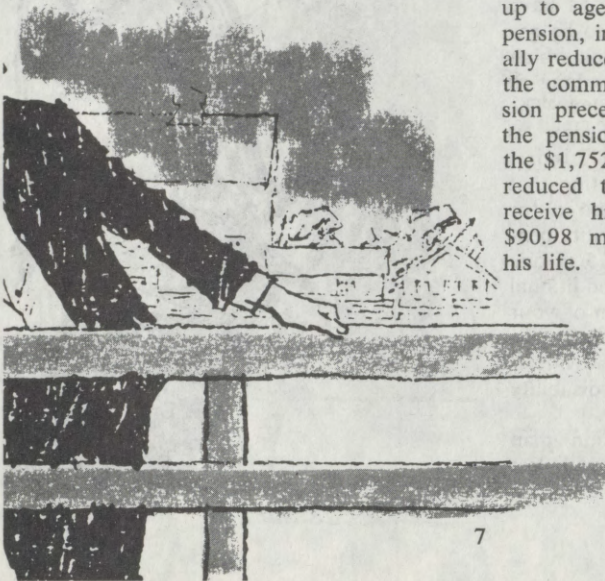
- (a) Take .875 of 1% of \$6,400=\$56.00
 (b) Take .6 of 1% of \$400
 (\$6,400 minus \$6,000) =\$ 2.40

(a) plus (b) =\$58.40

Jones' annual pension credit for each year of credited service is, therefore, \$58.40. \$58.40 multiplied by 30 years (Jones' credited service to age 60) = \$1,752.00 Jones' annual pension due at age 65 on account of his credited service to age 60.

This annual pension of \$1,752.00 would be Jones' vested pension deferred to commence at age 65.

As pointed out above, Jones could elect to have his pension commence at the end of any intervening month up to age 65. The \$1,752.00 annual pension, in this case, must be actuarially reduced for each month by which the commencement date of the pension precedes age 65. If Jones elects the pension to commence at age 60, the \$1,752.00 annual pension must be reduced to \$1,091.71, Jones would receive his pension at the rate of \$90.98 monthly for the balance of his life.



DEATH BENEFIT BEFORE RETIREMENT

If a member of the plan should die while in the employ of the Company prior to his early or normal retirement date, but after attaining age 55 and completing 20 or more years of credited service, the qualified beneficiary of the participant is entitled to a death benefit in the form of a monthly income payable for a period of sixty months following the participant's death. The amount of the monthly payment is computed in the same manner as the computation of the normal retirement payment. A qualified beneficiary is defined as the spouse, dependent child, dependent mother or dependent father of the deceased.

Detailed information concerning these death benefits is available through the Personnel Office.

TOTAL AND PERMANENT DISABILITY PENSION

A disability pension is provided if any member of the plan becomes totally and permanently disabled before he becomes eligible for a normal retirement pension. Disability is determined by the Retirement Committee.

Such disabled employee must have 15 or more years of service to be entitled to a full disability pension which is then payable for life, or as long as the employee remains disabled. The amount of this disability income is determined exactly as an early retirement "vested pension" excepting that no actuarial discount is required for the commencement of a disability pension before age 65 on the .875 of one percent portion. As to the additional .6 of one percent, this portion of your disability pension is subject to actuarial reduction for any months it is payable before you receive a disability pension under social security.

A similar disability pension plan covers the eligible employee with less

than 15 years service, except that in the computation of the benefit, the pension payment is actuarially reduced for each month by which the month of payment precedes the employee's normal retirement date.

Suppose Henry Smith, employed at age 30, becomes totally and permanently disabled at age 55. His average annual earnings for the company for his last five years of employment have been \$6,400. His disability pension would be computed as follows:

- | | | |
|-----|-------------------------------|--|
| (a) | Take .875 of 1% of \$6,400 | = \$56.00 |
| | From \$6,400 subtract \$6,000 | |
| | leaving \$400 "excess" | |
| (b) | Take .6 of 1% of \$400 | = \$ 2.40 |
| | (a) plus (b) | = \$58.40 |
| | | Annual pension credit for each year of credited service. |

Next multiply \$58.40 by 20 years	
(of credited service)	= \$1,168
	Smith's annual disability pension.



Prior to the time Smith qualified for his disability benefit under social security, the "excess" part of this pension—(2.40 x 20 years)—or \$48.00 annually, would be actuarially reduced. At age 55 this would mean a reduction of approximately 59% in this part of the pension.

Assuming Smith later qualified for social security, the disability income under the plan would then be paid to Henry Smith at the rate of \$97.33 monthly for his life—or until he recovered from his disability, should recovery come before age 65. Disability, in any case, may be redetermined periodically by the Retirement Committee. If the Committee found Henry Smith has regained, for example, 25% of his former earning capacity, his pension would be reduced proportionately. If he regained more than 50% of his prior earning capacity, his disability pension would be terminated. No further changes will be made in a disability pension after an employee's age 65, and no reduction will be made in a disability pension that will reduce it below the amount of immediate early retirement income to which the employee would have been entitled at the time of his disability. If Smith recovers sufficiently to be re-employed, his credited service

prior to his disability will count towards his future regular retirement pension, but the period during which he was absent on a disability pension will not count as credited service.

OPTIONAL FORM OF PENSION

Some employees may wish to make provision upon their retirement so that their wives (or husbands) will not lose the right to their pension (in full) in event of the death of the retired participant. This may be accomplished under the plan by electing an optional form of pension.

A participant retiring at normal, deferred or early retirement date, but not a participant retiring on a disability pension, may elect, in lieu of a pension for his life only, a smaller pension payable for his life with any given portion of the amount as elected by the participant to be continued for the life of the wife of the participant (or husband if the participant is a female). Such election must be made on forms provided by the Retirement Committee. The amount of such reduced pension will be of equivalent value to the actuarial value of the normal pension payable for the life of the participant only.

Interested employees and those nearing retirement age are invited to visit the Personnel Department for specific information concerning the various retirement options available.

SPECIAL PROVISIONS FOR EMPLOYEES WHO WERE PARTICIPANTS ON THE EFFECTIVE DATE OF THE ORIGINAL PLAN

The original pension plan which was carried out through the purchase of individual retirement income contracts with an insurance company provided certain vested rights in the cash value of these contracts in event of the termination of employment of these employees. These rights up to the date of the conversion of the plan



from an insurance company to a trustee administered basis—December 1, 1948—are preserved for such participants. The amount of this vested interest for each of these original participants is set forth in a Schedule A attached to the amended plan and each such participant can procure a record of this amount in his own case from the Retirement Committee.

GENERAL INFORMATION

Already outlined are the valuable benefits under Whitaker Cable Corporation Employees Pension Trust. There are, of course, other provisions in the Plan and Trust Agreement. A few are mentioned below:

BENEFITS PURCHASED UNDER PLAN ARE NOT SUBJECT TO FUTURE REDUCTION

The company necessarily reserves the right to amend or terminate the plan at any time. However, future plan amendments cannot reduce the value of benefits already accrued to any employee on account of past contributions by the company. Nor can the Trustee return to the company—now or in the future—any part of the funds they now or later hold prior to the satisfaction of all liabilities to the employees and their joint pensioners under the plan. This applies even if the plan should be terminated. In such event the Fund will be distributed to the employees in the form of pensions, annuities or cash settlements as determined by the Retirement Committee, in accordance with “service and age priorities” as set forth in the plan.

PENSION TRUST AGREEMENT CONTROLS

In the event of any conflict between the terms in the Pension Trust Agreement, and those set forth in this booklet, the plan as set forth in the Trust Agreement will control.

RETIREMENT COMMITTEE

The members of the Retirement Committee effective September 1, 1971, are as follows:

C. Howard Clark, Chairman
Jack F. Whitaker
C. Craig Whitaker

The Retirement Committee will administer the plan for the benefit of the employees and the company. Any questions concerning the plan or its operation should be taken up with the Committee. They will be glad to furnish you with a copy of the full Pension Trust Agreement for review at any mutually convenient time within regular business hours.

LIFE INSURANCE

While not covered in the Pension Agreement, life insurance is made available to those employees who are participants in the Pension Plan on the following basis:

Upon entrance into the Pension Plan, each employee participant may or may not elect to carry term life insurance. The amount of coverage is approximately \$1,000 for each \$1,000 in annual earnings of the employee with a maximum of \$12,000. The cost to the employee is 60¢ per thousand per month, the balance of the cost is borne by the company. Employees whose salaries exceed \$15,000 per year are eligible for supplemental life insurance in addition to this coverage.

Upon retirement, as described in the Trust Agreement, the employee is permitted to continue the purchase of term life insurance equal to one-fourth the amount carried during active employment with a minimum of \$1,000 in amount. The employee pays the entire cost of this coverage.

This voluntary plan is written by AETNA Insurance Company.

Appendix A**COMPENSATION BASE**

The "compensation base" of a participant is the average annual earnings of the participant received from the company for the period for which credited service, as defined in Appendix B, shall accrue during the last 5 calendar years of service prior to the normal retirement date of the participant, or his actual retirement date, if earlier. Such average annual earnings will be determined by totaling the earnings received within the 5 year period and dividing by the actual period within that time for which the participant received compensation from the company.

The earnings of the participant referred to above shall be the participant's regular or basic salary or wages, exclusive of bonuses, overtime pay, commissions and any other form of extra compensation.

Appendix B**CREDITED SERVICE**

Credited service with the company shall mean years and monthly fractions thereof between the date the employee becomes a participant or disability retirement as provided for hereafter. Credited service shall include any period during which a participant is absent with the consent of the company, or during a war emergency, or by virtue of the retirements of Federal Law, is absent in the service of the armed forces or government of the United States, provided he has re-entered the employ of the company within 90 days after the earliest date upon which he might have been discharged from such service, and during such absence he shall be deemed to have been in receipt of monthly compensation at the rate received on the anniversary date last preceding such period of absence. In granting or withholding its consent to the absence of participants, the company shall treat all participants in similar circumstances alike. An employee whose employment by the company has been otherwise severed and later resumed shall be deemed a new employee as of the date of his re-engagement.

If a disabled participant recovers and returns to active employment with the company without in the interim having accepted full-time employment elsewhere, he shall be entitled to his credited service as of the time his absence for disability commenced. No credited service shall accrue, however, for the period of time that the participant received benefits for total and permanent disability, or prior to his return to active employment.

The CHAIRMAN. There is no vesting in your plan?

Mr. WHITAKER. It is entirely corporate—no.

Oh, yes; yes, sir. At age 55, with 20 years of credited service. And there is a disability at 15 years.

The CHAIRMAN. So there is an early retirement option here?

Mr. WHITAKER. Yes.

The CHAIRMAN. There is no period of vesting during employment?

The right is established upon retirement?

Mr. WHITAKER. Yes.

The CHAIRMAN. Early retirement is at age 55 and regular retirement is at what?

Mr. WHITAKER. Sixty-five.

The CHAIRMAN. But, during the period of employment, there is no point when a right is established and vested, to be paid out later upon reaching a certain age?

Mr. MAHURIN. Mr. Chairman, at age 55, an employee would be fully vested in his earned benefits to that date if he also has 20 years of credited service, so there is a point in time prior to age 65 when an employee does become entitled to benefits, and it is his option as to whether or not he wants to receive them immediately as an early retirement pension, or defer them until 65.

The CHAIRMAN. Let me understand this a little better. Given a man of 20 years employment, age 55, he does not accept early retirement and continues to work, and is discharged. What would his situation be?

Mr. MAHURIN. He would be fully vested in his benefits earned to the date of his actual severance, and that benefit would be based upon his years of credited service as of that date, and his last 5 years of earnings.

Mr. WHITAKER. That has happened.

The CHAIRMAN. I am glad I asked that question, because there is a vesting here that does not appear in the answers to the questions that we put to the company.

Mr. MAHURIN. Mr. Chairman, that I think is just a misinterpretation. In my experience, "vesting" means a lot of different things to many different people. I think when this questionnaire was filled out, that they were not thinking in terms of "vesting" or they were separating early retirement and vesting, when, in fact, they are one and the same in this situation.

The CHAIRMAN. In this case, I think you are right. But I think it is good we clarified that, because it looked here as though it had to be retirement.

Mr. MAHURIN. Right.

The CHAIRMAN. And there are other situations that can develop.

Mr. WHITAKER. We call it "vesting" in our pamphlet there.

The CHAIRMAN. You are absolutely right, though, vesting can mean different things—so we have clarified, and broadened our understanding of what you mean by vesting.

Mr. Cummings, administrative assistant to Senator Javits, would like to question the witness.

Mr. CUMMINGS. I would like to ask a few questions on behalf of Senator Javits.

I take it it is clear an employee could work almost 40 years and not vest. Let's say, if he started at the age of 20 and worked until the age of 45, so he would have worked 34 years, 11 months, and 29 days, and if he is discharged for any reason at that point, does he have a vested right?

Mr. MAHURIN. No, he would not.

Mr. WHITAKER. Except for disability.

Mr. CUMMINGS. I take it your answers to part III of the questionnaire, dealing with forfeitures, reflect people who may or may not have been in quite that serious a category, but you said that over the past—

Mr. CRAIG. What page, please?

Mr. CUMMINGS. Page 14 of your questionnaire. Since 1950 you have had 186 people leave the plan with no benefits—five of whom had worked more than 15 years, and 10 of whom had worked more than 10 years, and 171 of whom had worked more than 5 years, and the five who left with more than 15 years, I take it, must have been under the age of 55, or else they would have been in a position to early retire. Is that correct?

Mr. WHITAKER. I do not know just when we put in that 55-year thing.

Mr. MAHURIN. I do not remember. I am sorry.

Mr. WHITAKER. I do not know when we put the vested right in at 55, because that has been an addition to the plan.

Mr. CUMMINGS. In view of the large number of people who left, or the relatively large number of people who left with only 5 years of service and the very few who left getting nothing after long years of service, was it your actuary's estimate that it would be very expensive to put early vesting into this plan?

Mr. MAHURIN. We have never made a calculation or had any real serious discussions on this specific point.

Mr. CUMMINGS. There were only five people in a period of 20 years who worked more than 15 years and got nothing. So I take it that the net cost of putting in vesting, even at 15 years, without regard to age, would have been the discounted value of five pensions. Is that right?

Mr. MAHURIN. If the pattern were to continue, if this pattern were to continue, then it would be necessary to make calculations to determine what the costs would be, whether it would be minimum or medium or maximum. It probably would be minimum, but those costs calculations or serious discussions have not occurred.

Mr. CUMMINGS. I take it the reason you did not put vesting in was because you presumed that it would cost you something you did not want to spend. Is that right?

Mr. MAHURIN. I will have to defer to Mr. Whitaker.

Mr. WHITAKER. We have another problem. We have grown rather rapidly. And we get more people in this thing all the time. Where 10 years ago, we were around 500, 600 people, now we are up to 2,400.

Mr. CUMMINGS. Further down on the same page, you are asked the question: "Within the past 5 years, how many people left the plan with 15 or more years?" And your answer was: six people.

Mr. WHITAKER. It is minimal. They did not leave us.

Mr. CUMMINGS. If this Congress were to enact a law requiring you to vest pensions for those six people, the company could sustain the cost of that, since you have grown so enormously?

Mr. MAHURIN. If the pattern were to continue, we would estimate the cost would not be great. But, we have to put that big "if" in there.

Mr. CUMMINGS. That is all the questions I have.

Thank you, Mr. Chairman.

The CHAIRMAN. What is the product of the company? You make cables for what?

Mr. WHITAKER. We make wire assemblies for the Pinto, the Maverick, the total wiring that goes in automobiles, wiring for Xerox copiers, IBM computers. We make cables for all heavy-duty trucks, golf carts, snowmobiles. We put the wiring systems in them, and, therefore, there is a lot of hand labor, light, really unskilled women labor involved.

The CHAIRMAN. These are not the large submarine cables?

Mr. WHITAKER. It is strictly an assembly.

The CHAIRMAN. Thank you very much.

Mr. WHITAKER. Thank you.

Senator WILLIAMS. We will take a 5-minute recess and then have the retail shoe employees fund witness, Mr. Simon.

(Recess.)

Senator WILLIAMS. It is time to reconvene.

Mr. Jerome Simon, Retail Shoe Employees Union?

STATEMENT OF ARTHUR K. GARFINKEL, COCOUNSEL RETIREMENT FUND OF RETAIL SHOE EMPLOYEES, ACCOMPANIED BY JOSEPH BINENBAUM, TRUSTEE AND CHAIRMAN; JACK MALTZ, TRUSTEE AND ASSISTANT CHAIRMAN; THEODORE WILEY, COCOUNSEL; AND JEROME M. SIMON, ADMINISTRATOR

Mr. GARFINKEL. My name is Arthur K. Garfinkel. I am cocounsel for the Retirement Fund of Retail Shoe Employees.

To my right immediately is Mr. Joseph Binenbaum, chairman of the Retirement Fund of Retail Shoe Employees. Next to him is Mr. Theodore Wiley, cocounsel to the fund; and to the extreme right is Mr. Jerome Simon, administrator of the fund. And to my left is Mr. Jack Maltz, vice chairman of the fund.

Senator, there has been a misnomer in the name. We have tried to clarify it. The union is not the one that gives the pension benefits. It is a separate fund, and it is known as the Retirement Fund of Retail Shoe Employees. We have tried to call that to your attention before, but we would like to have it corrected.

The CHAIRMAN. Say that again.

Mr. GARFINKEL. It is the Retirement Fund of the Retail Shoe Employees.

Mr. Binenbaum, who is chairman of the fund, will carry the ball, so to speak, but I think a few preliminary remarks may be in order about this.

We do not have a formal statement, although, on July 22, a letter was sent to the committee, or the subcommittee, in reference to the particular individual who was going to testify about his particular case.

First, I would like to point out that this fund was started about 1951. It is a fund administered by a board of trustees consisting of an equal number of employer and union trustees, and it is important that it be understood that such board of trustees and it alone determines the policy 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.

Approximately 400 employers contribute to the fund. At the outset, I should point out that this is a fund that is entirely contributed to by employers, and no employees contribute.

Approximately 2,300 employees are covered by the fund.

Retirement benefits are given by the fund in accordance with the retirement plan which, from time to time since the early 1950's, has been amended. And the basis of coverage is "covered employment." And "covered employment" means employment as a full-time worker with an employer who has a collective bargaining agreement in which it agrees to contribute to the fund with respect to such workers.

There was a period during which there were no contributions—and employees are entitled to certain past service credits even though there were no contributions with respect to them made to the fund during such period. The fund started to make payments to beneficiaries in 1955 allowing certain past service credits even though there were no contributions therefor. And although the requirement at that time was 15 years of covered employment, actually payments were made for only 4 years. So that there was a good deal of past service credit. And yet the fund attempted to start it off as best it could with the contributions it received. Originally the contributions with respect to each full-time employee were \$8 a month. Eventually it was increased to \$10 a month, and at the present time the contributions are \$14 per month per employee.

When the fund commenced paying retirement benefits in accordance with its plan to the employees, the benefits were \$50 a month for 15 years of covered employment.

About that time further actuarial study had shown that the provisions for 15 years of covered employment were insufficient and that the fund would have to require greater covered employment before the fund could be kept on a sound actuarial basis. And in 1955 there was an amendment to the plan which increased the amount of the required covered employment from 15 to 20 years, but it was spread out over a period of years. For the first few years there was a requirement of 16 years of covered employment, and in the next few years, 17, and so forth, until last year the requirement for covered employment was raised to 20. But the plan to raise that from 15 to 20 was adopted in 1955 on the basis of the actuarial study.

This fund has continuously had an actuary, and the actuary is Sam W. Ain, who, unfortunately, due to a prior engagement which could not be changed, could not be here today, for which I am very regretful and I know he is.

This fund, since its inception, or since it started to pay benefits, has been one approved by the Internal Revenue Service, and the Internal Revenue Service from time to time has qualified the amendments to the plan, approved the amendments to the plan, whether it related to covered employment or whether it related to how much a worker could earn after retirement, or whether it related to the benefits.

Well, the benefits, as the amount of contributions to the fund increased, the fund raised the benefits to \$60 per month, and eventually to what it is now paying, only \$75. And I say "only \$75" because it is the feeling of the trustees, and very regretfully so, that in 1971, \$75 monthly is not very much to pay.

The fund also has a provision for disability benefits, and the disability benefit provision requires 20 years of covered employment, too. But a person who is disabled after age 60 can receive—and this is one of the things that is making the trustees very unhappy, that the amount of that benefit from age 60 to 65 is only \$37.50 monthly for this totally and permanently disabled man until age 65, when he gets the full benefit, which today is \$75 per month.

The fund has a corporate trustee which presently is, and has been since its inception, the First National City Bank of New York. Investments are the concern of the corporate trustee, but the fund also has the Committee on Investments which passes on the investments as submitted from time to time by the corporate trustee.

I will say that past experience has shown that the Investment Committee is greatly guided by the opinion of the corporate trustee.

The basic policy of what percentage should be invested or minimum percentage to be invested, say, in U.S. Government Bonds, or in corporate bonds, or in corporate stocks—since the broadening of the scope of investments in New York has permitted a greater scope for corporate stocks—is determined by the board. But, as I say, this is just the broad policy. The actual day-to-day functioning of investments is handled by the corporate trustee.

I think that basically gives an outline of the background of the fund and how it functions.

With respect to the particular individual involved, as I mentioned, on July 22, 1971, a letter was sent by the fund, in which it gave his history. The letter pointed out that the individual, the employee who was to testify—and since then has testified—has voluntarily chosen since September 4, 1970, not to be in covered employment. And it was therein pointed out that despite his choice, he still has the opportunity to return to covered employment and be eligible to get the pension at age 65, without losing anything.

And the facts—and I think they should be developed—are that Mr. Finkelstein, in order to fulfill the conditions for retirement at age 65, should return to covered employment not later than his 60th birthday, November 13, 1971.

He 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.

I might mention that Mr. Finkelstein's employer in the summer of 1970 was going out of business, and what followed ties in with that. On June 15, 1970, the union called a meeting of the workers employed by his then covered employer, due to the fact that said employer was going out of business. Mr. Finkelstein was present at that meeting. And 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 then in need of workers, at compensation levels comparable to 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 noncovered employer, thereby voluntarily jeopardizing his right to retirement benefits under the plan.

I understand that as late as July of this year, Mr. Finkelstein agreed to work for a certain employer which contributes to the fund, and it was a comparable job with comparable compensation. In fact, the manager of the union informs me that it was a job where he could even earn more money. He agreed to take the job, and at the last minute had a change of heart and did not take it. So that although in the industry there are, as I said, roughly 400 employers contributing, and possibly a comparative handful who do not contribute but have their own plans, he has chosen—and he has a democratic right to do so—to remain out of covered employment, and has thus jeopardized his pension.

Now, Senator, I am not qualified, of course, to speak for the trustees. There are an equal number of union trustees and employer trustees, and they are all men who have devoted a good deal of time to this. The employer trustees—unfortunately, in the last several months there have been changes in the employer trustees, because they have had 15 and 20 years of service with the fund, and they are retiring. But these trustees, the employer trustees and the union trustees, are all men who are very mindful of the problem, and I might say, that they have sympathy with this question of vesting. But to them it is a question of priorities, and they feel very disturbed—they feel very disturbed that this fund, after 20 years, in 1971, can only afford to pay \$75 per month to a retired employee who might have 20, 30, or 40 years of covered employment; that they can only pay to a man who has 20 years, at least 20 years of covered employment and has to retire at the age of 60 because of total and permanent disability, only \$37.50 monthly until the age of 65, and then only \$75 monthly. They are very

disturbed that this fund can only afford to pay this to a retiree, and nothing to his widow with the result that a man who worked 20, 30, 40 years in covered employment and then died a month or two after retirement, his widow gets nothing from the retirement fund.

These are matters the trustees are concerned with. And it is a question of priorities. And, of course, the trustees all have their own views.

But my own feeling, based upon conversations with them and, in fact, conversations with Mr. Gaglio, a representative of this committee, at which some of the employer trustees were present, I feel that it is a question of priorities.

In their minds, the three priorities that I have mentioned are ones that are more vital than the other, which they consider as vital, but not the greatest priority.

I am summarizing what I feel is their viewpoint.

The CHAIRMAN. You are attorney for the fund?

Mr. GARFINKEL. The retirement fund of retail shoe employees.

The CHAIRMAN. Are you on the policy committee?

Mr. GARFINKEL. No.

The CHAIRMAN. Who is here from that committee?

Mr. GARFINKEL. Mr. Binenbaum is chairman of the fund. Mr. Maltz is the vice chairman of the fund.

The CHAIRMAN. Do you have any comments now, gentlemen? Your counsel has done a very good job, but now it is time to talk to the men who make decisions.

Mr. BINENBAUM. Our eminent attorney covered practically everything, but I want to say this, Mr. Chairman: I am the manager of local 1268. I had a little to do in establishing the pension plan.

The CHAIRMAN. You are the manager? I missed that.

Mr. BINENBAUM. I am the manager of one of the two unions. Mr. Maltz is the manager of local 287.

The CHAIRMAN. I was going to come to this. How did these 450 employers suddenly decide to be partners in a pension fund? Were they prompted by you, the union?

Mr. BINENBAUM. Well, we have in our industry two particular groups—or more than two. We have an association that we do business with. They cover a percentage of maybe 50 or 60 percent of the stores in the city of New York. We also have chainstores; that is, well-known chainstores in our industry.

In our contracts way back in 1949, when we negotiated the contract then, we were successful in securing for our members at that time and convincing management that when a man has put in many years of service with the company, that some consideration should be given to their employees. As a result, we were successful in convincing them to contribute \$8 a month toward a pension plan.

The contributions started in 1951. Our first group of retirees retired in 1955. As Mr. Garfinkel stated, our first group of people that retired received only \$50 a month.

I would also like to bring to the attention of the chairman that, prior to the establishment of our pension fund, we retained an actuary. We thought it would be possible to have an insurance company or a

bank to administer our plan. We found that after due consideration and discussion with these various banks and insurance companies, that we would not be able to pay the \$50 a month because you can readily understand that they charge us for services, and rightfully so.

So we decided then—the board of trustees, consisting of 12 people, six employers' trustees, and six union trustees—that we were going to administer the plan ourselves. And, of course, we have an administrator.

By the way, Mr. Chairman, our pension fund is not in the office of the union headquarters. We have a separate office in the midtown area in the city of New York.

As Mr. Garfinkel stated, a few years later we succeeded in convincing management by negotiations to increase the \$8 to \$10 a month. And based upon actuarial studies, we were able to increase the benefits to \$60 a month. And today, management pays \$14 a month, and we pay \$75 a month to our pensioners, male or female, not only salesmen.

We have in our industry what we term "industrial workers," such as cashiers, salesgirls, porters, stockboys. They also receive the same amount as the salesmen today, \$75 a month.

That \$14, Mr. Chairman—and I want to bring this to the chairman's attention—went into effect in 1969. Just about that time we increased the benefits to our pensioners to \$75 a month. And we have today approximately 400 retirees receiving \$75 a month.

I am the chairman of the board of trustees. Mr. Maltz is the manager of local No. 287, and I am the manager of local No. 1268. So even though I am the chairman of the board of trustees, we feel that we have a responsibility to our members to give them as much as we possibly can for the money that we get in contributions.

Our aim and objective has been right along, as Mr. Garfinkel stated, that when a man—even though our plan provides if a member of ours or an employee of the companies that contribute to our plan, if he becomes totally and permanently disabled and if he is eligible to retire, he can retire at the age of 60 and receive 50 percent of the \$75 until the age of 65, and at the age of 65 he receives the full amount, which is \$75 today. We do hope and trust that we will be able to do better, because today, Mr. Chairman, with the cost of living—I do not have to tell you, we all know what it is—\$75 a month today for a man who retires is no money, even though he receives social security. And our aim and objective was right along to try and bring down the age 60 to possibly 55, and he cannot do any work, I think he should be entitled to get this \$37.50, or whatever the amount may be.

And we are also very much concerned, when a man retires, one of our members retires and he passes away a year or two later, that the widow does not get anything. But you can only pay so much for the money that we get in. We have discussed this with our actuary from time to time, again, and our board of trustees is very cognizant of the responsibility that we all have, that we have to our members and that management has to their employees. They are very cognizant.

But, unfortunately, for the amount of money we get in in the contributions on a yearly basis or monthly basis, we cannot afford to increase it. We hope and trust that at some future date we will be able

to correct these two particular items, which I think are very, very important, and I say this on behalf of the unions. It is very unfortunate that if a member dies, at whatever age it may be—if he retires at age 65 and he dies at age 66, the widow does not get a darn thing. I feel, and we feel, that the widow should get something for a period of 3 years or 5 years. I do not say the full amount. Possibly 50 percent of the \$75, you understand.

And the same applies to a member who becomes disabled at the age of 55.

Mr. GARFINKEL. Mr. Chairman, if I might interject something, there has been mentioned that today, there are 2,300 who are presently covered and there are also 400 who have already retired. When the retirees retired, some got \$50, or at the time there were those who got \$60, and eventually \$75. However, when these benefits were raised, because of the hard facts of the economic cost of living, the retiree benefits were increased similarly. Although a man may have retired in 1955, and 1956, at \$50 a month, today he is getting the \$75 that is given to a man who will retire today.

I am very happy to report that there are some men who at age 91 are still receiving benefits from this fund. This is one of the things that makes the trustees very happy.

The only thing that makes them very unhappy is that the amount can only be \$75 per month. But that is an actuarial fact of life.

The CHAIRMAN. You are familiar with this statement that came to this committee from Mr. Finkelstein, right?

Mr. BINENBAUM. Yes, Mr. Chairman.

The CHAIRMAN. This was a harsh one. He worked—let me see if I am right—about 19½ years in covered employment. I believe he was with the Andrew Geller Co. They went out of business; is that correct?

Mr. BINENBAUM. Correct.

The CHAIRMAN. Was he close to a vested right at that point? How old was Mr. Finkelstein?

Mr. BINENBAUM. He was about 59, I believe, at that time. About that age; 58½, 59.

There was no vested interest, Mr. Chairman.

The CHAIRMAN. He had no vested interest at all?

Mr. BINENBAUM. None.

The CHAIRMAN. When was that? When did Geller go out of business?

Mr. BINENBAUM. 1970, about September.

The CHAIRMAN. He had been in the plan since it had started?

Mr. BINENBAUM. From the very inception, correct.

The CHAIRMAN. And he had been a salesman for 35 years, and in the plan? The plan is not 35 years old; is it?

Mr. GARFINKEL. He had some covered employment prior to payments. Under the plan there was some past service credits.

The CHAIRMAN. Even before the plan?

Mr. GARFINKEL. Well, when the plan was inaugurated they gave past service credits because people who were retiring in 1955—at that time the plan required 15 years of covered employment, and there were only payments for 4 or 5 years.

The CHAIRMAN. I see. But that is not Mr. Finkelstein. He had no past service credits?

Mr. GARFINKEL. No; I am just giving a picture of the plan.

The CHAIRMAN. We are dealing with Mr. Finkelstein. Let us trace what I consider a rather harsh result that fell on his shoulders under the plan—and probably he is in a group or in a class that is similarly situated.

At any rate, he had 19½ years under the plan, is that right?

Mr. BINENBAUM. Yes.

The CHAIRMAN. And then Geller went out of business?

Mr. BINENBAUM. They went out of business; correct, sir.

The CHAIRMAN. And he had no vested right?

Mr. BINENBAUM. At that time, no.

The CHAIRMAN. Now the point was made he could have moved over to another job that was covered employment?

Mr. BINENBAUM. Correct.

Mr. MALTZ. He was offered the job, Senator. And he was fully posted and apprised of what the situation was if he did not take the job. That is important, to get that into the record. The man did not just get out without knowing. He was told full well by Mr. Binensbaum: "If you take another job in noncovered employment, you will not be eligible."

The CHAIRMAN. This comes to sort of a sociological point. I recall him as vividly as if he were here yesterday and it is now 4 months, I believe. Does a man work just to stay covered? Or does a man want to work with interest and pride in his job?

He told us that the work that he had been in was a personal service thing with the Geller Shoe Co. and he wanted to continue in what he considered comparable employment.

The jobs that would have kept him in the plan were wholly dissimilar from his personal idea of satisfaction in doing a job.

Are you familiar with this?

Mr. MALTZ. Yes, I am.

The CHAIRMAN. So although he went from Geller to uncovered employment in I. Miller, he could have gone to covered employment but it would not have been with satisfaction in his work. Every moment would have been a chore. When he was doing the job that he was associated with in Geller, he tells us he was happy.

You see what I mean? It all comes down to the fact that one of our concerns here is, all of these years of investment of time and, for one reason or another there is termination, and there is no vested right, and no portability of right.

Mr. MALTZ. May I say something? I think in your background, somewhere along the line I read you were a member of United Steelworkers Union. Am I correct?

The CHAIRMAN. Yes.

Mr. MALTZ. Now you know full well, sir, that in a good democratic union it caters to the will of the membership. Is that correct?

The CHAIRMAN. Yes.

Mr. MALTZ. In the 1940's, the late 1940's—I do not think you got a full answer to the question on this—there were a small group of shoe salesmen who were working for \$40, \$50, \$55 a week, 60 and 70

hours a week. Mr. Binenbaum's local is from the East River of New York City up to Westchester, and the local I am privileged to serve is from the East River all the way out to the end of Suffolk County. So we got together, a bunch of shoe salesmen who knew nothing about pensions, working under lousy conditions, feet that stunk sometimes, but trying to make a living for our families and hoping that someday along the line when we retired that we were going to get a couple of bucks' pension. We had heard about it. And, frankly, myself, Joseph Binenbaum, and a few other guys, we met someplace, the boss should not know about it, and started to get to work on the pension thing. It was a dream, something we never thought we would finally realize, to have a pension plan covering shoe salesmen.

Lo and behold, we came up with some type of plan, as Mr. Binenbaum explained to you. We got the insurance company in and they said, "You cannot give this kind of money with the kind of money you have coming in."

Our union is not the kind of union that strikes; we like to go through a process of evolution with employers, getting the maximum we can without engaging in strikes. So, based upon the \$8 monthly contribution, we were able to get through collective bargaining, the first benefit we gave to the people, and I think it was in 1955, \$50 a month.

You have got to understand, everybody can come up to a committee and be a Monday morning quarterback, and there are three famous words in New York we use: "I could have," "I should have," and "I would have."

We started a plan. Every member, all the rank and file people were apprised fully of what our plan was. We discussed it with them. Their criticism, if any, was taken into account. The membership, the executive board, everybody in our union knew full well what we were planning to do and each and every member was given a booklet listing the future amendments that took place. Every member in the union was fully apprised of what our plan contains.

No, I am not saying to you it is the best plan. It could stand a lot of improvement.

The CHAIRMAN. That is the whole point.

Mr. MALTZ. We did not have to come to Washington to be told that. We know that.

The CHAIRMAN. Our goal is exactly the goal you started with at the inception of this. That is why I wanted to clarify how this came about.

Mr. MALTZ. There were a couple of shoe salesmen who got together with a dream, and it finally became a reality.

I want to compliment you, Senator. You put us in the company of Anaconda and Western Union. But we are just a little union, guys trying to get along and do the best we can for our people.

The CHAIRMAN. Would you not like to see a man with 19½ years in covered employment who changes his job take some right with him?

Mr. MALTZ. Are you asking me the question?

The CHAIRMAN. Yes.

Mr. MALTZ. You are entitled to your opinion and I am entitled to mine.

The CHAIRMAN. Would you like to see this?

Mr. MALTZ. I want to give you the answer the way I want to. It is a question of priorities. It is a question of what your membership thinks. It is a question, when you are leader of a union, to have to go to the membership. You cannot ram your opinion down their throats. You have to go with their feelings. Our members of Locals 1268 and 287 would like to get our pension to \$100 a month. Then we would like to see that a widow gets *x* amount. That would be point No. 2.

Point No. 3 is, when a guy is disabled at the age of 60 we would like to see that the guy does not get only \$37.50 monthly; we would like to see that the poor shoe salesman gets a little more.

When those things are completed and become a fact, then I may agree with you. But it will have to be discussed, not by Binenbaum or Maltz, because we do not operate it, but the trustees together will make a determination for the best interests of our memberships.

I cannot, under any circumstances, because Finkelstein does not come from my local; he comes from Mr. Binenbaum's local, 1268—I have no ax to grind with the guy. He is entitled to feel the way he did. Maybe I would feel the same way he did. I will be honest.

But the leadership in the union has to follow what the membership wants, and that is the determination our membership made.

We were asked a question by the gentleman up there, Mr. Gaglio, a very fine gentleman—I want to compliment him. He gives you a lot of respect.

You know, when you speak to the average person, or our average member, you ask a girl about a pension, she does not want to know about that. All she wants to know is about more vacations. If you speak to a fellow 23, 24, 30, if he wants the pension, he would much rather get it in his envelope every week.

But speak to a guy 55, he knows our pension plan and he knows about his rights and the benefits flowing from that pension plan. And do not let anybody kid you, he does not know, because our union office is flooded with booklets. If he cannot read it, we have enough business agents, and they will be happy to read it for him. We have a very competent administrator by the name of Jerry Simon who will do the job.

The CHAIRMAN. At what age would you say people begin thinking about pensions?

Mr. MALTZ. I have not made a sampling throughout the country, but I would say that shoe salesmen do not think about it until they are about 60.

You are asking me a question in our industry about shoe salesmen?

The CHAIRMAN. Yes.

Mr. MALTZ. Offhand, I would say—and it is just a calculated guess, just having a feel of people, since I have been in this business since I was a kid of 13, and now I am 60—I started to work in stores at 13. I started in Brooklyn with the union when I was about 15. So I have a pretty good feeling of shoe salesmen.

I would say that the average shoe salesman when he is about 60 starts to think about a retirement.

The fact remains, the average man in the industry does not want to retire at the age of 65. He stays until he is 68 or thereabouts.

The CHAIRMAN. I will say this—one of the complaints—and we get flooded with individual stories, harsh and hard stories, one of them is

the fact that the employee did not know his rights, did not know his benefits, did not know what would cut off any developing rights he might have, and it comes as a shock and a surprise when there is a forfeiture and he thought he had something.

I am sure that is not true in this situation.

Mr. MALTZ. It is not true.

The CHAIRMAN. I believe your 2,300 people know exactly when they are covered and when they are not covered.

Certainly Mr. Finkelstein was not complaining about lack of knowledge. He knew it full well. But he had to make that hard choice of staying in this quality personal service as a salesman of shoes, with his own clientele.

Mr. GARFINKEL. He was offered comparable jobs.

Mr. BINENBAUM. Mr. Maltz and I, we were shoe salesmen too. We sold shoes. I sold shoes until 1941. Mr. Maltz also, maybe a year before, Mr. Chairman, if any shoe salesman will tell you that, if he leaves one firm and he goes to work for another firm, that he takes the customers, and in the shoe business a salesman has a certain percentage of following—it is not so.

For instance, like Mr. Finkelstein—and believe me, I have known him for many, many years, I sympathize with anyone who loses his job at a certain age, and he cannot get employment and he cannot retire. But in our industry it is entirely different, Mr. Chairman. We have no unemployment. We have jobs today, comparable jobs, as Mr. Finkelstein has, and the same type of trade. And Mr. Finkelstein said that he will take an Andrew Geller customer that patronized the store on 57th Street. That Andrew Geller customer can go into Bonwit Teller and buy Andrew Geller shoes. You understand? If a customer comes into I. Miller, he does not come to Mr. Binenbaum, if I am the salesman, or come in to Mr. X. That customer comes into I. Miller or Andrew Geller.

I am sympathetic with people that have no vested interests. But, as Arthur Garfinkel stated in the letter sent to the committee, fortunately for us, we have no unemployment. Mr. Finkelstein, and anyone, any employee of Geller's that lost a job because of the closing of the store, we placed them in other jobs, and at the same earnings, the same type of trade.

We happen to have a store in the mid-town area—you know, a shoe salesman's duties is not only to sell shoes. He has to do a little stock work in that particular store, that firm does not want the salesmen to do any stock work at all. They have stock boys. The salesman comes in in the morning, he is dressed like you and I are dressed now. The owner of the store wants the salesman to be presentable, you understand.

Now, Mr. Finkelstein could have come up to union headquarters and perhaps the union would have been able to place him in that job, the same type of trade, Mr. Chairman. So I do not think Mr. Finkelstein had any beefs, and I do not think he complained about the union, because I heard part of his testimony, you understand.

But, Mr. Chairman, any shoe salesman will tell you, if he quits I. Miller and goes into Bonwit Teller or Saks Fifth Avenue—and you have heard of those firms in the city of New York—that he will take the customer with him, it is not so, Mr. Chairman, it is not so.

The CHAIRMAN. He was very persuasive.

Mr. MALTZ. I never knew a fellow who was trying to make his point of view that did not try to be charming and persuasive and everything else. But it is important the way you look at the ball game, whether they are sitting in the bleachers or sitting behind home base. We are sitting right behind home base. We get the sentiments of our rank and file members, and we get the feeling of what they want and what their priorities are. This is the important thing, not what anybody else wants, but what the majority of workers want. The majority of workers want these priorities.

They keep saying to us, "We want to get \$100 minimum a month. Once you have it up to \$100, then go into the other phase." And then they will talk about vested interests. This is the workers. I am elected by them, and, if I am not representing them correctly, I have no right—and by golly, I like my job at the age of 60; I do not want to do anything they do not want me to do.

Mr. WILEY. Mr. Finkelstein, I believe, hurt himself monetarily by taking the job he did, because the firm he is working for, due to the method by which they pay compensation, is not subject to the Fair Labor Standards Act. So, in the event he puts in more than 40 hours a week, he will not get time and a half. The rest of the units in New York City, in the type of stores who would do more than a quarter of a million dollars, they pay time and a half after 40 hours. He hurt himself by taking the job he did, although it is a quality store, and we have many other quality stores. But he will not get overtime, only straight-time money. So, from the long point of view, from his own selfish point of view, he made a bad move.

You see, Senator, under the Fair Labor Standards Act, if a store pays wages by way of commission more than 50 percent of it, they are not subject to the overtime requirements of the Fair Labor Standards Act. They will not have to pay overtime at the rate of time and a half, including all the money on commissions. And the other stores he was in did it because it was over a quarter million store, and the jobs that were offered to him by the union were in quality stores where the volume was more than a quarter million dollars a year, and subject to time and a half after 40 hours.

And there is overtime work in this industry because we have a shortage of qualified people. You know, young people do not want to work in the retail trade any more. They want a nameplate. They want to work 5 days a week. It is very hard to get young people to work in the retail trade. They do not want to work in these stores. This is what makes it very difficult. That is why we have no unemployment. We could use 50 or 100 men. If you know anybody who wants to be trained as a salesman, we can use them in the industry.

The CHAIRMAN. In Mr. Finkelstein's case—let us come back to him—if he gets the message from you here today and wants to come back—

Mr. MALTZ. He would be eligible for a pension.

The CHAIRMAN. He could pick up where he left off?

Mr. MALTZ. Mr. Binensbaum offered him a job. Mr. Binensbaum offered him a comparable job—not a job, but a comparable job, with more money even.

The CHAIRMAN. In other words, his break-in covered employment would not penalize him? He would pick up right where he left off? He had 19½ years and it would go right on from there?

Mr. MALTZ. Yes.

The CHAIRMAN. A lot of people have to start all over again. Now, is that hard and fast?

Mr. BINENBAUM. Yes.

The CHAIRMAN. Under a lot of plans, if you break your covered employment, and then you come back, you pick it right up at the beginning.

Yesterday morning I had a call. I was at a conference down South. I had a wake-up call, that is how anxious this fellow was to tell me of his problems. He read in the paper I was there, and he called the hotel, and he tells me he broke his employment and lost everything because on his coming back he did not get the benefits.

Now, that is not true in your plan?

Mr. BINENBAUM. No.

Mr. SIMON. Mr. Chairman, Mr. Finkelstein will reach 60 years of age on November 13 of this year. Should he return by then into covered employment—by which I mean whereby employers are obligated to cover their workers with this fund—he will be eligible for retirement at age 65.

Mr. CUMMINGS. Are you familiar with the contents of the annual report you filed with the Labor Department?

Mr. SIMON. Yes.

Mr. CUMMINGS. You state in the latest annual report a set of assumptions about turnover in your industry. For example, you assume that at age 20, out of 10,000 employees 1,400 would turn over every year or withdraw from the coverage of the plan over a year. There is a very high turnover at that early age, which is the point you just made.

You also said that beyond age 55 you assume zero turnover.

Now, if that is the case, do you have an estimate as to how expensive it would be for your plan to provide vesting for people situated in positions such as Mr. Finkelstein was situated in?

Mr. MALTZ. May I ask a question? It is a question of what we think, what our membership thinks, and what we are doing in following our membership's thinking in developing that. Now, this is not a question of who is right or wrong. This is a question of what we presently have as dictated by our membership.

Mr. CUMMINGS. You misunderstand my question. The question is simply: How many people are we talking about? How many people leave after the age of 55 without benefits or with benefits? Who withdraws from this plan beyond the age of 55?

Because your annual report states no one withdraws, or it is assumed no one withdraws, which suggests that it would not cost very much to vest them.

Mr. GARFINKEL. You are assuming a state of facts not in evidence. What would be the withdrawals in the event people have vested rights and could withdraw at age 55—it would be an entirely different ball game.

Mr. CUMMINGS. I see.

Mr. GARFINKEL. You are basing it on what the facts are today. We have no way of appraising—the fund has no way of appraising what the picture would be if it permitted, say, vesting under Senator Javits' proposed bill, starting with 5 years employment, 10 percent after 6 years, and going on to 15 years. We have no way of knowing what it would cost because we have not had it.

Mr. CUMMINGS. Your assumption is, I take it, although substantially nobody under the current practice withdraws from the coverage of the plan over the age of 55, that, if they could withdraw and take with them a vested benefit, then they would?

Mr. GARFINKEL. May I say something? As Senator Javits' representative, you are familiar with New York. You know what has happened as a result of the city pensions, when you gave vesting and pensions, substantial pensions at age 55. You know that has resulted—and the newspapers report it continuously—in a good deal of withdrawals. And the result might be that, if people can accomplish certain ends by getting a vested right, they might withdraw at a much earlier age.

Mr. CUMMINGS. You said, and I think it is true, that a good union leader is responsive to the views of your active membership. Is that correct?

Mr. MALTZ. Yes.

Mr. CUMMINGS. You also said the average shoe salesman did not really begin to worry about a pension—

Mr. MALTZ. Or start thinking about it until about 60.

Mr. CUMMINGS. Until about 60?

Mr. MALTZ. Correct.

Mr. CUMMINGS. What is the average age of your active union membership?

Mr. WILEY. 47 years.

Mr. CUMMINGS. So the average person in your union really does not care about pensions? Or very few?

Mr. MALTZ. I did not say that at all.

Mr. CUMMINGS. I am putting together two statements of yours.

Mr. MALTZ. Will you repeat the words you just used?

Mr. CUMMINGS. What I am trying to get at is, it struck me from listening to your testimony, that there probably were out there a substantial number of people in their 60's who used to work in the industry, who had contributions made to your fund with respect to their service, who were no longer covered. They have gone to I. Miller or gone off to become other types of employees.

Mr. MALTZ. Incidentally, not too many go off like you said to I. Miller. You have one case. If you have a couple more, you can tell us, but we only know of one.

I am just saying I want the record straight. We know of only this one particular man.

Mr. CUMMINGS. Would you consider it appropriate for Congress to provide that the trustees be elected, not necessarily by the active union membership, but do you think those people with—

Mr. MALTZ. We will abide all the time by the collective thinking of the Congress and the Senate. I think they are smarter than I am in that respect, and they have more competent people up there and have

more facts and figures than we ever had. And we will go along with them.

Mr. CUMMINGS. I have one last question. I notice in the annual report that you took down contributions last year from employers of \$312,000; for the calendar year ending December 31, 1969, \$312,000. And your administrative expenses were \$50,000.

Mr. WILEY. You have got that wrong.

Mr. CUMMINGS. Subtracting the \$16,000 that you got reimbursed from another fund, it comes out to \$36,000, which would be 11 percent rather than 17 percent.

In your judgment, first, is that an accurate representation of the percentage of your contributions which go to administrative expenses? And, second, do you think that is par for the course?

Mr. GARFINKEL. As Senator Javits' representative, you know that this fund is under the jurisdiction of either the superintendent of insurance or the superintendent of banking, and they are subject to periodic reviews, at least once every 5 years. And, we have been told by them, and we have every reason to believe—and I invite the committee to check with them—that this fund is one of the well-managed funds in every sense, including the sense of the administrative costs. I invite you to check.

Mr. WILEY. I might say that 11 percent is low for joint industry and union operated funds. If you will check around, 1 percent is a low administrative overhead.

Mr. CUMMINGS. That is the answer to my question.

I should say, gentlemen, I did not mean to cast any aspersions on your fund. My wife's grandfather was a retired shoe salesman drawing a pension from your fund, and we were very fond of you.

Mr. WILEY. We are very happy to hear that.

The CHAIRMAN. You worked very hard to develop your fund, and I want to include a copy of it in the record at this point.

Thank you very much.

(The information referred to follows:)

Retirement Plan

THE RETIREMENT FUND

of

RETAIL SHOE EMPLOYEES

AMENDMENT
TO
RETIREMENT PLAN
OF THE
RETIREMENT FUND OF RETAIL SHOE EMPLOYEES

ARTICLE IV, Paragraph 3, of the RETIREMENT PLAN of THE RETIREMENT FUND OF RETAIL SHOE EMPLOYEES is hereby amended to read as follows:

"3. No worker whose application for retirement benefits has been approved and who has retired pursuant to this Plan shall thereafter engage in any occupation or industry, either as an employer or employee, directly or indirectly, for remuneration or profits which yields him or her earnings in excess of \$140.00 in any calendar month, except that after reaching the age of sixty-eight years, such worker may, but only if he or she engages in an industry other than the retail shoe industry, earn remuneration or profits in such other industry which yields him or her earnings in excess of \$140.00 per calendar month."

ADOPTED AND EFFECTIVE
DECEMBER 17, 1965

AMENDMENT
TO
RETIREMENT PLAN
OF THE
RETIREMENT FUND OF RETAIL SHOE EMPLOYEES

Article V, Paragraph 1, of the Retirement Plan of The Retirement Fund of Retail Shoe Employees shall be amended to read as follows:

ARTICLE V
RETIREMENT BENEFITS

"1. Commencing with the calendar month next succeeding the calendar month in which a worker's application for retirement has been approved and he or she has retired, the Fund shall pay to such worker until the time of his or her death, the sum of \$75.00 monthly (only 50% thereof monthly until attaining the age of sixty-five years in the case of workers retired hereunder for total and permanent disability), subject, however, to the limitations, conditions and reservations provided for in this Plan."

AMENDMENT TO
RETIREMENT PLAN OF THE
RETIREMENT FUND OF
RETAIL SHOE EMPLOYEES

ARTICLE III, Paragraph 3, of the RETIREMENT PLAN OF THE RETIREMENT FUND OF RETAIL SHOE EMPLOYEES is hereby amended to read as follows:

“3. In the event that the Union shall pay into the Fund contributions for its paid employees monthly equivalent to the contributions required to be made by Employers to the Fund with respect to their employees pursuant to collective bargaining agreements with the Unions, such employees of the Union, with respect to whom such contributions are made, shall be entitled to participate in this Plan and to receive retirement benefits, provided that they otherwise meet the retirement eligibility requirements hereunder, the Union being deemed to be such an Employer within the meaning of this Article for such purpose, and, anything in this Plan to the contrary notwithstanding, employment by the Union of such employees shall also be deemed to be ‘covered employment’.”

ADOPTED AND EFFECTIVE
DECEMBER 17, 1965

AMENDMENT TO
RETIREMENT PLAN OF THE
RETIREMENT FUND OF
RETAIL SHOE EMPLOYEES

ARTICLE III, of the RETIREMENT PLAN OF THE RETIREMENT FUND OF RETAIL SHOE EMPLOYEES is hereby amended by adding a new paragraph, Paragraph 4, to read as follows:

“4. Employees of the Fund shall be entitled to participate in this Plan and to receive retirement benefits, provided that they otherwise meet the retirement eligibility requirements hereunder, the Fund being deemed to be an Employer within the meaning of this Article for such purpose, and, anything in this Plan to the contrary notwithstanding, employment by the Fund shall also be deemed to be ‘covered employment’.”

ADOPTED AND EFFECTIVE
DECEMBER 17, 1965

Retirement Plan

THE RETIREMENT FUND

of

RETAIL SHOE EMPLOYEES

NEW ADDRESS
36 W. 44 ST.
NEW YORK 36, N. Y.

521 Fifth Avenue
New York 17, N. Y.

MUrray Hill 2-1577

TABLE
of
CONTENTS

	Article No.	Page No.
Foreword		4
Officers, etc.—Local 287		6
Officers, etc.—Local 1268		7
THE PLAN		9
Titles	I	9
Application	II	9
Retirement Eligibility	III	10
Retirement	IV	14
Retirement Benefits	V	16
Period During Which Application May Be Made	VI	18
Application for Retirement Benefits	VII	20
The Fund	VIII	22
Endorsement of Checks Issued by Fund	IX	24
Appearance After Retirement	X	24
Effect of Pledge, Assignment, Transfer, Garnishee, etc., on Retirement Benefits	XI	25
No Lump-Sum Cash Settlement	XII	26
Death After Retirement	XIII	26
Amendment to Plan	XIV	28
Effective Date	XV	28

FOREWORD

TO RETAIL SHOE EMPLOYEES

The Retail Shoe Employees Union, Locals 287 and 1268, CIO, in conjunction with Employers in the retail shoe industry in Greater New York, have established a retirement fund for covered employees under the name of "*The Retirement Fund of Retail Shoe Employees.*"

This Fund was established because Locals 287 and 1268 and Employers recognized that the industry employs persons who, for many years, have contributed to its general welfare by their skill, experience and loyal service and that many of these employees have reached or will attain an age at which it may be desirable for them to withdraw from work if they are able to spend the remainder of their lives with some measure of security and comfort. Locals 287 and 1268 and Employers recognized this matter to be of special interest and concern and, in the belief that it is socially desirable and for the good and stabilization and well-being of the industry that some plan be created for the retirement of employees of the industry, established The Retirement Fund of Retail Shoe Employees.

The Fund is wholly financed by Employers.

The Fund provides substantial retirement benefits which are exclusive of any retirement

benefits you may be entitled to under the Federal Social Security Act.

The Fund is another milestone in the path towards greater security and peace of mind for the employee. It is also another step forward in the direction of better employee-management relations.

It is to your advantage to study the plan which follows to see when you are eligible thereunder and the benefits you can attain thereunder.

Sincerely yours,

EMPLOYER TRUSTEES

Jack Domash,
Secretary

Samuel G. Staff

Samuel Kaplan

Joseph Marcus

Mac Siegel

Meyer Bogorff

UNION TRUSTEES

Samuel Lowenthal
Chairman

Joseph Binenbaum

David Geisler

Sol E. Sherman

Jack Maltz

S. Ringle

TAIL SHOE EMPLOYEES UNION LOCAL 287

OFFICERS

SAMUEL LOWENTHAL, <i>Manager</i>	*WILLIAM HURWITZ, <i>Vice President</i>
SOL SHERMAN, <i>Assistant Manager</i>	*HERBERT SEGAR, <i>Recording Secretary</i>
JACK MALTZ, <i>Assistant Manager</i>	*SAMUEL ELLIS, <i>Treasurer</i>
*JOSEPH BERNER, <i>President</i>	*JOE FRIEDLAND, <i>Sgt-at-Arms</i>
*LOU FREEDMAN, <i>Sgt-at-Arms</i>	

EXECUTIVE BOARD

NAT COHEN	IRVING ROSENKRANTZ
ED WHITMAN	LESTER MIHLSTIN
ED SACKS	WILLIAM WERNICOFF

BOARD OF TRUSTEES

*MURRAY SKOLLER	*IRVING GOLDBERG
*BEN RASHBAUM	

WELFARE BOARD

JACK KREISEL	MARTIN SIMON
SAM SCHULMAN	

* Also members of Executive Board.

RETAIL SHOE EMPLOYEES UNIO. LOCAL 1268

OFFICERS

J. BINENBAUM, *Manager*

D. GEISLER, *Business Agent*

*S. RINGLE, *President*

*M. SCHECHTER, *Vice President*

*A. COOPER, *Vice President*

*I. TUCKMAN, *Treasurer*

*H. GERONIMUS, *Recording Secretary*

*M. FISHMAN, *Sgt-at-Arms*

EXECUTIVE BOARD

M. WASSER

C. COOPER

S. ORSHAN

M. HILLMAN

W. BROWN

W. COLLIGAN

I. SMITH

A. SUFFIN

A. SCHWARTZ

A. REINER

H. WHITE

J. RABIN

* Also members of Executive Board.

RETIREMENT PLAN
of
THE RETIREMENT FUND
of
RETAIL SHOE EMPLOYEES

ARTICLE I

Titles

1. This Fund is known as "THE RETIREMENT FUND OF RETAIL SHOE EMPLOYEES" (hereinafter referred to as the "*Fund*"). This Fund was established by an Agreement and Declaration of Trust dated August 31st, 1949.

2. This Plan shall be known as the "RETIREMENT PLAN OF THE RETIREMENT FUND OF RETAIL SHOE EMPLOYEES" (hereinafter referred to as the "*Plan*").

ARTICLE II

Application

This Plan applies to all members of the Retail Shoe Employees Union, Local 287 (hereinafter referred to as "*Local 287*"), and Retail Shoe

Employees Union, Local 1268 (hereinafter referred to as "*Local 1268*"), (hereinafter severally and collectively designated as the "*Union*" or "*Unions*"), covered by collective bargaining agreements between Employers and the Union and for whom payments are made to the Fund, subject, however, to the limitations, conditions and reservations provided for in this Plan. Anything herein contained to the contrary notwithstanding, no one at any time prior to approval of his application for retirement and prior to his retirement hereunder shall have any rights with respect to the Fund or any retirement benefits payable by the Fund; after approval of his application for retirement and after his retirement hereunder, such member shall have only those rights with respect to retirement benefits payable by the Fund as are provided in this Plan, subject, however, to the limitations, conditions and reservations provided for in this Plan.

ARTICLE III

Retirement Eligibility

1. Any member of either Local 287 or Local 1268 who meets all of the requirements hereinafter stated and who desires to retire from work as hereinafter provided, shall be eligible to make

application to the Fund for retirement benefits if he or she:

(a) has reached the age of sixty-five years or will reach such age upon his or her next birthday (although the application, however, may not be acted upon by the Fund until the applicant has actually reached the age of sixty-five years); and

(b) has a cumulative membership of at least fifteen years in good standing in the Unions; and

(c) has been in good standing in the Unions for a period of at least seven consecutive years immediately preceding the date of making application for retirement benefits; and

(d) is a member in good standing in the Union on the date of approval of application for retirement benefits; and

(e) has been employed by an Employer or Employers required under collective bargaining agreement with the Unions, to contribute to the Fund with respect to him or her, such employment to be continuous from January 15, 1951 to the date of approval of application for retirement benefits, except for lay-off, illness, unemployment due to other causes and the like and service in the Armed Forces of the United States, and ex-

cept for periods of service as a paid employee of the Union; or

has been employed by an Employer or Employers required under collective bargaining agreement with the Unions, to contribute to the Fund with respect to him or her, such employment to be continuous for a period of at least seven years immediately preceding the date of approval of application for retirement benefits, except for lay-off, illness, unemployment due to other causes and the like and service in the Armed Forces of the United States, and except for periods of service as a paid employee of the Union. While such employment shall be deemed to be continuous despite periods of such lay-off, illness, unemployment due to other causes and the like and service in the Armed Forces of the United States, nevertheless such periods shall not be included in computing such required period of seven years of such continuous employment.

The Board of Trustees (hereinafter referred to as the "*Board*") may, in its sole and absolute discretion, partially waive the foregoing requirements of this subparagraph (e) in meritorious cases where there is satisfactory proof that the applicant for retirement benefits, because of age or illness, was employed only occasionally or ir-

regularly or incidentally or was unable to find any employment whatsoever during the aforementioned period in which such continuous employment is required hereunder.

2. The Board may, in its sole and absolute discretion, permit the retirement, with retirement benefits, of an applicant who after reaching the age of sixty years has become totally and permanently disabled, under standards and criteria established and promulgated by the Board, provided, however, that such applicant meets all the other retirement eligibility requirements hereunder other than that relating to having reached the age of sixty-five years, and further provided, however, that his retirement benefits until he attains the age of sixty-five years shall be in an amount equal to fifty percent (50%) of the full monthly retirement benefits provided in Article V, paragraph 1, hereof.

3. Membership in good standing in the Union within the meaning of this Plan, shall be determined by the Union of which the applicant is a member.

4. In the event that the Union shall pay into the Fund contributions for its paid employees monthly equivalent to the contributions required

to be made by Employers to the Fund with respect to their employees pursuant to collective bargaining agreements with the Unions, such employees of the Union, with respect to whom such contributions are made, shall be entitled to participate in this Plan and to receive retirement benefits, provided that they otherwise meet the retirement eligibility requirements hereunder, the Union being deemed to be such an Employer within the meaning of this Article for such purpose.

ARTICLE IV

Retirement

1. Effective as of January 1st, 1955, a member (except paid employees of the Union) must file an application for retirement upon reaching the age of sixty-eight years, except, however, that if such member does not then meet the retirement eligibility requirements hereunder, such member must file such application as soon thereafter when such member meets the retirement eligibility requirements hereunder. In the event such member fails or neglects so to file such application within the period for filing applications provided hereunder immediately following the time when he is required under the foregoing sentence to file his application, then he shall not be entitled to any retirement benefits.

2 Retirement as used in this Plan shall mean the discontinuance of all work of any kind or description, for remuneration or profit, whether in the retail shoe industry or any other industry, either as an Employer or employee, directly or indirectly, except as hereinafter provided.

3. No member whose application for retirement has been approved and who has retired pursuant to this Plan shall thereafter engage in any occupation or industry, either as an employer or employee, directly or indirectly, for remuneration or profits which yields him or her earnings in excess of the amount permitted to be earned under the Federal Social Security Act to workers receiving Old Age Benefits covered by that Act, except that after reaching the age of sixty-eight years, such member may if he or she engaged in an industry other than the retail shoe industry, earn remuneration or profits in such other industry which yields him or her earnings in excess of the amount permitted to be earned under the Federal Social Security Act to workers receiving Old Age Benefits covered by that Act.

4. It shall be the duty of every recipient of retirement benefits to notify the Board promptly with respect to any month in which his or her earnings exceed the permissible maximum earn-

ing provided in Paragraph "3" of this Article. During any such month he or she shall not be entitled to any retirement benefits hereunder.

5. The Board shall be entitled at any time, and from time to time, to require of any recipient of retirement benefits a signed and sworn statement by him showing his earnings for each month since retirement date and any corroborating data it deems advisable.

6. Retirement benefits shall immediately cease to any recipient, who, after retirement, is not in full compliance with the provisions of this Article, and such person shall, in the sole and absolute judgment and discretion of the Board, either

(a) forthwith restore to the Fund all or part of the retirement benefits theretofore received by such recipient, or

(b) lose all or partial rights to future retirement benefits.

ARTICLE V

Retirement Benefits

1. Commencing with the calendar month next succeeding the calendar month in which a member's application for retirement has been ap-

prec and he or she has retired, but in n ent before January 1, 1955, the Fund shall pay to such member until the time of his or her death, the sum of \$50.00 monthly (only 50% thereof monthly until attaining the age of sixty-five years in the case of members retired hereunder for total and permanent disability), subject, however, to the limitations, conditions and reservations provided for in this Plan.

2. Each retirement benefit shall be paid on or about the 10th of the month for the month immediately preceding.

3. Retirement benefits to members who have been retired hereunder because of total and permanent disability hereunder shall be paid to them until they reach the age of sixty-five years, but only during the continuance of their total and permanent disability. After they reach the age of sixty-five years, they shall be eligible to receive retirement benefits in the same manner and amount as all other members who qualify under this Plan and without regard to whether or not their total and permanent disability has continued.

4. After approval by the Board of a member's application for retirement benefits and his retirement hereunder, his subsequent Union status

shall be determined by the Union of which he is a member, but his subsequent Union status shall not affect his rights to retirement benefits hereunder.

5. The right is expressly reserved to the Board, in the exercise of its sole and absolute discretion and judgment, giving due consideration to the Fund's current reserves, potential income and the number of persons receiving and applying for retirement benefits, to adjust the amount of monthly retirement benefits herein provided for with respect both to persons already retired and persons thereafter retiring. Adjustments made under this paragraph shall be by amendment to this Plan as provided for in Article XIV hereof and such adjustments shall be uniform as to all recipients of the same class as of the date of such adjustment. The right to receive retirement benefits in accordance with this Plan shall at all times be subject to the availability of money in the Fund and in no event shall the Trustees of the Fund be otherwise liable for such retirement benefits.

ARTICLE VI

Period During Which Application May Be Made

1. Application for retirement benefits may only be made during the period commencing

April 1st and ending May 31st or during the period commencing October 1st and ending November 30th in each calendar year. Applications not received at the office of the Fund during the above prescribed periods will be considered untimely.

2. In the event that an application shall have been approved by the Fund and the applicant shall have been duly notified of such approval and such applicant shall not retire within the meaning of this Plan within sixty days subsequent to such notification, the approval of the application shall thereupon be deemed to be automatically cancelled and the application void and of no effect.

3. In the event that an application shall be disapproved or rejected by the Fund, the applicant shall be required to make new application in the manner herein provided for in any succeeding period in which he or she seeks retirement.

4. The filing or approval of an application for retirement benefits shall not deprive the applicant of the right to withdraw such application prior to the commencement of payments, nor shall such filing or approval be deemed a waiver of such right.

ARTICLE VII

Application for Retirement Benefits

1. Members who desire to retire in accordance with this Plan shall be required to make application on forms prescribed and furnished by the Fund and the applicant shall answer all questions thereon under oath and shall sign the same.

2. Applicants shall provide such proof or supporting data of the statements made in their application as the Fund shall require. In connection with proof of age, the Fund may give consideration to birth certificates, Bible entries, citizenship papers, marriage licenses, insurance policies, baptismal certificates, school records, passports, social security records, etc.

3. Applications containing false statements with respect to any material fact shall be rejected and the person making such false statements shall thereafter be deprived of the right to make further application for retirement benefits. In the event that after the approval of the application or after retirement benefits have commenced, the Fund shall ascertain that a material false statement has been made by an applicant, the Fund thereupon shall have the absolute right to discontinue further payments and shall have the

also the right to recover any retirement benefits theretofore made.

4. Applicants shall appear in person before the Board or any of its committees or subcommittees or any of its personnel whenever requested to do so. Failure to so appear shall void the application unless the applicant shall furnish proof satisfactory to the Board of his or her inability to appear.

5. In the event of rejection or disapproval of any application by the Fund, the applicant shall be given written notice thereof and thereupon the applicant shall have the right of review. Such right of review shall be exercised by the applicant requesting in writing the right to appear before the Board, by registered mail, addressed to the Fund. Upon receipt of such request in writing, the Board shall fix a time and place for the appearance of such applicant and the applicant shall be given written notice thereof.

6. All applications for retirement benefits shall be examined, considered and determined by the Board. Its decision with respect to approval or disapproval of any application and as to all matters on which the decision was made shall be final, binding and conclusive.

An applicant whose application is approved shall have no recourse against the Fund or any of its committees or subcommittees, the Trustees of the Fund, the Unions, or any of the officers, agents, directors, employees or members of any of them, or against the association of employers or any corporation or firm of employers in contractual relationship under collective bargaining agreement with the Unions, or any of the officers, agents, directors, employees or members of any of them.

8. The Fund may withdraw its approval of any application if it appears that after the filing thereof and before retirement is effectuated, the applicant has failed to continue his or her membership in good standing as aforesaid in his or her respective Union.

ARTICLE VIII

The Fund

1. The Fund shall consist of the Employer contributions made to the Fund pursuant to collective bargaining agreements, including all increments and earnings thereof, and including contributions pursuant to Article III, paragraph 4 hereof.

2. Payments made by Employers to the Fund, as well as retirement benefits made pursuant to this Plan, shall not constitute or be deemed wages.

3. No Employer shall have any right, title, interest or claim, legal or equitable, in or to any sums paid by it or by any other Employer to the Fund or against the Fund itself.

4. No member shall have any right, title, interest or claim, legal or equitable, in or to his Employer's or any other Employer's payments to the Fund. No member shall have the option or right to receive any part of the Employer's contribution instead of the benefits of the Fund. No member shall have the right to assign his benefits under the Fund or to receive a cash consideration in lieu of such benefits, either upon the termination of the trust or his withdrawal through severance of employment or otherwise.

5. No rights shall accrue to any member or to any person except as provided in the Agreement and Declaration of Trust dated August 31st, 1949, establishing this Fund, and any supplemental agreements thereto, and this Plan and any rules and regulations established by the Board, and as the same may be added to, amended or modified from time to time. In any event, no

right shall accrue to any member unless and until such member's application for retirement benefits has been duly approved and he or she has retired.

ARTICLE IX

Endorsement of Checks Issued by Fund

All checks issued by the Fund must be endorsed personally by the payee. If a mark, cross or symbol is to be used in place of a signature endorsement, the recipient of the check shall be required to have his or her mark, cross or symbol witnessed by a person whose signature is placed on file with the Fund. In any case of signature discrepancies, the Fund shall have the right to withhold sending further checks until it has had an opportunity to investigate the facts and ascertain whether any irregularities, in violation of any of the provisions of this Plan, have been committed.

ARTICLE X

Appearance After Retirement

At any time after the commencement of the retirement benefits, the Board shall have the right to request the appearance of the recipient before it. Failure to appear in pursuance of such a re-

quest shall entitle the Fund in its sole and absolute discretion to discontinue further retirement benefits until the recipient shall appear and satisfactorily explain his default in appearing.

ARTICLE XI

Effect of Pledge, Assignment, Transfer, Garnishee, etc., on Retirement Benefits

1. Retirement benefits are part of trust funds and are not income from a trust fund.

2. No benefits or moneys payable from the Fund shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, garnishee, encumbrance or charge, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, garnishee, encumber, or charge the same shall be void. Nor shall any moneys paid into the Fund be liable for or subject to the debts, contracts, liabilities, or torts of any person entitled to receive benefits from the Fund. No benefits payable by the Fund shall be subject to levy, execution, attachment, garnishee or other remedy for recovery or collection of a debt by any creditor. If any person entitled to receive benefits from the Fund shall attempt to, or shall, alienate, sell, transfer, assign, pledge or otherwise encumber his benefits payable from the Fund or

an, part thereof, or if by reason of his bankruptcy or insolvency or any event happening at any such time such benefits would devolve upon anyone else or would not be enjoyed by him then the Board, in its sole and absolute discretion, may terminate his interest in any such benefit and hold or apply it to or for the benefit of such person, his spouse, children or any dependents, or any of them, in such manner as the Board may deem proper.

ARTICLE XII

No Lump-Sum Cash Settlement

The Fund shall have no power to make any lump-sum cash settlement or anticipate payment of any retirement benefits thereafter to be made to any person whose application for retirement has been approved.

ARTICLE XIII

Death After Retirement

1. Upon the death of a retired member, retirement benefits shall cease commencing with the calendar month next following the calendar month in which death occurred and thereupon the Fund shall pay all unpaid retirement bene-

fits which have accrued prior thereto in the following order of priority:

- (a) to the widow or husband of the deceased member;
- (b) to the children of such deceased member;
- (c) to the father of such deceased member;
- (d) to the mother of such deceased member;
- (e) to the brothers and sisters of such deceased member;
- (f) to the administrator of the deceased member's estate.

2. Where the retirement benefits or any part thereof become due to a person under the age of twenty-one years, the amount may be paid to such person—without requiring the appointment of a guardian—by paying such amount to anyone over the age of twenty-one years who submits satisfactory proof that he or she is supporting and maintaining such person, and gives assurance in satisfactory form that the money so paid over will be used for such purposes.

3. In the event that two or more persons shall become entitled to the retirement benefits in accordance with the provisions of paragraphs 1

and of this Article, the retirement benefit shall be paid to the one who has paid the funeral expenses of the deceased member and such payment shall release and discharge the Fund from any further liability.

ARTICLE XIV

Amendment to Plan

This Plan may be added to, amended or modified from time to time, without notice, by the Board whenever in its sole and absolute judgment it is advisable to do so to carry out more effectively the purposes of the Fund.

ARTICLE XV

Effective Date

This Plan shall be effective as of January 1st, 1951, except that no retirement benefits shall accrue prior to January 1st, 1955.

The foregoing Plan was duly approved and adopted by the Board of Trustees of the Retirement Fund of Retail Shoe Employees, this 30th day of July, 1952.

Amendments
TO
RETIREMENT PLAN OF
THE RETIREMENT FUND
OF
RETAIL SHOE EMPLOYEES

ADOPTED AND EFFECTIVE

DECEMBER 3, 1954

DECEMBER 9, 1955*

Provisions of Special Interest

Lack of Vesting - p. 8

5 year service requirement -
p. 9

*** Paragraph 1(b) of Article III (Amendment 3)**
adopted and effective December 27, 1955.

Attachment C

ARTICLE IV, Paragraph 3, of the RETIREMENT PLAN of THE RETIREMENT FUND OF RETAIL SHOE EMPLOYEES is hereby amended to read as follows:

"3. No worker whose application for retirement benefits has been approved and who has retired pursuant to this Plan shall thereafter engage in any occupation or industry, either as an employer or employee, directly or indirectly, for remuneration or profits which yields him or her earnings in excess of \$100.00 in any calendar month, except that after reaching the age of sixty-eight years, such worker may, but only if he or she engages in an industry other than the retail shoe industry, earn remuneration or profits in such other industry which yields him or her earnings in excess of \$100.00 per calendar month."

ADOPTED AND EFFECTIVE

DECEMBER 3, 1954

AMENDMENT 1

The word "member" or "members" wherever appearing in the Retirement Plan, be amended to read "worker" or "workers", as applicable.

AMENDMENT 2

Article II of the Retirement Plan be amended to read as follows:

[3]

ARTICLE II

Application and Definitions

1. This Plan applies to all workers covered by collective bargaining agreements between Employers and the Retail Shoe Employees Union, Local 287 (hereinafter referred to as "Local 287"), and/or RETAIL SHOE EMPLOYEES UNION, Local 1268 (hereinafter referred to as "Local 1268"), (hereinafter severally and collectively designated as the "Union" or "Unions"), and with respect to whom payments are made to the Fund pursuant to such collective bargaining agreements, subject, however, to the limitations, conditions and reservations provided for in this Plan. Anything herein contained to the contrary notwithstanding, no one at any time prior to approval of his application for retirement and prior to his retirement hereunder shall have any rights with respect to the Fund or any retirement benefits payable by the Fund; after approval of his application for retirement and after his retirement hereunder, such worker shall have only those rights with respect to retirement benefits payable by the Fund as are provided in this Plan, subject, however, to the limitations, conditions and reservations provided for in this Plan.

2. With respect to employment prior to January 15, 1951, the term "covered employment" as

used herein, means only employment as a full time worker covered by a collective bargaining agreement between the Union and his Employer.

3. With respect to employment on and after January 15, 1951, the term "covered employment" as used herein, means only employment as a full time worker covered by a collective bargaining agreement between the Union and his Employer, pursuant to which such Employer is required to contribute to the Fund with respect to such worker.

4. Words of the masculine gender as used herein, include the feminine.

AMENDMENT 3

Article III of the Retirement Plan be amended to read as follows:

ARTICLE III

Retirement Eligibility

1. Any worker who meets all of the requirements hereinafter stated and who desires to retire from work as hereinafter provided, shall be eligible to make application to the Fund for retirement benefits if he

(a) in calendar year 1955 or 1956 has reached the age of at least 68 years and com-

pleted 10 years of covered employment out of the last 15 years immediately preceding the date of making application for retirement benefits, or has reached the age of at least 65 years and completed 15 years of covered employment out of the last 20 years immediately preceding the date of making application for retirement benefits;

in calendar year 1957 has reached the age of at least 68 years and completed 11 years of covered employment out of the last 16 years immediately preceding the date of making application for retirement benefits, or has reached the age of at least 65 years and completed 15 years of covered employment out of the last 20 years immediately preceding the date of making application for retirement benefits;

in calendar year 1958 or 1959 has reached the age of at least 68 years and completed 12 years of covered employment out of the last 17 years immediately preceding the date of making application for retirement benefits, or has reached the age of at least 65 years and completed 15 years of covered employment out of the last 20 years immediately preceding the date of making application for retirement benefits;

in calendar year 1960 has reached the age of at least 68 years and completed 13 years

of covered employment out of the last 18 years immediately preceding the date of making application for retirement benefits, or has reached the age of at least 65 years and completed 15 years of covered employment out of the last 20 years immediately preceding the date of making application for retirement benefits;

in calendar year 1961 or 1962 has reached the age of at least 68 years and completed 14 years of covered employment out of the last 19 years immediately preceding the date of making application for retirement benefits, or has reached the age of at least 65 years and completed 15 years of covered employment out of the last 20 years immediately preceding the date of making application for retirement benefits;

in calendar year 1963 has reached the age of at least 65 years and completed 15 years of covered employment out of the last 20 years immediately preceding the date of making application for retirement benefits;

in calendar year 1964 or 1965 has reached the age of at least 65 years and completed 16 years of covered employment out of the last 21 years immediately preceding the date of making application for retirement benefits;

in calendar year 1966 has reached the age of at least 65 years and completed 17 years

of covered employment out of the last 22 years immediately preceding the date of making application for retirement benefits;

in calendar year 1967 or 1968 has reached the age of at least 65 years and completed 18 years of covered employment out of the last 23 years immediately preceding the date of making application for retirement benefits;

in calendar year 1969 has reached the age of at least 65 years and completed 19 years of covered employment out of the last 24 years immediately preceding the date of making application for retirement benefits;

in calendar year 1970 or thereafter has reached the age of at least 65 years and completed 20 years of covered employment out of the last 25 years immediately preceding the date of making application for retirement benefits; and

(b) has been in covered employment continuously from January 15, 1951 to the date of approval of application for retirement benefits, except for periods of lay-off, illness, unemployment due to other causes and the like, and except for periods of service in the Armed Forces of the United States, and except for periods of service as a paid employee of the Union; or

has, after January 15, 1951, been in covered employment for a period of at least 12

years preceding the date of approval of applica-
tion for retirement benefits; provided, however,
that he has, after January 15, 1951, in any event,
been in covered employment continuously for a
period of at least 5 years immediately preceding
the date of approval of application for retirement
benefits, except for periods of lay-off, illness, un-
employment due to other causes and the like,
and except for periods of service in the Armed
Forces of the United States, and except for
periods of service as a paid employee of the
Union. While such employment shall be deemed
to be continuous despite periods of such lay-off,
illness, unemployment due to other causes and
the like, and despite periods of service in the
Armed Forces of the United States, and despite
periods of services as a paid employee of the
Union, nevertheless such periods shall not be
included in computing such required period of
five years of such continuous covered employ-
ment, subject, however, to the provisions of
Paragraph "3" of this Article.

2. The Board may, in its sole and absolute discretion, permit the retirement, with retirement benefits, of an applicant who after reaching the age of sixty years has become totally and permanently disabled, under standards and criteria established and promulgated by the Board, provided, however, that such applicant meets all the

other retirement eligibility requirements hereunder for retirement at age 65 other than that relating to having reached the age of 65 years, and further provided, however, that his retirement benefits until he attains the age of 65 years shall be in an amount equal to fifty percent (50%) of the full monthly retirement benefits provided in Article V, paragraph 1, hereof.

3. In the event that the Union shall pay into the Fund contributions for its paid employees monthly equivalent to the contributions required to be made by Employers to the Fund with respect to their employees pursuant to collective bargaining agreements with the Unions, such employees of the Union, with respect to whom such contributions are made, shall be entitled to participate in this Plan and to receive retirement benefits, provided that they otherwise meet the retirement eligibility requirements hereunder, the Union being deemed to be such an Employer within the meaning of this Article for such purpose.

AMENDMENT 4

Article V, paragraph 4, and Article VII, paragraph 8, of the Retirement Plan be deleted therefrom.

ADOPTED AND EFFECTIVE
DECEMBER 9, 1955*

* Paragraph 1(b) of Article III (Amendment 3)
adopted and effective December 27, 1955.

[11]

The CHAIRMAN. We will take an extended break here for half an hour and then we will return.

(Whereupon, at 1:15 p.m., the subcommittee was recessed, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

(The subcommittee reconvened at 2:30 p.m. pursuant to recess.)

The CHAIRMAN. The subcommittee will now come to order.

We will now hear from the D.C. Transit System, Mr. J. Godfrey Butler and Mr. Manuel J. Davis.

STATEMENT OF J. GODFREY BUTLER, SENIOR VICE PRESIDENT, D.C. TRANSIT SYSTEM, INC.; ACCOMPANIED BY MANUEL J. DAVIS, SPECIAL COUNSEL, D.C. TRANSIT SYSTEM, INC.

Mr. BUTLER. I am J. Godfrey Butler, senior vice president, D.C. Transit System, Inc. My business address is 2250 26th Street NE., Washington, D.C.

I serve as a company representative on the retirement allowance committee of the employees' retirement plan and am secretary of that group, which consists of two other company representatives and myself along with three representatives of the labor organization which represents our employees, namely division No. 689 of the Amalgamated Transit Union, AFL-CIO.

I appear here today by invitation submitted to me by the Subcommittee on Labor of the Committee on Labor and Public Welfare and was advised by letter dated September 13, 1971, that this subcommittee would inquire, pursuant to Senate Resolution 35, dated March 1, 1971, into the administration and operations of the pension plans.

I was also advised that of particular interest to the inquiry will be those areas relating to the vesting and funding provisions, asset investments, transferability of retirement credits, and standards of fiduciary responsibilities.

In cooperation with your investigative staff, I submitted on behalf of D.C. Transit System, Inc. Employees' Retirement Plan, Pension Study Form P-1, duly answering all questions and supplying your committee with all the available information pertaining to the plan.

I have met with members of your investigative staff on September 30, 1971, when we fully discussed questions raised by your representatives about the plan.

I have given your investigative staff all the information, data, and material which was requested and I know of no other matters that remain to be highlighted or covered at my appearance here today.

However, in view of your investigation, I appear here today to answer any questions which you may have with respect to D.C. Transit's employees' retirement plan.

The CHAIRMAN. What is the indebtedness of D.C. Transit to the pension plan?

Mr. BUTLER. Mr. Chairman, I wouldn't be able to give you the precise indebtedness. If you refer to what is generally known by reason of newspaper publicity as an arrearage of several years ago which

has been covered by a promissory note and a deed of trust on property owned by the company, outside of that I believe the payments to the pension plan by the company are current, the last one having been made Friday, the first of October.

The CHAIRMAN. Currently, contributions to the plan are up to date?

Mr. BUTLER. Yes, sir.

The CHAIRMAN. Well, will you describe this arrearage and notes? Just give us that historical picture here.

Mr. BUTLER. Going back to the spring, I think, of April 1968, attendant upon the riots, civil commotion, murders, robberies, looting, and so on, that pervaded the city subsequent to the killing of Martin Luther King, our patronage fell off drastically, our revenue was considerably decreased, and our cashflow was diminished to the point that we were faced with the alternatives of meeting the payroll or paying the pension contributions as required by our contract with the union.

In order to keep the buses rolling and not deprive the city of transportation, we elected to continue the payroll and therefore became in arrears in our contributions to the pension plan.

The union, in due course, called that to our attention and insisted upon payment. In satisfaction of that obligation, we gave to the pension plan, that is the company gave to the pension plan, with the approval of the union, a promissory note backed up by a deed of trust on two pieces of real estate owned by the company which were—one was a former operating streetcar barn and the other a garage which at that time were no longer used or useful in the transportation business and were not so used.

The CHAIRMAN. What were the values?

Mr. BUTLER. The arrearage was something in the neighborhood of \$2 to \$3 million, and the value of the property pledged as collateral or security for that was in excess of that amount.

The CHAIRMAN. This is an employee contributory plan, isn't it?

Mr. BUTLER. Yes, sir.

The CHAIRMAN. And notwithstanding that, I see that there is no provision in the plan for vesting?

Mr. BUTLER. Correct, sir.

The CHAIRMAN. Is there any consideration being given to a vesting provision in the plan?

Mr. BUTLER. This is a negotiated plan and there is no consideration at the moment being given by the company. I can't tell you what the union has in mind for a future negotiation of modifications or deletions and so forth of the provisions of the plan, Mr. Chairman.

The CHAIRMAN. What is the nature of the employees' contribution?

Mr. BUTLER. Five percent of their payroll.

The CHAIRMAN. So that is a cash value at 5 percent at any point they terminate?

Mr. BUTLER. No; that is their deduction from payroll, 5 percent of their earnings during each pay period is withheld by the company and paid into the plan along with 10 percent of the company's money.

The CHAIRMAN. On termination short of retirement what is the situation?

Mr. BUTLER. They can withdraw their contribution with 2-percent interest compounded.

The CHAIRMAN. What is the fund earning now?

Mr. BUTLER. I haven't seen recent earning statements from the trustee bank, the National Bank of Washington, which handles the fund. It has been running in the nature of 4.2 percent up to as high as 5 percent but with the fluctuations in the stock market in recent months and particularly about a year ago, the earnings of the fund were not as high as they characteristically have been. I think they are probably back to normal earning figures now.

The CHAIRMAN. Is it a joint employer-employee committee that administers the fund?

Mr. BUTLER. Yes, sir.

The CHAIRMAN. What is your policy position on investment with respect to the trustees?

Mr. BUTLER. The trustee committee—and when I use that word I don't mean the bank but the joint committee—instructs the trustee bank how to invest the funds. The bank on its own initiative occasionally will suggest an investment or investment counselors to the union and the company will suggest an investment. And occasionally the bank, in order to occupy the money that is in there and not permanently invest it, will suggest a temporary short-term Government note, Government paper, for 30, 60, 90 days, Government bonds, for temporary holding of the money until the bank is instructed to buy corporate stocks or bonds.

The CHAIRMAN. So they invest under direction from the committee?

Mr. BUTLER. That is right; yes, sir.

The CHAIRMAN. And both the union and management have independent investment counsel?

Mr. BUTLER. No; we happen to have the same counsel at the present time.

The CHAIRMAN. From what fund are they paid?

Mr. BUTLER. Out of the pension plan money.

The CHAIRMAN. These fees running in 1970, \$55,577—now, that is administrative costs? What does that cover?

Mr. BUTLER. That would be the fee that the bank charges for being custodian of the funds and making the investment and making the monthly payment to some thousand pensioners and the charges of the investment counsel, and postage to mail out the pension checks each month and fees for an actuary.

The CHAIRMAN. How about the investment counsel? Is their payment reflected in this information?

Mr. BUTLER. Yes.

The CHAIRMAN. In that same figure?

Mr. BUTLER. I think so.

The CHAIRMAN. So that is—

Mr. BUTLER. A total expenditure of the fund for services by the bank and by the investment counsel. The company does all the clerical work for the plan at no charge.

The CHAIRMAN. In order to receive a retirement return, the employee has to be employed when he reaches retirement age; is that correct?

Mr. BUTLER. Yes, sir.

The CHAIRMAN. What is that again?

Mr. BUTLER. Normal retirement age is 65. We have provision for early retirement which is upon completion of 15 years of service and age 55. That is 10 years earlier than normal retirement, and disability retirement is at any age as long as they have 5 years of service if the disability is due to an occupational accident or illness, and 10 years of service if it is a nonoccupational ailment or injury.

The CHAIRMAN. And what if the employee is terminated between 55 and 65 and has not elected early retirement? What is his position?

Mr. BUTLER. He gets his refund of all the money put into the plan during his employment career, with 2-percent interest compounded.

The CHAIRMAN. In this industry, are you familiar with other companies and whether they have worked out vesting provisions?

Mr. BUTLER. No, sir; I am not.

The CHAIRMAN. I am sure you have thought about it—

Mr. BUTLER. Well, we have discussed it with the union in negotiations in past years, and as is usual in any negotiations of the labor contract, whether it be wages or what have you, the union trades off, I assume you would call it, things they want more for things they don't want so much, and they have never pressed this point with us, although I do recall it was discussed.

And I suppose in their judgment they thought other features that they incorporated by negotiation into the pension plan were more important than the vesting privileges. I am aware vaguely that there are vesting privileges in the transit industry, but I feel confident they are not widespread or prevalent in the larger companies.

The CHAIRMAN. When did the benefits last become subject to a change in your plan?

Mr. BUTLER. We had a 3-year contract which expired October 31—the contract prior to the existing contract expired October 31, 1969. In negotiations with the labor organization in the several months prior to the expiration date, various aspects of increases and changes in wages, working conditions, pensions, and health and welfare benefits were discussed.

The company and the union were not able to arrive at a mutually agreeable settlement of the demands of the union, and the matter went to arbitration. The arbitrator, in establishing a new contract, fixed a 3-year term contract, but did not address himself in any way to the changes in the pension provisions.

They remain in status quo, and still are today the same as they were 2 years ago. The end of October next year will be the expiration date of the current contract.

The CHAIRMAN. What is the current benefit rate? How do you pay out now?

Mr. BUTLER. The formula which constitutes the basis of computation of the pension is for every year of service, $1\frac{1}{4}$ percent of the average earnings of the employee—for instance, if he has been there 40 years, $1\frac{1}{4}$ of that would be 50 percent, he would get 50 percent of his average earnings as a monthly pension.

The CHAIRMAN. Average of what period of time?

Mr. BUTLER. I think it is the last 5 years. The most recent 5 years before his retirement.

Mr. NOTO. Referring back to the obligation which the D.C. Transit has with respect to the pension fund, let me ask you this: Does the obligation of the D.C. Transit Co. represent in your mind professionally or otherwise any potential or actual conflict of interest between yourself as the operating entity, which would be D.C. Transit, and the pension fund?

Mr. BUTLER. I must truthfully say I don't understand your question.

Mr. NOTO. D.C. Transit owes approximately \$2 million to the pension fund, is that correct?

Mr. BUTLER. We did, and it is secured by a promissory note backed up by real estate.

Mr. NOTO. You say you did owe?

Mr. BUTLER. Yes.

Mr. NOTO. That would imply that the obligation has been fulfilled and satisfied. Has it in fact?

Mr. BUTLER. By the giving of a promissory note and the dismissal of a lawsuit.

Mr. NOTO. Does the security which attaches to the promissory note constitute fulfillment or payment of a debt?

Mr. DAVIS. I don't understand the question. Are you asking for a legal opinion?

Mr. NOTO. Does D.C. Transit owe \$2 million to the pension fund?

Mr. DAVIS. Yes, secured by a note.

Mr. NOTO. Yes, it is secured, but there is an obligation. You do owe it \$2 million?

Mr. DAVIS. Yes, sir.

Mr. NOTO. Now, you, as employer, owe the pension fund \$2 million, correct?

Mr. DAVIS. Yes, sir.

Mr. NOTO. Therefore, my question is: Does that represent, in your mind, either an actual or a potential conflict of interest with respect to the integrity of the pension fund?

Mr. DAVIS. No; I see absolutely none. No, sir.

Mr. NOTO. You don't see any conflict?

Mr. DAVIS. Yes, sir.

Mr. NOTO. Assume for the sake of argument that the D.C. Transit Co. would continue to be financially unable to pay this \$2 million indebtedness to the pension fund; what would you foresee happening to the obligation of a pension fund to pay debts or accrued benefits as they would arise for full payment?

Mr. DAVIS. The pension committee could instruct the trustees under the deed of trust which backs up the promissory note to foreclose on the property and satisfy the obligation by paying the \$2.3 million into the pension fund.

However, I think to answer your question, if I understood it correctly, there would be no impact on the pension fund, which is some \$20 million or \$21 million, and the fund would not be embarrassed by the absence of that money in the fund itself as cash to pay out monthly benefits to pensioners. Have I responded to your question?

Mr. Noto. Yes, you have.

One more thought: You mention that the D.C. Transit obligation to the pension fund is current. Have you made the payments which have been due for the last quarter to the fund?

Mr. BUTLER. I was advised just before I came here that on October 1 the last payment, which would make us current, was sent to the bank. October 1 of this year.

Mr. NOTO. What would your comment be if I were to tell you that we have been advised for the last 3 months that as of now the obligation has not been paid? Would that be accurate?

Mr. BUTLER. I would think that the information I gave, that the payment made brought us up to date—whether we were in arrears prior to that I don't know, but I say that we were informed that we made the payment which makes us current now.

The CHAIRMAN. Now, I thought I understood, but I am now a little confused. What does that mean, "brings us up to date"?

Mr. BUTLER. Every month we have to match the 5 percent that has been withheld from the employees' payroll, by 10 percent of that same payroll. So if the employees in an aggregate contribute \$1,000 by deductions from their payroll, we have to send that to the trustee bank along with \$2,000 of our own.

The CHAIRMAN. All right.

Now, there is a period where you have not paid up, and that is represented by your company's obligation to the fund, represented by a promissory note which is secured by property. So that exists. What period is represented by that obligation?

Mr. BUTLER. That is a period that I can't accurately describe, Mr. Chairman. It is for several months subsequent to the riots of a couple of years ago, when our revenue was very low.

The CHAIRMAN. When did you start becoming current?

Mr. BUTLER. Immediately after the satisfaction and perhaps I don't use the word in the same sense as Mr. Noto, but the payment of that obligation by a promissory note backed up by the collateral. Immediately subsequent to that we resumed scheduled payments until just recently we may have fallen in arrears in September or so, but as of October 1 I am informed that we are current.

Mr. DAVIS. May I comment on those dates? I am reading from a stipulation agreement filed with the U.S. district court and it covers a period of November 1, 1966, through October 30, 1969.

The CHAIRMAN. What is the interest that you pay on the note?

Mr. DAVIS. 7½ percent, payable quarterly.

The CHAIRMAN. And you are current on the interest payments?

Mr. BUTLER. Yes, sir.

Mr. DAVIS. I have before me a Xerox copy of a check dated October 1, 1971, showing interest payment on note. No. 36, employees' retirement plan, in the amount of \$43,509.42.

Mr. BUTLER. That is a quarterly check, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. CUMMINGS. I would like to ask a few questions on behalf of Senator Javits.

In the form P-1 which you filed with the committee, you show a real estate mortgage of \$2,320,502 which I take it is security on that note to the fund. Is that correct?

Mr. BUTLER. That is the figure that I rounded out for the chairman as \$2.3 million. I don't challenge your figure there.

Mr. CUMMINGS. That is real property owned by D.C. Transit; is that correct?

Mr. BUTLER. Yes, sir.

Mr. CUMMINGS. Do you happen to know the fair market value of that real estate?

Mr. BUTLER. It is in excess of \$2.3 million.

Mr. CUMMINGS. Was it—

Mr. DAVIS. May I suggest it was appraised prior to the acceptance of the property as collateral.

Mr. CUMMINGS. Do you happen to know if this was a bankable loan? Had you gone to a bank rather than the pension fund and endeavored to borrow this money in order to pay the pension fund, would that property have been sufficient to get you that loan?

Mr. BUTLER. I wouldn't be able to answer that.

Mr. DAVIS. I feel reasonably certain it would have. I think you will find that the appraised value was vastly in excess of the amount of the indebtedness.

Mr. CUMMINGS. What is the property?

Mr. BUTLER. It is a garage at 10th and Michigan Avenue NE., and a former car barn.

Mr. CUMMINGS. What you are saying is that were there a law which would have prohibited the fund from in effect lending money to D.C. Transit, D.C. Transit could have borrowed the money elsewhere; is that correct?

Mr. BUTLER. I don't know that the D.C. Transit ever borrowed the money from anyone.

Mr. CUMMINGS. Well, were there a law which would have prohibited the fund from accepting a note secured by a mortgage and instead would have required a payment of the \$2 million into the fund, D.C. Transit would have, by use of this same device, been able to borrowed that \$2 million from some lending institution?

Mr. BUTLER. That is one thing they could have done—borrowed the money on the real estate?

Mr. CUMMINGS. On the real estate.

Mr. DAVIS. I don't get the question. Your question is way out in left field.

The CHAIRMAN. No; that is just whether you made a note to the fund. And the court made you secure it with property.

Mr. BUTLER. We did it voluntarily.

The CHAIRMAN. What if the court said "This is no good, go out and borrow the money independently at a bank, go to Riggs National or National Security and Trust"?

Mr. BUTLER. The court never told us to do anything.

The CHAIRMAN. Could you? Was this property in your judgment worth that much at another bank on a traditional—

Mr. BUTLER. My answer is yes.

Mr. CUMMINGS. You said in answer to part IV of the questionnaire—the question was: "State your total liabilities for all accrued vested benefits." Answer: "Not available."

Would you explain how it is possible for a pension fund not to know what its liabilities are?

Mr. BUTLER. We have a thousand pensioners, roughly, and we have 2,700 employees who are participating in the plan. I don't believe that

other than certain actuarial assumptions that it would be possible to state accurately within millions of dollars how much the pension fund would ultimately be required to pay out to all living pensioners until the last man is dead, and to all present participants until the last man has been retired and then has died.

Mr. CUMMINGS. You have on your payroll, or as an expense of the fund, I see, an actuarial firm, Towers, Perrin, Foster & Crosby. It would be possible for them to give you all vested pensions.

Mr. BUTLER. They do that periodically in the actuarial study that they make for the plan.

Mr. CUMMINGS. Well, your actuary was asked by the Labor Department in your annual report to supply that information, and Towers & Perrin managed to answer that. They say the answer is total accrued actuarial liability, \$4,618,000. So I take it there was a number there?

Mr. BUTLER. I would assume that the actuary knows what he is talking about.

Mr. CUMMINGS. I also notice on your annual report which you filed with the Labor Department, on your liabilities there are these items: "general reserve," "participants' equity," "pension equity" and "reserve for future benefits," and you show nothing for "reserve for future benefits."

Would you explain how that is possible?

Mr. BUTLER. I am sorry I can't answer that. I don't know whether you are reading from an answer filed by the company or by the actuary.

Mr. GORDON. This is part IV, section A of your D-2 report. It is signed by the vice president and comptroller of D.C. Transit System, Inc. Who is the vice president? Is that you?

Mr. BUTLER. No, I am senior vice president. Mr. S. O. Hatfield has been vice president and comptroller.

Mr. CUMMINGS. That is it. He says that there is no reserve for future benefits, at least on the books of this—

Mr. BUTLER. On the books of the company.

Mr. CUMMINGS. This is the annual report of the fund.

Mr. BUTLER. We don't keep the money of the fund and I don't think we make reports on the fund. Mr. Hatfield, as vice president and comptroller of the company, I don't believe would be making a report for the pension fund.

Mr. CUMMINGS. Finally, I see in the answer of the questionnaire which you filed with the chairman—

Mr. DAVIS. You, meaning who?

Mr. GORDON. By J. Godfrey Butler.

Mr. CUMMINGS. Part III of the questionnaire, questions 19 through 23, asks questions about the total number of employees who have—"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." Answer: "Not available."

How is it possible for a company not to know how many people work there?

Mr. BUTLER. We have no reason to keep track.

Mr. CUMMINGS. What is the basis on which contributions are made to the plan?

Mr. BUTLER. Five percent of the employee's earnings.

Mr. CUMMINGS. So you have to know what the employee's earnings are in order to be able to take 5 percent of it?

Mr. BUTLER. Yes, sir.

Mr. CUMMINGS. So the same facts that would have formed the basis on which you made your contributions to the plan, I assume, would answer that question?

Mr. BUTLER. If they were available. But if a man was employed, say, as a busdriver in 1949 by the company and after the required waiting period joined the pension plan and had a percentage taken from his pay, and that money matched by a double that amount by the company is put into the bank, and that man then leaves the company, there is no earthly reason I can see why the company should maintain a record that money has been sent to the bank. It has been audited and if we kept records of every man since 1947 that had paid a single dollar into the pension plan we would have to have, in my opinion, a work staff larger than the entire clerical force of the company.

Mr. CUMMINGS. I see that you also gave the same answer to the question except addressed to the last 5 years. You can't see any reason you should maintain any records over the last 5 years—

Mr. BUTLER. Not even over the last month.

Mr. CUMMINGS. If I could point you to a section of the Welfare and Pension Plans Disclosure Act—

Mr. BUTLER. I am sure if we felt that it was obligatory to keep such records we would have been keeping them.

Mr. CUMMINGS. I think we will be able to supply you with a citation.

Mr. BUTLER. All right, sir.

Mr. GORDON. Would you state for the record whether you know whether the current amount of assets held in the D.C. Transit System Employees' Retirement Plan covers at this point in time all the liabilities for retired lives?

Mr. BUTLER. I don't know, sir.

Mr. GORDON. Is there any way you could furnish that information to this subcommittee?

Mr. DAVIS. As you know, Mr. Butler is not an actuary and he tells me that from time to time the union and the company hire the services of the gentlemen you have heard referred to today who do this actuarial study. It is my understanding that a current study is presently being performed and I am certain that the funds will be only too happy to supply you with those figures and facts when they are available.

In other words, this is something constantly going on. I was surprised to note that the company has participated in the drafting of these answers when in fact it should be an undertaking by the trust fund itself and the plan to give you all the information you want rather than the company's obligation.

But to the extent the company has done that, I see no objection. But we are just trying to cooperate with you. We have nothing further to give you.

Mr. GORDON. I should point out that this was filed on behalf of the D.C. Transit Employees' Retirement Plan by J. Godfrey Butler, senior vice president, and I assume he took responsibility therefor for filing this information on behalf of the plan and, Mr. Chairman, on behalf of Senator Javits, I request that this P-1 be put in the record.

The CHAIRMAN. Perhaps it should, for clarification around this question. We will put it into the record.

(The following was subsequently supplied for the record:)

United States Senate

SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

April 5, 1971

PENSION STUDY: FORM P-1
(S. Res. 360)

File No. WP

(Give No. assigned by U.S. Department
of Labor.)

086876

086877

Part I. Identification

1. A. Name of Plan D.C. Transit System, Inc. Employees' Retirement Plan
- B. Address of Principal Office
of Plan 2250-26th Street, N.E., Washington, D. C. 20018
(Street) (City) (State) (ZIP Code No.)
- C. Name of Administrator (Trustee) National Bank of Washington
- D. Name and title of individual(s) who prepared response for this study:
J. Godfrey Butler
Senior Vice President
- Telephone: 835-5002

Part II. Plan Profile

2. A. Year of Plan establishment 1945
- 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) July 1945
- B. Date initial benefit payments under the Plan were made (other than refund of employee contributions) August 1, 1945
-

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 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 2,587 9/19/70B. Retired 947

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)

Percentage of gross earnings

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

See Appendix "A"

B. Early retirement

See Appendix "A"

C. Disability

See Appendix "A"

D. Death

Pensioners-payment of pension for month in which death occurs or payment of balance of equity.

E. Other (e.g., survivorship, temporary retirement, etc.) (specify)

See Appendix "A"

12. Age and service requirements for obtaining benefits.

A. Normal retirement

Age 60 with 25 years service

B. Early retirement

Age 55

C. Disability

10 years service

D. Death

Refund of contribution to beneficiary

E. Other (e.g., survivorship, temporary retirement, etc.) (specify)

none

13. A. Specify the requirements of the vesting provision, i.e., age, service, type of separation, etc.

None

B. What percentage of accrued benefits are initially vested? None

C. After how many years are all accrued benefits vested? None

D. Specify the vesting formula (including whether such formula has retroactive effect).

E. Specify any survivorship rights under the vesting provisions.

None

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.

None

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 arrangement (include data on any reciprocal arrangements entered into with other plans, including the identity of such other plans).

Full

-
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.

5% yes

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)	☐

- 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.

Credit is given from date of employment to
date of retirement.

-
17. Specify the maximum age, if any, at which an employee is barred from membership in the Plan _____

None

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 ☐ (3) 2 years ☐
 (2) 1 year ☐ (4) Over 2 years ☒
 (5) Other (specify) ☐

- B. Enumerate any other conditions which will constitute a "break in service."

None

- C. Enumerate any circumstances recognized by the Plan which will serve to waive a "break in service."

None

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
-

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	629
(2) Early retirement	96
(3) Disability retirement	750
(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. Not Available

- 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. Not Available

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

- 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. A. Indicate the average monthly benefit paid to retirees 5 years ago.
(1) Normal \$141.98 (2) Early \$153.48 (3) Disability \$133.76
- B. Indicate the average monthly benefit paid to retirees within the last year.
(1) Normal \$245.56 (2) Early \$216.34 (3) Disability \$210.20

25. Specify the following (give the latest figures) :

- A. Total assets of Plan (at cost, book, and market value) :
 (1) \$20,866,255.01 (2) \$20,866,255.01 (3) \$17,232,728.06 (4) June 30, 1970
 (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)..... Not Available
 (Date of latest evaluation)
- C. Total value of all accrued benefits, treating all such benefits as if they were vested (give present dollar value)..... Not Available
 (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 Appendix "B"

- 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.

None

- 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).....

Real Estate Notes

\$2,031,000

- 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.

D. C. Transit System, Inc.

Real Estate Mortgage Dated October 30, 1969 in the amount
of \$2,320,502.30

- 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.....	<u>\$36,646</u>
B. The ratio (percent) of current administrative costs charged to the Plan to total fund assets calculated at current market value.....	<u>.3226%</u>
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.....	<u>3.735%</u>
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.....	<u>2.015%</u>

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..... Not Available

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? **Regular grievance procedure for Labor Contract** (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..... none
-

-
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.

Collective bargaining representative handles grievances

37. A. Specify the procedure for amending the Plan.

Collective bargaining

- 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. _____ Not available

- C. Indicate approximately the intervals at which the Plan is codified in a single document to incorporate all amendments. _____

Every three years

-
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.

Monthly

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)

-
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.)

Legal list for trust investment

-
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.

Not applicable

- (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.

Not applicable

- (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.

Not applicable

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.

See Appendix "C"

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 ☐ (2) No ☒ If "Yes," furnish the following details:

(a) Name of the predecessor corporation Not Applicable

(b) Date of the acquisition, merger, consolidation, lease, etc. Not Applicable

(c) Name of the terminated plan of the predecessor corporation Not Applicable

(d) Date the plan of the predecessor corporation was terminated Not Applicable

- 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 None

17. 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..... Two

-
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..... None
- B. Of the total figure furnished in (A), specify the number which were successfully resolved in favor of such persons or which were settled..... Not Applicable
- C. Of the total figure furnished in (A), specify the number of suits which were based on claims for benefits..... Not Applicable

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.....None

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)

None

(2) Date

Not Applicable

(3) Law reporter citation(s) (if any)

Not Applicable

(4) Nature of issue

Not Applicable

(5) Outcome

Not Applicable

Mr. GORDON. Do I understand then at the present time neither of you gentlemen know whether the assets of the plan at this point in time are sufficient to cover the benefit liabilities owed by the plan?

Mr. BUTLER. I have no knowledge of that.

Mr. DAVIS. No such knowledge.

Mr. GORDON. So, in effect, there is no way at this time for you to know whether the plan is under-funded, over-funded, or fully funded?

Mr. DAVIS. That is correct, sir.

Mr. GORDON. Thank you.

Mr. CUMMINGS. Section 11 of the Welfare and Pension Plans Disclosure Act, as amended in 1962, reads as follows:

Every person required to file any description or report or to certify any information therefore under this Act shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained or clarified and checked for accuracy and completeness and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

Now, you show the total participants each year in your annual report, in answer to the D-2 report, which is promulgated by the Labor Department under this act. So, I put it to you that as you file this report the statute, section 11, requires that you maintain some basis on which the validity of the total which you filed each year can be verified.

We all know exactly how efficient the Department of Labor is in enforcing this act, but nonetheless the statute does insist that you maintain these records.

Mr. DAVIS. I know of no instance where the Department of Labor has ever requested any information from our company when they haven't gotten it. I know of no information we haven't supplied them willingly and to merely read a criminal statute to us I find rough, just because we can't give you the information you want which you think complies with the act.

Mr. CUMMINGS. The act says whatever it says.

The CHAIRMAN. Some of this detailed information that has been requested here, while you gentlemen didn't carry it with you in your briefcases, and you obviously don't carry it in your head, this kind of information must be back there in the shop somewhere.

Mr. BUTLER. Oh, I am sure it is somewhere in the records of the company, Mr. Chairman. We keep, not only for the purposes of the Labor Department regulations under the act which was cited by the gentleman, but for many other purposes, detailed records of employees, but to go back and cull through thousands and thousands of records of former employees who may have been with the company a lifetime or 1 day, and to then get the answers that would be completely responsive to the questions that the gentleman cited, would be a superhuman task. The basic material is all there but we didn't understand, and do not understand, that the details are necessary to be furnished as long as we maintain such records.

The CHAIRMAN. I am going to have to recess and I don't have anything further from you gentlemen. We will reconvene for the other witnesses as soon as I can.

(Recess.)

The CHAIRMAN. We will now reconvene the subcommittee hearing on pensions with Bank of America testimony, Merle R. Fisher and Gordon E. Hillegas.

STATEMENT OF MERLE R. FISHER, VICE PRESIDENT, COMPENSATION AND BENEFITS, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION; ACCOMPANIED BY GORDON E. HILLEGAS, ASSISTANT VICE PRESIDENT, COORDINATOR, EMPLOYEE BENEFITS

Mr. FISHER. Thank you, Mr. Chairman.

The CHAIRMAN. We are glad to have you, gentlemen.

Mr. FISHER. Considering the time and for the sake of brevity I will try to cut the statement down a little.

The CHAIRMAN. Fine, thank you.

Mr. FISHER. All of the benefit plans discussed in this statement are plans of Bank America Corp. and cover most of its subsidiaries and affiliates. Bank of America National Trust & Savings Association is the principal such subsidiary with by far the greatest number of participating employees. Therefore, for convenience all references in this statement to such plans will assume that Bank of America is the employer.

It is the bank's objective to design individual benefit plans with a view to the needs of the employee in various periods of his or her working career. This approach to the benefits planning process is a realistic one which recognizes that the total employee population is composed of individuals of different ages, who are at any given point in time, in different periods of their career development, who have different degrees of family responsibility; and whose concern and interest in the benefits program reflects this wide variation in age, responsibility, and career outlook.

Because of this relationship among the benefit plans, a meaningful appraisal of the retirement plan must follow at least a brief outline of these other benefits provided the employee and the part they play in the total compensation program, both present and deferred.

Protection against unexpected and burdensome medical expense is a need unrelated to age. This protection enables the younger employee to begin to build a personal financial reserve. It assures the older employee that the reserve assets acquired will not be eroded by the expense of illness and medical care.

The bank has made available to its employees a medical-dental plan that is among the most generous in the Nation. The bank shares the cost of this program with the employee on a 50-50 basis. This is the only plan offered by the bank in which the employee shares the cost.

Closely related to protection from loss of savings and earnings for medical treatment is the protection against financial loss through illness or disability. The bank assumes the full cost of protection against

loss of earnings from short term illnesses through a liberal sickness benefit plan in which an employee may accrue up to 3 months of fully paid sickness benefits—except to the extent of the legislated employee contributory plans in California and New York.

The employee is assured protection against loss of earnings from long term disability under a plan in which the employee is guaranteed the greater percentage of his full salary during disability and under which he or she, if permanently disabled, may accrue retirement benefits, and retire at age 60 with full service credit.

Premature death during the employment years and the expenses of death after retirement are provided for under a combination of group life and accident insurance, the cost of which is fully paid by the bank.

The surviving dependents of an employee are assured payment of insurance proceeds equal to $2\frac{1}{2}$ full years of salary and in the event of accidental death, proceeds equal to 5 years' salary at the employee's then applicable rate of earnings.

In addition, 1 full year of continued medical protection under the regular group plan is provided to the employee's dependents without cost to them.

The bank's family estate plan, funded through employer contributions, is a tax-qualified profit-sharing plan which provides important benefits to augment future retirement income. Employees participate in the profit-sharing plan after 3 years of service and derive a 25-percent vested interest in bank contributions on their behalf after 2 years of participation. From this point vesting is graduated to 100 percent after 15 years of participation.

The retirement plan covers all employees from the date of employment. Only 10 years of service at normal retirement date is required to retire under the plan. Normal retirement benefits are paid to all employees who have 10 or more years of service when they reach age 65. Under this plan, vesting is provided when the employee has completed 15 years of service and reached age 40.

There is no partial vesting under the program. At normal retirement employees receive an annual income equal to 2 percent of the average of their highest five consecutive salary years for each year of service to 25 years. An additional one-half percent of this average is allowed for each year over 25.

The bank recognizes its contribution to the employee's social security pension under the plan formula to the extent that the benefit objective developed by this formula is adjusted by 2 percent of the social security benefit for each year of service to a maximum of 50 percent.

For the average employee having 25 years of service, the combined bank plan and social security benefit will equal approximately 60 percent of final annual salary. This is entirely in addition to benefits received from the family estate plan.

Increases in social security benefits after retirement will not affect the retiree's bank plan benefits. In fact, the adoption of a variable annuity feature based upon investment performance of the fund can increase benefits after retirement.

Unlike conventional variable annuities, however, under the bank's plan the retiree is guaranteed never to receive less than the benefit paid immediately upon retirement.

The bank's retirement plan is intended to provide retirement income for intermediate as well as long service employees. For employees with 15 years of service aged 55 or older, the plan allows early retirement with an immediate benefit based upon average salary and service reduced by 3 percent for each year less than age 65.

Thus, the lowest benefit payable at early retirement is 70 percent of the accrued normal benefit. There is no actuarial reduction for employees having 40 years or more of service retiring at age 60 or over.

Also, the plan pays an additional amount to the early retiree equivalent to 2 percent of the projected social security benefit for each year of service to a maximum of 50 percent. This extra benefit ceases when the employee is eligible for full benefits from social security at age 65.

In the event of the employee's premature death, the plan provides a benefit to the surviving spouse of approximately 50 percent of the employee's accrued benefit. This provision applies to employees with 25 years of service regardless of age, or where the employee would have been entitled to an early retirement benefit upon the date of death.

For retired employees this 50-percent spouse benefit is a part of the normal retirement benefit, and is subject to increases under the variable annuity feature.

Thus it is that the retirement plan of Bank of America like the medical-dental, life and accident, sickness and disability, and profit-sharing plans is designed to respond to a specific need that is relevant to a specific segment of the bank's entire employee population. It is a plan that has evolved over a number of years and which has been amended, revised, and improved.

Major revisions were made to the retirement plan in 1970 and included not only a greatly improved early and normal retirement and surviving spouse benefit, but also an approach to funding that recognizes all full-time employees from date of employment as potential retirees.

The improvement in benefits and the change in the method of actuarial valuation naturally increased the actuarial liabilities significantly in relation to the total plan assets of \$95,951,000. However, the present plan assets represent approximately 85 percent of vested benefits and 65 percent of the value of all benefits. The value of all benefits being paid to those retired and accrued by employees to date is \$147,700,000.

The retirement plan is funded through a combination of an insurance contract with the Occidental Life Insurance Co. and a trust fund administered by the bank's trust department. Both of these funds are entirely insulated from the bank's resources and are invested within broad policy guidelines established by the bank's investment committee. The bank's funding policy is to pay the full normal cost of the plan and to amortize the entire unfunded actuarial liability over a 40-year period.

In conjunction with these and other benefit plan changes, an employee benefits committee was established, comprised of submanagement personnel, to administer the retirement plan and other benefit programs.

The establishment of this committee created a forum in which employees can obtain a hearing on their objections to the handling of various claims and determinations of benefits eligibility. The bank recognizes that no matter how diligent is the attempt to establish equitable rules, formulas and eligibility requirements, there will be a variety of circumstances requiring a review of individual facts in order to insure a fair and effective benefits program.

The bank recognizes also the importance of responsible funding of pension benefits and the adoption of reasonable vesting provisions in plans which provide for deferred benefits.

However, it seems clear that a requirement that all pension benefits be vested after a minimum period of employment and regardless of age would produce serious negative effects on private employee benefit programs. The resulting larger allocation from available resources to meet the cost of such requirements would necessarily have an unfavorable impact on the allocation of funds to plans related to present needs of all employees and plans which are the focus of concern for employees of different age groups.

There can be no doubt, however, that employees attaining the age level where retirement security takes on a greater degree of importance should have some definite assurance that their continued service with a present or future employer for a reasonable period will entitle them to reasonable benefits at retirement.

Also, there should be no doubt that the administration, management, and funding of the assets earmarked to provide these benefits should be free from practices which would jeopardize the interests of the employee who relies upon these funds for his future security. We feel the bank's retirement plan satisfies this responsibility.

We were very pleased to accept your invitation today, Mr. Chairman.

The CHAIRMAN. Thank you very much.

This is a most creative plan that you have described. The employee has a vested interest after 15 years of service—

Mr. FISHER. And 40 years of age.

The CHAIRMAN. How long have you had that? I want to find out how much experience you have had under that.

Mr. FISHER. Since—we implemented the plan October 1 of last year retroactive to January 1, 1970, and it was very, very well received by the employees of the bank. Our previous plan was in need of improvement. Our management was very receptive to that need. In fact it was a mandate from our management that we do so.

The CHAIRMAN. There is another attitude that we know exists, that some companies feel it important to not have vesting, and thus to create an incentive in the company to stay until 65 or lose out on returns. This is sort of a competing philosophy with the one that you are losing. Yours is relatively new.

I wonder if you have any feeling now how it is going to work out?

Mr. FISHER. The competitive labor market is one factor that we think creates a demand for earlier recognition. We realize that there

will be more employees over age 40 in the retirement group and that some might leave. With earlier recognition, however, we can also attract good talent with a better chance of keeping them. We feel providing pension benefits for employees age 40 with 15 years of service is reasonable.

Employees under age 40, who leave, normally have 25 years or more in which to develop a pension benefit from some other employer. As external and internal labor pressures continue to bear they will be recognized in future changes.

The CHAIRMAN. Do you balance that desire with this other opportunity which is to join in the profits of the company through a supplemental plan? Am I accurate there?

Mr. FISHER. Yes; we provide a profit-sharing plan for employees and they begin participating after 3 years. We offer the plan as an incentive for our employees to remain with the bank. After 3 years employees start vesting and after 2 years of participation they are 25 percent vested. It goes from there gradually to 100 percent at 15 years.

For example, an employee 39 years of age who, after 15 years of service, decides that he wants to leave the bank would have a 100-percent vested interest in the profit-sharing plan. The bank makes the only contribution to this fund.

This profit-sharing payment is the bank's way of recognizing the employee's performance contribution and providing for his future.

The CHAIRMAN. Well, now given the age 40 and 15 years to qualify under both plans, and the employee leaves at age 40 for other employment; now, he would receive the retirement benefit at age 65?

Mr. FISHER. That is right. A 100-percent vested benefit based on his salary and years of service at that point plus his profit sharing.

The CHAIRMAN. And then what could be his draw on that between age 40 and age 65?

Mr. FISHER. If the employee leaves, he could get his profit sharing in a lump sum within the subsequent taxable year after his present allocation is determined.

Mr. HILLEGAS. They can take it in installments.

Mr. FISHER. We provide installments at retirement but if the employee separates before then we provide it to him in one lump sum.

The CHAIRMAN. The profit-sharing plan?

Mr. HILLEGAS. The profit-sharing plan.

The CHAIRMAN. The retirement obviously stays in until he is qualified at age 65 to draw?

Mr. FISHER. That is correct.

The CHAIRMAN. This is a fund entirely created by direct contribution by the bank and not employee wage withholding? The dental-medical is a withholding?

Mr. FISHER. We share the cost of the dental-medical plan with the employee on a 50-50 basis. The estimated value—for instance, I have a wife and four children. I pay \$18.95 a month for the medical-dental plan which would cost me on the market, privately, about \$90 a month for the same benefit. It is a very good plan and here again as competitive pressures increase I am sure that the contribution required of employees will be less and less.

The CHAIRMAN. It sounds very good. What is wrong with it?

Mr. FISHER. Not a thing that I know of. I have enjoyed it very much.

The CHAIRMAN. You both look very healthy and happy about it and you are both participants.

Mr. FISHER. Well, we feel very strongly that with the rising cost of health protection this is a very critical benefit and is particularly needed by the employees from family bearing age to the time when their children graduate from college. One trip to the hospital will convince anyone of that, I am sure.

This plan covers 100 percent of all hospital bills, 80 percent of all surgery from the first dollar, and then there is a deductible portion. The dental plan fits into that portion and once that deductible has been met the dental plan operates on the basis of \$500 per year per family member.

The CHAIRMAN. Under the medical-dental are there schedules of payment, free choice of doctors and hospitals on the regular schedule for procedures?

Mr. FISHER. The insurance company knows approximately what a doctor would charge for an appendectomy in San Francisco as opposed to Fresno, so there is a geographic table of costs applied. Payment is made on a "reasonable and customary" basis.

This protects against inflation, as prices go up we don't have to continually go back to management to address the problems of an insufficient plan. It is expensive, but it is very, very necessary.

Mr. GORDON. Mr. Fisher, on behalf of Senator Javits, I have a few questions.

Your plan's newly adopted vesting provisions do have an age requirement, age 40, and 15 years of service. And in your testimony you observe that you felt that a vested schedule without an age requirement in it would present cost problems to employers.

Now, under your plan—and I realize it has been improved tremendously—a fellow could be hired by the bank at age 19 and work until age 39 with 20 years of service and then he could be either voluntarily or involuntarily separated from employment and not qualify for a vested pension, whereas a fellow who actually reached the magic age of 40 but only had 15 years of service would.

What was your reaction to that when your plan was designed?

Mr. FISHER. Well, it is a sharp break, there is no question about that, and your statement is absolutely correct. The philosophy that supports that approach is one whereby the person 39 still has 25 years of potential employment. His labor is still marketable. If the age factor is defensible, it is on that basis.

Mr. GORDON. Well, when you said then that you felt that there would be a cost problem to many employers in terms of adopting a vesting schedule—

Mr. FISHER. I think that is true. I am not speaking for anyone but the Bank of America and I am not going to sit here and tell you that the cost of creating 10 year vesting for the Bank of America would be prohibitive. It wouldn't, particularly since our turnover rate at below 5 years is high, but there are industries where the turnover mix may be different, where there may be sudden layoffs at age 45, where 5,000 em-

ployees are suddenly affected, where the turnover rate is just as high with long service as it is with short service employees—in these instances early vesting could create tremendous expense burdens. I am certainly not arguing that these are reasons against providing earlier vesting. However, these problems should be considerations in any legislation.

Mr. GORDON. In your judgment, if a vesting standard was mandated based solely on length of service, whatever the appropriate period is, and every pension plan was compelled to adopt that period of service, would the cost of vesting overall be relatively equally distributed among employers in industry groupings?

Mr. FISHER. That is difficult to answer.

Mr. GORDON. What I am trying to figure out—and I know this is a matter of great concern to Senator Javits—is whether or not an age requirement in a vesting schedule would have just the opposite effect, because what it would mean is that when the employee comes to the employer and meets the magic age number, that employer would have to bear the cost for all the employee's prior working years, whereas if you took out the age requirement and simply had it based on length of service, presumably the cost of vested pensions in industry groupings would be relatively equally distributed among the employers.

Mr. FISHER. I am really not qualified to answer that question—it would require an actuary.

Mr. HILLEGAS. Are you addressing the fact that the employee who leaves one employer and would take that particular vested portion with him, going to another employer, and I presume this has—

Mr. GORDON. Just being able to get vested pensions from, let's say, four employers, based on his length of service, instead of one employer having to bear most of the cost or all of the cost for a pension because he happened to hit a particular age.

Mr. HILLEGAS. In essence then it would be perhaps four smaller checks from the individual employers, but in total this would equal what he would essentially receive from one employer. In that context the cost would be distributed. Yes.

Mr. GORDON. Thank you.

The CHAIRMAN. Is your plan in other areas and other industries? You are in the banking business here, but I think you mentioned that, there are other areas of industry where employment practices are not comparable, in which your approach, this relatively early vesting, would probably be more expensive and a greater burden in other areas.

Do other banks have programs similar to yours, do you know?

Mr. FISHER. Well, when we completed our study, it supported our recommendations to management to change our plan. At that time, this was early 1970, the plan that we were recommending was a standard in the banking industry. The major banks, at least.

We compared with major banks and also compared with major industry. We felt that our plan was better than most.

Now to the extent that general industry has changed since that time I can't address that. I can address our position with other banks. We are still very competitive within banking.

The CHAIRMAN. You are setting a standard?

Mr. FISHER. Yes; our plan is as good as any in the banking industry.

The CHAIRMAN. Well, I am certainly glad that we called you and and you were so cooperative in coming. We appreciate it.

Mr. FISHER. Thank you very much and we appreciate the many complexities that your committee must be facing to resolve these problems and we thank you for the invitation and the chance to participate.

Mr. HILLEGAS. Thank you.

The CHAIRMAN. Finally this afternoon, The Great Atlantic & Pacific Tea Co., Inc., witnesses. Several.

Gentlemen, would you come to the table?

I appreciate your appearance here today. Proceed as you care to.

STATEMENT OF J. W. VAN VLIET, DIRECTOR, AUDITS AND INSURANCE, THE GREAT ATLANTIC & PACIFIC TEA CO., INC.; ACCOMPANIED BY DARRELL V. STIFFLER, JR., NATIONAL DIRECTOR, PERSONNEL AND INDUSTRIAL RELATIONS, THE GREAT ATLANTIC & PACIFIC TEA CO., INC.; AND CHARLES P. O'CONNOR, ATTORNEY AT LAW, MORGAN, LEWIS & BOCKIUS, WASHINGTON, D.C.

Mr. VAN VLIET. Thank you, Mr. Chairman.

We have a prepared statement for the committee.

My name is J. W. Van Vliet. I am director of audits and insurance for The Great Atlantic & Pacific Tea Co., Inc. I have been employed by A. & P. for 41 years. For the last 8 years of my employment I have served as both director of audits and insurance and as secretary of the company's retirement board.

I am appearing today at the invitation of the subcommittee in an attempt to furnish this subcommittee with information concerning the establishment and administration of the A. & P. employees' retirement plan.

At the outset, I want to express on behalf of A. & P. our appreciation for the opportunity to testify before the subcommittee concerning this very important subject. We have met on two separate occasions with the staff of this subcommittee and we have to the greatest extent possible attempted to cooperate with the investigation being conducted by the subcommittee staff.

I would like also to correct any misunderstanding that may exist in the minds of the members of the subcommittee concerning the failure of A. & P. to testify during the July hearings held by this subcommittee. Prior to these hearings we met with staff members of this subcommittee to answer their questions concerning the A. & P. retirement program and specific questions concerning a former A. & P. employee, Steven Duane.

After this meeting we received correspondence from the subcommittee's counsel inviting a representative of our company to appear and testify concerning the relationship between our pension plan benefits and Mr. Duane.

We advised the subcommittee's counsel, as we had previously advised the subcommittee's staff representatives, that at the time Mr. Duane resigned from A. & P. employment he was not covered by the

company's pension plan but rather he was covered by Teamsters Local 863 pension plan in Newark, N.J.

In the company's opinion, an appropriate explanation concerning Mr. Duane's complaint could come only from the trustees of the Local 863 pension plan. The Teamsters Local 863 pension plan is a jointly administered pension plan to which A. & P. is only one of many contributing employers. Thus, it was in this context that A. & P. did not accept the invitation to testify during the July hearings.

However, because of the interest this subcommittee has shown in the case of Mr. Duane, we think that the members of the subcommittee would like from the company an explanation concerning the Duane matter.

Mr. Duane was an employee in the A. & P. butter warehouse, Jersey City, N.J. As a warehouseman, Mr. Duane was represented by Teamsters Local 863. The terms and conditions of Mr. Duane's employment, including his pension coverage were governed by a collective bargaining agreement between the company and Teamsters Local 863.

In December of 1970, the company made an operational decision to shut down this warehouse. In an effort to protect his job, the company offered Mr. Duane the opportunity to transfer to another A. & P. facility. Mr. Duane was given 30 days in which to decide whether he desired to work at the company's Newark Produce Warehouse.

From December 28, 1970, until January 22, 1971, Mr. Duane worked at the Newark produce warehouse. On January 22, 1971, Mr. Duane resigned from A. & P. employment and received severance pay in the amount of \$5,406.40. In addition, Mr. Duane received his accumulated vacation pay totaling \$882. At the time Mr. Duane resigned from employment with A. & P., his pension coverage was under the Teamsters Local 863 pension fund.

This jointly administered pension fund is just one of the many jointly administered pension trust funds to which A. & P. is a contributing employer. It was our understanding that Mr. Duane's complaint to this subcommittee related to his inability to qualify for a pension under the Local 863 pension plan, and in this regard we felt it inappropriate for the company to make any comment concerning Mr. Duane's ability to qualify for pension benefits under the terms of this jointly administered trust fund.

I hope this brief explanation clarifies for the members of the subcommittee the basis upon which A. & P. declined the invitation to testify at the July hearings. I would now like to present to you a description of the A. & P. retirement program.

As an employer which prides itself on the long-term service of its average employee, A. & P. has long been interested in the development of an adequate system for paying retirement benefits to its employees. The initial A. & P. retirement program was established approximately 23 years ago.

In 1948, A. & P., as one of the retail food industry leaders, voluntarily established a retirement program for all A. & P. full-time employees. Then, as now, the employees' retirement plan covered A. & P. employees from the chief executive to the lowest paid full-time employee on the same basis. From its inception, this retirement program has been entirely paid for by A. & P.

The A. & P. retirement program which commenced in 1948, consisted of a single pension plan, the A. & P. Employees' Retirement Plan. At that time, all employees of A. & P. who met the qualification requirements of the plan were covered by this single pension plan and credited for past service.

Over the years, many A. & P. employees, represented in collective bargaining by unions, have elected to withdraw from the company plan and have negotiated provisions in their collective bargaining agreement which requires A. & P. to contribute to jointly administered pension trust funds.

These Taft-Hartley trust funds are coadministered by representatives of contributing employers and representatives of the unions. As a result, the A. & P. retirement program now exists in many different forms.

In addition to the company sponsored employees' retirement plan, A. & P. contributes to many jointly administered pension funds. Employees covered by these jointly administered pension funds are paid retirement benefits and qualify for these retirement benefits pursuant to the rules established by the trustees of the jointly administered trust funds. The company has no direct voice in the establishment of these rules or in the administration of these trust funds.

The CHAIRMAN. Let's stop right there.

If they are jointly administered, why doesn't the company have a direct voice?

Mr. VAN VLIET. These are multi-employer funds and we would in some cases not have a trustee and in other cases have one representing our interests among many others, so that we would as a company not have a direct voice. The gentleman who would be serving as a trustee sits only as a trustee and not as our representative.

Senator SCHWEIKER. If the gentleman will yield, how many other employers would be involved in this kind of situation?

Mr. VAN VLIET. Hundreds in some cases.

Senator SCHWEIKER. In this agreement?

Mr. VAN VLIET. Yes, sir.

Senator SCHWEIKER. Is this a national plan, then, or not?

Mr. VAN VLIET. Some of them are, yes, sir.

Senator SCHWEIKER. I am speaking now particularly to the case at issue for a moment.

Mr. VAN VLIET. Mr. Duane. It was a local 863 group, Teamsters.

Senator SCHWEIKER. Thank you.

Mr. VAN VLIET. To illustrate the impact of these jointly administered trust funds on the A. & P. retirement program as originally conceived, the following figures may be helpful to the members of this subcommittee.

In 1948, when the A. & P. retirement program commenced, it covered approximately 31,000 full-time A. & P. employees. Presently, approximately 78,000 employees of A. & P. are provided pension coverage.

Of these 78,000 employees, approximately 23,000 are covered by the company sponsored and administered A. & P. employees' retirement plan. Approximately 55,000 A. & P. employees are covered by various jointly administered pension trust funds.

I understand that the subject of this subcommittee's hearings at this time is solely concerned with the company pension plan but did feel that it was necessary to indicate to the subcommittee the entire scope of the retirement programs covering A. & P. employees.

In addition, I wanted to clarify any misunderstanding concerning the company's response to questions 21 and 22 of the P-1 form. Of the 55,000 A. & P. employees presently covered by jointly administered trust funds, approximately 63 percent represent transfers from the company plan to these jointly administered plans. Therefore, of the 37,510 employees who left the company plan as indicated by our answer to question 22, 34,650 employees simply transferred their pension coverage to jointly administered pension funds.

In addition to the A. & P. employees' retirement plan and A. & P.'s participation as a contributor to jointly administered pension trust funds, the company also provides a broad program of additional personal and family benefits.

These related programs include payment for sickness, hospitalization and surgical coverage, life insurance and, last, a thrift plan.

The thrift plan is designed to encourage the qualified employee to set aside some of his own salary for retirement. To encourage employees to utilize the thrift plan, the company also contributes to the plan for the benefit of its employees.

With this background, I hope the members of the subcommittee can appreciate that the retirement plan we are to discuss today is just one portion of the A. & P. fringe benefit program provided by the company for its employees.

Our overall program is, we believe, comparable to the programs of other leaders in the retail food industry. Our program is continually reviewed and updated with the view toward making meaningful improvements to benefit A. & P. employees consistent with the company's ability to meet the cost of these improvements.

On this last point, I think the members of this subcommittee would be interested in knowing that the retail food industry operates on a rather slim margin of profit. For example, our company currently operates on a ratio of well under 1 percent net income to gross sales.

The A. & P. employees' retirement plan is a pension program commenced in 1948 with the objective of providing A. & P. employees with a life income upon retirement designed to supplement the employees' social security benefits.

The retirement plan is fully qualified by the Internal Revenue Service. The retirement plan is a noncontributory plan; that is, the company bears the entire cost of the pension program.

In addition to paying the necessary contributions to the pension plan, from 1948 through 1968, the company bears the entire cost of administering the fund. At the present time the retirement plan is fully funded based upon the total value of all accrued benefits, treating all such benefits as if they were vested. Since 1948, approximately 13,000 A. & P. employees received pension benefits or death benefits from the retirement plan.

The retirement plan is administered by a retirement board. The retirement board consists of four individuals. The present retirement

board is made up of one outside member of the board of directors, the two vice-chairmen of the board of directors, and the corporation's general counsel. I serve as secretary to the retirement board.

As I have previously stated, the employees' retirement plan covers all full-time A. & P. employees with the exception of those employees covered under union negotiated jointly administered pension plans; thus, three of the members of the retirement board are participants in the plan.

The retirement board administers the plan for the benefit of all members of the plan. As set forth more fully in the pension study. Form P-1, filled out by the company for the benefit of this subcommittee, the retirement board is the beneficiary of both professional investment and actuarial advice.

The retirement plan utilizes the services of an independent certified public accounting firm.

The retirement board has invested the assets of the retirement plan by utilizing the services of a large national insurance company through a deposit administration account and through a corporate trustee, one of the largest banking institutions in this country.

Thus, from 1948 to 1960, the company set aside funds with the Prudential Insurance Co. toward the payment of future pension benefits. Commencing in 1960, the retirement board retained the Bankers Trust Co. as corporate trustee for the purpose of establishing a growth fund for the benefit of the retirement plan.

The investments of the retirement plan are, with a limited exception, at the sole discretion of the administrator of the deposit administration account, Prudential Insurance Co., and the corporate trustee, Bankers Trust Co.

As set forth more fully in the questionnaire submitted to this subcommittee, a substantial amount of the assets of the retirement plan are invested in housing or other social/economic improvement programs.

The A. & P. employees' retirement plan is noncontributory; the company bears the entire cost of funding and administering the program. Through the present time, the company has contributed approximately \$490 million toward the establishment of this retirement plan. The result of these significant contributions is that the current assets exceed the value of all benefits accrued through the present time, treating such benefits as though they were vested.

Since 1968, no contributions were made because such contributions would not have been tax deductible. The reason for this is the large gains that have resulted from employees under the retirement plan having elected, through the collective bargaining process, to leave the company administered retirement plan, become participants and thus obtained pension coverage through various jointly administered pension trust funds.

I want to emphasize that these employees voluntarily left the coverage of the A. & P. retirement plan by virtue of decisions made during the course of collective bargaining. That is, in collective bargaining, these employees' union representatives proposed, and the company acceded to, a program of contributions made by the company to jointly administered trust funds rather than continuing these employees under the company sponsored retirement plan.

Contributions made by the company to these jointly administered trust funds in 1970 alone amounted to \$14,419,000. Thus, employees who have left the coverage of the company plan and moved to coverage by a jointly administered pension plan will still receive a pension paid for by A. & P., assuming the employee qualifies under the rules and regulations established by the trustees of the jointly administered trust fund.

Under the terms of the A. & P. employees' retirement plan, a full-time A. & P. employee becomes a member and is covered by the plan after he or she has completed 5 years of full-time service. A member of the plan is eligible to receive benefits, at the earliest time, when the member has reached the age of 55 and has completed at least 10 years in the plan. Normal retirement is achieved at age 65.

A member of the plan retiring at age 65 will receive a life income from the plan based upon his or her "final pay"—the average of the 5 consecutive years of highest creditable earnings out of the employee's last 10 years prior to retirement—and the number of years that the employee worked as a member of the retirement plan.

Thus, an employee retiring at the age of 65 will receive 1½ percent of his final pay for each year of plan membership up to a maximum of 33½ years less half his or her primary social security benefits.

The CHAIRMAN. As that increases, does the retirement benefit decrease?

Mr. VAN VLIET. No, sir. He gets the benefit of any increases in social security in the future.

The CHAIRMAN. No offset?

Mr. VAN VLIET. No, sir.

For example, an employee whose average final pay is \$10,000 per year, retiring after plan membership with A. & P. for approximately 35 years would receive a pension benefit from the fund of \$307 per month. This benefit is computed by taking 1½ percent of the employee's final pay times the maximum number of creditable years under the plan—33½ years—which yields a figure of \$5,000.

Deducted from this \$5,000 is one-half of the employee's primary social security benefit or \$1,310. That would be as of the time that he retires.

This yields an average annual retirement income of \$535 per month. If the employee is married, at age 65, his wife would receive an additional \$109 per month or a net combined total retirement income of \$644. The average pay of an employee presently fully covered by the A. & P. retirement plan is approximately \$9,000 per year. Thus, the average retirement income payable to the average employee under the A. & P. retirement plan would be approximately \$3,200 per year or \$267 per month.

In addition, this employee would receive social security payments of approximately \$219 per month. Therefore, this employee's average annual retirement income would amount to \$5,820 or approximately 65 percent of his "final pay."

As a further addition, after the death of an employee, a surviving widow would receive payments for her lifetime equal to 40 percent of the employee's pension.

Since its establishment in 1948, the A. & P. employee's retirement plan has been continually reviewed and improved consistent with the company's policy of providing the maximum benefit coverage for its long-term employees and the availability of resources to pay for these benefit improvements.

During the last 14 years, the retirement board, and the board of directors approving it, has made approximately 19 benefit improvements, including the following:

(1) An increase from three-fourths percent of the first \$3,000 of creditable pay and $11\frac{1}{2}$ percent on the excess through several changes to the present level of $11\frac{1}{2}$ percent of "final pay."

(2) Widows benefit to the extent of 40 percent of the employee's pension with no reduction in the normal retirement benefit.

(3) Since the inception of the plan, the average employee's retirement income has increased from 45 percent to 64 percent of the average covered earnings under the plan.

Attached to this statement you will find a detailed history of the improvements made to the employees' retirement plan—exhibit 1—and a chart which illustrates the growth of retirement income in the years that benefits were improved—exhibit 2.

(The material referred to follows:)

A HISTORY OF THE A & P RETIREMENT PLAN

The A&P Retirement Plan--adopted October 1, 1948--has always been a non-contributory Plan. At the time of its inception, it was insured under a Group Annuity contract underwritten by The Prudential Insurance Company of America. All employees who had reached age 35 and completed 5 years of Company service automatically became Plan members on its effective date. The Plan provided an annual benefit for both past and future service, based on the following formula:

3/4% of base pay up to \$3,000 a year, plus

1-1/2% of base pay over \$3,000 a year

for each year of credited service up to

age 65.

Credited service included all years of continuous Company service after reaching age 35 and completing 5 years of service--even if those requirements were fulfilled before the effective date.

Base pay meant regular earnings not including overtime or any special pay. For all past service benefits (before October 1, 1948) base pay during the last 52 weeks up to April 3, 1948 was used.

From the Plan's inception, A&P has maintained a policy of periodic review for the purpose of updating the Plan as conditions warranted.

That this policy was strictly adhered to is evident in the revisions that occurred over the ensuing 21 years.

On November 1, 1957

- The benefit formula was changed because of Social Security changes and the benefit percentages were increased as follows:

The yearly benefit at age 65 equalled

- o for service before January 1, 1957

3/4% of base pay up to \$4,200 a year, plus

1-1/2% of base pay over \$4,200 a year

for each year of credited service up to 1/1/57.

Base pay was the average of the last week's pay in 1954, 1955 and 1956 times 52.

- o for service from January 1, 1957

1% of base pay up to \$4,200 a year, plus

2% of base pay over \$4,200 a year

for each year of credited service from 1/1/57

to age 65.

- A Widow's Benefit was adopted that provided a life income equal to 40% of the credited early retirement income based on pay over \$4,200 a year at the time of the employee's death.

This benefit was payable to the widows of employees--whether active or retired--who die between the ages of 55 and 65 after 10 years of Plan membership.

- Retirees, widows and contingent annuitants were guaranteed no reduction in benefits due to future Plan changes.

On July 1, 1959

- A "final pay" minimum benefit was added to the Plan. This alternate formula--which applied only if it produced an amount in excess of the regular plan formula--provided a yearly benefit equal to
1-1/2% of "final pay"
for each year of credited service to age 65
up to a maximum of 33-1/3 years
less primary Social Security
(proportionately reduced for early retirement).

Final pay was the average base yearly pay during the last 5 years of service.

Credited service included all continuous Company service--up to the maximum--after the first 5 years.

On October 1, 1960

- The Widow's Benefit became payable on death after retirement at age 65, as well as before 65. When an employee's death

occurs after retirement, the Widow's Benefit equals
40% of full pension

- A \$1,500 benefit payable on death after retirement to the retiree's normal beneficiary was added to the Plan (to replace discontinued post-retirement Group Life Insurance coverage).
- Election date for a Contingent Annuitant Option was reduced to 2 years before retirement instead of 5 years.

On July 1, 1965

- A Level Income Option--to make up for Social Security on early retirement--was added to the Plan.

On October 1, 1967

- The definition of final pay in the minimum benefit formula was changed to the average of the highest 5 consecutive years of base pay out of the last 10 years before retirement.

On March 1, 1968

- A maximum amount was established for the Social Security offset used in the final pay minimum formula. That maximum was \$1,783.06 of a year (\$148.59 a month).

On October 1, 1968

- A new alternative minimum benefit was added to the Plan which

provided a pension at age 65 equal to
\$5 a month
for each year of credited service
to a maximum of 35 years.

- After a Plan member is vested, his vested benefits cannot be reduced because of future Plan changes.

On December 1, 1969

- The final pay benefit completely replaced the career pay benefit formula for all Plan members' past and future service up to a maximum of 33-1/3 years.
- In addition, the offset for Social Security was reduced to 50%.
- A 5% per year reduction factor replaced the higher actuarial reduction factors used on early retirement in order to liberalize these benefits.
- The Widow's Benefit was liberalized to provide 40% of credited early retirement benefits on death after age 55 but before retirement.

	AVG. ANN. PENSION EARNINGS	A & P PENSION	% OF EARNINGS	SOC. SEC.	% OF EARNINGS	TOTAL PENSION	% OF EARNINGS
1948	\$3,768	\$1,020.60	27	\$ 672.00	18	\$1,692.60	45
1959	5,469	1,516.20	27	1,587.60	29	3,103.80	56
% Increase Over 1948	45%	49%		136%		83%	
1960 - 1961	5,540	1,616.80	29	1,938.00	35	3,554.80	64
Over 1948	47	58		188		110	
1965	6,539	2,103.68	32	2,064.00	31	4,167.68	63
Over 1948	74	165		207		146	
1967 - 1968	7,430	2,670.30	36	2,064.00	27	4,734.30	63
Over 1948	97	162		207		180	
1968 - 1969	9,005	3,502.16	39	2,278.80	25	5,780.96	64
Over 1948	139	243		239		242	

Mr. VAN VLIET. In order that employees will be fully acquainted with the retirement plan and its administration, the company has prepared a booklet which is distributed to each employee when he or she becomes a member of the plan.

This booklet is continually updated to reflect changes in the plan, both with regard to benefits and the administration of the plan.

In addition, employees are directly advised by correspondence from the company concerning improvements made in the benefits available under the plan or in the administration of the plan at the time these changes are implemented by the retirement board.

The company's communication program with regard to the employees' retirement plan is conducted with the employee in mind. I have attached to my statement a copy of the latest edition of this booklet, exhibit 3.

We have attempted to describe the plan and the benefits available under the plan in language and using examples that will be easily understood by the members of the A. & P. plan. Employees are encouraged to raise any questions they have concerning the plan or its administration with the company through their supervisor.

Our experience with employee inquiries indicates that questions that are raised are rapidly processed through the supervisory staff and local management to national headquarters in New York. We attempt to reply to employees with as fullsome an explanation as possible concerning any questions they have with regard to the retirement plan.

While the plan provides for no formal appeal procedure to the retirement board, it has been our experience that employees with questions or concerns regarding the administration of the plan or benefits available to them have not been reluctant to raise informally these questions or concerns through local management.

Again, we have attempted to respond to these questions and concerns of employees in as rapidly and efficiently a manner as possible.

Gentlemen, this concludes my presentation concerning the establishment and administration of the A. & P. retirement program. In discussing the subject matter of these hearings with representatives of the subcommittee staff, we are aware of the fact that this subcommittee is interested in our view of the vesting question.

The A. & P. plan is designed to reflect the experience of A. & P. with its employee complement. Thus, it may interest you to know that under the A. & P. employees' retirement plan, the present average length of service of a covered employee is approximately 20 years.

As I stated at the outset of my presentation, A. & P. is a company which has had a very favorable length of service experience with its employees. A. & P. employees do stay on the job in the vast majority of the cases throughout their working career.

Given this experience as improvements have been made in the retirement plan, the retirement board has taken into consideration the fact that it desired to provide the maximum form of benefits to these long-service employees.

With the limited resources available to commit to the pension plan, choices had to be made by the retirement board concerning the type of

improvements that would be made in the plan. In this context, vesting is considered as a benefit improvement.

To date, the retirement board has chosen to improve the retirement plan in areas other than vesting. I have outlined for you, chronologically, the type of improvements that have been made in the retirement plan.

These improvements are keyed to the long-service employee. That is, they are designed to provide the employee with alternative benefits and benefits which supplement the normal retirement benefit payable under a pension plan. They are keyed to the long-service employee because that is this company's experience with its work force.

However, I am certain that the retirement board recognizes the current interest in vesting of pension plans and consistent with an improvement in the company's earnings, will very seriously look at the present vesting requirement under the retirement plan with a view toward improving this form of benefit.

In conclusion, I want once again to express on behalf of A. & P. our gratitude for the courtesy shown by the staff of the subcommittee in their visits with us and to express to the members of this distinguished subcommittee our appreciation for the opportunity to testify before the subcommittee on this very important subject.

The CHAIRMAN. Thank you very much.

Mr. GORDON. Mr. Van Vliet, on behalf of Senator Javits, I would like to ask you first about these transfers to the jointly administered plans.

Now, for the sake of the record and to clarify this matter, I take it you are not contending that all of these long-service employees who left the employ of A. & P. or left the scope of the A. & P. plan were transferred into jointly administered negotiated plans?

Mr. VAN VLIET. The 34,650, Mr. Gordon, were transferred to the jointly administered plans.

Mr. GORDON. There are, in fact, employees with long service who do leave the scope of the plan, who don't transfer to the negotiated plans and who do not qualify for pension benefits?

Mr. VAN VLIET. Yes; there are sometimes. For example, anyone who died before age 55 would run into that category.

Mr. GORDON. I think the record should show, Mr. Chairman, that Senator Javits has received quite a few letters since the hearings in July when Mr. Duane testified, and I would just like to read portions of two of them very briefly to you, gentlemen, and get your reaction.

As a former employee of the Great A&P Tea Company, I read with interest the report in the New York Times Wednesday, July 28, 1971, concerning the pension. I worked for the Tea Company for 22 years, always in a professional and executive position.

In April of 1971 I was terminated because the company discontinued the National Real Estate Department, as indicated in the attached letter of May 18 from the national director of personnel.

I did not receive and will never receive the pension for my many, many years of service with the Great Atlantic & Pacific Tea Company.

I believe it should be made clear that the plight regarding blue collar workers who have been terminated by the Tea Company is also shared by professional and executive personnel terminated after many years of service.

And here is just one more:

I began working for the A&P on September 23, 1940, as a bag boy, worked my way up . . . I have managed large and small volume stores during these years.

Many of these years were spent in the city of Detroit. I was manager of a \$100,000 store in Detroit during the last riots and witnessed many stores burn during the riot.

In fact three of the nearest A&P stores were burned to the ground. I remained at the store for about another year and was transferred to a Dearborn store for the past three years. One day my supervisor came in and told me I was being transferred to a store in Detroit. He claimed they needed a strong man to clean up the store because of the location of the store.

My wife and I were not in favor of the transfer and . . . I was forced to leave and had nothing to show for these years of service.

So I think that the record should be clear, gentlemen, that not all of these individuals, as I am sure you would be the first to admit, have been transferred into these other plans.

Mr. VAN VLIET. That is correct.

Mr. GORDON. And isn't it also a fact that if Mr. Duane had not transferred into the local union plant, had remained under the scope of the A. & P. plan, and had been laid off precisely the same time that he was laid off, that he would not have qualified for a pension under the A. & P. plan?

Mr. VAN VLIET. He wasn't laid off. He resigned of his own accord.

Mr. GORDON. As I recall his testimony he claimed that they closed the plant and he was laid off and he was offered another job which he felt he was not in a position to physically accomplish and so he has no job now.

Mr. VAN VLIET. Well, he was offered the position, the job, and he took it.

Mr. GORDON. For about a year as I recall. I——

Mr. VAN VLIET. No; not that long.

Mr. GORDON. But the fact of the matter is that whether he had been laid off or whether he left voluntarily is immaterial. Under the A. & P. plan he would not have qualified at that time.

Mr. VAN VLIET. That is correct. If he quit of his own accord; yes, sir.

Mr. GORDON. Well, those are all the questions I have.

The CHAIRMAN. This plan that was raised here, the Local 863 plan, what happens to A. & P. covered people who are suddenly not covered by A. & P. but are picked up by the 863 plan? Do they go in laterally

There is something that escapes me about all of this. Why, with all of the attention you give to improving your plan, do you have all of this great exodus to other plans? Can you explain that to me? I am not familiar at all with this operation.

Mr. VAN VLIET. I can't imagine why they would be, because I feel personally that it is one of the finest plans in the country.

The CHAIRMAN. You are losing coverage to other plans, aren't you?

Mr. VAN VLIET. That is right. And I see no reason why they should want to go into some of these other plans.

The CHAIRMAN. This plan that was raised here, the Local 863 plan, what happens to A. & P. covered people who are suddenly not covered by A. & P. but are picked up the 863 plan? Do they go in laterally with the same years of credit and the same position in expectation of benefits or does everything switch on them?

Mr. VAN VLIET. No, Senator. They, under the 863 plan, go in and have to be in that plan, I understand, 5 years, and then they get 15

years creditable service, and at the end of that time then they could retire early at a benefit of, as I recall, \$90 a month, I think it is. And then that increases up to a maximum coverage of 30 years in the plan to \$180 a month, so that from Mr. Duane's standpoint, if he had stayed in the company plan he would have gotten more than that. I can't explain why they would want out.

The CHAIRMAN. Well, of course, he couldn't have stayed in the company plan because there was no job with the company. Am I right on that?

Mr. VAN VLIET. That is true. He was part of the union negotiating team that negotiated himself out.

The CHAIRMAN. It is not quite that simple.

Senator SCHWEIKER. I think we need to clarify this point. It is not very clear to the committee.

You say he negotiated himself out.

Mr. VAN VLIET. Well, he was part of the negotiating team that—

Senator SCHWEIKER. Well, that was at the demand of the bargaining unit to be released from this fund to go into the other fund. In other words, isn't the reason, as I understand what you said, that most of these negotiating bargaining sessions, the company is asked to relinquish governing of its pension plan so that the union administered jointly industry sponsored plan can take over?

That is the bargaining point that the unions are making in your bargaining contract, is that not correct?

Mr. VAN VLIET. Yes, sir; that is correct.

Senator SCHWEIKER. I think that is the reason for the exodus from the plan.

Mr. VAN VLIET. Yes, sir.

Senator SCHWEIKER. And the unions want a part of this and this is their national program that they have, is that a fair statement?

Mr. VAN VLIET. Yes, sir.

Senator SCHWEIKER. Thank you, Mr. Chairman.

The CHAIRMAN. Do you have anything else?

Senator SCHWEIKER. Yes.

Do I understand not only is your plan noncontributory; in other words, you pay the full cost of funding, but what about the jointly administered plans? Are they contributory or noncontributory, the plans that your people go into as a result of bargaining agreements?

Mr. VAN VLIET. I believe they are noncontributory. Yes.

Senator SCHWEIKER. So both sets of plans are basically noncontributory?

Mr. VAN VLIET. Yes, sir.

Senator SCHWEIKER. But is it fair to say that the unions have made this one of their major bargaining points in requesting that they jointly administer the plan and therefore want a separate pension set up for their employees who are leaving the agreement situation?

Mr. VAN VLIET. Yes, sir.

Senator SCHWEIKER. And is that the major reason then, according to your understanding as to why the transfer of the people from the parent plan of the A. & P. to the jointly administered plan?

Mr. VAN VLIET. I believe so, yes.

Senator SCHWEIKER. Is the requirement in these other plans similar or are there many different other plans that they siphon off to?

Mr. VAN VLIET. Many different ones, yes, sir. There are, I think, 264 as I recall.

Senator SCHWEIKER. 264?

Mr. VAN VLIET. No: 264 locals that negotiate and some of them are grouped in one particular plan, but there are many different plans.

Senator SCHWEIKER. With different benefits, different service points, et cetera?

Mr. VAN VLIET. Different service points, different requirements, everything, all around the clock, on this.

Senator SCHWEIKER. And I gather that the company generally, when requested in a bargaining situation to have the union jointly administer the plan and set up another kind of plan, generally has acceded to that request. Is that also an accurate statement?

Mr. VAN VLIET. That is correct. Where it is part of the union negotiation. The overall package plan of it.

Mr. GORDON. I assume, sir, that some of these negotiated plans might have an earlier vesting than your plan.

Mr. VAN VLIET. Yes, sir.

Mr. GORDON. And this might provide an incentive for an employee who wants to transfer from one plan to another. He might be vested earlier.

Mr. VAN VLIET. Yes, sir.

Mr. GORDON. That is all I have, Mr. Chairman. Thank you.

The CHAIRMAN. Now, the reason Mr. Duane was in trouble when he got fired was that while he had 32 years in the company, he hadn't reached the vesting age.

Mr. VAN VLIET. 51 years chronological age, and vesting age is 55.

The CHAIRMAN. So short of 55 it doesn't matter how many years you have worked?

Mr. VAN VLIET. That is correct.

The CHAIRMAN. There was a point made here that perhaps one of the incentives to escape the A. & P. retirement plan is that under the other plans there is a vesting provision.

Mr. VAN VLIET. In the plan that he went to he had to be in 5 years, then he would get 15 years credit.

The CHAIRMAN. He was laid off, I see, at the first job. That is where the plan shifted?

Mr. VAN VLIET. In the butter warehouse, and then he had a choice to go into our Newark produce warehouse.

The CHAIRMAN. And that is the job he physically couldn't do?

Mr. VAN VLIET. He says. That is correct.

The CHAIRMAN. Were you here to listen to the Bank of America plan?

Mr. VAN VLIET. Yes, sir.

The CHAIRMAN. It sounds a lot better, doesn't it?

Mr. VAN VLIET. It seems very nice. We have similar types of benefits to theirs and some of ours are better than theirs in other types of benefits.

The CHAIRMAN. Which ones?

Mr. VAN VLIET. Well, for example, he talked of the major medical for which he was deducting \$18 and said that it cost the company \$90 and on our major medical we have an employee deduction, for example, in a certain group, of \$4.12 a month, and it is a similar type of plan. The only difference in that plan was \$100 deductible.

The CHAIRMAN. I don't think he said the company or bank paid the \$90, did he? It would have cost the employee with another private plan \$90 to get that kind of coverage.

Mr. VAN VLIET. He was contributing \$18 and on ours we have them contribute \$4.12, a similar type of plan, paying all of the benefits or all of the costs and hospital, surgical, doctors, but we have \$100 deductible. Now the \$100 deductible is not worth the difference between \$4.12 and the \$18. It is much less cost than that. Plus the thrift plan, of course. We have that. The company, of course, contributes 25 percent to that. I didn't know how much they contributed to their plan.

The CHAIRMAN. Well, you can see though, that the plan we just had described to us from the bank had a vesting provision of 15 years, age 40.

Mr. VAN VLIET. Yes.

The CHAIRMAN. Now, in yours, it doesn't matter how many years, you have to be there at age 55. You can see that that makes the individual cases a lot harsher, as Mr. Duane showed.

Mr. VAN VLIET. That is correct, Senator.

The CHAIRMAN. I asked them how they shaped up in comparison to the rest of their industry, banking, and they thought they were sort of all in the same ball park, but maybe their plan was a little better than most. How do you shape up in your industry?

Mr. VAN VLIET. I would say better than average in the industry. Some are more stringent requirements, some are less, in our industry.

The CHAIRMAN. Thank you.

The hearing is now adjourned.

(Whereupon, at 5:05 p.m., the committee was adjourned.)

PRIVATE WELFARE AND PENSION PLAN STUDY, 1971

WEDNESDAY, OCTOBER 13, 1971

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

The subcommittee met at 10 a.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams, Javits, and Taft.

Present also: Mario T. Noto, special counsel; Michael Gordon, minority counsel.

The CHAIRMAN. The Senate Labor Subcommittee hearing on pensions will come to order.

Today we continue our subcommittee study of private welfare and pension plans in the United States. This is the second day of hearings looking into the structure, administration, and operations of pension plans. We are examining whether they are fulfilling the expectations of working men and women who have been led to believe they would receive retirement benefits at the end of their working lives.

Among yesterday's witnesses were employers and plan administrators and trustees who furnished the subcommittee with descriptions of a variety of problems and the difficulties resulting from harsh retirement requirements. Some have resulted in denial of pensions because of the absence of or inadequate vesting provisions. There was testimony that employers use lack of vesting to deter employees from moving to other jobs and thus restricting labor mobility. We heard testimony of employers which illustrated vividly and with sorrow the uncertainty of pension benefits resulting from the lack of funds or assets to fulfill the promised pensions.

We heard evidence of operations of pension plans which reflected potential conflicts of interest which could easily become very real. Pension plan investments into the employer present inherent dangers of conflicts. There was evidence where a required contribution by an employer to a pension fund took the form of secured notes.

An encouraging note in this area of pension reform was indicated in the testimony of a large institution which, of its own accord, reexamined their pension plan and on their own initiative made substantial improvements directed to the benefit of employees. It acknowledged the need to improve current plan requirements for eligibility to help employees. They testified that they " * * * recognized the need for vesting in today's competing labor market * * *" and expressed the

view that employers should endeavor to provide not only vested benefits, but liberal ones.

From other testimony, it is apparent that some employers choose to label and substitute early retirement benefits for vesting. This ignores the lack of benefits due to long-service employees who are terminated involuntarily prior to reaching an age to be eligible for early retirement.

We now continue our hearings and we shall hear testimony from other employers and plan administrators with respect to operations and effects of their retirement plans. We welcome their explanations and invite their views to assist this subcommittee to further define problem areas in private pensions which are in need of consideration for legislative reform.

Senator JAVITS. Mr. Chairman, I will wish to introduce a statement at the close of the hearings. I ask unanimous consent that the statement may appear in the record.

The CHAIRMAN. That will be done.

Senator JAVITS. I just wish to state my views so far, my basic findings on which S. 2, my bill, is based, and the basic findings which will come out of the survey.

We really must enact pension reform legislation.

I wish to again affirm to the Chair my deep gratitude, and I think the gratitude of every working man in the Nation, for calling these hearings, and the wonderful work of the staff, both majority and minority.

The CHAIRMAN. I certainly concur in the latter statement. We have been well-served by the staff on both sides.

I appreciate the remarks of Senator Javits.

We begin with the statement this morning of the New York Hotel Trades Council and Hotel Association of New York City, Inc., Pension Fund, Mr. William H. Spahn and Martin Levenson.

Mr. Spahn is director of the pension fund, and Mr. Levenson is vice president and associate actuary of Martin E. Segal Co.

We look forward to your statement.

STATEMENT OF WILLIAM H. SPAHN, DIRECTOR, NEW YORK HOTEL TRADES COUNCIL AND HOTEL ASSOCIATION OF NEW YORK CITY, INC., PENSION FUND, ACCOMPANIED BY MARTIN LEVENSON, VICE PRESIDENT AND ASSOCIATE ACTUARY OF MARTIN E. SEGAL CO.

Mr. SPAHN. Mr. Chairman, my name is William H. Spahn.

I have been the director of the New York Hotel Trades Council and Hotel Association of New York City, Inc., Pension Fund, since its inception in 1952, and I am here to speak on behalf of the trustees of that fund.

As you announced, with me is Mr. Martin Levenson, vice president and associate actuary of Martin E. Segal Co., our consultants and actuaries.

Senator JAVITS. The head of your union is Jay Rubin?

Mr. SPAHN. Yes; the head of the Hotel Trades Council is Jay Rubin.

The chief officer on the employer side is Albert J. Formicola who is the executive vice president of the Hotel Association of New York City.

Senator JAVITS. For the information of the Chair, I would like to note that Mr. Rubin is not only one of our leading labor leaders in New York but one of our most enlightened and has a very successful union in this field, especially in the health field.

Mr. SPAHN. We appreciate having this opportunity to speak to you today and make our views known.

Fundamentally, we support the concept and role of private pension plans and will support legislation to foster their growth and make them more responsive to the needs of their membership. To accomplish these purposes, we believe it is essential that legislation take into account the diversity of problems and purposes which characterize private pension plans today.

The fund I represent is a jointly trustee multiemployer-union fund qualified under section 401 (a) of the Internal Revenue Code and established in accordance with the provisions of the Taft-Hartley Act.

The plan covers some 28,000 active employees working at 340 hotels and hotel concessions in the New York City area. Benefits are currently being paid to about 7,000 pensioners.

The plan participants include members of nine different unions, though participation in the plan is extended to all employees in jobs covered by the bargaining agreements, whether union members or not.

The plan is collectively represented for bargaining purposes by the New York Hotel and Motel Trades Council, AFL-CIO. All of the participating employers are represented by the Hotel Association of New York City, Inc.

The plan is administered under my supervision, at a fund office having its own employees, independent of the bargaining agents. The administrative costs incurred last year in operating this program amounted to \$138,734, about one-half of 1 percent of the fund's assets. Benefit payments last year totalled \$3,708,588, and since inception \$25,899,551.

The overall responsibility for the plan resides in the board of trustees, under its co-chairmen, Mr. Albert A. Formicola, executive vice president of the Hotel Association of New York City, Inc., and Mr. Jay Rubin, president of the New York Hotel and Motel Trades Council.

While bargaining establishes the contribution going to support the plan, it is the board of trustees which sets the specific benefits to be provided and the eligibility requirements.

Our plan, if not unique, certainly has features which warrant special consideration.

Our discussion today will not deal with details of specific proposals set forth in bills previously introduced to cover pension plans, though we do speak of general areas of legislative interest. Basically, we seek to explain to you the objectives of our pension plan and some of the problems we face.

First, let me briefly trace the history of the plan and describe its key benefit provisions.

The plan was established in 1952 on the basis of employer contributions equal to 2 percent of the payroll for eligible employees. Members were given credit for all service in the industry prior to the inception of the plan and the normal retirement benefit was set at \$40 per month. To qualify for this benefit at age 65, a member needed 25 years of service credit. However, a reduced benefit was payable with 15 years of service.

Disability pensions equal to the normal pension were payable to those who became disabled after age 60 with at least 15 years of service. The substantial past service liabilities assumed by the plan precluded higher benefit levels at its inception.

Since that time, improvements have been significant: contributions increased to 3 percent of payroll; the normal benefit increased to \$60 per month; the age requirement was eliminated from the disability benefit, and vested benefits were provided for all those leaving the industry after age 55 with 15 years service.

Moreover, reciprocal agreements were entered into with five other multiemployer-union plans covering related employees in New York City. A list of these related funds will be supplied for inclusion in the record.

(The following was subsequently supplied for the record:)

FUNDS WITH RECIPROCAL AGREEMENTS

Club Employees Pension Fund.

Local 144 Associated Hotels Pension Fund.

Dining Room Employees Union Local No. 1, Restaurant Industry Pension Fund.
Chefs, Cooks, Pastry Cooks, and Assistants, Union, Local 89, Restaurant Industry Pension Fund.

Hotel Association of New York City, A Division Pension Fund.

Mr. SPAHN. The reciprocal agreements provide that service under each plan will be counted in determining benefit eligibility under the other. These agreements thus add to the basic portability of benefits provided by a multiemployer-union plan.

In determining service credit under the plan, special rules have been adopted to provide fair treatment for certain classes of employees having unusual employment patterns, such as banquet waiters, hat check girls, et cetera.

It should also be noted that the trustees of this plan have responded to the needs of its participants by increasing the benefits payable to those already retired, in addition to those for future pensioners. In 1970, the monthly normal retirement benefit for those already retired was increased to \$55.

The board of trustees believes that within the funds provided by a 3 percent salary contribution, the program they have devised strikes a reasonable balance between the need to provide an adequate benefit for those devoting a substantial portion of their working lifetime to the New York hotel industry and the desirability of providing some protection for those not meeting normal retirement standards.

One could argue, of course, that a greater percentage contribution should be devoted to support the retirement program. Any such de-

cision must take into account the other social needs of the plan participants and the resources of the contributing employers.

In the hotel industry, the employers are required by the collective bargaining agreement to finance health clinics which provide comprehensive medical services for all the employees and their dependents and, in addition, an insurance program covering life insurance, accident and sickness insurance, and Blue Cross hospital benefits. No employee contributions are required in any of these programs.

I am sure you are aware of the upward trend in hospital and medical care costs and it is a distressing fact that our health programs are in financial difficulty as a result of those increases. If additional funds are not provided in these areas, it will be necessary to curtail existing benefits.

It is no easy task to establish priorities as to the respective needs for wage adjustments in the present inflationary period and the needs of the competing claims for fringe benefit dollars. Where labor and management both have effective voices in working out those priorities, we believe that most of these decisions are best left to them. Hence, we believe that pension legislation should distinguish between bargained and nonbargained programs and, more particularly, between bona fide multiemployer-union plans and others.

By bona fide multiemployer-union plans, we mean those which cover a substantial portion of the employers in a given industry within a reasonable geographical area. Such plans provide a portability of benefits not found in the typical single employer plan. Moreover, the breadth of coverage has implications as to the funding of the benefit program.

The likelihood of an entire industry disappearing is far less than the chance that a single employer will go out of business or shift its operations to disenfranchise a substantial number of workers.

It is true that there have been wholesale industrial migrations in recent years, of manufacturing facilities in the textile industry, for example, but it is entirely improbable that the New York hotel industry could move elsewhere.

These facts have a significant bearing on various aspects of pension programs that have been given attention in proposed legislation. Where there is an inherent portability of benefits, as in our fund, the necessity for formal vesting provisions is substantially reduced.

We believe, however, that all pension plans should be required to periodically set out to their membership, in a comprehensive fashion, the various circumstances under which benefit rights are forfeited.

We believe it is also appropriate to distinguish between multiemployer-union plans and those for single employers as to the funding of benefits. Our plan, for example, is designed so that the annual contributions are expected to cover the annual normal cost of the plan and pay interest on the unfunded past service liability.

Last year, employment was at a sufficient level to provide a margin of about 20 percent between contribution income and the indicated actuarial costs. Hence, while we do not follow a formal program for reducing the unfunded liability, our actuarial assumptions are sufficiently conservative to permit actual reductions year by year.

While we have had little problem in collecting contributions from participating employers, there have been occasions when financial difficulties prevented a particular employer from making the required payments. Your committee may wish to consider whether such unpaid contributions should be accorded priority treatment, as wages, in bankruptcy proceedings.

As you know, New York is one of several States that requires regular audits of the financial statements of multiemployer-union pension funds. Hence, there is already some review of the fiduciary conduct of our fund's trustees and an established financial reporting standard.

We believe, however, that there is much to be said for establishing a uniform set of regulations through Federal legislation to supplant the various State requirements in this area.

The comments we have made concerning the differences in funding multiemployer-union and single employer plans also bear on the necessity for some form of national reinsurance of pension benefit rights.

We have fundamental doubts as to the practicality of insuring a risk, such as nonpayment of accrued pension benefits, which lies, to a significant degree, within the control of those sponsoring a plan. It is obvious that the likelihood of such nonpayment is quite different for multiemployer-union and single employer plans and that the possibility of any intentional termination or curtailment is far less for the former.

Hence, we think that multiemployer-union plans should be accorded treatment different from other private plans in this area.

In conclusion, Mr. Chairman, we recognize that legislation must have broad applicability to be effective. Nevertheless, we also believe that distinctions can be made among major categories of pension plans to take account of their special characteristics.

We appreciate the attention you have given us today and your concern with the economic security of American workers.

THE CHAIRMAN. Thank you very much.

Senator Javits, do you have some questions?

Senator JAVITS. Thank you, Mr. Chairman. First, may I say that I am deeply impressed with this union. I know a great deal about it and I think they have done remarkably well.

Also, I think you have presented us with a totally different facet of the pension fund problem, though the essential issues, I think, remain the same.

It is interesting to have a multiemployer plan carried on by the union essentially for those in the industry, whether or not they are members.

I am troubled, I might tell you, by the problems of adequacy of funding, the adequacy of vesting and the administrative procedure, tightness of control, which you have over the plan, both as to beneficiaries and proposed beneficiaries.

So, I would like to ask you just a few questions, if I may.

First, is it a fact that the trustees have an absolute right to fix the benefits?

Mr. SPAHN. Yes; the benefits are fixed by decision of the trustees with, of course, the guidance of their actuary who determines the financial soundness of the benefits the trustees may be interested in.

Senator JAVITS. Given a situation where the trustees would fix extremely low benefits, isn't it entirely possible that you could pile up millions and millions of dollars in this plan and they would just sit there, be invested and reinvested without anybody benefiting from them and it would be perfectly lawful? You would not do that, I know.

Mr. SPAHN. Theoretically, that would be possible.

As I have indicated, I have been with the plan since 1952 and the shoe has always been on the other foot.

Senator JAVITS. Wouldn't you agree that though it is unlikely that you would do that it is a hazard which we would find unacceptable if the plan were under the control of an employer or a group of employers?

Mr. SPAHN. I do not know that I understand the question, sir.

Senator JAVITS. Suppose that an employer or group of employers ran this plan. No worker would wish to accept the absolute discretion of the employer or employers as to what the benefits would be.

Mr. SPAHN. Right.

Senator JAVITS. You fellows do this because you represent the workers, so you have the power over the workers which you would never grant to his employer.

Mr. SPAHN. This plan is protected from this kind of thing by the fact it is a collective bargaining plan.

Senator JAVITS. Also because the union officials are the trustees.

Mr. SPAHN. One-half of the board of trustees are made up of the union officials and the other half, the employers.

Senator JAVITS. This, after all, is a matter of personal trust. They are still people and they could cut the benefits down to nothing; is that right?

Mr. SPAHN. Theoretically yes.

Senator JAVITS. Therefore, you want us to make special provision in the law for this kind of situation; am I correct?

Mr. SPAHN. We have tried to emphasize in the statement that the problem is, I suppose, fundamentally a problem of priorities; there is a certain amount of money available when labor and management get together for providing social benefits for their employees, and particularly in an industry where the wage level is what it is in hotels there is a very serious question as to what is more socially desirable, increased wages, improved medical care program, improved pension benefits, and so on.

The point of the argument that was made on behalf of the trustees is that that was so specialized that it should be left to the collective bargaining process.

Senator JAVITS. The collective bargaining process does not fix the benefits.

Mr. SPAHN. The collective bargaining process does not fix the benefits but the collective bargaining process does fix the amount of money which is available for the benefits and in that sense it does fix the benefits.

Senator JAVITS. The only way that the worker could control the benefit, at least to the extent of half of the trustees, is this. He does have the right to vote out the officers of the union and put in new ones.

Mr. SPAHN. That is correct.

Senator JAVITS. Is there automatic succession to incumbent trustees?

Mr. SPAHN. The trustees are elected by the two boards of directors, one of the hotel association for the employer-trustee, and the other by the executive board of the Hotel Trades Council.

Senator JAVITS. I just raise the question with you, in view of the fact that this plan exists because employer contributions can be deducted from taxes, whether vesting that amount of discretion in the trustees is a legitimate concern of the United States.

Mr. SPAHN. I am not competent to answer that, sir.

Senator JAVITS. I notice that in 1970 you did provide for a limited amount of vesting. I would like to understand that.

If a person who leaves his work in the industry was 55 with 15 years of service, when did he actually collect his pension? When he became 65?

Mr. SPAHN. Either 62 or 65. We follow the social security pattern.

Senator JAVITS. But he was vested?

Mr. SPAHN. Yes.

Senator JAVITS. Why did you change from nonvesting, which you sought to justify in your statement, to vesting?

Mr. SPAHN. We changed to vesting in 1970 because in the judgment of the parties involved there were sufficient funds to permit this to be done without jeopardizing the plan.

Senator JAVITS. Is it therefore to be admitted that vesting is a desirable point notwithstanding your statement, "Where there is an inherent portability of benefits," on page 5 of your statement, "as in our fund, the necessity for formal vesting provisions is substantially reduced."

Nonetheless, you, yourself, brought about vesting obviously because you thought it was more desirable than undesirable.

Mr. SPAHN. And the fact that we brought it about reflected the success of the collective bargaining principle in negotiating these things.

I am in a little difficult position, as I am sure you understand, because I am answering your questions on behalf of the board of trustees in which there is no fundamental consensus on this question of vesting.

Senator JAVITS. You are not answering them on behalf of the board of trustees. You are answering the questions for yourself, we understand that. You are only giving us information based on your opinion. So, you need not worry about that. We understand that.

The other thing I would like to ask you is this: Suppose the person drops out of the industry at age 54 with not 15 but 25 years of service. Does he get anything?

Mr. SPAHN. No.

Senator JAVITS. This is one of the problems.

Mr. SPAHN. I would qualify that in a minor way.

We permit a break period so that he could drop out of the industry at age 53 and get the benefits. In other words, if he had not used up the plan's amount of interruption of the service in the course of his employment history he could apply those at the end of his employment and retire at 53 and receive the pension at 62 or 65.

Senator JAVITS. Now, do you have a provision for breaks in service?

Mr. SPAHN. Yes.

Senator JAVITS. What is that provision?

Mr. SPAHN. The provision allows for 4 years of breaks in service, no more than three of which can be consecutive in the face of illness or two in the face of nonillness, and in the event that the prior employment credit is lost as a result of the violation of this break period, subsequent employment for 10 years reinstates all of the previously earned credit.

Senator JAVITS. Suppose that employee quits the industry at age 54 with 25 years of service. He gets nothing out of the plan; does he get his contributions back, or credit?

Mr. SPAHN. No.

Senator JAVITS. I notice you come out against national reinsurance for your type of plan. That is strictly, I gather, on your judgment that there is not much risk involved; isn't that right?

Mr. SPAHN. Yes. This type of plan has special safeguards.

Senator JAVITS. It is a fact, however, considering your method of funding, which is by no means conservative, that the default of any considerable number of employers would immediately cause you to have to pay only a percentage of benefits. Isn't that true?

Mr. SPAHN. Again, I can only answer that by saying theoretically it is true but in the entire history of the fund there has been practically no default by employers.

Senator JAVITS. But employers don't insure each other.

Mr. SPAHN. No.

Senator JAVITS. In other words, if employer "A" does not pay, it is just that much money that drops out of the package. The other employers don't take it up.

Mr. SPAHN. Except that there are the pressures of collective bargaining from the labor side on employers who don't meet their contributions.

Senator JAVITS. Thank you very much.

I will pass the questioning on to my colleague.

The CHAIRMAN. Mr. Spahn, you described the plan broadly as multiemployer and multiunion.

Mr. SPAHN. There are nine unions involved, functioning through one council. That is the Hotel Trades Council, of which Mr. Rubin is the chairman.

The CHAIRMAN. What are the various unions involved?

Mr. SPAHN. There is a waiters union; there is a painters union; there is a telephone operators union; there is an upholsterers union; there is a front service union; and so on.

The CHAIRMAN. All employed by hotels?

Mr. SPAHN. Hotels or concessions within hotels.

The CHAIRMAN. The bartenders, are they included in your plan?

Mr. SPAHN. Yes. The bartenders who work in the hotels are part of this plan; hatcheck attendants who work in hotels are part of this plan. Maids and housemen, restaurant workers in hotels, the maintenance men, the engineers, carpenters, plumbers; all of the people in these various categories are members of one or another of these nine unions and these nine unions are represented for bargaining purposes by a council, an industrial setup—the Hotel Trades Council which does the bargaining for the nine separate hotel unions.

The CHAIRMAN. You described the pension plan as incorporating the idea of portability.

Mr. SPAHN. Yes.

The CHAIRMAN. Now, this situation does not reflect what I consider portability. You don't have upholsterers becoming waiters; portable in that sense?

Mr. SPAHN. No; the portability that I was referring to, Senator Williams, has two aspects to it:

One, that as the employee, the upholsterer, for example, moves from one hotel to another in New York City and all of the hotels of any consequence are in this plan, there is no loss of benefits. So, he carries his benefits because it is an industrywide plan.

The CHAIRMAN. Unless he goes to a hotel that is not part of the plan.

Mr. SPAHN. But all of the hotels, all of the major hotels, in New York City are part of the plan and for the minor hotels there is a different pension fund. So that, I think it is factual to say that the hotel industry in New York City is practically 100 percent organized—practically 100 percent—as to that, it is portable.

The other meaning of the use of the term "portability" has to do with the use of reciprocal agreements I referred to, were outside of the hotel industry but in allied occupations arrangements have been made to honor each other's employment credits and history.

The CHAIRMAN. The employment area for a waiter, for example, is that limited in New York City or could he go up to White Plains or over to Newark?

Mr. SPAHN. It is limited to the New York City area.

The CHAIRMAN. The plan is but how about the employment, the waiters?

Mr. SPAHN. The waiters in certain occupations, banquet waiters, for example, of course go to the Catskills for the summer or go down to Florida for a particular period of time.

We have established separate and much more liberal eligibility rules in terms of consecutive employment to meet that situation.

For example, a banquet waiter needs to be employed only in each of 6 months of a calendar year. So, we tailor by special provisions in the plan, as I tried to note in the statement, special occupational conditions so that the plan isn't unfair to workers who by the nature of their occupation can't fulfill the requirements that other workers can.

The CHAIRMAN. Is this all spelled out clearly in documents that your beneficiaries can understand?

Mr. SPAHN. Yes. We issue a booklet. The booklet is in three sections. The first two sections are the highlights of the plan—I have a few—in which we try in everyday English as much as possible to give the main features of the plan. The first section is in English and the second section in Spanish because we have a large Spanish-speaking population.

Then the actual text of the plan is the third section of the book.

We run these off in quantities of 10,000 and do our best to put them in the hands of all of the workers in the industry.

Of course, we supplement the explanation of the plan, at least the union side does, through a weekly newspaper which carries stories

about the plan, publishes the financial reports, lists all of the people who are approved on a monthly basis, and so on.

The CHAIRMAN. In your discussion of the benefit level with Senator Javits, I got the impression that this benefit could be changed by the trustees with ease. In the booklet, I would get the impression that the monthly benefit was pretty well fixed.

Mr. SPAHN. I thought Senator Javits was asking me—and I tried to respond without being unresponsive—theoretical questions. Theoretically, the trustees decide what the benefit level of the program should be but that is completely restricted by the funds available and the funds available are the product of collective bargaining.

What has happened since this plan was first negotiated is, again as the statement tried to indicate, that, as fast as additional moneys become available through collective bargaining, the benefits of the program were improved, the benefits went from 40 to 60, the age requirement for disability requirements was put aside, special provisions were introduced for special categories of employees, the vesting provision at age 55 was introduced, and so on.

The CHAIRMAN. The payroll contributions are now 3 percent?

Mr. SPAHN. Yes.

The CHAIRMAN. With the multiunion aspect of this, which means different kinds of employment, this must be a difficult administrative matter. A good portion of the waiters' compensation is on the basis of tips. Is that reported for payroll purposes or not?

Mr. SPAHN. For the pension plan, tips are not subject to contributions to the pension plan. The waiters—I suppose we all think of the hotel industry as being largely made up of waiters—there are a significant number; I would estimate between 15 and 20 percent of the staff are in the tipping categories.

Of course, those tips vary considerably, depending on whether you are at the Waldorf or uptown.

The CHAIRMAN. Where is your money invested? Who is the trustee for the—

Mr. SPAHN. We have, I think, been very careful in the fiduciary area. From the inception, we retained the Chase Manhattan Bank and Manufacturers Hanover Trust Co. as the custodial investment advisers and we instructed them to assign brokerage fees to four brokers whom the trustees designated. The brokers' function was to give us annual reports on the performance of our investment advisers and to meet at least quarterly with the investment advisers to discuss the investment decisions.

So, we have the Chase Bank and Manufacturers Hanover, plus the reports of the four brokers.

In a recent period, we added on a small scale another investment adviser, the Wertheim Co., and we invested \$850,000 in a mutual fund.

The object of the trustees is that of trying to develop a yardstick so that the performance of the investment advisers could be compared, could be measured.

The CHAIRMAN. Funds are held in two banks?

Mr. SPAHN. The funds are now held in four institutions. They are held in two banks, the Chase Manhattan and the Manufacturers Han-

over. At the year end at market value the Chase Manhattan held a little over \$10 million; Manufacturers held a little over \$10 million. The Wertheim Co. held a little of \$3,850,000. The Dreyfus Fund had approximately \$775,000.

The CHAIRMAN. What we are trying to do here is to get a profile of the fund. Right now, looking at the operations and the expense of operation, administrative expenses are \$212,656.

I see your legal expenses on one sheet I have here are \$323.

Mr. SPAHN. I have our last financial report with me. Let me see if I can be of help.

This is a certified public accountant's report, of course.

For the year ending December 31, 1970, the administrative expenses were \$145,561. I think in my statement I gave \$138,000, or something like that. The difference in the two is that of a cash and accrual statement.

For that year, the pension benefits paid were \$3,657,462.

I don't know what figures you have but your figures sound to me as though they include bank investment service fees and our legal expenses and our consulting and actuarial fees. Those altogether would probably add up to the figure that you have.

Mr. CUMMINGS. We have in front of us here your report for the year ended December 31, 1970, filed with the Labor Department, form D-2, file WP-025284. It has a general category, category 11 under disbursements, entitled "Administrative Expenses," which shows salaries \$68,688; fees and commissions, \$86,424; other administrative expenses, some \$47,000, and you show total administrative expenses in this of \$212,656.

It would sound somewhat larger than the auditor's report.

Could you explain the discrepancy?

Mr. SPAHN. I believe you have the brokerage commissions in there which are mandated by law. Those are security transactions. I believe under the reporting system you consider those as administrative expenses. These are the fees that we are required to pay the brokers when they buy or sell stock for us, for example.

Mr. CUMMINGS. I would like to ask one or two other questions. I see your actuary is with you.

I see that part of your annual report attached by your actuary, signed by Mr. Levenson, states certain assumptions about the turnover—at what age and so on will employees leave.

Mr. SPAHN. Yes.

Mr. CUMMINGS. We also see in the survey form, which you filed in response to the chairman's questionnaire, that a series of questions on terminations were simply answered "information not available."

Now, if the plan has no information as to how many people are working, for how long, and are leaving and getting nothing, how can the actuary state an assumption as to that fact?

Mr. SPAHN. There is an answer to that. Let me refer, of course, to the actuary.

Mr. LEVENSON. It is in fact a difficult problem in this particular plan because of the trustees' and the fund office staff's concern with keeping the administrative expenses of the program as low as possible

so as to maximize the amount of money available to pay benefits. They have followed a policy of not maintaining records with respect to active employees during the course of their working lifetimes but relying on social security records to the point that employees become eligible for benefits, so that data on the characteristics of the people covered on a day-to-day basis in the industry are simply difficult to come by.

The device that we have used to develop statistics, to permit reasonable actuarial assumptions here, has been to prepare every 4 years a census of the active employees that work in the industry and then using actuarial techniques to review the actuarial gains and losses in relationship to the assumptions that we are making over accumulative periods of time.

This does not permit an accurate verification of the particular figures that we show here as turnover assumption for various ages, for example, but we are confident that in aggregate the turnover tables that we are using here fairly represent the overall level of turnover generated within the particular industry.

In other words, by comparing the actuarial gains and losses from year to year, we are able to get a feeling whether our assumptions are appropriate and accurate.

Mr. CUMMINGS. In other words, your actuarial assumptions attached to the report are guesses and not based on a study of the records of what is the actual day-to-day happening in this industry; is that right?

Mr. LEVENSON. The tables were initially developed on the basis of a study pertaining to the actual turnover experience. That was quite some years ago.

In recent years, we have not undertaken a renewal of that study but rather have depended upon the overall accuracy of the turnover tables which we do verify periodically.

Mr. CUMMINGS. In other words, if enough people don't get a pension so that you don't go broke, you have guessed right? Am I stating that correctly?

Mr. LEVENSON. I think that is an overstatement. It is not a question of the plan going broke or not. It is a question of doing an actuarial calculation of the gains and losses and determining the overall adequacy of the assumptions we are making.

Mr. CUMMINGS. It is a fact, is it not, that the assets of this fund now, or at least as of the end of 1969, were \$21,797,000 and that you calculated liabilities for vested pensions as some substantial amount, at some \$28 million; is that correct?

Mr. LEVENSON. Yes.

The last evaluation report that we prepared showed for the first time in quite some years that the liability for pensions exceeded the assets on hand.

We also prepare periodically a projection of the assets and liabilities of this fund and that showed that that is a temporary situation which would be corrected by virtue of the funds cash flow within several years.

Mr. CUMMINGS. Isn't it also a fact that if this plan were to terminate today, you would have liabilities of some \$84 million?

Mr. LEVENSON. I am not quite sure how you calculated that. Are you assuming that all of the accrued benefit rights would be vested?

Mr. CUMMINGS. I am assuming whatever vesting is required by the Internal Revenue Code was vested.

The question in the questionnaire is "Total value of all accrued benefits, treating all such benefits as if they were vested", and you answered that as of December 31, 1969, it was \$84 million.

Mr. LEVENSON. Yes; that is right.

The CHAIRMAN. Thank you very much, gentlemen.

The Genesco Corp. will be our next witnesses.

Senator Baker of Tennessee will introduce our witnesses.

STATEMENT OF HON. HOWARD H. BAKER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator BAKER. Mr. Chairman, thank you very much for permitting me to appear before the committee to introduce the management representatives of Genesco, an outstanding company of my native State of Tennessee.

Genesco was founded in 1924 as the Jarman Shoe Co., and from its first beginning has been a real citizen of our State and, as it grew, of the Nation.

Today, with its headquarters in Nashville, Tenn., Genesco employs some 60,000 people throughout the United States, either manufacturing or distributing apparel and shoes in all the 50 States. It operates some 304 plants and warehouses and slightly over 2,450 retail stores and leased departments.

The some 14,000 Genesco employees in the State of Tennessee have not only contributed to the economic welfare of the State but have done a marvelous job collectively and individually with their churches and communities in being good citizens.

Genesco's management has had an outstanding record of fine employee relationships and it is with great pleasure that I introduce Mr. J. G. DeLacey, vice president and secretary of the corporation; and Mr. Willard L. Bland, assistant secretary of Genesco; and Mr. W. C. O'Connor, the head of Genesco's legal department.

They are accompanied by Sanford Litvack, Esq., of the firm of Donovan, Leisure, Newton & Irvine, who are corporate counsel; and Mr. Blackburn G. Hazelhurst and Mr. David Parsons, of Hazelhurst Associates, consultants and actuaries in the pension and employee benefits area.

Mr. Chairman, I am delighted to bring the witnesses to your committee. I am sure their testimony will be a meaningful contribution to the record.

Thank you, Mr. Chairman.

The CHAIRMAN. I appreciate that very much.

Senator BAKER. Now, if the committee staff will excuse me, we are involved in markup of the bill in Public Works. I need to return. I leave the gentlemen to your tender mercies.

The CHAIRMAN. Mr. Bland?

STATEMENT OF WILLARD L. BLAND, ASSISTANT SECRETARY, GENESCO, ACCOMPANIED BY J. G. DeLACEY, VICE PRESIDENT AND SECRETARY AND W. C. O'CONNOR, HEAD OF THE LEGAL DEPARTMENT, GENESCO; AND SANFORD LITVACK, ESQ. OF DONOVAN, LEISURE, NEWTON & IRVINE, CORPORATE COUNSEL; AND BLACKBURN G. HAZELHURST AND DAVID PARSONS OF HAZELHURST ASSOCIATES

Mr. BLAND. Mr. Chairman, with your permission, I would like to read a prepared statement.

The CHAIRMAN. Fine.

Mr. BLAND. Mr. Chairman and Senators my name is Willard L. Bland.

I am assistant corporate secretary and director, corporate benefits for Genesco, Inc.

Accompanying me are Mr. J. G. DeLacey, vice president and corporate secretary of Genesco; Blackburn Hazelhurst, our actuary from Atlanta; and Sanford Litvack, member of the firm of Donovan, Leisure, Newton & Irvine, New York, our attorneys.

At the outset, I want to thank you for this opportunity to appear before this committee today.

I will be reading a statement and will then be most happy to attempt to answer any of your questions.

My statement to you will consist of a general description of Genesco; an overall view of the various Genesco employee benefit plans; a detailed description of the Genesco retirement plan; and, in conclusion, Genesco's response to the allegations contained in the testimony of Mr. Allen Sorenson before this committee.

Genesco was originally incorporated in 1925 under the name Jarman Shoe Co. Its name was changed to General Shoe Corp. in 1933 and then in 1959 to Genesco Inc.

Genesco is presently engaged in the manufacture and sale at wholesale and retail of wearing apparel and related products.

Among the products manufactured by Genesco, its subsidiaries and divisions, are shoes for men, women, and children, men's suits, accessories for men, men's slacks, women's dresses, coats, undergarments, and sleepwear. Many of these products are sold under familiar brand names such as Jarman Shoes, Johnston & Murphy, Phoenix, Susan Thomas, Esquire, and Formfit Rogers.

In addition to its manufacturing operations, the company and its subsidiaries operates retail stores throughout the country.

Such stores include Bonwit Teller, I. Miller—the new chosen home of our mutual friend, Mr. Finkelstein—Roos/Atkins, Barons, S. H. Kress & Co., and others.

The CHAIRMAN. You got a lot of good advertising out of him, I tell you.

Mr. BLAND. He is a good man.

The CHAIRMAN. He sure is.

Mr. BLAND. We have given you exhibit A¹ which is a complete listing of Genesco's domestic divisions.

¹ Exhibits referred to appear on p. 607.

Genesco's domestic operations currently involve the company in virtually every State. In addition, Genesco has subsidiaries and affiliates in 12 other countries. Today Genesco employs a total of about 66,000 people; 60,000 here in the United States.

EMPLOYEE BENEFITS

Turning to the Genesco employee benefit program, Genesco employees receive a wide variety of benefits. For example, the company offers its employees major medical and health policies at a nominal cost to the employee. In addition, employees are eligible for low-cost group life insurance, have access to the company's credit union, have the right to purchase company products at significant discounts, and are eligible for the annual employees savings fund stock purchase plan which enables the employee, through payroll savings, to purchase stock at prices below the current market price.

RETIREMENT PLANS

Of primary interest to you are the retirement plans.

Genesco has several such plans. More than 33,000 employees are covered by the main Genesco retirement plan, with virtually all the other employees covered by various other plans.

Thus, for example, there are approximately 15,000 employees who, as a result of collective bargaining, are covered by union plans of different sorts. This group includes approximately 10,200 employees who participate in the retirement plans of the International Ladies Garment Workers Union and the Amalgamated Clothing Workers Union.

There are an additional 7,500 employees participating in 32 small pension and profit-sharing plans of companies which have been merged with Genesco but whose plans have not yet been merged with the Genesco plan. Finally, certain employees, such as commission salesmen, are covered under other plans.

The main plan, however, has been and still is the Genesco retirement plan.

(A copy of the plan as of August 1, 1969, is submitted as exhibit B.)

Genesco initiated its retirement plan more than 25 years ago. At that time, the company, convinced of the importance of providing pension benefits for employees who reach retirement age after years of faithful services, undertook to establish a plan which would accomplish that goal by supplementing the social security benefits which these employees would receive.

In so doing, Genesco hoped and believed that it would enable its longtime employees to continue to lead meaningful lives in retirement. This has been and continues to be the basic concept and ultimate goal of the retirement plan.

The plan has, we believe, been successful in accomplishing its purposes. It has grown from a small plan of the General Shoe Corp. to a plan covering thousands of employees throughout the United States engaged in a vast variety of skills and professions.

Today, there are more than 4,500 people who are either retired and receiving benefits under the plan or past age 55 with a minimum of 15 years service and hence fully vested.

Having made these preliminary remarks, I will now describe the details of the plan, itself.

The plan, which currently has assets with an audited value of \$40 million and a realistic actuarial value of more than \$70 million, includes employees, not covered by another plan, from the day hired without any waiting period.

The plan provides for retirement income at age 65, after 15 or more years of service, based upon the average compensation paid to the employee during his last 10 years of employment.

Upon reaching age 65, an employee receives an amount based on $11\frac{1}{2}$ percent of his average income for the 10-year period, for each year of credited service. Since the plan was and is intended to supplement social security, the plan's payment is considered to include three-fourths of any social security benefits the employee would receive.

For example, if an employee who was with the company 40 years retired with an average compensation for the relevant years of \$10,000, he would be entitled to \$6,000 per year, including three-fourths of any social security payments to which he was entitled. Thus, if social security benefits amounted to \$2,400 per year, the plan would pay \$4,200 per year in addition to the \$2,400 received from social security, for a total pension of \$6,600.

Early retirement benefits are also available once an employee reaches age 55 with 15 or more years of service. These early retirement benefits are actually more advantageous than the customary "actuarially equivalent" early retirement benefits.

The Genesco plan provides for reduction of benefits of 3 percent per year for early retirement, whereas the normal actuarial tables provide for an average reduction of 6 percent per year. To illustrate, a typical employee retiring at age 55 under the Genesco plan would receive 70 percent of his accrued age 65 benefits, while the actuarial equivalent approach would only yield 45 percent.

In addition, the plan has survivorship features. Survivorship benefits for death are available after age 55 and 15 years of service and credited service for disability may be counted for retirement service up to 5 years.

Further, Genesco has recently approved an amendment to the plan which considers as credited service, prior employment in an acquired company after age 50. (This amendment is in preparation for filing with the Internal Revenue Service, with an effective date of August 1, 1970.)

This amendment is particularly significant because many of the current Genesco employees joined Genesco, as employees of companies which had no retirement plan. The amendment enables older employees of these companies to qualify for a pension from the Genesco plan, for which they would not otherwise be eligible.

It should be noted that 60 percent of the companies which have joined Genesco had no pension plan and all the employees in these companies have been, or will be, brought into the Genesco plan.

Where acquired companies have plans of their own, the plans are

typically merged into the Genesco plan as soon as feasible. When the plans are merged, any existing vested benefits are protected in the amendment. Accrued nonvested pension benefits are preserved under the Genesco plan and all existing profit-sharing balances are 100 percent vested and fully protected.

This concludes the description of the Genesco retirement plan, and I now turn to the prior testimony of Mr. Allen Sorenson.

We believe that Genesco has an obligation to present the facts and supporting evidence to provide this committee with an accurate and complete record. It is in this spirit and for this purpose that we respond to Mr. Sorenson's testimony, rather than from any desire on our part to engage in any debate with him.

While there were numerous incorrect statements and inferences made by Mr. Sorenson, we think in general that his testimony can be divided into three basic areas.

We do not consider separately Mr. Sorenson's claim that Genesco attempted to compel him to sign a statement that he had "resigned," before it would refund his pension contributions. Nor do we discuss Mr. Sorenson's statement that he has sued Genesco and/or Kress. The facts are that Mr. Sorenson was not required to sign anything he didn't wish to. He was sent a standard form used by Kress for many years. The form lists two reasons for termination and it leaves room to add others. (See exhibits E through M)

However, Mr. Sorenson never notified anyone that he was troubled by the form. When the company learned of his concern, he received his refund promptly. As for his claim that he sued Genesco and/or Kress in mid-July, although almost 3 months have elapsed, neither company has ever heard of such a suit or been served with any papers. It is doubtful any such suit exists.

(1) His claim that he was terminated so that his pension benefits would not vest;

(2) His assertion that his termination was part of an overall policy to terminate employees for the purpose of avoiding pension benefit payments; and

(3) His charge that Kress real estate was sold to the pension fund so that Genesco could use the pension fund's moneys.

First, with respect to Mr. Sorenson's claim that he was terminated in order to avoid a vesting of his pension rights, let me note at the outset that Mr. Sorenson's pension rights would not have vested under the plan for another 8 years. Mr. Sorenson was age 47 and, under, the merger of the Kress plan into the Genesco plan, as approved by the Internal Revenue Service, no rights would have vested until he reached age 55.

(See "bridge amendment," submitted as exhibit C and IRS approval letter of Aug. 5, 1970, submitted as exhibit D.)

At any rate, the record makes it clear that Mr. Sorenson was discharged solely because of his failure to perform adequately as a store manager and his refusal to accept or follow instructions given to him. (See affidavit of John T. Choate, his regional manager, submitted as exhibit F.)

The primary reason for Mr. Sorenson's dismissal was the serious "shrinkage" problem which existed in the Salt Lake City store while

under his management. The term "shrinkage" as used herein, and generally in the retail trade, refers to any shortage, for whatever reason, in actual inventory, compared with the books and records for the store.

For the period from August 1, 1969, to February 1, 1970, the Salt Lake City store experienced shrinkage of 3.5 percent of sales. For the comparable period under Mr. Sorenson's management, the shrinkage soared to 12.5 percent. During the same period, the average shrinkage in the other Kress Utah stores has been reduced to 0.7 percent.

As you know, shrinkage is one of the greatest problems confronting retail store operations today. Every retail company must watch its shrinkage records carefully to detect unusually high figures so that it can act promptly. (See affidavit of Richard D. Tucker, president of Kress, West, submitted as exhibit G.)

No company can operate profitably if it tolerates a shrinkage rate of 12.5 percent. When you translate this into dollars at the Salt Lake City store, it means that with sales of approximately \$350,000 for the 8 months, shrinkage amounted to about \$45,000.

Unfortunately, Mr. Sorenson was not the only Kress store manager with a high shrinkage rate. In fact, eight managers were dismissed in 1971, out of 350 stores, due, at least in part, to excessive inventory shrinkage. The lowest shrinkage of those managers was 7.98 percent of sales. Only one manager had a higher shrinkage rate than Mr. Sorenson. (See exhibit H.)

It should also be noted that in addition to the shrinkage problem, the volume of sales at Mr. Sorenson's store had declined substantially under his management. While Mr. Sorenson testified that his "dollar decrease was less than any of the other Utah stores," the record is directly to the contrary.

Other than Mr. Sorenson's Salt Lake City store and a new store which had just been opened in the suburbs, Kress operated two other stores in Utah—one in Provo and one in Ogden. Whereas Mr. Sorenson's sales had declined 14.5 percent over the 8-month period he was in charge of the store compared to a comparable 8 months a year earlier, each of the other two stores showed increases.

Indeed, since Mr. Sorenson's departure, his store has shown a sales volume increase over the prior year by 11.7 percent. (See exhibit F.)

In sum, the facts establish that Mr. Sorenson's discharge was solely due to his poor performance and had nothing to do with his pension rights, which would have vested some 8 years later. Nor do the three specific instances of termination cited by Mr. Sorenson lend any support to his claim.

Before reviewing each of these instances, let me categorically state that no employee has ever been terminated by the company in order to prevent a vesting of pension rights. With respect to Kress, the fact is that there were 17 store managers discharged in 1971. The average age of these managers was 33, a full 22 years away from any vesting of pension benefits.

I will now turn to the examples cited by Mr. Sorenson.

First, Mr. Sorenson cited the termination of the district manager in Honolulu, Hawaii, as an alleged example of this policy of termination. The manager to whom Mr. Sorenson refers is Roger L. Stoker.

At the outset, it should be noted that there could not have been any question of pension vesting rights involved in Mr. Stoker's case because Mr. Stoker had voluntarily withdrawn from the Kress pension plan in 1958 and would have received no benefits from the retirement plan, even at the normal retirement date.

The circumstances which led to Mr. Stoker's termination are very simple. In January 1971, Kress reorganized its western field organization, consolidating eight districts into three larger regions. As a result, there was no longer a district manager's position in Hawaii. Mr. Stoker, who was 61 years old at the time, was offered another job which he did not accept.

The second example cited by Mr. Sorenson was the termination of the manager of the Seattle-Pike Street store, Frank W. Childers, Mr. Childers was 58 years old at the time he left Kress. He was fully vested in his pension and is receiving pension payments. Obviously, no question of pension vesting rights was involved.

The third and last specific example cited by Mr. Sorenson was the termination of the office supervisor of his Salt Lake City store. The person referred to was Juanita Reed who was 12 years away from vesting age. As with the other examples given by Mr. Sorenson, no question of pension vesting rights was involved here. Mrs. Reed's termination followed an audit of the books and accounts of that store on May 25 and 26, 1971, which disclosed certain irregularities in her handling of lay-away receipts.

Apparently in an effort to support the charge that he and others were released because they were nearing retirement age, Mr. Sorenson testified that while he was employed in Kress' personnel division in New York, Mr. L. P. Johnson, then president of Kress, commissioned a study to be made regarding Kress' pension costs.

Although Mr. Sorenson admitted he was in no way involved in the purported study, he went on to charge that, based on this purported study, a decision was made to retire a number of Kress employees at an early date to save pension costs for the company. He also suggested that this policy has been continued and that indeed his discharge was pursuant to that policy.

As far as can be determined, no such study was ever undertaken. We have attempted to locate any Kress study relating to vesting or pension costs and have found nothing.

More importantly, Mr. C. Harvey Williamson, then director of personnel administration for Kress (and Mr. Sorenson's superior at the time, now retired), has stated that no Kress employee was ever terminated because of his status in the pension fund or the relationship of his age to the established vesting age. (See affidavit of C. Harvey Williamson submitted as exhibit I.)

Similarly, Mr. L. K. Guiler, then secretary of the Kress Pension Committee, has averred that, to the best of his knowledge, there was no such study undertaken and no employee was ever released because of the pension costs involved. (See affidavit of Leonard K. Guiler submitted as exhibit J.)

There was no effort by Kress and there has been no effort by Genesco, since the plans were merged in 1968, to discharge Kress employees prior to vesting. In this connection, it should be noted that on March

15, 1968, there were 1,807 employees participating in the Kress plan while Kress had more than 6,000 employees at the time, only 1,807 were participating in the plan because the plan provided that employees were not eligible until they had been with the company at least 10 years, and since then 241 have retired.

Only 258 of the employees have terminated their employment since March 1968. In other words, more than 85 percent of the Kress employees who were participating in the plan at the time of the merger either still remain in the plan or are receiving pension benefits.

Mr. Sorenson's third general charge was that Kress real estate was sold to a pension fund so that Genesco could use the pension fund's money. This charge is irresponsible and wholly unsupported by the facts.

At one point in his testimony, Mr. Sorenson identifies the transaction as allegedly involving the sale by Genesco of Kress real estate to the Kress pension fund. The very premise of this claim is erroneous.

Genesco never sold any real estate to the Kress pension fund. The only time any Kress real estate was purchased by the Kress pension fund was in 1958, 5 years before Genesco acquired its interest in Kress. This involved one small piece of property. (See minutes of Kress Pension Committee submitted as exhibit K.)

Although the facts still do not support his claim, Mr. Sorenson might have intended to refer to certain sale and leaseback transactions involving Kress real estate in 1964. If so, Mr. Sorenson's charge is truly astounding.

As the committee knows, the Kress sale and leaseback transaction gave rise to at least three separate lawsuits by stockholders of Kress. In each case, one of the bases for the suit was the charge that the plan had received a "windfall" of millions of dollars, to the detriment of Kress and its stockholders. While Genesco vigorously denied and contested the charge that the transaction injured Kress or its stockholders, the substantial benefit to the retirement plan was always clear from the face of the transaction. For someone to now attempt to turn this around and claim that the plan was disadvantaged, ignores the basic facts.

The fact is that in 1964 the Kress board determined that it would be desirable for it to enter into a sale and leaseback arrangement with respect to the store properties which it owned. Kress felt that while the properties had substantial value, the fact that Kress was tied to these properties inhibited its growth into suburban areas.

Also, the substantial real estate investment would mean a lack of liquid assets which the company would need to modernize stores, open new locations, and generally remain competitive.

The trustees of the Genesco retirement plan, recognizing this as a Tennessee Ravenwood and G/K Properties, to enter into the sale and leaseback transactions with Kress for a total of 158 pieces of real estate, with an appraised value of approximately \$60 million. Since the plan would only be investing the \$2,000 capital of the two subsidiaries, without any further exposure and since it would receive the residual interest in valuable realty, the transaction was considered sound.

Tennessee Ravenwood and G/K paid for the properties by issuing notes to Kress in the amount of approximately \$60 million, due December 1, 1964. The real estate companies entered into a 25-year lease with Genesco and Genesco subleased the properties to Kress.

Thereafter, Tennessee Ravenwood and G/K were able to obtain mortgages on the property from large institutional investors, with the rentals being sufficient to service the mortgages. As a result of the mortgage financing, the notes of Tennessee Ravenwood and G/K to Kress were completely satisfied.

The net effect, from the standpoint of Tennessee Ravenwood and G/K, is that they have a residual interest in the properties and they owe no money to Kress. The rentals are sufficient to pay the mortgage costs and the real estate companies retain the residual rights in the property.

The plan, of course, has the residual interest, through its subsidiaries, but it has no liability, obligation, or exposure other than the \$2,000.

We believe that with this explanation the committee can see that the Kress properties represent a good investment for the plan. There was no misuse of any trust funds and, contrary to Mr. Sorenson's speculation, no funds of any trust were taken or used by Genesco.

Finally in this regard, Mr. Sorenson in his testimony raised some question as to the value of the Kress real estate. The value of this property is at least \$60 million. The current value of the residual rights in this property—that is, the unencumbered ownership of the property at the end of another 18 years—is realistically some \$32 million.

Of the \$60 million value of the Kress real estate, approximately half represents the value of the buildings and half represents the value of the underlying land. While the value of the buildings is declining, the value of the underlying land is appreciating rapidly. In fact, of the \$32 million current actuarial value of the residual rights in this property, 82 percent represents the value of the land and only 18 represents the value of the buildings.

Before concluding, I would like to note that we have submitted a revised response to the committee's form P-1. (See exhibit L.)

In conclusion, let me state that Genesco is proud of its employee benefit programs, including its pension plan. We believe that we have been scrupulously faithful to the goals of the plan.

We thank you for your attention and the opportunity to appear before this committee.

I will be happy to answer any questions you may have.

(The exhibits A to L previously referred to follow:)

GENESCO

Senate Subcommittee On Labor

Exhibit A - Companies and Divisions

Apparel Raw Materials and Components

Capitol Products Company
Nashville, Tennessee
Carbons and containers

H. Ekan Company
Chicago, Illinois
Cattlehides

Elliott Associated Companies
Chicago, Illinois
Cattlehides

General Adhesives & Chemical
Nashville, Tennessee
Adhesives, finishes, and chemical products

Kingsboro Textile Company
New York, New York
Fabric knitting, dyeing, and finishing

Kingtex Fabrics Co.
Red Springs, North Carolina
Industrial knit fabrics

Lebanon Knitting Mill
Pawucket, Rhode Island
Fabric knitting, dyeing, and finishing

Sole Leather Contan
Nashville, Tennessee
Contract production of sole leather

Southern Sole Company
Nashville, Tennessee
Out soles and findings

Style Knit
Greensboro, North Carolina
Knit fabrics

Swift Spinning Mills
Columbus, Georgia
Natural, carded, and combed yarns, blends, 100% synthetics

Tennessee Leather Company
Milan, Tennessee
Side leather finishing

Upper Leather Contan
Nashville, Tennessee
Contract tanning of upper leather

Valmore Leather Company
Nashville, Tennessee
Sole leather sales

Whitehall Leather Company
Whitehall, Michigan
Leather tanning

Wood & Hyde Leather Co.
Glensville, New York
Glove and garment leather

Men's Apparel

Ainsbrooke/Flagg
New York, New York
Underwear and pajamas

Hardy Amies of London
New York, New York
Fashion apparel designed by Hardy Amies

Camp & McInnes
New York, New York
Quality hosiery

Cedar Crest Shoe Co.
Nashville, Tennessee
Service, dress and special-purpose footwear

Dominion Shoe Company
Nashville, Tennessee
Private-label footwear

Douglas Shoe Company
Nashville, Tennessee
Dress and service footwear

English-American
Tailoring Company
Baltimore, Maryland
Individualized, made-to-order clothing

Esquire Sportswear
Manufacturing Corp.
New York, New York
Stocks, sportswear and rainwear

L. Greif and Bro.
Baltimore, Maryland
Medium- and higher-priced tailored clothing

H-K Corporation
Atlanta, Georgia
MALE stocks and jeans

Hayes Garment Company
Nashville, Tennessee
Sportswear, uniforms, and career apparel

Individualized Custom Shirts
Perth Amboy, New Jersey
Custom shirts

Jarman Shoe Company
Nashville, Tennessee
Footwear

Johnston & Murphy Shoe Co.
Nashville, Tennessee
Footwear

Jordan Clothing Co.
New York, New York
Private-label tailored clothing

Lally Manufacturing Co.
Utica, New York
Thermal underwear and insulated garments

Phoenix, Inc.
New York, New York
Tailored clothing

Republic Shoe Co.
Nashville, Tennessee
Private-label footwear

Sandy McGee Shoe Company
Nashville, Tennessee
Popular-priced footwear

Sentry Shoe Company
Nashville, Tennessee
Private-label footwear

Triangle Shoe Manufacturing
Nashville, Tennessee
Footwear manufacturing

Tray District Shirt Company
New York, New York
Dress shirts

Women's Apparel

Charles H. Bacon Co., Inc.
Lenoir City, Tennessee
Hosiery

Berkshire Apparel Co.
Malden, Massachusetts
Women's and misses' dresses

Beverly Paige
New York, New York
Misses' sportswear

Charm Step Shoe Co.
Nashville, Tennessee
Women's popular-priced footwear

Cover Girl Shoe Co.
Nashville, Tennessee
Contemporary footwear for young women

Dominion Shoe Co.
Nashville, Tennessee
Private-label footwear

Easy Street Shoe Co.
Nashville, Tennessee
Classic fashion footwear

Evins Shoe Company
New York, New York
Quality fashion footwear

Fanfare
New York, New York
Blouses

Formfit Rogers
New York, New York
Lingerie and foundation wear

Greensboro Mfg. Co.
New York, New York
Popular-priced sleepwear

Hamilton Sales Co.
New York, New York
Private-label foundation wear and lingerie

Kellia
New York, New York
Junior and junior petite sportswear

Kenrose
New York, New York
Popular-priced dresses, robes, sportswear and uniforms

Mademoiselle Shoe Company
New York, New York
Fashion footwear

Mannequin Shoe Co.
Nashville, Tennessee
Medium-priced fashion footwear

Mayfair Sportswear
New York, New York
Casual outerwear

Divisions**1971**

L. Miller Wholesale
New York, New York
Quality footwear

National Vogue Shoemakers
Nashville, Tennessee
Fashion footwear

New York Mackintosh
New York, New York
Misses' and juniors' rainwear

Pyramid Manufacturing Co.
Nashville, Tennessee
Footwear manufacturing

Republic Shoe Company
Nashville, Tennessee
Private-label footwear

Robby Len Fashions
New York, New York
Popular-priced swimwear

Rona Dresses
New York, New York
Dresses and ensembles

Sentry Shoe Company
Nashville, Tennessee
Private-label footwear

Susan Thomas
New York, New York
Dresses, separates
and coordinates

**Women's Apparel
Manufacturing**
Speers, Pennsylvania
Contract apparel manufacturing

Children's Apparel

Aerobal Shoe Company
Nashville, Tennessee
Footwear

Ainsbrooke/Flagg
New York, New York
Boys' underwear and pajamas

Charles H. Bacon Co.
Lenoir City, Tennessee
Hosiery

Dominion Shoe Co.
Nashville, Tennessee
Private-label footwear

G. H. & E. Freydtberg
New York, New York
Popular-priced apparel

Girltown
Boston, Massachusetts
Sportswear

Greensboro Mfg. Co.
New York, New York
Popular-priced sleepwear

Hislis Charles Co.
New York, New York
Popular-priced sweaters,
swimwear, skirts and dresses

Lally Manufacturing Co.
Utica, New York
Insulated underwear

New York Mackintosh
New York, New York
Rainwear

Pyramid Shoe Manufacturing
Nashville, Tennessee
Footwear manufacturing

Republic Shoe Co.
Nashville, Tennessee
Private-label footwear

Sentry Shoe Company
Nashville, Tennessee
Private-label footwear

Storyboard Shoe Co.
Nashville, Tennessee
Footwear

Apparel Retail

Al Goodman
Charlotte, North Carolina
Women's quality
fashion shoe stores

Allen Stores
Nashville, Tennessee
Women's popular-priced
shoe stores

Baron's
Miami Beach, Florida
Men's clothing stores principally
in the Southeast

Bell Bros.
Nashville, Tennessee
Popular-priced family shoe stores

Henri Bendel
New York, New York
Specialty apparel store for
women on New York's
fashionable 57th Street

Bertrand Shoe Company
Nashville, Tennessee
Leased family shoe departments,
discount stores and
department stores

Bonwill Teller
New York, New York
Specialty apparel stores in New
York, Chicago, Cleveland, Boston,
Philadelphia, Palm Beach,
Manhasset, L.I., N.Y., Short Hills, N.J.,
Oak Brook, Ill., Jerkintown and
Wynnewood, Pa., Westchester
County, N.Y., and Troy, Mich.

Jamman
Nashville, Tennessee
Men's shoe stores and leased
departments featuring
Jamman shoes

Charles Jourdan
New York, New York
Women's quality fashion footwear

S. H. Kress and Company
New York, New York
Nationwide chain of budget
apparel and variety stores

Manass
Nashville, Tennessee
Women's quality
fashion shoe stores

McFarlin Clothing Co.
Rochester, New York
Stores for men's and
women's apparel

Malnemy's
Honolulu, Hawaii
Quality men's and women's
apparel stores in Hawaii

L. Miller Salons
New York, New York
Women's quality fashion shoe
salons in New York and other
major cities

Murphy Retail
Nashville, Tennessee
Leased departments featuring
J & M shoes

Plymouth Shops
New York, New York
Women's specialty shops in the
New York metropolitan area

Rogel Kent
New York, New York
Stores for men in New York, Boston
and Philadelphia

Roos/Atkins
San Francisco, California
Quality men's and women's
apparel stores in the West

Sommer & Kaufmann
San Francisco, California
Family shoe stores

L. Strauss & Company
Indianapolis, Indiana
Men's and women's apparel
stores in Indianapolis

Tate-Brown
Charlotte, North Carolina
Men's clothing stores in the
Charlotte area

Valmart
Nashville, Tennessee
General merchandise and family
apparel budget stores and
leased departments

Whitehouse & Hardy
New York, New York
Stores for men's clothing,
furnishings and shoes

Brittain's
Raleigh, North Carolina
Family shoe stores

Burkhardt's
Cincinnati, Ohio
Men's clothing stores in Cincinnati
and Dayton, Ohio, Louisville, Ky.
and Nashville, Tenn.

Burkhardt-Davidson's
Cleveland, Ohio
Men's clothing stores in the
Cleveland area

Delman's
New York, New York
Women's quality fashion shoes

V. J. Elmore
Birmingham, Alabama
Budget store chain, primarily
in the South

Flagg Bros.
Nashville, Tennessee
Shoe stores featuring footwear
particularly designed
for young men

Frank Bros.
New York, New York
Stores for men in New York,
Chicago, Detroit, and Palm Beach

French Bootery
Waco, Texas
Family shoe stores

Gidding-Jenny
Cincinnati, Ohio
Specialty apparel stores for
women in Cincinnati and Dayton,
Ohio, Louisville, Ky.

M. Gilbert & Sons
South Bend, Indiana
Men's and women's apparel
stores in the South Bend area

Graves, Cox & Company
Lexington, Kentucky
Men's clothing stores in the
Lexington area

Guarantee Shoe Stores
San Antonio, Texas
Family shoe stores

Halt-Brown
Knoxville, Tennessee
Men's clothing stores in the
Knoxville area

John Hardy Shoe Company
Nashville, Tennessee
Popular-priced men's shoe stores

Harold's
Minneapolis, Minnesota
Women's specialty stores
in Minneapolis

Holiday-Wise
Nashville, Tennessee
Shoe stores selling medium-priced
women's fashion shoes

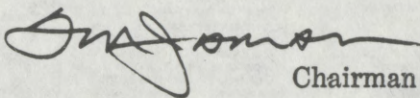
Innes Shoe Stores
Los Angeles, California
Family shoe stores

EXHIBIT B

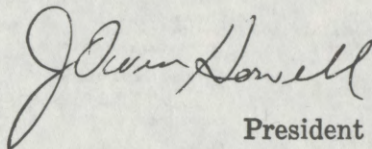
GENESCO

RETIREMENT PLAN

The company continually seeks to improve your security and well-being. We are glad that we have been able to make major improvements in your GENESCO Retirement Plan in the past year. All changes made to date are reflected in this revised booklet.



Chairman



President

1 August 1969

GENESCO RETIREMENT PLAN

CONTENTS

	PAGE
Highlights of Plan.....	1
Answers to Your Questions.....	3
Tables	7
Examples	10
GENESCO Retirement Plan—Full Text.....	13

IMPORTANT: The material contained in the early part of this booklet briefly explains and illustrates the Plan. The full terms and conditions of the Plan are set forth in the Plan text. The Plan text will control in deciding any questions which may arise concerning the Plan.

HIGHLIGHTS OF PLAN

Eligibility: Employees of GENESCO and its subsidiaries or companies which have been approved as an Employing Company under this Plan by the GENESCO Board of Directors. Minimum of 15 years credited service is required.

Effective Date: January 1, 1965, (as amended thru August 1, 1969) with discretion reserved to the Board of Directors as to the name of any company which shall be eligible to be an Employing Company under the Plan, and as to the effective date of such eligibility.

Credited Service: All service credited or benefits earned under the previous GENESCO Employees Retirement Plan are automatically carried forward into this Plan. Special rules apply for Pre-GENESCO service or for service in a subsidiary or company prior to its approval as an Employing Company.

Normal Retirement Benefits: 1.50% of average earnings for each year of credited service, less 75% of the primary Social Security benefits of the employee.

Earning Base: Average *Total* monthly earnings earned during the ten years immediately prior to retirement.

Normal Retirement Date: First day of the month after the 65th birthday.

Early Retirement: After age 55 and with 15 years of credited service. The benefits you would receive at normal retirement would be reduced by 3% for each year or 0.25% for each month of early retirement.

Postponed Retirement: Not permitted, except hourly employees who meet normal working standards may, with Company consent, continue to work to the first of the month after reaching age 68; and an employee with less than 15 years credited service at age 65 may, with Company consent, continue to work until 15 years credited service is completed, but not beyond age 75.

Form of Retirement Benefit: Normal form is a monthly income for life. Joint and survivor option election permitted any time after age 55.

Minimum Retirement Benefits: At Normal Retirement Date and after 15 years of credited service, at least \$1.25 per month for each year of credited service up to 30 years, in addition to

primary Social Security benefits; and at least \$125 per month including primary Social Security Benefit, at Normal Retirement Date and after 25 years of credited service.

Death Benefits: Employees who make a final and unchangeable choice of a joint and survivor option and who die between 55 and 65, after such election, will be treated as having elected early retirement on the day preceding the date of death, and the survivor portion of the benefits earned to date (reduced for early retirement) will be paid to the widow as a life annuity.

Pre-GENESCO Plan Benefits: Service credits based on funds owned or credited in a prior plan may be credited to the individual and used to provide as much benefit as possible under this plan.

Terminations of Service before becoming eligible for retirement: No benefits, except where benefits from a prior plan have been guaranteed when merged into this plan.

Withdrawals and Loans While Employed: Not permitted, excepted as authorized specifically in the amending of a prior plan into this plan.

Employee Contributions: None; Company bears entire cost of plan.

Alternative Additional Discretion: Discretion is further reserved to the Board as to the manner and extent to which service prior to Effective Date will be recognized.

ANSWERS TO YOUR QUESTIONS

What is the purpose of this Plan?

To help you provide security and independence for your later years after a period of long and faithful service. The Plan provides a retirement income for you from the date you receive the first payment for as long as you live.

What is the effective date of this Plan?

January 1, 1965, (as amended thru August 1, 1969.)

When am I eligible to enter the Plan?

1. If you are covered under the previous GENESCO Employees Retirement Plan you are automatically included in this Plan with all service and benefits earned under the old Plan carried over into this Plan.

2. If you are an employee of a company not covered under the GENESCO Employees Retirement Plan, you will be eligible on the date on which your company is brought under the Plan by action of the GENESCO Board of Directors.

3. Future employees will be eligible on the date of employment with a company already covered under this Plan, or on the date on which the employing company is brought under the Plan by the Board.

How much must I contribute?

Nothing. The entire cost of the Plan is paid by the Company.

How Much Will I Get When I Retire?

Your basic monthly retirement income from the Plan will be 1.50% of your Final-Average Earnings multiplied by your years of Credited service, minus 75% of your own Primary Social Security Benefit. A minimum monthly income is provided if you retire after age 55 with 15 or more years of Credited Service.

What are my Final-Average Earnings?

Retirement benefits are based on your Final Average Earnings, which are your average total monthly earnings in the ten years before your retirement.

What is my Credited Service?

Credited Service is the total of all periods of employment under the Plan, and service carried forward into this Plan from other plans as approved.

What is my normal retirement date?

Your normal retirement date will be the first day of the month following your 65th birthday.

May I retire before my normal retirement date?

Yes. You may retire as early as the first day of the month after you reach age 55 if you have completed 15 years of Credited Service. Your benefits will be based on your Credited Service and Final-Average Earnings at early retirement. These benefits will be reduced because of the earlier beginning of benefit payments.

May I retire after my normal retirement date?

Hourly paid employees may postpone retirement beyond their normal retirement date subject to company consent, but not beyond age 68. Other employees must retire by their normal retirement date, unless permitted to continue working after that date to complete 15 years of Credited Service. But in no case may any employee work after age 75.

What is the usual method of payment of retirement income?

If you do not choose some other form of benefit, your monthly retirement income will be paid to you each month for as long as you live.

May I take my retirement income in some other form?

Yes. You may arrange for your wife or some other person you name to continue to receive payments after you die by accepting reduced retirement income for yourself.

What are some other forms of retirement income?

1. Joint and Survivor Options.

You may arrange for your survivor to receive all, $\frac{3}{4}$, $\frac{2}{3}$, or $\frac{1}{2}$ of your own reduced retirement income. Your retirement income is adjusted so that the value of the combined retirement benefits is the same in each case. This option

becomes effective only on your normal retirement date or earlier actual retirement date. With proper approval, you may change back to another form of income payment before this option becomes effective.

2. Level Income Option on Early Retirement.

If your retirement income starts before your normal retirement date and you can furnish evidence of good health, you may choose to co-ordinate your retirement income with Social Security. If you do this you will receive a larger retirement income from the Plan before you start receiving Social Security and a smaller amount thereafter, so that your combined Retirement Plan and Social Security income will be approximately the same before and after Social Security benefits start. A similar option is also available for your survivor under a joint and survivor option if he or she can furnish evidence of good health.

3. Other options which may be specifically provided by the Board of Directors when a company is brought into this Plan.

Must I be in good health to choose these optional forms of retirement income?

Not if you choose the option at least six months before you start receiving retirement income benefits. Otherwise, evidence of your good health and Committee approval will be required.

Are there any death benefits prior to retirement?

Yes. If you (1) make a final and unchangeable choice of the joint and survivor option, (2) name your Spouse as beneficiary, (3) make the choice at least six months before your death, and (4) die after age 55 and before income payments begin, a survivor's benefit will be paid to your Spouse as if you had retired the day before your death.

Are there any benefits if I leave the company before becoming eligible for retirement?

Not unless specifically provided for in the transfer from some other previous plan to this Plan.

Would my retirement income be affected by other employment after retirement?

Not unless the employment is in competition with or harmful to the interest of GENESCO or any of its Employing Companies.

How is this Plan administered?

By an administrative Committee, which is composed of five members appointed as provided in the Plan.

How is this Plan paid for?

Company contributions will be paid into a Pension Fund which is for the exclusive benefit of the participants in the Plan. Each year, the financial soundness of the Fund is checked to determine the amount of Company contributions which will be needed to provide for costs of the Plan.

Will there always be a Retirement Plan?

Your Company hopes and expects that it will be possible to continue the Plan indefinitely. However, due to unforeseeable conditions in the future, the Company cannot make an unqualified commitment to maintain the Plan without change forever. The Plan therefore necessarily includes provisions reserving to the Company the right to amend or to terminate it at any time. However, no change will deprive any person, without his consent, of his right to benefits credited to him up to the time of the change.

Table A

Illustrations of estimated retirement incomes for different levels of average earnings and years of service.

Average Monthly Earnings during the 10 calendar years prior to retiring.	Estimated monthly income for life at age 65. Combined GENESCO monthly Pension and Primary* Social Security.	Estimated monthly income for life with spouse** eligible for Social Security. Combined GENESCO monthly Pension and Social Security.	This is the approximate amount of money that you would have to save to be able to purchase the equivalent amount of retirement income.
20 Years Credited Service			
\$ 250.00	\$140.00	\$197.50	\$ 21,200.00
300.00	152.00	215.50	23,000.00
350.00	165.00	235.00	25,000.00
500.00	194.50	283.50	29,400.00
650.00	249.50	358.50	37,700.00
750.00	279.50	388.50	42,200.00
1,000.00	354.50	463.50	53,500.00
25 Years Credited Service			
\$ 250.00	\$146.25	\$203.75	\$ 22,100.00
300.00	158.25	221.75	23,900.00
350.00	171.25	241.25	25,900.00
500.00	232.00	321.00	35,000.00
650.00	298.25	407.25	45,000.00
750.00	335.75	444.75	50,700.00
1,000.00	429.50	538.50	64,900.00
30 Years Credited Service			
\$ 250.00	\$152.50	\$210.00	\$ 23,100.00
300.00	166.75	230.25	25,200.00
350.00	192.50	262.50	29,100.00
500.00	269.50	358.50	40,700.00
650.00	347.00	456.00	52,400.00
750.00	392.00	501.00	59,200.00
1,000.00	504.50	613.50	76,200.00
35 Years Credited Service			
\$ 250.00	\$160.00	\$217.50	\$ 24,200.00
300.00	189.25	252.75	28,600.00
350.00	218.75	288.75	33,000.00
500.00	307.00	396.00	46,400.00
650.00	395.75	504.75	59,800.00
750.00	448.25	557.25	67,700.00
1,000.00	579.50	688.50	87,500.00
40 Years Credited Service			
\$ 250.00	\$178.75	\$236.25	\$ 27,000.00
300.00	211.75	275.25	32,000.00
350.00	245.00	315.00	37,000.00
500.00	344.50	433.50	52,000.00
650.00	444.50	553.50	67,100.00
750.00	504.50	613.50	76,200.00
1,000.00	654.50	763.50	98,800.00
45 Years Credited Service			
\$ 250.00	\$197.50	\$255.00	\$ 29,800.00
300.00	234.25	297.75	35,400.00
350.00	271.25	341.25	41,000.00
500.00	382.00	471.00	57,700.00
650.00	493.25	602.25	74,500.00
750.00	560.75	669.75	84,700.00
1,000.00	729.50	838.50	110,200.00

* The primary insurance amount is determined as the maximum amount available relating to the earnings level shown.

** Spouse assumed to be at least 65 when Social Security benefits commence; benefits would be lower if spouse is under age 65.

Table B

**Table of Reduction Factors to be Applied to the Accrued
Benefit Before Offset For Social Security**

Age At Retirement	Percentage of Accrued Retirement Income %
65	100.0
64	97.0
63	94.0
62	91.0
61	88.0
60	85.0
59	82.0
58	79.0
57	76.0
56	73.0
55	70.0

NOTE: In calculating incomes at intermediate ages between 55 and 65, an adjustment is made to allow for completed months.

Table C

**Table of Reduction Factors To Be Applied To The
Primary Social Security Benefit In Calculating
Early Retirement Benefits**

Age at Retirement	Males	Females
65	1.000	1.000
64	.913	.923
63	.835	.853
62	.765	.791
61	.703	.735
60	.646	.683
59	.597	.637
58	.553	.595
57	.512	.556
56	.475	.521
55	.441	.487

NOTE: In calculating incomes at intermediate ages between 55 and 65, adjustment will be made to allow for completed months.

Table D

**Table Showing Percentages Applicable Under
The Joint and Survivor Annuity Option**

The figures shown in this table illustrate the percentage of the single life annuity which will be payable to a Participant whose joint and survivor option has become effective in favor of his wife.

Age at Retirement	Wife 5 Years Older Than Participant	Wife Same Age As Participant	Wife 5 Years Younger Than Participant	Wife 10 Years Younger Than Participant
-------------------	--	---------------------------------------	--	---

Pension continuing at full rate to wife

65	81.8%	75.8%	69.8%	64.6%
60	83.2%	78.1%	73.1%	68.7%
55	84.6%	80.4%	76.2%	72.5%

Pension continuing at $\frac{3}{4}$ rate to wife

65	85.7%	80.7%	75.5%	70.8%
60	86.8%	82.6%	78.4%	74.5%
55	88.0%	84.5%	81.0%	77.8%

Pension continuing at $\frac{2}{3}$ rate to wife

65	87.1%	82.4%	77.6%	73.2%
60	88.1%	84.2%	80.3%	76.7%
55	89.2%	86.0%	82.8%	79.8%

Pension continuing at $\frac{1}{2}$ rate to wife

65	90.0%	86.2%	82.2%	78.4%
60	90.8%	87.7%	84.5%	81.4%
55	91.7%	89.1%	86.5%	84.1%

NOTES: (1) The above factors are for male participants with a female annuitant. Percentages for any other participant annuitant combinations and ages not shown will be supplied on request.

(2) These factors are based on actuarial tables which depend on estimates of interest and mortality rates. Some changes may be found necessary if these underlying estimates change through time.

EXAMPLES

For the purpose of the following examples we shall assume that an employee, whom we shall call "Employee A" was born on January 1, 1944, and that he was employed by GENESCO on January 1, 1965. It is further assumed that his annual earnings were \$8,000 prior to the effective date and will continue at that rate until his Normal Retirement Date, January 1, 2009.

It will be understood, of course, that as future earnings increase, resulting retirement benefits will also increase, since retirement benefits are based upon average earnings in the last ten years of employment.

Example I

Normal Retirement

If Employee A retires at age 65, his normal monthly retirement income would be as follows:

Annual earnings of \$8,000 correspond to \$666.67 monthly
Credited Service equals the period from employment
(i.e., January 1, 1965) to normal retirement (i.e.,
January 1, 2009), or44 Years

The normal monthly retirement income would be:

1.50% of \$666.67 times 44 years or	\$440.00
less 75% of estimated monthly primary Social Security benefit at age 65 (\$218.00)	\$163.50
Monthly income from Plan	<u>\$276.50</u>

Total monthly retirement income to Employee A at his Normal Retirement Date	<u>\$494.50</u>
--	-----------------

If Employee A is married and his wife is age 65 or over, she will be entitled to $1\frac{1}{2}$ of Employee A's monthly Social Security benefit. This would increase their combined monthly income to \$603.50. She could elect a reduced monthly Social Security benefit commencing at age 62. Your Social Security office can give you information about your own benefits.

Example II

Early Retirement

If Employee A wishes to retire on January 1, 2004, at age 60, his benefits under the Plan would be calculated as follows:

Credited Service is from January 1,
1965 to January 1, 2004, or 39 Years
Early retirement income at age 60:

(A) 1.50% of \$666.67 times 39, or	\$390.00
Reduced by early retirement factor,	
Table B	.85
	\$331.50

(B) Less 75% of primary Social Security equivalent at age 60, assumed to be	\$163.50
Reduced by early retirement factor,	
Table C	.646
	\$105.62

Monthly retirement income to begin at age 60 \$225.88

Example III

Joint and Survivor

Suppose Employee A retires at his Normal Retirement date as shown in Example I, and that he has elected the Joint and Survivor Option. His wife is 5 years younger than he, and he desires that her benefit be $\frac{1}{2}$ of his benefit under the option.

Normal monthly retirement income from the Plan, as shown in Example I, is \$276.50.

Table D shows that the percentage factor for this option is 82.2%.

The monthly retirement income to Employee A under this option would be .822 times \$276.50, or \$227.28

After Employee A's death, if his wife survives him, she will be entitled to a monthly benefit as long as she lives of $\frac{1}{2}$ of \$227.28, or \$113.64

Example IV**Widow's Benefit Option**

Suppose Employee A dies on January 1, 2004, after having made an irrevocable election of the Joint and Survivor ($\frac{1}{2}$) Option at age 55. His wife is 5 years younger than he. Employee A's early retirement benefit as of the date of death (Example II) would be \$225.88.

The monthly income payable to the widow is calculated as follows:

Early retirement benefit	\$225.88
Adjusted by Joint and Survivor factor, Table D	x .845
	\$190.87
Continuation elected	x $\frac{1}{2}$
Monthly benefit to widow	\$95.44

The benefits in the above examples II through IV are in addition to any monthly Social Security benefits payable during the same periods.

GENESCO

RETIREMENT PLAN

FULL TEXT

This Plan was established by resolution of GENESCO Inc. Board of Directors dated January 18, 1965.

The purpose of this Plan is to provide for the accumulation of a fund to pay retirement income benefits to regular employees because of age or disability after a period of faithful service and to supplement the benefits provided under the Federal Social Security Act.

SECTION 1: DEFINITIONS

The following words and phrases, when used in this Plan, unless the context clearly indicates otherwise, shall have the following meanings:

1.01 PLAN: GENESCO Retirement Plan.

1.02 COMPANY: GENESCO Inc., a Tennessee corporation, or its successors.

1.03 BOARD: The Executive Committee of the Board of Directors of the Company.

1.04 EMPLOYING COMPANY: Any division of the Company, or any subsidiary or other company which adopts this Plan and which is designated by the Board as an Employing Company.

1.05 COMMITTEE: The administrative Committee provided for in Section 9 (Administration).

1.06 PRIOR PLAN: Any pension or profit-sharing plan to which an Employing Company contributed, and designated by the Board as a Prior Plan which was in effect for an Employee up to the date this Plan became effective for him as provided in Section 2 (Plan Membership).

1.07 EMPLOYEE: Anyone regularly employed on a full-time basis by an Employing Company either in the United States or, if he is a United States citizen, outside the United States, excluding however those persons for whom an Employing Company is currently making contributions to another retirement plan other than Social Security. Salesmen compensated by commissions are not considered Employees.

1.08 PARTICIPANT: Anyone who has become included in this Plan as provided in Section 2 (Plan Membership), and who continues to have rights or contingent rights to benefits payable under this Plan.

1.09 CONTINUOUS EMPLOYMENT: Service as an Employee (including successive service with two or more Employing Companies or their predecessors, but only in the manner and to the extent authorized by the Board) which has not terminated as defined in Section 3.04 (Termination of Continuous Employment).

1.10 EFFECTIVE DATE: The date this Plan becomes effective for any Employee as provided in Section 2.01 (Effective Date).

1.11 CREDITED SERVICE: Service as provided in Section 3 (Credited Service).

1.12 EARNINGS: Amounts earned by an Employee for personal service rendered to an Employing Company, including all regular pay, overtime pay, and discretionary bonuses, and including amounts earned, but with respect to which payments are deferred by contract; but excluding reimbursement for expenses and other special payments, as determined by the Committee.

1.13 FINAL-AVERAGE EARNINGS: The average Earnings during the months in which there were Earnings in the last ten calendar years of Continuous Employment prior to the earliest of the dates of death, termination of Continuous Employment, or retirement as provided in Section 4.01 (Retirement Date).

1.14 BENEFICIARY: The person or persons last designated by a Participant, by written notice filed with the Committee, to receive a Plan benefit upon his death which may be provided by Section 2.02 (Effect of Prior Plan) or Section 5.02 (Additional Benefits Arising From Prior Service) or Section 6.02 (Optional Forms of Retirement income).

1.15 PRIMARY SOCIAL SECURITY BENEFIT: The amount which would be available at age 65 as a monthly old age benefit for the Participant exclusive of benefits for relatives or dependents, under the Federal Social Security Act or under any similar Federal Act or Acts as now existing or subsequently amended, superseded, or created, whether or not payment of such amount is delayed, suspended, or forfeited because of failure to apply, other work, or for any other reason. Provided that for purposes of this Plan in the event retirement income is to commence prior to the Participant's Normal Retirement Date, Primary Social Security shall be

determined as if he receives no further income after he ceased to receive Earnings.

1.16 NORMAL RETIREMENT DATE: The date determined by Section 4.01 (Retirement Date).

1.17 SPOUSE: The spouse of the Participant at the time his election of an optional form of retirement income becomes effective as provided in Section 6 (Form of Benefits and Options).

1.18 ACTUARIAL EQUIVALENT: The benefit of equivalent value, computed on the basis of the mortality tables and interest rate last adopted for this purpose by the Committee.

1.19 PENSION FUND: The fund established by contributions of the Employing Companies in order to provide for the payment of the benefits specified in the Plan, including the funds accumulated under any Prior Plan, as provided in Section 8.03 (Pension Fund).

1.20 GENDER AND NUMBER: Wherever applicable the masculine pronoun shall include the feminine pronoun, and the singular shall include the plural.

SECTION 2: PLAN MEMBERSHIP

2.01 EFFECTIVE DATE: This Plan is effective as of January 1, 1965, for Employees covered under a Prior Plan on that date. The Board may determine the Plan to be effective as of January 1, 1965, or as of a later date for each other group of Employees of each Employing Company.

2.02 EFFECT OF PRIOR PLAN: As of the later of the date this Plan becomes effective for an Employee or the date a plan covering him is designated as a Prior Plan by the Board:

a. No further contributions shall be made, and no further benefits shall accrue under such Prior Plan for him after the effective date of this Plan, and

b. All benefits payable to him under the terms of the Prior Plan shall be merged into the benefits provided by this Plan, and shall be paid under this Plan as directed by the Board.

The total of benefits paid under this Plan shall not be less than the Actuarial Equivalent of the benefits which the Employee would have received under the Prior Plan had he terminated employment the day before the date the Prior Plan was so designated with respect to him.

2.03 EFFECT OF TRANSFERS:

a. In the event a person transfers from a classification not contemplated in Section 1.07 (Employee) to Employee

status, benefits, if any, for such person will be as determined by the Board on a non-discriminatory basis for all persons similarly situated.

- b. In the event of transfer from Employee status to a classification not contemplated in Section 1.07 (Employee), benefits provided under this Plan for service prior to the date of such transfer shall be preserved as if the Employee were on leave of absence during his continuing employment with an Employing Company or with a company which is a subsidiary or affiliated company of an Employing Company, provided that such benefits shall be reduced by any benefits provided for by any other retirement plan to which an Employing Company contributes, other than Social Security, to the extent such other plan benefits result from the service credited under this Plan.

SECTION 3: CREDITED SERVICE

3.01 CREDITED SERVICE: An Employee's Credited Service shall be the number of years of Continuous Employment, after the Effective Date of this Plan for him.

3.02 PERIODS INCLUDED IN CREDITED SERVICE: An Employee's Credited Service shall include:

- a. Leaves of absence for required service with the Armed Forces of the United States (with such leave expiring concurrently with re-employment or with the expiration of any re-employment rights required by law) subject to such non-discriminatory rules as may be established by the Committee.
- b. Service with affiliated companies in foreign countries.
- c. Periods of disability as determined by the Committee, up to a maximum of five years in total.
- d. The first thirty days of any lay-off.
- e. Previous periods of Continuous Employment as provided in Section 7.02.
- f. Periods of Continuous Employment as a Salesman compensated by commissions prior to the Effective Date of this Plan for him.

3.03 PERIODS EXCLUDED FROM CREDITED SERVICE: An employee's Credited Service shall exclude periods of disability as determined by the Committee in excess of five years in total.

3.04 TERMINATION OF CONTINUOUS EMPLOYMENT: Continuous Employment shall be deemed to terminate in the event of:

- a. Resignation or quit by the Employee;

- b. Discharge;
- c. Failure to return to work upon expiration of approved leave of absence, or upon recall after lay-off, or before expiration of re-employment rights required by law;
- d. Elapse of one year after lay-off without recall;
- e. Permanent shut-down, unless re-employed by an Employing Company within sixty days thereafter;
- f. Other permanent severance of the employment relationship.

SECTION 4: ELIGIBILITY FOR RETIREMENT

4.01 RETIREMENT DATE: A Participant's Normal Retirement Date is the later of (1) the first of the month coinciding with or next following his 65th birthday, or (2) the first of the month coinciding with or next following his completion of 15 years of Credited Service.

An Employee who does not complete at least 15 years of Credited Service prior to his 75th birthday will not be eligible to retire under this Plan.

A Participant may not postpone his retirement beyond his Normal Retirement Date; provided that even though an hourly paid Participant's Normal Retirement Date is prior to age 68, he may, with Committee consent, postpone his retirement beyond his Normal Retirement Date but not beyond age 68.

A Participant may retire on the first of any month prior to his 65th birthday, provided he has reached his 55th birthday and has completed at least 15 years of Credited Service on such date.

4.02 APPLICATION FOR COMMENCEMENT OF BENEFITS: A Participant may apply to have retirement income benefits commence as of the first of any month on or after the Participant's retirement date as provided in Section 4.01 (Retirement Date). The application must be in the form prescribed by the Committee, and must be filed with the Committee not more than 120 days nor less than 15 days prior to the date retirement income is to commence. No retirement income will be payable unless a Participant retires as provided in Section 4.01 (Retirement Date).

SECTION 5: AMOUNT OF RETIREMENT INCOME

5.01 NORMAL RETIREMENT: Where retirement income benefits commence on or after the Participant's Normal Retirement Date, the monthly amount of such benefits is equal to the greatest of (a), (b) or (c) below:

- (a) The excess, if any, of (i) over (ii) below:

- (i) The Participant's Credited Service multiplied by the sum of 1.50% of his monthly Final-Average Earnings up to \$4167 and 1.25% of such Earnings over \$4167.
- (ii) 75% of the Participant's Primary Social Security Benefit.
- (b) The Participant's Credited Service up to a maximum of 30 years multiplied by \$1.25.
- (c) Provided the Participant has 25 years of Credited Service, an amount equal to \$125 less his Primary Social Security Benefit.

5.02 ADDITIONAL BENEFITS ARISING FROM PRIOR SERVICE: Additional benefits for service prior to the Effective Date may be approved by the Board on a non-discriminatory basis for any group of Employees.

Benefits under this Plan may not be less than those provided by Section 2.02 (Effect of Prior Plan).

5.03 EARLY RETIREMENT: Where retirement income benefits commence prior to the Participant's Normal Retirement Date, the monthly amount of such benefits shall be determined as in Sections 5.01 and 5.02 based upon his Final-Average Earnings and Credited Service as of his actual retirement date pursuant to Section 4.01 (Retirement Date). This amount will be reduced by 0.25% for each month by which the date of commencement of such benefit precedes the Normal Retirement Date, provided that the offset pursuant to Section 5.01(a) (ii) shall be reduced for this purpose on an Actuarially Equivalent basis rather than by the 0.25% factor.

SECTION 6: FORM OF BENEFITS AND OPTIONS

6.01 NORMAL FORM OF RETIREMENT INCOME: The normal form of retirement income payable under this Plan shall be an income payable monthly for life.

6.02 OPTIONAL FORMS OF RETIREMENT INCOME: In lieu of the normal form of retirement income, a Participant may elect to receive an Actuarially Equivalent retirement income in either one of the following forms:

Option 1: Joint and 100% Survivor. A reduced retirement income payable to the retired Participant during his lifetime and continuing after his death to his Beneficiary for life.

Option 2: Other Joint and Survivor. A reduced retirement income payable to the retired Participant during his lifetime. After his death a portion of his reduced retirement income then continues to his Beneficiary for life. This portion may be $\frac{1}{2}$, $\frac{2}{3}$, or $\frac{3}{4}$ of the amount payable during the lifetime of the retired Participant.

6.03 CONDITIONS RELATIVE TO OPTIONAL BENEFITS:**(a) Option's Effective Date**

An optional form of income becomes effective on the Participant's Normal Retirement Date or earlier actual retirement date provided it has been properly elected.

(b) Election of Option

To elect an optional form of income the Participant must complete an application in a form satisfactory to the Committee, and the form must be properly filed either at least six months prior to the actual retirement date, or at any time up to the actual retirement date if either:

(i) The retirement date is within six months of the Effective Date of the Plan for the Participant, or

(ii) The Participant submits evidence of good health satisfactory to the Committee.

(c) Effect of Beneficiary's Death

If the Beneficiary dies before the earlier of the Participant's Normal Retirement Date, or the date of income commencement to the Participant, the election of the option becomes null and void.

If the Beneficiary dies after the earlier of the Participant's Normal Retirement Date or the date of income commencement to the Participant, the option shall remain effective even though the Participant is still alive, and the income payable to the Participant shall be as determined under the option elected.

(d) Revocability

The Participant may file an election in a revocable or irrevocable form. Subject to the consent of the Committee, a revocable election may be cancelled by the Participant at any time prior to commencement of retirement income. An irrevocable election may not be cancelled by the Participant.

6.04 WIDOW'S BENEFITS: If the Participant dies after an option has become effective, the income payable to his beneficiary, if still living, shall be as determined under the option.

If the Participant dies before an option becomes effective and before having made an irrevocable election, no benefits are payable under the option.

If the Participant dies before an option becomes effective, and dies after he attains age 55 and after completing at least 15 years of Credited Service and if he has filed an option irrevocably at least six months previously naming his Spouse as Beneficiary, a benefit will be paid to his Spouse if still living. The amount of the benefit payable to the Spouse shall be the same as if the Participant had retired on the day prior to the date of his death with the option in effect on such date. Accordingly, the income to the Spouse will be based on the Participant's Credited Service and Final-Average Earnings at the time of death, and will reflect the reduction in benefits if commencement is prior to the Participant's Normal Retirement Date, and will reflect the percentage continuation to the surviving Spouse under the option.

6.05 SOCIAL SECURITY OPTION: Subject to submission of evidence of good health and approval by the Committee a Participant or Spouse receiving retirement income prior to age 65 may elect to receive a larger income before age 65 and a smaller income after age 65 so as to provide a total income which is approximately level after including Social Security benefits, provided the aggregate value of the payments payable both before and after age 65 is the Actuarial Equivalent of the benefit otherwise payable to such Participant hereunder.

SECTION 7: DEATH AND TERMINATION BENEFITS

7.01 DEATH BENEFITS: There are no death benefits provided under this Plan except as may be provided under Section 2.02 (Effect of Prior Plan), Section 5.02 (Additional Benefits Arising From Prior Service) or Section 6.04 (Widow's Benefit).

7.02 TERMINATION BENEFITS: No benefits are provided under this Plan after termination of Continuous Employment as determined in accordance with Section 3.04 (Termination of Continuous Employment), except as may be provided under Section 2.02 (Effect of Prior Plan), or Section 7.01 (Death Benefits) if termination is as a result of death, or Section 4 and Section 5 if termination is as a result of retirement pursuant to Section 4 (Eligibility For Retirement). However, in the event of subsequent re-employment Credited Service prior to termination of Continuous Employment will be restored.

SECTION 8: CONTRIBUTIONS AND PENSION FUND

8.01 NO PARTICIPANT CONTRIBUTIONS: No contributions shall be required from any Participant.

8.02 CONTRIBUTIONS BY THE EMPLOYING COMPANIES: Once each year the Committee shall cause to be made and transmitted to the Board an actuarial valuation of the Plan on the basis of the service and mortality tables, rate of interest, and method of funding approved by the Committee.

The contributions of the Employing Companies shall be paid at such times and in such amounts as the Board shall determine.

8.03 PENSION FUND: The Company shall establish a Pension Fund to which shall be transferred the funds accumulated in connection with any Prior Plan, and into which shall be paid the contributions of each Employing Company. The Pension Fund may comprise either a trust fund or trust funds held by one or more Trustees, or a group annuity contract or contracts or other forms of insurance contracts, including a deposit administration contract or contracts, or any combination thereof.

At no time prior to the satisfaction of all liabilities under the Plan with respect to Participants and Beneficiaries, shall any part of the corpus or income of the Pension Fund be used for or diverted to any purpose other than for their exclusive benefit. No person shall have any financial interest in or right to the Pension Fund or part thereof, except as expressly provided for in the Plan.

Each participant or other person who shall claim the right to any payment under the Plan shall be entitled to look only to the Pension Fund for such payment. No liability for the payment of benefits under the Plan shall be imposed upon the Board, the administrative Committee, any Employing Company, or the officers, directors, or stockholders of any Employing Company.

SECTION 9: ADMINISTRATION

9.01 COMMITTEE: Administration of the Plan, the exclusive power to interpret it, and the responsibility for carrying out its provisions are vested in an administrative Committee of

five members. The Board shall appoint the Committee members and shall have the power of removal and substitution. The Board shall designate the Chairman and the Vice Chairman of the Committee and the Chairman shall designate a Secretary. Any Committee member may resign by notifying the Board and the Committee Secretary in writing. The Committee shall establish rules for administration of the Plan and transaction of its business.

9.02 COMMITTEE MEETINGS: The Committee shall hold meetings, determining the notice, place, and time of each. A majority of its members shall constitute a quorum. Decisions with a quorum present shall be by majority vote. The decisions of the Committee as to interpretation and application of the Plan shall be final. The action of a majority expressed in writing without a meeting shall constitute the action of the Committee and shall have the same effect as if assented to by every Committee member.

9.03 DELEGATION OF DUTIES: The Committee may appoint subcommittees and determine their powers; employ counsel and agents; and authorize one or more Committee members or any agent to execute or to deliver any written instructions, requisitions, orders, notices, or other instruments or to make any payments on their behalf. They may also obtain clerical, accounting and actuarial assistance to carry out the provisions of the Plan.

9.04 PLAN RECORDS: The Committee shall maintain appropriate accounts and records of the Plan and shall keep in convenient form the data necessary for actuarial valuations.

9.05 COMMITTEE LIABILITY: Committee members shall use ordinary care and diligence in performing their duties; but no member shall be personally liable by virtue of any contract, agreement, bond or other instrument made or executed by or for him as a Committee member, nor for any loss unless due to his own gross negligence or willful misconduct.

9.06 COMMITTEE INDEMNIFICATION: The Company shall indemnify each Committee member against costs, expenses and liabilities, including attorney's fees, incurred in connection with any action, suit or proceeding instituted against him because of any act of omission or commission performed by him as a Committee member while acting in good faith and exercising his judgment for the best interests of the Plan. Promptly after receipt by an indemnified party under this section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be

made against the Company, notify the Company of the commencement thereof, and the omission so to notify the Company will relieve it from the liability hereunder, but not from any other liability which it may have to such person. The Company shall be entitled to participate at its own expense in the defense or to assume the defense of any action brought against any party indemnified hereunder.

In the event the Company elects to assume the defense of any such suit, such defense shall be conducted by counsel chosen by it and reasonably satisfactory to the indemnified party, and the indemnified party shall bear the fees and expenses of any additional counsel retained by him.

9.07 COMMITTEE EXPENSES: Any expenses incurred by the Committee in the performance of its duties shall be paid by the Company.

9.08 POWERS OF THE ADMINISTRATIVE COMMITTEE: The administrative Committee shall have the following powers and duties:

- (a) To establish and enforce such rules, regulations and procedures as it shall deem necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, its interpretation thereof in good faith to be final and conclusive;
- (c) To decide all questions concerning the Plan and the eligibility of any Employee to participate in the Plan;
- (d) To compute the amount of benefits which shall be payable to any Participant, retired Participant, Spouse, or Beneficiary in accordance with the provisions of the Plan, and to determine the person or persons to whom such benefits shall be paid;
- (e) To authorize the payment of benefits;
- (f) In the exercise of all of its functions the administrative Committee shall act in an impartial and non-discriminatory manner.

SECTION 10: SPECIAL PROVISIONS

10.01 RE-EMPLOYMENT OF A PARTICIPANT WHO HAS RETIRED:

- (a) The retirement income payable under the Plan to any Participant who has retired shall cease as of the first date

of rehire, if such Participant is rehired by an Employing Company and shall resume as of the first day of the month following his subsequent retirement subject to the provisions of (b) below. Such cessation or suspension of retirement income payable shall not affect the payment of benefits after the death of a re-employed Participant under any optional form of benefit which shall at that time be in effect.

(b) In any case where the payment of a retirement income which was reduced on account of early retirement is suspended on account of reemployment, the amount of the retirement income to be paid on subsequent retirement shall be actuarially determined on the basis of the increased service, age, amount of benefit paid to age 65, and other relevant factors.

10.02 SMALL PAYMENTS: In the event that any benefit provided under the Plan is payable in an amount of less than \$5 monthly, the administrative Committee may direct that a lump-sum settlement that is Actuarially Equivalent in value be paid in lieu of any other benefit under the Plan.

10.03 PREJUDICIAL ACTIVITY: No member or former member shall be barred by this Plan from any business activity after he terminates employment with the Employing Companies. However, except as provided in the last paragraph of Section 2.02, any right of a member or former member to any Plan benefit, or of a retired Participant to the continuation of his retirement income, shall terminate if the Committee determines that he has engaged in competition harmful to the interests of any of the Employing Companies or has otherwise prejudiced the interests of any of the Employing Companies by any act of omission or commission whether during employment or after termination.

10.04 PLAN NOT A CONTRACT OF EMPLOYMENT: The Plan shall not be deemed to constitute a contract between any Employee and any Employing Company, or to be 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 any Employing Company; all Employees shall remain subject to discharge, discipline or lay-off to the same extent as if the Plan had not been put into effect.

10.05 PAYMENTS TO MINORS AND INCOMPETENTS: If the administrative Committee shall receive satisfactory evidence that a Participant or Beneficiary who is entitled to re-

ceive any benefit under the Plan is, at the time when such benefit becomes payable, a minor or is physically unable or mentally incompetent to receive such benefit and to give a valid release therefor, and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian, committee or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the administrative Committee may authorize payment of such benefit otherwise payable to such Participant or Beneficiary to such other person or institution, and the release of such other person or institution shall be a valid and complete discharge for the payment of such benefit.

10.06 MISSTATEMENT IN APPLICATION FOR RETIREMENT INCOME: If a Participant in any application or response to the administrative Committee makes any statement which is erroneous or omits any material facts or fails before receiving his first payment to correct any information that he previously incorrectly furnished to the administrative Committee for its records, the amount of his retirement income shall be adjusted on the basis of the facts, and the amount of any overpayment theretofore made to such Participant shall be deducted from his next succeeding payments as the administrative Committee shall direct.

10.07 MISSING PERSONS: If the administrative Committee is unable, within three years after any benefit becomes due from the Pension Fund to a Participant, Spouse, or Beneficiary, to authorize payment because the identity or whereabouts of such person cannot be ascertained, the administrative Committee may direct that such benefit and all further benefits with respect to such person shall be forfeited and all liability for the payment thereof shall terminate.

10.08 NON-ALIENATION OF BENEFITS: No benefit which shall be payable under this Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, garnishment, encumbrance, or charge.

SECTION 11: GENERAL PROVISIONS

11.01 MODIFICATION OR DISCONTINUANCE OF THE PLAN OR COMPLETE DISCONTINUANCE OF COMPANY CONTRIBUTIONS:

(a) The Board and each Employing Company expects and intends to maintain the Plan in force indefinitely, but necessarily reserves the right to change or discontinue the Plan at any time.

(b) Change in Plan or Suspension of Contributions: At any time and from time to time, the Plan may be changed in whole or in part, or the contributions of any Employing Company may be suspended, provided that:

(i) No change shall be effective unless the Plan as so changed shall be for the exclusive benefit of the Participants, except as provided in Section 11.02 (c), and

(ii) No change shall deprive any person without his consent of his right to the benefit which had accrued to his credit up to the time of such change.

11.02 DISTRIBUTION OF ASSETS OF PENSION FUND:

(a) In the event that contributions of all Employing Companies are completely discontinued or in the event that it becomes necessary to discontinue the Plan, the assets then remaining in the Pension Fund shall be applied in the following order; all persons in each class being entitled to their respective proportionate shares:

Firstly: Provision to Participants who have benefits pursuant to Section 2.02 (Effect of Prior Plans) of the benefits to which they shall be entitled or contingently entitled under the Plan;

Secondly: Provision to Participants who have retired and their Spouses and Beneficiaries of any remaining benefits to which they shall be entitled under this Plan;

Thirdly: Provision to Participants who shall at that time be entitled to retire and to their Spouses and Beneficiaries, of the benefits to which they shall be entitled or contingently entitled under the Plan;

Fourthly: Provision to all other Participants and their Spouses and Beneficiaries of the benefits to which they shall be entitled or contingently entitled under this Plan.

(b) Any reserves which shall be released as a result of the application of the provisions of Section 11.03 shall be added to the portion of the Pension Fund which is distributed as provided above to Participants whose benefits are not restricted, provided that in the event that all of the benefits accrued to such Participants are fully provided for, such released reserves (or any remaining portion thereof) shall be allocated to such unrestricted Participants in direct proportion to the value of their benefits accrued up to the time of discontinuance of the Plan, and shall be distributed to such Participants either in cash or in the form of additional benefits similar to those provided under the Plan.

(c) Any surplus remaining in the Pension Fund, after the satisfaction of all rights or contingent rights accrued under the Plan with respect to such benefits, and after distribution of any released reserves as above provided, shall, subject to the pertinent provisions of federal or state law, be returnable to the Company.

11.03 RESTRICTION—25 HIGHEST-PAID EMPLOYEES:

This Section 11.03 shall apply to each of the 25 highest-paid employees of each Employing Company on any "commencement date" whose anticipated normal retirement allowance under the Plan exceeds \$1,500 per annum. "Commencement date" means the effective date of Plan adoption by each Employing Company, or the effective date of any Plan amendment which increases benefits. If during the first ten years after a "commencement date" the Plan is terminated for employees of any Employing Company, the annuity for any one of the above highest-paid employees of that company shall be no greater than the annuity that can be provided by the largest of the following amounts:

(a) The contributions (or funds attributable thereto) which would have been applied to provide the annuity if the Plan as in effect on the day before the "commencement date" had continued without change;

(b) \$20,000; or

(c) The sum of (i) the 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 the "commencement date", *plus* (ii) the smaller of \$10,000 or 20% of the employee's average annual remuneration during his last five years of service, multiplied by the number of years since the "commencement date".

If the unfunded past actuarial requirement at the end of any year prior to the tenth anniversary after a "commencement date" exceeds the unfunded base, then, until such liability shall have been met, the annuity payable to any such employee shall not exceed the one that would have been payable had the Plan terminated when these costs were not met.

Any excess reserves arising from the foregoing provisions shall be used as provided in the Plan for the benefit of other persons who have rights under the Plan by reason of employment by such company.

If it should later be determined by statute, court decision, Internal Revenue Service ruling, or otherwise, that the pro-

visions of this section are no longer necessary to qualify the Plan under the Internal Revenue Code, they shall become ineffective without further amendment of the Plan.

11.04 FORFEITURES AND INVESTMENT INCOME: Forfeitures and investment income shall be used to reduce employer contributions and shall not be used hereunder to increase the benefit of any person prior to termination of the Plan or complete discontinuance of contributions.

11.05 PLAN SUBJECT TO TAX APPROVAL: This Plan, as it applies to any Employing Company, is expressly subject to the condition precedent that it shall be approved and qualified by the Internal Revenue Service as meeting the requirements of the Federal Internal Revenue Code and regulations issued thereunder with respect to employees' trusts.

In the event of the failure of the Plan to receive such approval, the Plan shall be of no effect with respect to such Employing Company and all contributions by such Employing Company shall be returned to such Employing Company.

11.06 GOVERNING LAW: The Plan and all provisions thereof shall be governed by the laws of Tennessee.

GENESCO

Senate Subcommittee On Labor

Exhibit C - Bridge Amendment

Kress Pension Plan

S. H. KRESS AND COMPANYBRIDGE AMENDMENT TO AMENDED AGREEMENT OF TRUST

The Amended Agreement of Trust (hereinafter called the "Prior Plan") effective March 15, 1956, as amended subsequently, is hereby amended in its entirety as of March 15, 1968 into the GENESCO Retirement Plan (hereinafter referred to as the "Plan") and the GENESCO Retirement Trust (hereinafter referred to as the "Trust") which Plan and Trust are attached hereto and made a part hereof, provided however, that the Plan is expressly made subject to the provisions set forth below, pursuant to Sections 1.09, 2.02, 5.02 and 7 of the Plan.

S. H. Kress
An
Employing
Company

1. S. H. Kress and Company (hereinafter called the "Employer") is hereby named as an Employing Company pursuant to Section 1.04 of the Plan, and the provisions of this Bridge Amendment shall apply to all regular full-time employees of S. H. Kress and Company as of March 14, 1968 (hereinafter called "Kress Employees"), including those entitled to benefits or contingent benefits under the Prior Plan, but excluding any employee who became eligible to enter the Prior Plan, but had not done so as of March 14, 1968.

Minimum
Income
Benefits

2. In determining retirement income benefits pursuant to Section 5.01 of the Plan, benefits for employees of S. H. Kress and Company (as of March 14, 1968) shall be the greater of (a) or (b) below:

February 3, 1969

-2-

- (a) The excess of (i) over (ii):
- (i) 110% of the retirement income benefits determined in accordance with Article IV of the Prior Plan as if employment continued to the Kress Employee's normal retirement date pursuant to Article IV of the Prior Plan assuming a continuation, in the case of participants in the Prior Plan, of their earnings used in the actuarial valuation made as of March 15, 1967; and in the case of non-participants, their rate of earnings as of December 31, 1967, as determined by the Employer.
 - (ii) the retirement income benefits which are actuarially equivalent as determined under the Plan, to the accumulation at 3.75% interest compounded annually of Kress Employee contributions that would have been made under the Prior Plan from March 15, 1968, until the employee's normal retirement date, pursuant to Article III of the Prior Plan had the earnings or rate of earnings described in (i) above continued during such period.

February 3, 1969

-3-

(b) The sum of (i) and (ii):

- (i) The amount determined in (a) (i) above, multiplied by the ratio of 1) his years of service determined pursuant to Article I(9) of the Prior Plan adjusted for completed months, as of March 14, 1968, to 2) such service as of his normal retirement date pursuant to Article IV of the Prior Plan.
- (ii) The amount determined pursuant to Section 5.01 of the Plan, for this purpose including in Credited Service under the Plan the employee's service prior to March 15, 1968, determined pursuant to Article (I) (9) of the Prior Plan; multiplied by the ratio of such Credited Service subsequent to March 14, 1968, to all such Credited Service both prior to March 15, 1968 and subsequent to March 14, 1968.

Vested
Value

- 3. The accumulated Kress Employee contributions with interest as of March 14, 1968, determined in accordance with the provisions of the Prior Plan; accumulated thereafter with interest at the rate of 3.75% per annum compounded annually from March 15, 1968, to the earliest under the Plan of the date of death, date of termination of Continuous Employment under the Plan, normal retirement date, or actual retirement date; shall hereinafter be referred to as the Kress Employee's "Vested Value".

February 3, 1969

-4-

Death
Benefit
Before
Retirement

4. In the event of death prior to the earlier of termination of Continuous Employment under the Plan or commencement of retirement income, the Vested Value as of the Kress Employee's date of death will be paid to his beneficiary.

10 Year
Certain
Option
Permitted

5. Providing the Kress Employee has not elected any of the options permitted in accordance with Section 6.02 of the Plan, he may elect at any time prior to commencement of his retirement income, to convert his retirement income into an income reduced in the ratio of 100 to 110 payable for the life of the Kress Employee after retirement, with the additional benefit that if he should die after retirement income commences and before 120 monthly income payments are received, his beneficiary will receive such monthly income payments thereafter, until the Kress Employee and his beneficiary have together received 120 monthly payments.

20 Year
Certain
Option and
Full Cash
Refund
Option at
Retirement

6. As additional benefits in consideration of service prior to March 15, 1968, pursuant to Section 5.02 of the Plan, participants who were entitled to benefits under the Prior Plan and who are entitled to benefits under the Plan may, with the approval of the Committee under the Plan, elect at any time prior to commencement of his retirement income to convert all his retirement income into either of the following forms:

- (i) A reduced income payable for the life of the Kress employee after retirement, with the additional benefit that if

February 3, 1969

-5-

he should die after retirement income commences and before 240 monthly income payments are received, his beneficiary will receive such monthly income payments thereafter, until the Kress employee and his beneficiary have together received 240 monthly payments.

- (ii) A reduced income payable for the life of the Kress employee after retirement, with the additional benefit that if he should die after retirement income commences and before the actuarial value of the unreduced lifetime income payments at retirement are received, his beneficiary will receive such monthly income payments thereafter, until the Kress employee and his beneficiary have together received the actuarial value of the unreduced lifetime income payments at retirement. The payments made to the beneficiary under this option may be paid in a lump sum on an actuarially equivalent basis, subject to approval of the Committee under the Plan.

Beneficiary

7. For purposes of Paragraphs 4, 5 and 6 above, until such time as the Kress Employee names a beneficiary under the Plan pursuant to Section 1.14 of the Plan, his beneficiary shall be determined in accordance with the designation in effect on March 14, 1968, pursuant to Article VI of the Prior Plan.

February 3, 1969

Early
Retirement

8. In the event of early retirement, benefits shall be adjusted for such early retirement in accordance with the provisions of the Plan; provided that no early retirement reduction factor will apply to benefits accrued through March 14, 1968, with respect to females retiring between the normal retirement age under the Kress Plan and age 65; provided further that early retirement under the Plan shall be permitted after March 14, 1968, for any Kress Employee who would have both attained age 50 and completed 15 years of service under the Prior Plan had his employment continued through March 14, 1969, and terminated by retirement on March 15, 1969.

Withdrawal of
Employee
Contributions
and Termination
of Employment

9. At any time during employment, or in the event of Termination of Continuous Employment, or after Termination of Continuous Employment prior to commencement of annuity payments, the employee shall have the option to withdraw his Vested Value as of the date of withdrawal.

If he does withdraw his Vested Value, he shall be entitled to no further benefits under this Plan as a result of the Prior Plan.

If he does not withdraw such amount, his termination benefits in respect of service through March 14, 1969, shall be at least Actuarially Equivalent in value to the benefit he would have received had he terminated employment under the Prior Plan on March 14, 1969,

February 3, 1969

-7-

in which case he may elect to have his retirement income benefits based on his service to his Termination Date commence at any time after his termination of employment, but not later than his normal retirement date under the Plan, provided that in such case the Vested Value will be payable if the Employee dies before his retirement income commences.

Continuation
of Benefits
for Inactive
Employees

10. Any benefits due under the Prior Plan as of March 14, 1968, to Kress Employees who were then inactive because of retirement, disability, or vested termination, will continue to be provided under the Plan subject to the same conditions pertaining to such benefits as set forth in the Prior Plan as in effect on March 14, 1968.

Salesmen

11. Notwithstanding the provisions of Section 1.07 of the Plan, any Kress Employee who is a salesman compensated only by commissions as of March 14, 1968, shall be entitled to retire under the Plan and to have a retirement benefit upon retirement under Section 5.02 of the Plan for service arising prior to March 15, 1968, in an amount equal to the benefit described in Paragraph 2(b)(i) above. In the event said salesman terminates service whether by death, resignation, or any other reason (other than by retirement under the Plan), said salesman shall be entitled to the benefit described in Paragraph 8 above. For this purpose "termination of Continuous Employment under the Plan" shall mean separation from service with the Company in the case of a salesman. Such benefits shall be administered and paid pursuant to the provisions of the Plan and this Bridge Amendment.

February 3, 1969

Transfer
of Fund

12. The fund held under the Prior Plan shall be transferred as soon as feasible after the effective date of this Amendment, to the Trust, subject to the conditions of this Amendment.

Amendment
Subject to
Internal
Revenue
Approval

13. This Bridge Amendment shall not be effective if the Internal Revenue issues an initial determination letter that the Prior Plan as amended by this Bridge Amendment or the Plan would not qualify for tax purposes.

This Bridge Amendment may be amended by GENESCO, Inc. to conform it to Internal Revenue requirements or for any other reason.

Approved this 3rd day of March, 1969, by:

S. H. KRESS AND COMPANY

By *E. M. G. [Signature]*
Its Assistant Vice President

GENESCO, INC.

By *[Signature]*
Its Assistant Vice President

Statements for notarization of signatures on this page are provided on following page.

February 3, 1969

STATE OF Tenn.
COUNTY OF Davidson

On the 3rd day of March 1969, before me personally came
E. M. McHenry to me known and known to me to be the individual
who executed the foregoing instrument and he acknowledged to me that he executed
the same.

James W. Brown
Notary Public
March 3 1969
Date

STATE OF Tenn.
COUNTY OF Davidson

On the 3rd day of March 1969, before me personally came
W. C. Brown to me known and known to me to be the individual
who executed the foregoing instrument and he acknowledged to me that he executed
the same.

James W. Brown
Notary Public
March 3 1969
Date

GENESCO

Senate Subcommittee On Labor

Exhibit D - IRS Approval Bridge Amendment

Address any reply to: 801 Broad St., Nashville, Tenn. 37203
Department of the Treasury



District Director
Internal Revenue Service

Date: August 5, 1970 In reply refer to: 434:RCH
 NASH-P-70-247

S. H. Kress and Company
 % Genesco, Inc.
 111 Seventh Ave. No.
 Nashville, Tennessee 37202

Gentlemen:

Attn: Mr. Paul Oberhellmann
 Assistant Vice President
 S. H. Kress and Company Employees'
 Plan: July 17, 1941 / Pension Trust Agreement
 Executed Date: Sept. 9, 1968 and March 3, 1969
 Amended Date:

We have made a further determination that your plan as amended meets the requirements of section 401(a) of the Internal Revenue Code, and that the Trust continues to be exempt under section 501(c)(3). Attention, however, is invited to section 1.401-1(b)(3) of the Regulations which states in part: "The law is concerned not only with the form of a plan but also with its effects in operation."

Subject to the conditions and limitations of section 404(a) of the Internal Revenue Code and to verification upon examination of your return, deductions from gross income will be allowed on account of contributions made under the plan.

The Trust, being exempt under section 501(c)(3), is subject to the provisions of section 502 (relating to feeder organizations), section 503 (relating to prohibited transactions), and sections 511 to 515, inclusive, of the Code (relating to tax on unrelated business income). It is also required to file an annual return as prescribed by section 6033 of the Code. Form 990-P is used for this purpose.

This office is to be notified in the event of termination of the plan.

This determination relates to the bridge amendment under which the S. H. Kress and Company Employees' Pension Trust was merged into the Genesco Retirement Plan.

Very truly yours,

James A. O'Hara
 James A. O'Hara
 District Director

GENESCO

Senate Subcommittee On Labor

Exhibit E - Kress Pension Plan Forms

S. H. KRESS AND COMPANY
PENSION COMMITTEE
111 Seventh Avenue N.
Nashville, Tennessee 37202

April 15, 1971

Mr. Allen H. Sorenson
385 South 850 East
Bountiful, Utah 84010

RE: Retirement Pension Plan Certificate No. 2367

Dear Mr. Sorenson:

As your employment with the Company terminated on April 1, 1971, you are no longer a participant in the Retirement Pension Plan. You are entitled to a refund of the contributions made by you toward the plan, plus interest, as follows:

Pension contributions	\$3,947.00
Plus interest	<u>999.61</u>
Total refund	<u>\$4,856.61</u>

Before making the above refund to you, it will be necessary for you to return to us your Certificate of Participation No. 2307. Also you will need to sign and return the enclosed Cash Disbursement Voucher. The space for your signature is in the lower left hand corner of the Voucher and has been indicated with a tick mark. Please forward to us your Home Address.

Refunds are made 31 days after termination.

Insurance: All life insurance coverage is canceled when employment is terminated. However, life insurance coverage may be converted on your insurance without medical examination provided you notify the local office of John Hancock Mutual Life Insurance Company within 31 days after your termination that you wish to personally assume to pay the annual premium for all or part of the insurance coverage held.

If there is no local John Hancock representative, you should write to -

Associate General Agent
John Hancock Mutual Life Insurance Co.
P.O. Box 2528
Nashville, Tennessee 37219

Upon receipt of your Certificate of Participation and the Cash Disbursement Voucher your refund will be processed. If you have any questions, please contact my assistant, Mr. Paul Saffer, who will be glad to help you.

Yours very truly,

cc: Steve Briar
WLB/mb
1.2

W. L. Bland, Secretary

No. 03504

S. H. KRESS AND COMPANY
Retirement Pension Plan
Certificate of Participation

THIS IS TO CERTIFY THAT, according to the records of the Pension Committee, _____ is a participant in the S. H. KRESS AND COMPANY RETIREMENT PENSION PLAN established by the Amended Agreement of Trust, effective March 13, 1956, as amended, and, as provided by the Agreement, is enrolled for the following benefits:

Annual Retirement Pension at normal retirement date \$ _____,

Life insurance coverage pursuant to the Retirement Pension Plan \$ _____,

subject to the provisions of the Amended Agreement of Trust, as amended, which are hereby made a part of this certificate as though they were set forth in full herein. Copies of the Amended Agreement of Trust, as amended, are on file in the office of the Company at New York, New York.

This certificate, and all rights of the participants under the Retirement Pension Plan are non-negotiable, non-transferable and non-assignable.

IN WITNESS WHEREOF: the undersigned has signed this Certificate this _____ day of _____ 19____.

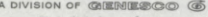
S. H. KRESS AND COMPANY, PENSION COMMITTEE

By _____ Secretary

Certificate
of Participation
in the
S. H. Kress and Company
Retirement
Pension Plan

No. 03504

Participant

S. H. KRESS and Company
A DIVISION OF 
114 Fifth Avenue
New York, N. Y. 10011

Date _____
Amount
of
Check \$ _____

City and State _____

Approved: _____
For Payment _____

Approved: _____
For Account _____
To Be Charged _____

GENESCO

Senate Subcommittee On Labor

Exhibit F - Affidavit, John T. Choate

AFFIDAVIT

STATE OF CALIFORNIA

SS:

COUNTY OF SAN FRANCISCO

JOHN T. CHOATE, being duly sworn deposes and says:

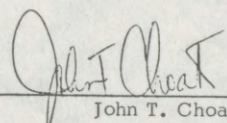
1. On April 1, 1971, I advised Allen H. Sorenson of his termination from S.H. Kress and Company for the following reasons:

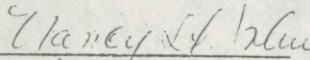
- a. Failure to follow instructions of Regional Manager
- b. Poor shrinkage record
- c. Failure to show improvement in sales.

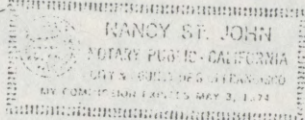
2. It was felt that better results could have been obtained from different store management and this has proved to be the case. As of 3/26/71 Sales Volume was 14.6% below same period last year. Since the change of management Sales Volume, as of 9/17/71, shows an 11.7% increase over same period last year.

Sworn to before me this

29th day of September, 1971


John T. Choate


(Notary Stamp)



GENESCO

Senate Subcommittee On Labor

Exhibit G - Affidavit, Richard D. Tucker

AFFIDAVIT

STATE OF CALIFORNIA

SS:

COUNTY OF SAN FRANCISCO

RICHARD D. TUCKER, being duly sworn, deposes and says:

1. That I am President of S.H. Kress and Company, (KRESS - WEST), Division of Genesco, Inc., ultimately responsible for the operation of the Salt Lake City, Utah, store and a superior of Allen H. Sorenson at the time of his termination.

2. At the time of Allen H. Sorenson's termination from S.H. Kress and Company on 4/1/71, he was not under any employment contract with the Company.

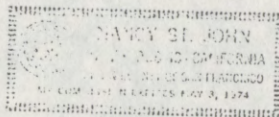
3. It is a long standing Company policy to terminate employees with bad shrinkage records. Shrinkage control is an important standard operating procedure for which each store manager is responsible. Failure to control shrinkage is failure to fulfill the responsibilities of the store manager.

Sworn to before me this

29th day of September, 1971.

Richard D. Tucker
Richard D. Tucker

Nancy St. John
(Notary Stamp)



GENESCO

Senate Subcommittee On Labor

Exhibit H - Kress Managers Dismissed 1971

With Shrinkage Involved

MANAGERS DISMISSED - 1971
WHERE POOR SHRINKAGE RECORD WAS INVOLVED

<u>Name</u>	<u>Age</u>	Shrinkage as % of <u>Sales</u>
J. L. Bills	37	-11.9
B. J. Eakin	32	-12.5
C. E. Gurley	31	-10.0
L. F. Ishee	27	-21.55
T. G. Long	31	- 8.90
D. W. McDaniel	27	- 9.97
A. H. Sorenson	47	-12.5
J. G. Taylor	28	- 7.98

GENESCO

Senate Subcommittee On Labor

Exhibit I - Affidavit, Mr. C. Harvey Williamson

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
 COUNTY OF NEW YORK)

C. HARVEY WILLIAMSON, being duly sworn, deposes and
 says:

1. That I am a retired employee of S. H. Kress & Company,
 a Division of Genesco Inc., and worked for this employer from July, 1928
 until May, 1971.

2. I was responsible for the personnel function of
 S. H. Kress & Company in 1964, and Alan H. Sorenson was directly under my
 supervision.

3. At no time was a list which stated the cost of
 pension funding used to make decisions on terminating employees. No employee
 was terminated because of his status in the pension plan or the relationship
 of his age to the established vesting age.

Sworn to before me this

30 day of September, 1971.

C. Harvey Williamson
 C. Harvey Williamson

Marcia R. Edge
 (Notary Stamp)

MARCIA R. EDGE
 Notary Public, State of New York
 No. 21 815000
 Qualified in New York County
 Commission Expires March 30, 1972

GENESCO

Senate Subcommittee On Labor

Exhibit J - Affidavit, Mr. Leonard K. Guiler

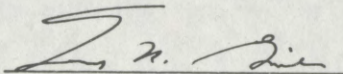
A F F I D A V I T

State of New York)
) ss.
 County of New York)

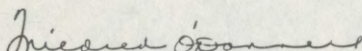
Leonard K. Guiler, being first duly sworn, deposes and states as follows:

1. During the period from March 15, 1956 to March, 1968, I was Secretary of the S. H. Kress and Company Pension Committee. The Pension Committee was responsible for making and promulgating rules and regulations for the administration of the S. H. Kress and Company Retirement Pension Plan and for the administration of said Plan.

2. My tenure as Secretary of the S. H. Kress and Company Pension Committee extended over the period of time referred to by Mr. Allen H. Sorenson of Bountiful, Utah in his testimony on 29 July 1971 before the United States Senate Subcommittee on Labor of the Committee on Labor and Public Welfare in which Mr. Sorenson alleges S. H. Kress and Company made a survey of the cost of pensions for certain employees and that based on that survey these employees were dismissed because of the prospective cost to the company of their retirement. I had a close association with the S. H. Kress and Company Retirement and Pension Plan during this period referred to and, to the best of my knowledge and belief, no such survey was ever made. Further, I never knew or heard of any person who was terminated as an employee because he or she was nearing the age of vesting in the Retirement and Pension Plan.


 Leonard K. Guiler

Subscribed and sworn to
 before me this 4
 day of October,
 1971.


 Notary Public

MILDRED O'DONNELL
 Notary Public, State of New York
 No. 41-2942645
 Qualified in Queens County
 Term Expires March 30, 1983 1973

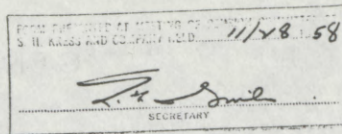
GENESCO

Senate Subcommittee On Labor

Exhibit K - Minutes Kress Pension Committee

November 25, 1958

Pension Committee
 C.H. Williamson, Chairman
 W.B. Sutherland
 J.W. Cubbison
 G.N. League
 F.J. Pollard
 L.P. Johnson
 L.K. Guiler, Secretary



TRUST FUND - PURCHASE AND LEASEBACK OF 3RD AVE., NEW YORK, N.Y. STORE:
 On October 1, 1958, the Board of Directors approved the sale and leaseback by the Company to the Trust Fund of the Kress store at the southeast corner of Third Avenue and East 106th Street, New York, N.Y., for \$877,200, subject to the approval of the Pension Committee and certain other conditions.

The following is a summary of the Trust Fund investments on November 14, 1958:

	<u>Cost</u>	<u>% to Total Fund</u>
Bonds		
Public Utility companies	\$4,043,907	44%
Industrial "	1,402,734	15
Finance	610,812	7
U.S. Government	891,313	10
Federal Agencies	609,617	7
Total	\$7,558,383	83%
Common Stocks	1,580,332	17
Total Bonds and Common Stocks	\$9,138,720	100%

In line with the diversification of investment which is commonly followed by pension trust funds and investment trusts, The Hanover Bank, Trustee, is of the opinion that a purchase and leaseback real estate and building transaction is a desirable addition to the trust fund, which in 1959 will approximate \$10,000,000. In accomplishing diversification in a trust fund it is considered conservative and prudent to limit the investment in purchase and leaseback transactions to approximately 10% to 15% of the total fund.

The proposition as approved by the Board of Directors involves a total purchase price of \$877,200, with a net leaseback agreement for an initial term of 25 years at an annual rental of \$60,000 with three option periods of ten years each at 2½% of the original purchase price, or \$21,930 per year.

The following are some of the advantages to the Trust Fund in purchasing and leasing back the Third Avenue, New York City store to the Company:

1. The annual rental of \$60,000 figures at 6.84% of the purchase price, which is based on interest at $4\frac{3}{4}\%$. The remainder of 2.09% provides for amortization of the total purchase price over 25 years. In other words, the Trust Fund is investing \$877,200 at $4\frac{3}{4}\%$ and at the end of 25 years has recaptured its entire original investment and, in addition, owns both the land and building.
2. The future prospects of the store location are particularly favorable in view of the numerous low housing units which have been opened in the immediate area during the last several years and those which will be opened by 1960. It may be assumed that the store building, which was recently modernized with a new addition, will have substantially the same life as the housing units surrounding it.
3. The transaction provides a desirable diversification of investment with a guaranteed return of $4\frac{3}{4}\%$ as compared to the present fund yield of 3.51%.
4. As covered later in this memorandum, it is proposed that securities now in the Trust Fund with an aggregate yield of approximately 3% will be sold at market to raise the necessary \$877,200, and replaced with an investment which will produce a constant yield of $4\frac{3}{4}\%$ for 25 years.
5. The increased yield of $4\frac{3}{4}\%$ on approximately 10% of the Trust Fund will reduce the cost of Pension Plan operation.
6. Lease includes numerous provisions to insure that the land and building will be readily marketable. No set-offs may be made against the \$60,000 rental and, consequently, there is no provision whatever in the lease that will in any way cut down or cancel the \$60,000 annual rent commitment. There is no rent statement in the event of fire or destruction. The Company is obligated to pay all taxes, assessments, insurance, repairs, and other expenses.
7. The volatility of the bond market demonstrates the advantages to a trust fund of regular guaranteed payments.
8. Assuming the soundness of the current thinking that it is desirable to include a purchase and leaseback transaction in a trust fund to maintain diversification as well as liquidity, it would seem preferable, assuming all factors to be equal, to close such a transaction with S.H. Kress & Co., rather than with another retail company or other concern.

9. The Hanover Bank, Trustee, has devoted considerable study to the transaction and the Trust Committee of its Board of Trustees recommends it as a sound investment.
10. The purchase price of \$377,200 is based on an independent appraisal by the President of Cruikshank Co., one of the oldest and best known real estate firms in New York City. They are independent in the transaction and have no interest in any respect, either in The Hanover Bank, S.H. Kress & Co., or the Trust Fund.
11. The book value of the land totals \$231,854, of which \$163,900 represents the cost of acquisition in 1930, and the remaining \$67,954 acquired in 1951.

In recommending the transaction to the Trust Committee of its Board of Trustees, The Hanover Bank established the following requirements which have been met:

1. Independent appraisal. As explained above, Cruikshank Co. has prepared and submitted an appraisal stating that in their opinion the value of the property, subject to a long term lease, is \$880,000 (\$2800 in excess of the purchase price).
2. Land and Building survey. A surveyor assigned by Title Guarantee & Trust Co., completed a survey of the entire property.
3. Approval by Pension Trust Unit of U.S. Treasury Department. Transaction was explained in detail in a conference with the head of the Pension Trust Unit for the New York City District, and his first assistant, by the Secretary of the Pension Committee and a Vice President of the Trust Division of The Hanover Bank. The Treasury Department has indicated full approval of the transaction, and has stated that the qualification of our pension plan under their requirements, as previously established, will not be changed.

If the transaction is approved a copy of the contract of sale and lease, with supporting papers, will be filed with the Pension Trust Unit in New York City for their permanent records.

4. Guarantee of title. Title Guarantee & Trust Co. has agreed to accept the guarantee of title despite encroachments up to 1-3/4 inches, disclosed by the survey. The survey shows encroachments by the old building on the sidewalks which are city property. The proposed contract of sale and lease provides that the City be put on notice of these encroachments, and

if they take no action within one year of the date of notice that the City, as provided by law, will not be empowered to take any action for removal of the encroachments at any future time.

To properly protect the Trust Fund in the event of the City taking action to remove the encroachments within one year, the lease provides that if the encroachments are not removed at the expense of the Company or if there is any damage to the building because of the removal of the encroachments, the Company is required to buy back the land and building at the original selling price less payments on principal to date.

5. Opinion of independent legal counsel as to the contract of sale and lease. The firm of Kelley, Drye, Newhall & Maginnes has been retained as independent counsel to represent the Trust Fund in this transaction.
6. Direction by Pension Committee to the Trustee. The Hanover Bank, although approving the transaction, requires this direction so that there will be no question in the future that the purchase and lease-back was not an "arms length transaction."

In line with the favorable acceptance of this purchase and leaseback, as disclosed by informal discussions among members of the Pension Committee in September, it is recommended that the Secretary be authorized to direct The Hanover Bank, Trustee, to purchase on December 1, 1958 the Third Avenue, New York City land and store building at a total price of \$877,200; at an annual rental of \$60,000 for 25 years, and at an annual rental of \$21,360 for 1 to 3 ten year option periods. It is further recommended that the contract of sale and the lease, be signed subject to the requirements of independent counsel, the Legal Division, and The Hanover Bank.

To provide for the necessary cash for payment of \$877,200 from the Trust Fund to S.H. Kress & Co., The Hanover Bank recommends that the following securities, now held in the Trust Fund, be sold on December 1, 1958 to realize approximately \$822,000:

Security	Principal Amount	Cost		Market		Gain or (Loss)
		Unit	Amount	Unit	Amount	
U.S.A. Treasury Bonds						
2 1/2's due 11/15/61	\$200,000	97.75	\$195,500.00	96 30/32	\$193,875.00	(\$1,625.00)
U.S.A. Treasury Bonds						
2 1/2's due 8/15/63	200,000	97.281	194,562.50	95 6/32	190,375.00	(4,187.50)
Twelve Federal Land Banks						
2 1/4's due 5/1/59	190,000	97.368	185,000.00	99 17/32	189,109.37	4,109.37
Twelve Federal Land Banks						
1/2's due 6/1/60	100,000	97.563	97,562.50	98 14/32	98,437.50	875.00
General Intermediate Credit						
Banks 2.45's due 12/1/58	125,000	100.344	125,429.69	99 31/32	125,000.00	(429.69)
U.S. Steel Corp. SF Dabs						
4 1/2's due 7/15/83	<u>25,000</u>	99.877	<u>24,969.25</u>	100	<u>25,000.00</u>	<u>30.75</u>
Total	\$840,000		\$823,029.54		\$821,796.87	(\$ 1,227.67)

The proceeds realized from the above sales, plus approximately \$56,000 of cash in the Trust Fund which will be available for investment on December 1st, will provide the necessary \$877,200 cash to complete the purchase.

Approval of Pension Committee is requested to authorize the Secretary to close the purchase and leaseback of the Third Avenue, New York, N.Y. store, in accordance with this memorandum.

GENESCO

Senate Subcommittee On Labor

Exhibit L - Completed Form P-1

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 020271

(Give No. assigned by U.S. Department of Labor.)

Part I. Identification

- ✓ 1. A. Name of Plan The GENESCO Retirement Plan
- B. Address of Principal Office
of Plan 111 Seventh Avenue N., Nashville, Tennessee 37202
(Street) (City) (State) (ZIP Code No.)
- C. Name of Administrator W. L. Bland
- D. Name and title of individual(s) who prepared response for this study:
W. L. Bland, Secretary
Retirement Committee
Telephone: 747-6488

Part II. Plan Profile

- ✓ 2. A. Year of Plan establishment 1945
- 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) 1945
- B. Date initial benefit payments under the Plan were made (other than refund of employee contributions) 1945
-

✓ 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)

☒

Five former executives of the company are the independent trustees.

-
- ✓ 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 32,358B. Retired 1913

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 regular, full time employees, excluding commissioned salesmen, and excluding those persons for whom an employing company is currently making contributions to another retirement plan other than Social Security.

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)

Based upon actuarial requirements.

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

1.50% of annual earnings base up to \$50,004 plus 1.25% of any excess earnings over \$50,004 times credited service less 75% of the primary Social Security benefit.

B. Early retirement

After age 55 and 15 years of credited service, benefit before offset based on credited service to date reduced 0.25% per month before age 65, less the actuarial equivalent of the primary Social Security offset.

C. Disability

Deferred pension.

D. Death

Before retirement and after age 55, joint and survivor election becomes effective if irrevocable and made at least six months before death in favor of spouse.

E. Other (e.g., survivorship, temporary retirement, etc.) (specify)

Survivorship benefits available as optional election at retirement; income benefits may be increased prior to commencement of Social Security and reduced subsequently by option.

✓ 12. Age and service requirements for obtaining benefits.

A. Normal retirement

65 years old and 15 years of credited service, but not later than age 75 with 15 years of credited service.

B. Early retirement

After age 55 and 15 years of credited service.

C. Disability

After age 55 and 15 years of credited service.

D. Death

After age 55 and 15 years of credited service, if irrevocable joint and survivor option elected.

E. Other (e.g., survivorship, temporary retirement, etc.) (specify)

Age 55 and 15 years of service.

- ✓ 13. A. Specify the requirements of the vesting provision, i.e., age, service, type of separation, etc.

Same as eligibility for retirement, i.e., age 55 and 15 years of service.

B. What percentage of accrued benefits are initially vested? None

C. After how many years are all accrued benefits vested? Age 55 and 15 years service.

D. Specify the vesting formula (including whether such formula has retroactive effect).

Eligibility for retirement, i.e., age 55 and 15 years of service.

E. Specify any survivorship rights under the vesting provisions.

Survivorship income options available at retirement, i.e., after age 55 and 15 years of service, with benefits continuing into retirement.

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.

Benefits in case of illness are not paid under the GENESCO Retirement Plan but are covered under separate plans.

- ✓ 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 arrangement (include data on any reciprocal arrangements entered into with other plans, including the identity of such other plans).

Multiple companies are treated like divisions, i.e., full credit is given for service throughout the GENESCO system of companies. Further, credit is given in various ways for certain amounts of service prior to the time a company becomes affiliated with GENESCO (see response to Number 45-B).

-
- ✓ 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 | ☒ | (4) 2-3 years | ☐ |
| (2) 3-6 months | ☐ | (5) Over 3 years | ☐ |
| (3) 1 year | ☐ | (6) Other (specify) | ☐ |

- 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 _____
60 years old.
-

- ✓ 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 ☐ (3) 2 years ☐
 (2) 1 year ☐ (4) Over 2 years ☐
 (5) Other (specify) ☒ X

Does not contain a continuous service requirement.

- B. Enumerate any other conditions which will constitute a "break in service."

Does not apply, see answer to 18 (A)

- C. Enumerate any circumstances recognized by the Plan which will serve to waive a "break in service."

Does not apply, see answer to 18 (A)

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 Information Not Available - See ATTACHMENT #1
- B. Specify the total number of persons who have participated in the Plan within the past 5 years..... 113,410. (In part estimated)
-

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	_____ 1630 est. _____
(2) Early retirement	_____ 2175 est. _____
(3) Disability retirement	_____ None _____
(4) Death	_____ 25 est. _____
(5) Other	_____ 25 est. _____

- 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. No Vesting until eligible for retirement benefits.

- 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. No Vesting until eligible for retirement benefits.

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) See response to No. 19A
- 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. See response to No. 19A
- 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) 83712 estimated
- 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. 81052 estimated

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 See response to No. 19A
- 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 See response to No. 19A
- 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 See response to No. 19A
- 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 See response to No. 19A
- E. Within the past 5 years 81052 (est.)
- F. Within the past 5 years with more than 15 years service under the Plan 1600 (est.)
- G. Within the past 5 years with more than 10 years service under the Plan 4,000 (est.) (including F)
- H. Within the past 5 years with more than 5 years service under the Plan 9,700 (est.) (including G)
- I. Within the past 5 years due solely to voluntary separation Such Classification not Kept
- J. Within the past 5 years due solely to failure to meet continuous service requirements None (Does not contain Continuous Service requirement)

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.... | 45 (estimated) |
| B. Within the past 5 years with more than 10 years service under the Plan.... | 44 (estimated) |
| C. Within the past 5 years with more than 5 years service under the Plan.... | 38 (estimated) |
-
24. A. Indicate the average monthly benefit paid to retirees 5 years ago.
- | | | | | | |
|------------|-------|-----------|-------|----------------|----|
| (1) Normal | 84.41 | (2) Early | 28.23 | (3) Disability | -- |
|------------|-------|-----------|-------|----------------|----|
- B. Indicate the average monthly benefit paid to retirees within the last year.
- | | | | | | |
|------------|-------|-----------|-------|----------------|----|
| (1) Normal | 91.96 | (2) Early | 75.34 | (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) 42,136,998 * (2) 42,136,998 * (3) 39,166,432 (4) 12-31-70
(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)..... See Attachment #3
(Date of latest evaluation)
- C. Total value of all accrued benefits, treating all such benefits as if they were vested (give present dollar value)..... 12-31-70
(Date of latest evaluation)
- Attachment #3
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).
- Mortality - a - 1949 table
Interest - 10%, compounded annually
Turnover - By prior experience
Salary Scale - By prior experience
Inflation - 4%, compounded annually
Retirement Age - 50% retire at age 60 and 50% at age 65
Social Security - 1970 legislation used for determination

* (Question 25) All common stock held by the Trust are carried on the books at Market Value and Cost Values are not maintained.

- 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.

All contributions based upon actuarial requirements.

- 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.

Investments made in GENESCO common stock and bonds :

As of December 31, 1970 Market Value of stock was \$15,227,000 and
Maturity Value of bonds was \$200,000.

Investments by GENESCO Retirement Trust in 16 wholly owned companies on December 31, 1970 is \$86,986 valued at cost. The principal business of these companies is to hold properties which are leased to GENESCO Inc. or its subsidiaries.

In 1958 the Trustees of the S.H. Kress and Company Pension Plan purchased certain properties from S.H. Kress and Company for \$877,200. The properties were then leased to S.H. Kress for a 25 year period. These properties are carried at \$490,805 plus their estimated residual value of \$200,000.

The Trust owns other miscellaneous properties which are leased to GENESCO. The annual rental of these properties approximate \$321,000. These properties are carried at a value of \$2,700,000.

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..... 30%

✓ 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.....

None

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? (Opportunity for hearing would be granted if requested) (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.....

1966	-	91
1967	-	150
1968	-	260
1969	-	290
1970	-	349

- ✓ 35. Indicate whether the Plan utilizes the following (check all which are applicable):

- A. ☐ Professional administrator
- B. ☐ Corporate trustee
- C. ☒ Actuary (indicate qualifications) F.S.A.
- D. ☒ Public accountant (indicate qualifications) CPA
- 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.

The Trustees of the Plan are retired employees of GENESCO.

-
- ✓ 37. A. Specify the procedure for amending the Plan. Section 11.01 (b) of Plan states:

"At any time and from time to time, the Plan may be changed in whole or in part, or the contributions of any Employing Company may be suspended, provided that:

- (i) No change shall be effective unless the Plan as so changed shall be for the exclusive benefit of the Participants, except as provided in Section 11.02 (c), and
- (ii) No change shall deprive any person without his consent of his right to the benefit which had accrued to his credit up to the time of such change."

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. _____

5

C. Indicate approximately the intervals at which the Plan is codified in a single document to incorporate all amendments. _____

5 years

-
- ✓ 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)

-
- ✓ 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.)

No restriction stated in the Plan except, at no time prior to the satisfaction of all liabilities under the Plan with respect to Participants and Beneficiaries, shall any part of the corpus or income of the Pension Fund be used for or diverted to any purpose other than for their exclusive benefit.

-
- ✓ 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.

Plan not insured.

- (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.

- First: Provision to Participants who have benefits pursuant to Section 2.02 (Effect of Prior Plans) of the benefits to which they shall be entitled or contingently entitled under the Plan.
- Second: Provision to Participants who have retired and their Spouses and Beneficiaries of any remaining benefits to which they shall be entitled under this Plan.
- Third: Provision to Participants who shall at that time be entitled to retire and to their Spouses and Beneficiaries, of the benefits to which they shall be entitled or contingently entitled under the Plan.
- Fourth: Provision to all other Participants and their Spouse and Beneficiaries of the benefits to which they shall be entitled or contingently entitled under this Plan.

After all of above have been satisfied if anything remains it is returnable 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 ☐ (2) No ☒ If "Yes," furnish the following details:

(a) Name of the predecessor corporation _____ (See ATTACHMENT #2)

(b) Date of the acquisition, merger, consolidation, lease, 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 currently 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.

The GENESCO Plan does not have any paid administrators, officers or employees, since these expenses are borne by GENESCO outside 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..... Twice in last 5 years

Last change in trustee was in 1969
Previous change was in 1966

-
- ✓ 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..... None
- B. Of the total figure furnished in (A), specify the number which were successfully resolved in favor of such persons or which were settled..... None
- C. Of the total figure furnished in (A), specify the number of suits which were based on claims for benefits..... None

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..... None

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)

None

(2) Date

(3) Law reporter citation(s) (if any)

(4) Nature of issue

(5) Outcome

ATTACHMENT #1

Since there is no waiting period to enter our plan, and since our plan covers a number of retail outlets with seasonal and other changes in employment, and since the plan is non-contributory, we make no effort to record employees who enter the plan after one valuation date but cease to be employed before the next valuation date, for example. There are substantial numbers of employees entering the plan and leaving the plan without detailed information being gathered because the plan covers everyone from the day they become employed even if they only stay there three months.

ATTACHMENT #2

It is not the practice of GENESCO to terminate predecessor plans when acquiring companies. On the contrary, the predecessor plans are typically amended into the GENESCO master plan, subject to various protective provisions relative to predecessor plan depending on the circumstances. Typically profit sharing plans are amended into the GENESCO plan with the pre-existing profit sharing balance being promoted to 100% vesting, and with benefits for pre-acquisition service being the greater of the actuarial equivalent of the profit sharing balance or the GENESCO plan benefits giving 50% credit for pre-acquisition service. Typical pension plans are amended into the GENESCO master plan with protection of accrued benefits under the predecessor plan to the date of amendment, and often with protection of benefits that would have been earned subsequent to the date of amendment under the prior plan if they would be greater than those under the GENESCO plan for future service. Where there is no plan pre-acquisition service is counted for purposes of meeting the 15 year requirement under the GENESCO plan. Further, GENESCO has recently amended this program to count for benefit purposes pre-acquisition service after age 50 at 100%. Thus, GENESCO is generally extending retirement benefit credits to companies GENESCO acquires even though they have no plan and for certain periods of service prior to the time the company with no plan joined GENESCO.

ATTACHMENT #3

Actuarial valuation method in use does not break out the value of benefits for retired lives, or the value of accrued benefits for active lives, as an amount distinct from all other liabilities, i.e., a detailed response to this question would require a special valuation.

Senator JAVITS (presiding pro tempore). Mr. Bland, I have a few questions I would like to ask you. First, let us finish about this real estate.

Is there any residual liability on the pension fund trust, either the Genesco pooled investment trust or any other entity which contains pension fund money on the paper affecting this real estate? Is there any liability or mortgage, guarantee, or other paper affecting this real estate?

Mr. BLAND. The only investment of any trust fund is \$2,000 capitalizing the two real estate companies, and there is no liability to any trust beyond that.

Mr. DELACEY. Mr. Chairman, could I address myself to that?

The answer to your question is "No," and further I would point out that at the time of the expiration of the sale leaseback, the property will be fully paid for and will be fully owned without any liability to Ravenwood and G/K Properties.

Senator JAVITS. I was asking, was there any exposure, as that term is used in financial circles, on the part of the Genesco pooled investment trust? It does not have to be money. Is there any liability, any mortgage?

Mr. DELACEY. No; and moreover, at the end of this time, the properties will be completely unencumbered.

Senator JAVITS. Was any credit of these pension fund entities pledged or used at the time the deal was made with the new mortgagees?

Mr. DELACEY. No.

Senator JAVITS. In other words, the mortgagors on the bond are in no case related to the backing of the pension fund.

The other thing I would like to ask you is this: What proportion of the assets of the Genesco retirement plan—I gather the main one is the pooled investment trust—are invested in securities of Genesco or any of its subsidiary or affiliated companies, or in real estate which is under lease to or used by the Genesco or any of its affiliated or subsidiary companies?

Mr. BLAND. Considering the real estate residual value as part of the trust, the trustees estimated it to be worth approximately \$80 million. In this \$80 million is a residual value of Kress real estate of approximately \$32 million, and about \$15 million of Genesco's securities.

Senator JAVITS. If you deduct the \$32 million from the \$80 million, which leaves you \$48 million, \$15 million is roughly a little less than a third of the \$48 million; is that right?

Mr. BLAND. That is right.

Senator JAVITS. That is the total ownership within the pool investment fund of Genesco securities or those of any affiliated or subsidiary companies; is that right?

Mr. BLAND. That is correct.

Senator JAVITS. Now, in 1966 the SEC reported as follows, and I ask unanimous consent, without objection, that the SEC report be made part of the hearing, the SEC report was as follows: Federal

Securities Reports. Paragraph 77354, page 82651. I am sure you have seen this many times:

Between January 1, 1961, and October 29, 1965, the company acquired controlling or minority interest or both in the following companies in exchange for common stock of the company, to wit, Genesco.

Then follows a list of companies which will be in the record.

Purchases were made under the employees stock purchase plan and/or by the trust prior to and during negotiations for all of such acquisition.

Now, first, is that fact correct; and, second, what proportion of the purchases were made by the trust as distinguished from the employees stock purchase plan?

(The material referred to follows:)

Text of Agreement Between Genesco, Inc., and
the Securities and Exchange Commission Con-
cerning Restrictions of Employee Stock Pur-
chase Plan and Special Stock Purchase Plan

¶ 77,354 Genesco, Inc., Prospectus: Employee Stock Purchase Plan and Special Stock Purchase Plan; Purchases of Common Stock on New York Stock Exchange; Acquisitions and Possible Contingent Liabilities.

Prospectus of May 10, 1966. Excerpts from pages 19 through 23 in full text, with deletions indicated by asterisks.

Transactions in Company Stock for Employee Stock Bonus Trust—Self-Imposed Restrictions Outlined in Prospectus.—Transactions for a company's employee stock purchase plan and special stock purchase plan were voluntarily restricted to avoid any possible violations of Sections 9(a)(2) and 10(b) of the Exchange Act and Rules 10b-5

and 10b-6 thereunder, and Section 17(a) of the Securities Act. The self-imposed restrictions are similar to those entered against the Georgia-Pacific Corporation (§ 91,692). Purchases during one week are limited to 15% of the average weekly trading volume on the New York Stock Exchange in the four preceding calendar weeks, and the number of shares purchased on any one day will not exceed 20% of the average daily trading volume on the Exchange.

See § 4815, "Securities Act—Liabilities" division, Volume 1; and §§ 22,511, 22,721, 22,725, and 22,726, "Exchange Act—Manipulations" division, Volume 2.

Under two of these plans, the Employee Stock Purchase Plan and the Special Stock Purchase Plan, the Company advances to a trustee the funds required to purchase the shares on the New York Stock Exchange at their market value at the time of purchase. The purchasing employees give their notes for payment of the shares to the trustee and authorize the trustee to pledge such notes and the purchased shares with a bank, thereby enabling the trustee to repay the Company for its advances. The employees pay their notes with interest at the prime rate by means of payroll deductions in the case of the Employee Stock Purchase Plan and pay their notes without interest by the application of all dividends on the shares in the case of the Special Stock Purchase Plan. At January 31, 1966, the trustee under the Employee Stock Purchase Plan and Special Stock Purchase Plan, currently W. M. Jarman, Chairman of the Company, held as collateral 753,472 shares having an aggregate market value of \$45,019,952 and subject to loans from banks of \$4,160,276. During the year ended July 31, 1965, the Company advanced to the trustee an aggregate of \$9,237,646, of which \$318,012 was owed to the Company by the trustee at July 31, 1965. During the year ended July 31, 1965, the Company paid interest on bank loans secured by notes of officers and directors under the Employee Stock Purchase Plan and Special Stock Purchase Plan of approximately \$24,747 and received interest under the Employee Stock Purchase Plan from officers and directors in the amount of \$5,976.

In addition to stock purchased on the New York Stock Exchange for the accounts of employees by the trustee under these stock purchase plans, the GESCO Pooled Investment Trust (see "Business—Employee Relations") purchases Common Stock of the Company for its investment

portfolio at the discretion of its trustees. Between January 1, 1961 and October 29, 1965, the stock purchase plans and the trust bought approximately 940,000 shares of the approximately 2,780,000 shares of Common Stock of the Company reported as having been traded on the New York Stock Exchange. W. M. Jarman, who has been trustee of the employee stock purchase plans throughout the period, was, prior to April 16, 1964, one of the five trustees of the trust.¹ Reference is made to "Ownership of Securities" for information with respect to proxies given Mr. Jarman for shares acquired under the stock purchase plans. Both the trustee under the stock purchase plans and the trustees of the trust customarily delegate to an officer of the Company responsibility for making such purchases. F. M. Jarman, now Financial Vice President of the Company, has been delegated the function of making purchases both under the employee stock purchase plans and for the trust during most of the period. Both the timing of such purchases and the price paid for the stock are in the discretion of such trustees or the person to whom their authority is delegated. Neither the plans nor the trust had, during the period mentioned above, any restrictions or conditions designed to insure that such purchases followed rather than led the market or restricting the percentage of shares traded on the New York Stock Exchange which were purchased under the plans and by the trust.

Purchases under the employee purchase plans and for the trust comprised approximately 75 per cent or more of the total reported volume of trading in the Common Stock of the Company on the New York Stock Exchange during four months, 50 per cent or more during nineteen months and 25 per cent or more during forty-three months of the fifty-eight month

¹ Since April 16, 1964, two of the trustees have been officers of the Company and the

others have been former officers of the Company.

Number 100-165
6-15-66

New SEC Rulings
Genesco, Inc.

8 2, 6 5 1

period referred to above. A table indicating the volume of such purchases in relation to the reported volume of trading in

the Common Stock of the Company on the New York Stock Exchange on a quarterly basis during such period follows:

	Total Volume on New York Stock Exchange only ¹	GENESCO Plans & Trust Volume	GENESCO Plans & Trust % of Total Volume	Approximate Price at End of Quarter
1961:				
1st Quarter	118,700	10,700	9.0	33
2nd Quarter	132,000	48,600	36.8	37
3rd Quarter	98,700	38,400	38.9	39
4th Quarter	97,500	40,600	41.6	41
1962:				
1st Quarter	100,100	47,400	47.4	40
2nd Quarter	128,900	96,900	75.2	34
3rd Quarter	104,400	81,500	78.1	34
4th Quarter	208,900	65,900	31.5	36
1963:				
1st Quarter	173,800	24,000	13.8	37
2nd Quarter	127,000	44,100	34.7	36
3rd Quarter	93,700	24,300	25.9	35
4th Quarter	112,100	53,400	47.6	39
1964:				
1st Quarter	136,700	52,600	38.5	37
2nd Quarter	136,400	55,600	40.8	39
3rd Quarter	102,800	34,900	33.9	46
4th Quarter	130,800	80,100	61.2	46
1965:				
1st Quarter	243,200	41,800	17.2	52
2nd Quarter	265,400	59,600	22.5	50
3rd Quarter	124,500	31,500	25.3	55
4th Quarter	144,500	11,300 ²	7.8	58

¹ Includes total volume reported on the New York Stock Exchange only. Does not include transactions on the Midwest Stock Exchange on which the Common Stock of the Company is also listed, nor transactions effected in the over-the-counter market.

² No purchases have been made under the plans or by the trust from October 29, 1965 to the date of this Prospectus.

During this period, the Company exchanged over 1,000,000 shares of its Common Stock for stock or assets of other

companies.¹ Representatives of such companies were, in the course of negotiations, advised of the existence of the stock pur-

¹ Between January 1, 1961, and October 29, 1965, the Company acquired controlling or minority interests or both in the following companies in exchange for Common Stock of the Company: Paul D. Blackman Corporation and affiliated companies; the Gidding Company; Britains Inc. and affiliated companies; Rutledge Manufacturing Company; Agnew-Surpass Shoe Stores, Ltd.; Flagg-Utica Corporation; Jenny Company; Fillee Shoe Corporation; J. M. Wood Manufacturing Company, Inc.; Ainsbrooke Corporation; Majestic Specialties, Inc.; and Major Blouse Company, Inc. Purchases were made under the employee stock purchase plans and/or by the trust prior to and during negotiations for all of such acquisitions. As shown by the table above, purchases under the employee purchase plans and for the trust were greatest during the second and third quarters of 1962. Such purchases aggregated approximately 75 per cent and 78 per cent, respectively, of the total reported volume of trading in Common Stock

of the Company on the New York Stock Exchange during such quarters. In July 1962, negotiations were in progress for the acquisition of Flagg-Utica Corporation by an exchange of common stocks and a written agreement with the majority stockholders was signed on July 25, 1962. In August 1962, a registration statement for an offering of Common Stock of the Company to the publicly held minority interest in Flagg-Utica became effective, which offering was terminated in September 1962. On July 20, 1962, a registration statement for an offering of Common Stock of the Company to the publicly held minority interest of Agnew-Surpass Shoe Stores, Ltd. became effective, the majority interest having previously been acquired for cash. This offer was terminated in August 1962. There also became effective in August 1962, a registration statement filed by the Company for the benefit of individuals desiring to sell Common Stock of the Company previously acquired by them in connection with earlier acquisitions.

chase plans and the retirement funds, which are considered beneficial to employees of the companies being acquired. The existence of such plans and the fact that shares acquired by employees under the Employee Stock Purchase Plan were, and under the Special Stock Purchase Plan might be, outstanding shares was also disclosed in registration statements filed in connection with the acquisitions of Flagg-Utica Corporation and Agnew-Surpass Shoe Stores, Limited. Such registration statements also disclosed the number of shares held by the trustee under these plans on July 31, 1961 (361,412) and April 30, 1962 (429,400) in the case of Agnew-Surpass and on such dates as well as on July 31, 1962 (516,255) in the case of Flagg-Utica. Such registration statements did not disclose that all shares acquired by employees under the Special Stock Purchase Plan as well as under the Employee Stock Purchase Plan were in fact outstanding shares purchased on the New York Stock Exchange. Nor did such registration statements disclose, and representatives of the acquired companies were not specifically informed of, the volume of purchases immediately preceding and during periods of negotiation for the sale to the Company of the majority interests in such companies or during periods in which exchange offers to publicly held minority interests were open. On January 9, 1963, the Company sold to the public through underwriters an issue of convertible preferred stock which is still outstanding.

The transactions described above may have resulted in violations by the Company and the individuals, plans and trust mentioned above of the Securities Exchange Act of 1934 and the Securities Act of 1933, including Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934, Section 17(a) of the Securities Act of 1933 and Rule 10b-5 and Rule 10b-6 adopted under the Securities Exchange Act of 1934.³ The Company does not believe it has violated any of these provisions. In the event that any such violations are ultimately held to exist the Company may have incurred contingent liabilities as a result thereof. The amount of any such contingent liabilities, if any, is not determinable and neither the

Company nor its counsel believe that any such liability exists.

In order to assure that future purchases under these plans and by the trust do not result in any violation of law or of the rules and regulations of the Securities and Exchange Commission, the Company has furnished an undertaking to the Commission that such purchases will be made only subject to the following restrictions:

1. At the commencement of serious negotiations (as opposed to exploratory conversations) looking toward the acquisition of securities or assets of another company for Common Stock of the Company, or securities convertible into or exchangeable for Common Stock of the Company, the Company will furnish to the persons conducting such negotiations for the other company information with respect to the daily volume and price range of purchases by the plans and trust during the previous 30 days. From the commencement of such negotiations until purchases are discontinued in accordance with the following paragraph, or such negotiations are broken off, the Company will furnish such persons weekly with information as to the volume, price and order of execution of each purchase by the plans or trust during the previous week.

2. Purchases will be discontinued when a definite arrangement (as opposed to a formal contract) to make the acquisition has been made and will not be resumed—

- A. In the case of a private transaction, until the number of shares of stock of the Company has been fixed in accordance with the terms of a binding contract.

- B. In the case of an exchange offer subject to the registration provisions of the Securities Act of 1933, until the final termination of such exchange offer.

- C. In the case of an acquisition requiring a vote of the stockholders of the acquired company or of the Company, until the vote of such stockholders has been consummated.

In addition, purchases will be discontinued at the appropriate time when any other distribution of Common Stock, or a security which is convertible into or exchangeable for Common Stock, is con-

³ The text of these provisions is set forth in the appendix to this Prospectus. [Not reproduced. CCH.]

templated by the Company or by an insider and will not be resumed until the completion or abandonment of such proposed distribution.

3. In effecting transactions, the Company, the plans and the trust will avoid any arrangement or activity that would give preference to any insider.

4. If and when purchases permissible under the above restrictions are made, they will be made only subject to the following restrictions.

A. As to purchases made on the New York Stock Exchange—

1. Purchases will be made through only one broker at a time.

2. No bid placed prior to the opening will be at a level which exceeds the previous closing price and no more than 100 shares or 50% of the opening block traded, whichever is higher, will be purchased.

3. After the opening transaction, no bid will be placed and no purchase will be made at a price in excess of the last sale price or the highest current independent bid price, whichever is higher.

4. The number of shares purchased in any one week will not exceed 15% of the average weekly trading volume on the New York Stock Exchange in the four preceding calendar weeks; the number of shares purchased on any one day will not exceed 20% of the average daily trading volume on the New York Stock Exchange in the four preceding calendar weeks; and the broker employed to effect the purchases will be instructed to endeavor to keep the number of shares purchased during each week equal to or below 15% of such week's volume of trading on the Exchange and to keep the number of shares pur-

chased during each day equal to or below 20% of that day's volume of trading on the Exchange; provided, however, that during the period in which the plans are eliminating the backlog of 62,000 shares which exists as of the date of this Prospectus, each of the foregoing percentages may be raised by five percent.

B. As to other purchases—

1. Unsolicited privately negotiated purchases, each involving 1,000 shares or more, may be made from dealers or from brokers acting for others, off of the New York Stock Exchange, at prices not exceeding the current New York Stock Exchange price.

2. Unsolicited privately negotiated purchases, each involving 1,000 shares or more, may be made, provided such purchases are effected neither on a securities exchange nor from or through a broker or dealer.

C. No bid or purchase shall be made for the purpose of creating actual or apparent active trading in, or raising the price of Common Stock of the Company and every effort will be made to follow rather than lead the market.

The above restrictions may be modified in the future with the concurrence of the Commission.

As stated on the cover page, W. M. Jarman, as Trustee under the plans, proposes to purchase for participating employees up to 30,000 shares of the Common Stock offered by this Prospectus to the extent not purchased by others. An exemption from the provisions of rule 10b-6 has been granted with respect to such purchases.

Mr. BLAND. I refer this question to our legal counsel who was involved in these arrangements.

This is Mr. Sanford Litvack.

Senator JAVITS. What firm?

Mr. LITVACK. I am a member of the firm of Donovan, Leisure, Newton & Irvine of New York, representing Genesco.

To answer the Senator's question, I believe the statement is true that the trustees for the pension plan did purchase stock on the stock exchange as you indicated.

We do not have the information which indicated what percentage of that represented purchases by the retirement plan as distinguished from the employees stock purchases.

Senator JAVITS. Will you furnish for the record as soon as you can ascertain it as nearly as possible, the factual situation which you say you don't have now?

Mr. LITVACK. You mean the breakdown, Senator?

Senator JAVITS. Right.

Mr. LITVACK. Certainly.

(The information subsequently supplied follows:)

The proportion of the purchases between January 1, 1961 and October 29, 1965 made by the trust as distinguished from the employee stock purchase plans was 41%.

Senator JAVITS. What has happened since 1966? Has this practice continued?

Mr. LITVACK. Since 1966, Senator, the plan, acting pursuant to an agreement of "no action" by the SEC, has acquired stock in accordance with the provisions set forth in that agreement.

Senator JAVITS. Also in Genesco and in various companies Genesco acquires, is that right?

Mr. LITVACK. To the extent that the plan purchased the Genesco common stock, it has been in accordance with the "no action" agreement with the Securities and Exchange Commission.

Senator JAVITS. You have made periodic reports to the SEC?

Mr. LITVACK. That is correct.

Senator JAVITS. The \$15 million to which Mr. Bland was testifying results either from the original transactions referred to by the SEC or to subsequent transactions which you claim to be within the purview of its "no-action" letter?

Mr. LITVACK. That is substantially correct.

Senator JAVITS. That "no-action" letter essentially limited the volume of trade, did it not?

Mr. LITVACK. It prescribed circumstances under which the plan would purchase stock, limiting trade, among other things, to a percent of the total.

Senator JAVITS. Would you agree, Mr. Bland, that whatever may be the ins and outs, the right and wrong involved, we do have to decide as a matter of national policy, whether, and to what extent, there should be investment by pension and retirement funds in stock or properties of the contributing employer?

Mr. BLAND. I think that is a rightful consideration of the Congress.

Senator JAVITS. Second, isn't it a fact that you contribute to this pension fund only what your actuary tells you you should contribute?

Mr. BLAND. That is correct.

Senator JAVITS. Therefore, the \$32 million backup in value of the Kress properties is critically important to you because it limits the amounts you have to contribute every year to the fund.

Mr. BLAND. That is correct.

Senator JAVITS. Therefore, the valuation of those properties at the highest possible figure is advantageous to the employer paying into the retirement fund; is that correct?

Mr. BLAND. The highest realistic figure.

Senator JAVITS. Right.

Is it not also correct that it puts the employee at the hazard of the solvency or insolvency of the employer even more than normally he would be?

In other words, if your plan is funded without employer properties, then the hazard that the employee runs is, to the extent that the plan has an actual as against an actuarial deficiency, when his retirement comes due, he has to look to the credit of the companies. That is what happened to the fellows in Studebaker. They got stuck because there was no credit beyond what was in the plan.

Now, isn't that difficulty aggravated when part of the property which is supposed to be assurance for pension rights is company property or company stocks? It is the same credit or same entity.

Mr. BLAND. I think as I said it depends on the value of the real property.

Senator JAVITS. The real property you could sell to somebody else, theoretically. So that has some value at least, even if not \$32 million, but that is not true of the stock; is it? The stock is at the hazard of the enterprise.

Mr. BLAND. That is right.

Senator JAVITS. I am not saying it is right or wrong; we will worry about that; but it does compound the risk of the worker; is that right?

Mr. BLAND. It would be the same risk as if these investments were in any other securities. The soundness of those securities would also be in question.

Senator JAVITS. I am sorry I cannot agree with you on that. He is already running the risk of your credit because you admit, do you not, that you don't have every dollar of liability, future liability, based on actuarial standards, in that fund?

Mr. BLAND. We talk about the funding—

Senator JAVITS. To the extent that his pension right is not funded, I am not talking about it actuarially but actually—he has to look to the credit of the company.

Mr. BLAND. That is true.

Senator JAVITS. He also has to look to the credit of the company for even some of the assets which it allegedly has on hand.

Mr. BLAND. That is true.

Senator JAVITS. Therefore, if the credit goes down the drain, the stock will go down the drain; is that right?

Mr. BLAND. That is right.

Senator JAVITS. For the record, the Chair would like to insert, without objection, part III of Genesco's form P-1, the facts and figures on the number of people going through this plan in the various categories

of service and particularly those who left the plan without any retirement benefits. The figures show 81,052 having left the plan without of retirement benefits within the past 5 years. Of these, 1,600 had more than 15 years of service; 4,000 more than 10 years of service; 9,700 more than 5 years of service, and the 9,700 would be covered by my bill.

(The following was subsequently supplied for the record:)

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. Information Not Available - See ATTACHMENT #1
- B. Specify the total number of persons who have participated in the Plan within the past 5 years. 113,410 (In part 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	<u>1630 est.</u>
(2) Early retirement	<u>2175 est.</u>
(3) Disability retirement	<u>None</u>
(4) Death	<u>25 est.</u>
(5) Other	<u>25 est.</u>

- 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. No Vesting until eligible for retirement benefits.

- 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. No Vesting until eligible for retirement benefits.

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). See response to No. 19A
- 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. See response to No. 19A
- 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). 83712 estimated
- 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. 81052 estimated

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..... See response to No. 19A
- 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..... See response to No. 19A
- 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..... See response to No. 19A
- 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..... See response to No. 19A
- E. Within the past 5 years..... 81052 (est.)
- F. Within the past 5 years with more than 15 years service under the Plan..... 1600 (est.)
- G. Within the past 5 years with more than 10 years service under the Plan..... 4,000 (est.) (including F)
- H. Within the past 5 years with more than 5 years service under the Plan..... 9,700 (est.) (including G)
- I. Within the past 5 years due solely to voluntary separation..... Such Classification not Kept
- J. Within the past 5 years due solely to failure to meet continuous service requirements..... None (Does not contain Continuous Service requirement)

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..... 45 (estimated)
- B. Within the past 5 years with more than 10 years service under the Plan..... 44 (estimated)
- C. Within the past 5 years with more than 5 years service under the Plan..... 38 (estimated)

24. A. Indicate the average monthly benefit paid to retirees 5 years ago.
 (1) Normal 84.41 (2) Early 28.23 (3) Disability --
- B. Indicate the average monthly benefit paid to retirees within the last year.
 (1) Normal 91.96 (2) Early 75.34 (3) Disability --

Senator TAFT. I might ask one question, Mr. Chairman.

Senator JAVITS. Senator Taft.

Senator TAFT. What was the cause for reduction in income from investments for the 3 years 1968 through 1970?

Mr. BLAND. Mr. Hazelhurst, the actuary, will respond.

Mr. HAZELHURST. You are talking about the reduction in the market value of investments?

Senator TAFT. I am talking about the income from investments. The exhibit states income in 1968, \$85,000; 1969, \$65,000; 1970, \$60,000.

Mr. HAZELHURST. I can't answer your question directly but the main thing you are probably seeing there is the fall in the value of the investments, themselves, which reflect market conditions at that time, probably also contributing to some fall in the dividend rates, themselves, of the securities.

(Information subsequently supplied follows:)

The Form D-2 for 1968 was prepared on the accrual basis while those for 1969 and 1970 were prepared on the cash basis and that accounts for substantially all of the reduction referred to.

Senator TAFT. Was there a high turnover in the securities held by the fund?

Mr. HAZELHURST. No; there was not a high turnover. This was a difficult period for securities and security values in general.

Senator TAFT. Did Genesco increase or reduce its dividends during that period?

Mr. DELACEY. The company had a slight increase in dividends during this period of time, a small one.

Senator TAFT. Is there real estate involved in this?

Mr. HAZELHURST. Most of the real estate is the \$32 million which has been discussed. The income from that does not show in the figures you have there. Those values and the growth in it or the income, if you will, attributable to it is not—

Senator TAFT. What is the income attributable to? Income from lease agreements?

Mr. HAZELHURST. The real estate is leased. All of the current cash income is utilized for expenses and for mortgage payments. So, the current income does not benefit the trust right now.

The current income is exactly sufficient to cover expenses and to repay mortgages from large lending institutions which were placed against those properties.

At the present time, there is no cash flowing to the trust. There is no dividend on the initial capitalization stock flowing to the trust; no other payment flowing to the trust.

The trust is neither spending nor receiving any money as a result of those properties.

The current value of the residual at the end of the lease period, the buildings and the properties and the land will be owned free and clear by these two companies which in turn are owned by the trust. At that time the trust will be able to utilize the property in any way they see fit.

The \$32 million represents the present value of this.

In addition to the investment the income figure you see is a growing value of that, of something in excess of \$32 million a year.

Senator TAFT. Did you acquire this real estate during this period?

Mr. HAZELHURST. Which period are you referring to?

Senator TAFT. Did you acquire interest in the company during this period?

Mr. HAZELHURST. The real estate being spoken of was acquired in 1964.

Mr. BLAND. He is talking about the years shown on the D-2.

Mr. HAZELHURST. I am referring to the income that is not shown in D-2.

Senator TAFT. What is the explanation for the reduction in the income shown in D-2?

Mr. HAZELHURST. I can't answer directly.

Mr. DELACEY. I don't believe we have the exact information on that with us. I can give you the answer later.

Senator TAFT. It would appear that there must have been some shift—the drop in income is so sharp—there must have been some shift in capital involved.

Mr. DELACEY. If it were sold it would come back into the trust so that there would be no shift in that sense.

Senator TAFT. I understand that, but there might not have been any return.

Mr. DELACEY. I will have to check it out and let you know.

Senator TAFT. Who are the trustees of this plan?

Mr. HAZELHURST. Perhaps I could add one more thing.

In addition to the fact that the income or the growth in value, if you will, of this large \$32 million chunk of real estate is not shown in the D-2, in addition to that most of the assets of the plan as shown in the D-2 relate to the Gesco pooled trust fund and the income in that trust is buried in those figures and does not show separately.

So, the bulk of the income is simply not shown as income as such. That is the main problem. The income of the trust is not fairly represented by the \$60,000 you are speaking of. Part of it is in the Gesco pooled trust and the other part relates to a substantial block of real estate that is held outside the Gesco pooled trust.

Mr. BLAND. To answer your question, Senator, the trustees are appointed by the board of directors. They are five retired executives, vice presidents, financial vice presidents of Genesco. They are the trustees of the Genesco retirement trust.

They are also the trustees of the Gesco pooled investment trust which is made up primarily of the securities held by the Genesco retirement fund.

Senator TAFT. There is no independent financial institution involved?

Mr. BLAND. That is correct.

Senator TAFT. Thank you.

Thank you, Mr. Chairman.

Senator JAVITS. Is there any objection to giving us the composition of the \$15 million worth of securities of Genesco and its component elements which make up part of this pension fund?

Mr. LITVACK. I am not sure we understand what you mean when you state component parts. It is Genesco common stock.

Senator JAVITS. All Genesco common stock?

Mr. LITVACK. Yes. That is the number we were given.

Senator JAVITS. \$15 million?

Mr. LITVACK. That is right.

Senator JAVITS. Is the stock of any of these other affiliated or subsidiary companies also in the pension fund?

Mr. LITVACK. \$83,000, roughly, of G/K.

Senator JAVITS. Let us have a list of what you have that is Genesco stock or the stock of any of its subsidiaries or affiliates.

Mr. LITVACK. The overwhelming bulk is \$15 million Genesco common stock.

(Information subsequently supplied follows:)

The securities of Genesco referred to in the transcript as being held by the trust represented Genesco common stock having a market value at 31 December 1970 of \$15,227,000 and Genesco bonds having a maturity value of \$200,000. The trust held no other stock of Genesco or any of its subsidiaries or affiliates. However the trust is the sole stockholder in 16 corporations whose principal business is to own properties which are leased to Genesco and its subsidiaries. The aggregate investment in such corporations at December 31, 1970, valued at cost, amounted to \$86,986.

Senator JAVITS. It is a fact that the SEC case was based on the fact that you could not have bought all of these subsidiaries with your own stock if you had not used the money of this employees retirement fund and the employees stock purchase plan in order to operate in the market. That was their charge. You denied it.

Is that the fact?

Mr. LITVACK. That was not a fact. No charge was ever leveled against the company by the SEC. There was a discussion of a number of possibilities.

I will not tell you that members of the staff didn't at one time or another hold those views. We held contrary views. No formal charge was ever lodged against the company.

Senator JAVITS. It is a fact, is it not, that you did enter into an agreement which restricted your otherwise unrestrained operations in that regard?

Mr. LITVACK. We entered into a "no-action" letter with respect to future purchases in which the SEC specifically reserved its right to proceed against the company with respect to prior purchases. SEC never did so.

Senator JAVITS. In any case, the record will speak for itself. It is all going in.

Mr. LITVACK. Yes, sir; the record will speak for itself.

Senator JAVITS. If you wish to add anything from the company to that, in your brief or anything else, give it to us and we will have it all appear.

Mr. LITVACK. We appreciate that opportunity, Senator.

Senator JAVITS. Thank you.

Thank you, gentlemen. We appreciate your appearance and the information you have given us.

Mr. BLAND. Thank you, Senator.

Senator JAVITS. The next witness is from F. W. Woolworth Co. Will the representatives of that company come forward.

Mr. Zimmermann, will you introduce your associates?

STATEMENT OF ROBERT G. ZIMMERMANN, ASSISTANT SECRETARY AND ASSISTANT TREASURER, F. W. WOOLWORTH CO., ACCOMPANIED BY CHRISTOPHER J. HOEY, EMPLOYEE RELATIONS COUNSEL; JOHN K. ARMSTRONG, OF COUNSEL FOR F. W. WOOLWORTH CO., AND HENRY J. L. FORTUIN, JR., SENIOR VICE PRESIDENT, AND PHILIP C. MOWER, ASSISTANT VICE PRESIDENT, MARSH & McLENNAN, INC., ACTUARIES

Mr. ZIMMERMANN. Thank you, Mr. Chairman.

I would like to introduce the gentlemen on my right, Mr. Christopher J. Hoey, staff counsel of the F. W. Woolworth Co. Immediately to my right is Mr. John K. Armstrong, who is of counsel for the company. To my left, Mr. Henry J. L. Fortuin, Jr., who is senior vice president and actuary of Marsh and McLennan, Inc. On the far left, Mr. Philip C. Mower, assistant vice president with Marsh & McLennan.

Senator JAVITS. Will you describe yourself too?

Mr. ZIMMERMANN. I am assistant secretary and assistant treasurer of the F. W. Woolworth Co. I am also secretary of the retirement plan committee. I am responsible for the administrative detail work of the plan.

Senator JAVITS. Mr. Zimmermann, our chairman is back but he has allowed me to finish the arrangement with you. Your statement will be made part of the record, without objection. We would appreciate it if, to the extent possible, because it is quite a long statement, you give us the essential facts your own way.

Mr. ZIMMERMANN. All right, sir. I will brief that to the best of my ability. I would like to describe our operations.

As you are aware, Woolworth's operations are nationwide with stores in every State of the Union, as well as in Puerto Rico and the Virgin Islands, and our concern with respect to our employees is very broad and we are faced with many varieties of employee problems. We operate in a wide spectrum of communities, from the large metropolitan areas to the small community.

The history of the company's relationship with its employees is an outstanding one, and its experience under its retirement plan has been good. Woolworth is pleased to continue its cooperation with the committee in its important work, and in view of our two meetings with committee staff members preceding this hearing, I will discuss all aspects of the present pension plan including the recent plan amendments.

Woolworth amended its pension plan effective January 1, 1971 in the areas of eligibility, vesting, benefit levels, and in the forms of benefit payments. To better understand Woolworth's pension plan, the background leading up to the recent amendments made to the plan is relevant.

In the early part of 1969, we surveyed a series of suggested changes which led to an actuarial review of the plan. We continued our re-

search on the plan throughout 1970 and following an additional actuarial review just prior to the end of 1970, reached our conclusions with respect to the changes which were desirable. These conclusions were translated into plan amendments which were adopted by the board of directors and subsequently approved by shareholders at the annual meeting of the company held in May 1971. Following these actions, the newly amended plan was approved by the Internal Revenue Service effective retroactively to January 1, 1971.

A great deal of time and effort was devoted to the changes effected in 1971. We not only studied our own plan, but we also looked at other pension plans in the retail industry, particularly those of our direct competitors. We also reviewed the trends as outlined in the Banker's Trust Co. survey of industrial retirement plans. We believe you will agree that because of the complexities involved, the attention devoted was absolutely necessary. Since the amendments were sweeping in character, we will discuss our plan with respect to the various sectors changed by these amendments.

ELIGIBILITY

Under the 1971 amendments to the plan, the age and service requirements were reduced from age 35 and 5 years of service to age 30 and 5 years of service.

Both the service and the age requirements are important in the design of the plan.

With respect to the service requirement, our records show a relatively high turnover for full-time employees with less than 5 years of service. Since we employ a great many young people, this turnover rate is to be expected. The service requirement makes it unnecessary to incur the administrative expense of recordkeeping for a great number of people with very limited service.

The current eligibility requirement is designed so that career employees will receive a benefit based on 35 years of service. With such service, the pension from the company plus social security will range from over 90 percent of pay for the lowest paid to under 40 percent for the highest paid. The average for all employees is two-thirds of pay. Without the maximum on covered service which is affected by the age requirement, a quite different benefit formula would be necessary to keep the cost of the plan at the desired level.

VESTING

Under the plan as amended, a member attains full-vested rights as of the January 1 following both the completion of 15 years of continuous full-time employment and the attainment of age 35.

Under the plan as in effect prior to the amendments, employees became vested on the January 1 following the completion of 15 years of continuous full-time employment and the attainment of age 50. On that basis, 5,506 or 31.6 percent of the members of the plan would have been 100 percent vested as of January 1, 1971. The revision in the plan resulted in an additional 2,346 employees becoming fully vested as of that date making a total of 7,852 or 45 percent of the 17,431 members.

The age requirement of the vesting provision was established after a review of competitors plans and industry practice. We deem the age provision to be liberal compared to our industry.

The vesting provision contains a 15-year service requirement in order to control the cost of the plan. At the time of the recent amendments, consideration was given to reducing the service required to 10 years. This would have increased the cost of the plan by approximately 10 percent. Such a change was not made as it was decided that the purposes of the plan could be better realized by providing greater benefit increases to longer term employees rather than by allocating the available money for the benefit of the relatively short-term employees whose services terminate prior to the achievement of 15 years of service.

PAST SERVICE BENEFITS

Benefits under the Woolworth retirement plan are based on the career average of any employee's earnings. Consequently, benefits for the employee who has been a member of the plan for a number of years are adversely affected by inflation, since benefits accrued during the early years of membership are usually based on lower wages. Recognizing this, the company decided to increase the general level of benefits by providing a past service benefit based on current salaries. Accordingly, benefits accrued for service prior to December 31, 1970 were recomputed using a formula which was applied to the lower of (a) the employee's salary for 1970, or (b) the average of the employee's highest 5 consecutive years earnings out of the last 10 prior to retirement.

In addition, the new past service benefit was computed on the number of years of the employee's membership in the plan using the new eligibility rules. Members of the plan, therefore, had their past service benefits recomputed not only on the basis of the new formula, but where applicable, were credited with additional years of coverage up to a maximum of five. This generally produced a higher benefit for the member; however, in those cases where it did not, the member retained the benefits accrued to December 31 under the prior formula. In short, no one lost any of his accumulated benefit, and the majority of members received an increased benefit.

FUTURE SERVICE BENEFITS

The formula for determining future service benefits had not been changed since its institution in 1958 despite the many changes that have occurred in social security benefits since that date. These social security changes had the effect of increasing total post retirement benefits, at a substantial increase in cost to the company. The company found it desirable to take account of the recent substantial increases in social security benefits by changing the future service benefit formula to provide a benefit equal to $1\frac{1}{4}$ percent of the first \$6,600 of the employees annual earnings, plus $1\frac{1}{2}$ percent of such earnings in excess of \$6,600. We recognize that the taxable wage base for social security purposes is somewhat higher; however, we did not feel it necessary at this time to completely follow that wage base in determining the percentage break point although that is the normal practice for many plans.

We would add that, despite the reduction in the future service benefit formula, an employee with a full 35 years of coverage under the plan, will receive a higher benefit under the new revised plan than he would have received under the old plan.

ALTERNATE FORMS OF BENEFITS PAYMENTS

Even prior to the amendments, the Woolworth pension plan provided plan members the opportunity to elect joint and survivor benefits for a named beneficiary. Plan members at the appropriate time may designate joint and survivor annuitants so that in the event of their death, either prior to or after retirement, the beneficiary will receive a benefit depending upon the election made. The recent amendment to the plan gives the employee an additional third option which is a payment certain option. Under the terms of this option, an employee can designate a beneficiary who will receive the balance of payments due the employee should such employee die within a 5- or 10-year period following retirement.

PUBLICATION OF PLAN TO MEMBERS

We recognize the need to keep our employees fully acquainted with the terms of the plan so that they can be informed as to its coverage and benefits. We have provided each member with a retirement plan booklet which summarizes the salient points of each of the sections of the plan. This booklet is written as simply as possible. We have included several examples of how benefits are computed and the member, applying the facts of his individual employment to these examples, should be able to determine what his benefits are to date and what they can amount to at retirement.

The vesting provision is explained and in addition, the employee is told that if his service with the company terminates before he attains vested rights, there will be no benefit payable to him under the plan.

Although the booklet provides the method whereby an employee can compute his own benefit, we also furnish him with an annual statement showing the employee:

- (a) The amount of his annual benefit accrued to January 1 of the current year.
- (b) His total estimated annual pension at normal retirement date based on projected continuation of his current salary.
- (c) His estimated annual primary social security benefit.
- (d) Whether his status is vested or not vested.

On the reverse side of the form we have included a summary of the plan provisions.

We referred previously to survivor benefits which are available to those who wish to elect them. Each year we canvass eligible employees to determine if they wish to elect one of the payment options. We provide such employees with the procedural details for making the election, the terms of the available options, and the percentage reductions that will apply should they elect any of these options.

In short, we want our employees to know what the plan provides and on a factual basis to be able to know what they can anticipate receiving at the end of their working careers.

FUNDING

The Woolworth retirement plan is a trusted plan and is funded using the unit credit cost method. Briefly, this method funds units of benefit as they accrue. The assumed investment return rate has been adjusted periodically to reflect the changes in investment climate. Unrealized asset appreciation of equity investments is taken into account in determining asset values. In accordance with actuarial advice, proper employment termination rates and mortality assumptions are used.

Current service costs are funded as they are incurred. The 1971 Plan Amendments created an unfunded past service liability of \$7,199,508 which is being amortized over a 20-year period as permitted by Internal Revenue Service regulations and Accounting Principles Bulletin No. 8.

The assumed investment return rate now being used is 4¾ percent.

PENSION FUND INVESTMENTS

As of September 1, 1971, the relative value of the assets of the pension fund were invested as follows:

	Market value	Percent to total
Bonds and fixed income.....	\$8,098,316	7.04
Common stocks.....	71,715,341	62.34
Mortgages.....	9,078,091	7.89
Real estate.....	21,655,751	18.83
Cash and temporary investments.....	4,487,733	3.90
Total.....	115,035,232	100.00

You will note from this schedule that 26.72 percent of the fund is invested in real estate and mortgages. All properties owned by the pension trust are occupied by Woolworth Stores under a formal lease agreement. The investment in these properties by the pension fund began in 1951 and continued through 1966. No such investments have been made subsequent to that year.

In 1951 when sale and contribution of these properties to the pension fund began, the concept of investments suitable for pension funds was quite different from that presently held. At that time, it was common practice to invest heavily in long-term debt obligations with very little emphasis on common stock investments. The properties owned by Woolworth were considered prime investments much sought after by other pension funds which at that time were also investing in real estate. Many pension funds are still investing in real estate.

In order to assure the soundness of each real estate investment, the trustee determined through outside sources the current yield commanded by a comparable investment. In addition, the company took the necessary steps to assure itself that such properties were appropriately valued.

Each lease with the trust provides for a rental commensurate with the interest rate at time of contribution. In addition to this rental income, the lease provides for the amortization of the investment over

the life of the lease at the end of which time the pension trust will be in possession of the residual value of the property. There are explicit provisions in the pension trust agreement which control the terms of any such lease.

At no time has the company contributed to the pension fund any properties which it did not consider to be of prime quality. It is common knowledge among investors that a Woolworth lease is a valuable possession and carries great weight when a developer is looking for financing. We believe this value also inures to the pension trust.

From time to time, Woolworth has also purchased shares of its common stock for the pension trust. Since November of 1970, no further purchases of F. W. Woolworth Co. common stock have been made.

General comments and conclusion: We would also like to say a word about the assumed investment return rate currently being used. Coincident with the amendments to the plan, we raised this rate from $3\frac{1}{2}$ percent to $4\frac{3}{4}$ percent. The $3\frac{1}{2}$ percent rate was a conservative one and for several years the trust has earned a rate of return in excess of $3\frac{1}{2}$ percent. We regard this new rate as being conservative.

F. W. Woolworth Co. has long recognized its responsibility to its employees to provide a reasonable pension at retirement. The retirement plan was initiated in 1946 on a noncontributory basis and is still entirely paid for by the company.

We have recognized our duty to safeguard the assets of the pension fund for the benefit of plan members. The plan has been soundly funded and this reflects our determination to provide the benefits which the members have earned. The diversification of investments in our pension fund portfolio is such that it will weather adverse economic conditions.

We appreciate having had the opportunity to describe the F. W. Woolworth Co. pension plan to this important committee.

The CHAIRMAN. I would like to first deal with the pension fund investments. In summary, the fund is heavily invested in real property, is that right, Mr. Zimmermann?

Mr. ZIMMERMANN. That is correct; 26.72 percent being in real estate and in mortgages.

The CHAIRMAN. Now I have a note here that tells me that this acquisition of Woolworth properties or mortgages of Woolworth properties stopped in 1965.

Mr. ZIMMERMANN. 1966 was the last time any transaction was made; that is correct.

The CHAIRMAN. What was the policy decision that made you switch away from Woolworth properties as investments in the fund?

Mr. ZIMMERMANN. We were attracted primarily to the common stock concept of investing. It was felt that the fund could benefit more from that area of investment than it could from a fixed type of investment. We were attracted by the growth of the common stock fund.

The CHAIRMAN. What has been your experience here on these mortgage properties? What rate do you charge generally on the properties where you take the mortgage?

Mr. ZIMMERMANN. The mortgages have varied in rates up to $5\frac{1}{2}$ percent.

The CHAIRMAN. These were properties you owned and then sold to the operator of the individual store?

Mr. ZIMMERMANN. No, sir; these properties were owned by the F. W. Woolworth Co. In the case of the real estate transactions that are held by the pension trust, those were either sold to the pension trust or they were contributed to the pension trust. In the case of mortgages, these are properties owned by the company and on which the pension trust has granted a mortgage. In the case of the pension trust properties, the value of the property is returned to the pension trust in the form of a monthly rental which provides for a stated rate of return plus a factor to completely amortize the property, including the land and the building, over the life of the lease. In the case of the mortgage, this is straight debt which is paid off over a period of 25 years.

The CHAIRMAN. How do you assess the risk of this method of investing the pension fund, investing it in your own company activities?

Mr. ZIMMERMANN. As far as the company is concerned we think there is no risk at all. The lease that the pension trust holds on the property is in the nature of a financial transaction. It would not be dissimilar to a long-term bond investment whereby at the end of a period of time the holder of that debt would receive his money. In the case of the pension trust real estate the holder of the lease receives his money monthly in payment of that debt obligation.

The CHAIRMAN. That is not an arm's-length transaction?

Mr. ZIMMERMANN. Indeed it is.

The CHAIRMAN. It is?

Mr. ZIMMERMANN. Yes, sir. The pension trust has the control of the property and the bank trustee has the control of the lease agreement. It is not something that Woolworth can deal lightly with, once it is entered into. It is a long-term obligation.

The CHAIRMAN. What would be the impediment to the fund in recasting a mortgage, say?

Mr. ZIMMERMANN. I think the trustees would refuse to permit the recasting of such a mortgage unless it were completely for the benefit of the pension fund itself.

The CHAIRMAN. Who is the trustee?

Mr. ZIMMERMANN. The trustee is the Irving Trust Co.

The CHAIRMAN. There is a question of law here that is a little beyond my ken but what legal limitation would there be on the trustee if the company who hires the trustee said, "Look, things are tough, payments on that mortgage property are too much to bear at this time." What would there be to stop the trustee from recasting and taking a lower rate?

Mr. ZIMMERMANN. I think there are a number of things that would stop that. Before any of this was entered into, going back to the early 1950's, this matter was thoroughly cleared with the Internal Revenue Service.

Second, the trustee operates as a fiduciary and as such has a fiduciary responsibility to discharge, and we think that the trustee would not be discharging his responsibility in this respect if he permitted changes in these obligations.

There is another point in recasting these mortgages. Presumably this would be done at a lower rate of interest—and I deny this could

be done but presuming it could be done for just a moment—the only thing that would happen is that there would be a reflection into the actuarial calculation of the cost of the pension trust and the coporation would find itself making larger contributions year by year.

What it would gain on one side it would lose on another.

Mr. CUMMINGS. I would like to ask a few questions on behalf of Senator Javits.

How does it happen that the trustee, which, I take it, is Irving Trust Co., has invested 26 percent of the funds in real estate of Woolworth? In other words, did it just so happen that this trustee went shopping for real estate and he discovered that the best real estate investment available in the whole country happened to be F. W. Woolworth, or did it happen that some request by someone was made, even in the form of a provision in the trust agreement or by instructions from the administrator of the fund, that these investments be made in real estate exclusively owned by Woolworth, to wit, all the land underneath Woolworth's stores?

I take it that it is not just an accident that all of these real estate investments happened to be in land owned by Woolworth.

Mr. ZIMMERMANN. Obviously it was not an accident. As I stated previously, this is a circumstance that was investigated thoroughly before it was entered into. At the onset of this procedure, it was not only the Woolworth Pension Trust that was looking for investments in good real estate, there were also other pension trusts. Woolworth could have sold these properties to a pension trust other than the Woolworth Pension Trust. Woolworth felt that since other trusts were interested in this it must be a good investment. If it was a good investment for somebody else, why would it not be a good investment for Woolworth's own pension trust.

Mr. CUMMINGS. What you are saying, I take it, is that this real estate was for sale by Woolworth, for mortgage by Woolworth, or for sale, and that there were various pension trusts that would like to buy. Woolworth did its own pension trust a favor by selling it to its own pension trust, and that the favor was a favor from Woolworth to its pension trust?

Mr. ZIMMERMANN. I don't really think it was a favor. I think it was a good business decision.

Mr. CUMMINGS. Why was it a good business decision? A good business decision for whom, for Woolworth or for the pension trust?

Mr. ZIMMERMANN. For both. After all, the success of the pension trust vitally affects the contribution that Woolworth makes to that trust in order to fund the pension plan.

Mr. CUMMINGS. I take it if Woolworth were to collapse—I am not suggesting there is any danger of collapse—the fund would then be in a position of having tenants on all the real estate it owns simultaneously being unable to make further payments. Is that correct, sir? You would have 26 percent of your assets which in an instant became not income producing and up for sale, in a distress condition.

Mr. ZIMMERMANN. I think the supposition is wrong to start with because that is not going to happen.

Mr. CUMMINGS. The supposition of the investment is that Woolworth would never go bust.

Mr. ZIMMERMANN. It is a continuing operation. I think the whole economic system of the United States is built on the fact that corporations are ongoing entities and they will continue to go on. F. W. Woolworth Co. is not going to continue until the 30th of November and then suddenly stop.

Mr. CUMMINGS. But the supposition of a fund as distinguished from a pay as you go plan is that if the company is unable to pay as you go the fund will be there to pay when you are gone, isn't that true?

Mr. ZIMMERMANN. I think that we would view this real estate investment in the same light that we view any other investment and that is that if there appears to be a decline in the value of the investment we would put our money in something else. I think if indications were that the values were eroding to that extent in this real estate or that the value of Woolworth as an individual company was eroding to the point where it could not pay its rent, steps would be taken. I do not view that as a possibility.

Mr. CUMMINGS. So you view it as a perfectly proper investment for a trust to have an undiversified investment of 26 percent of your real estate money in the real estate of your employer.

Mr. ZIMMERMANN. We see nothing wrong with it.

Mr. CUMMINGS. As to your funding practices, you state it is terminal funding, I see, in your answer to the questionnaire. If your actuary is here I wonder if he could respond as to what you mean by the words "terminal funding."

Mr. FORTUIN. Where is that particular phrase used? This is not a terminal funded plan. This is a program wherein benefits are paid for as they are earned. It is not a terminal funded plan.

Mr. CUMMINGS. I have your form which you filed with the Labor Department in which you say group annuity contract, F. W. Woolworth Co., type of basis of funding: Terminal funding.

Mr. FORTUIN. That relates only to a discontinued group annuity contract,—discontinued for many years. There is a residual dividend and to the extent that we used that dividend we did purchase benefits for people at retirement, but that is not the total plan fund. That is a small segment of the plan, About \$18 million out of a total of about \$133 million. The plan originally was funded through a group annuity. That is discontinued. If there is residual dividend, we use it to buy a piece of benefit for some group that is retired. That is not the plan. It is a segment of it. It comes out of money we originally put up with the insurance company.

Mr. CUMMINGS. This form is dated January 1, 1970. It says amount of—

Mr. FORTUIN. It relates only to the group annuity contract which is a discontinued contract.

Mr. CUMMINGS. What is your funding procedure, if terminal funding is not your funding procedure?

Mr. FORTUIN. Terminal funding relates to that specific group annuity. Where there is a dividend we use the money to buy a benefit for a man who retires. If you read the other part of the form you will see our funding method is a unit-credit method. Each year as the benefit is earned we set up the money necessary to fund that benefit.

Mr. CUMMINGS. That includes nonvested liabilities to the extent you predict they may or may not become vested?

Mr. FORTUIN. That is correct.

Mr. CUMMINGS. To what extent do you predict, when an employee joins the company, and presumably for an indefinite period? What is your assumption as to what the odds are that you will have to fund a pension plan for him? In other words, so that he will vest it and get a benefit.

Mr. FORTUIN. We apply termination rates. We don't determine that this man who is now 35 has for example a 22-percent chance to reach vesting.

Mr. CUMMINGS. Let us say a fellow joins the employ of the company today at age 30. Can you estimate or assume what the odds are that he will stick around?

Mr. FORTUIN. I could do that but that is not the way I make the calculation. We apply a termination rate, we don't first determine his chance of vesting. It is all in one factor.

Mr. CUMMINGS. What is that one factor?

Mr. FORTUIN. The factor is the single premium rate which has in it a discount (for mortality, termination, and interest). We can give you the factor that you asked for but we don't compute costs that way.

Mr. CUMMINGS. Let us take a hundred employees. Of those hundred presently employed by F. W. Woolworth, roughly what is your assumption about how many of those will actually get a pension?

Mr. FORTUIN. I don't apply that assumption directly in my calculation. I have termination rates, that is, for people at age 30, 67 out of a thousand will terminate in a year.

Mr. CUMMINGS. Sixty-seven out of a thousand. Your vesting is 15 years, is that right?

Mr. FORTUIN. That is correct.

Mr. CUMMINGS. In 15 years, 15 times 67 will terminate and the balance of the thousand I assume will vest.

Mr. FORTUIN. No; no man stays age 30. If he is 30, there is a 6.7 percent chance he will terminate; by the time he is 35, it is 5 percent; by the time he is 40 it is 3 percent. It is not 67 times 15. That would assume that he always stayed at age 30.

Mr. CUMMINGS I assume you know what you are doing.

Mr. Chairman, might I on behalf of Senator Javits ask that there be inserted in the record the answers to the P-1 questionnaire, part III, relating to the number of employees who have left this plan over the last 5, 10 and 15 years without accumulating benefits?

The CHAIRMAN. That is the figure you said you could make available?

Mr. FORTUIN. That is available.

The CHAIRMAN. Certainly.

(The information subsequently supplied 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. 37,422
- B. Specify the total number of persons who have participated in the Plan within the past 5 years. 25,292
-
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 | <u>3,641 (Est)</u> |
| (2) Early retirement | <u>2,487 (Est)</u> |
| (3) Disability retirement | <u>None</u> |
| (4) Death | <u>None</u> |
| (5) Other | <u>None</u> |
- 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. 932 (Est)
- 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. 460
-
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). 20,648 (Est)
- 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. 14,520 (Est)
- 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). 8,518 (Est)
- 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. 5,675 (Est)
-

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	13,588 (Est)
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	625* (Est)
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 (Excludes 22B)	2,150 (Est)
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 (Excludes 22B&C)	4,300 (Est)
E. Within the past 5 years	5,215 (Est)
F. Within the past 5 years with more than 15 years service under the Plan	235* (Est)
G. Within the past 5 years with more than 10 years service under the Plan (Excludes 22F)	830 (Est)
H. Within the past 5 years with more than 5 years service under the Plan (Excludes 22F&G)	1,660 (Est)
I. Within the past 5 years due solely to voluntary separation	4,375 (Est)
J. Within the past 5 years due solely to failure to meet continuous service requirements	Minimal

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	57
B. Within the past 5 years with more than 10 years service under the Plan	51-1/3
C. Within the past 5 years with more than 5 years service under the Plan	52-1/2

- * 24. A. Indicate the average monthly benefit paid to retirees 5 years ago.
 (1) Normal 50.99 (2) Early 77.31 (3) Disability N/A
- B. Indicate the average monthly benefit paid to retirees within the last year.
 (1) Normal 81.87 (2) Early 78.45 (3) Disability N/A

*Deceased

Age Entered in Plan :

*Probability of attain-
ing vested status
(percent)*

30	57
35	66
40	75
45	84
50	89

Mr. FORTUIN. We actually do not as one step perform a calculation with just the specific element of termination. It is part of the total formula. That is why I can't give you the answer. I could give you the answer because I could compute in it that way, but that I would not do normally.

Mr. ZIMMERMANN. Senator, may I point out that the answers to the questionnaire that you have just referred to do not reflect the amended plan. These answers of course were the result of history under our previous plan. The numbers under the new plan will be significantly different.

Mr. CUMMINGS. There is a new plan as to which there is no experience, is that correct?

Mr. ZIMMERMANN. That is correct.

Mr. CUMMINGS. This relates to whatever plan there was at the end of last year.

The CHAIRMAN. I have here the schedule of properties and mortgages filed with the Department. For mortgages you have the original cost from the book value. Why do you use book value?

Mr. ZIMMERMANN. Book value is the amortized value of the property as carried on the books of the pension fund.

The CHAIRMAN. That is conservative. They are all less than the original cost.

Mr. ZIMMERMANN. The reason they are less than the original cost is that they have been amortized over the period of years that they have been in the plan. We mentioned that an amortization factor was applied to the properties owned by the pension trust, and the mortgages themselves, of course, bear a reduction for each month that payments were made.

The CHAIRMAN. That is easily understood on the mortgage properties. How does this reflect in the properties that are owned; and these are rented, I guess, aren't they?

Mr. ZIMMERMANN. That is correct.

The CHAIRMAN. Why is the book value always lower here than the original cost?

Mr. ZIMMERMANN. The rental is composed of two factors, a return of interest on the original purchase price, and a factor which amortizes the value of the property. Each month when payment is made to the pension trust, there is a difference in the value at which it is carried on the books. As the payment comes in—it is similar to a home mortgage payment—as the payment comes in, the value of the property is reduced. It is a conservative way of reducing the valuation, so eventually at the end of the lease, the value will read zero. The residual actual value will still be there, represented by the value of the land and the building on the property.

The CHAIRMAN. I was going to say—I used the word “conservative” at the outset—it seems to be conservative. I am glad to see that you have a mortgage on property in Keene, N.H.

Mr. ZIMMERMANN. Yes.

The CHAIRMAN. Are you familiar with each one of these properties?

Mr. ZIMMERMANN. I am not familiar with the physical location, no.

The CHAIRMAN. That property in Keene is worth just about half a million dollars.

Mr. ZIMMERMANN. I am glad to hear that.

Mr. GORDON. I would like to ask some questions on behalf of Senator Javits.

Mr. Zimmermann, you stated in your testimony that you felt that the investment by the Woolworth retirement plan in Woolworth real estate was an “arm’s-length” transaction.

Mr. ZIMMERMANN. Correct.

Mr. GORDON. Isn’t it true that under the Internal Revenue Code, this kind of transaction would fall under the so-called “prohibited transactions” section, and that if something other than fair market value was paid for the property or if the lease agreements did not represent a fair rental, that this would be a basis for IRS disqualification of the plan under the code?

As a matter of fact, we had testimony yesterday of a plan which was disqualified for precisely this reason. Isn’t it true then that this does fall under the “prohibited transactions” section of the code?

Mr. ARMSTRONG. As was pointed out in the prior testimony, Mr. Gordon, the transactions which were made with the pension trust were cleared in advance with the Internal Revenue Service. This advance clearance was obtained for the very reason that the rules and regulations, which require that a pension trust only be invested for the beneficiaries of the pension plan, were considered. These indeed overlie the entire realm of investment by the company in anything which it owns. Any self-dealing, lack of arm’s-length transaction, is indeed governed and ruled by the IRS regulations and rulings in the overall area. This is the reason this entire program and the methods by which values and interest factors was determined, were cleared with the Internal Revenue Service in advance of doing it.

Mr. GORDON. I agree that is an accurate statement. Is it necessary for a pension fund such as your own to clear every transaction that it makes with the IRS, or just some?

Mr. ARMSTRONG. The overall modus operandi of doing these transactions was cleared. Each particular transaction was not cleared.

Mr. GORDON. Let me restate the question. Does every investment in real estate made by a pension plan have to be cleared in advance by IRS?

Mr. ARMSTRONG. No.

Mr. GORDON. What kind of investments in real estate by pension funds do have to be cleared in advance by IRS?

Mr. ARMSTRONG. None. It was simply the company’s conservative practice, since these areas of regulation do exist and the company did not wish to run afoul of them, that advance clearance was obtained.

Mr. GORDON. Why did you wish to obtain advance clearance?

Mr. ARMSTRONG. I just told you.

Mr. GORDON. Was there any problem that did arise in your mind about these particular transactions?

Mr. ARMSTRONG. The only problems were inherent in the framework of Government regulations which overlay the transactions involved. We did not pass a value judgment as to whether or not there should be such Government regulation and control contained in the Internal Revenue Code and in its regulations. It is a fact; it is there; and as every business faced with an increasing array of governmental controls and regulations must realize, it is prudent and sometimes necessary in order to avoid trouble, to obtain clearance in advance, and that is what was done.

Mr. GORDON. Would you agree with me that the reason that it is prudent to obtain advance clearance with the Internal Revenue Code with regard to this type of transaction is because it is a transaction made by the pension fund with properties of the employer?

Mr. ARMSTRONG. I just told you that was not my view. I do not agree with it.

Mr. GORDON. Mr. Chairman, we don't have the available provisions of the Internal Revenue Code and regulations relating to prohibited transactions but, on behalf of Senator Javits, I request these materials be made part of the record. We did have testimony yesterday on exactly this point. As you recall, the plan involved was disqualified by IRS.

Senator WILLIAMS. There was a question of valuation.

Mr. GORDON. That is right. The point we are trying to deal with here is whether or not this is an "arm's-length" transaction. That does not mean that we are passing any judgments.

(The material referred to follows:)

Pertinent Provisions of Internal Revenue Code
Relating to "Prohibited Transactions"

SEC. 503. REQUIREMENTS FOR EXEMPTION.

(a) DENIAL OF EXEMPTION TO ORGANIZATIONS ENGAGED IN PROHIBITED TRANSACTIONS.—

(1) GENERAL RULE.—

(A) An organization described in section 501(c)(17) or (18) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1959.

(B) An organization described in section 401(a) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after March 1, 1954.

(C) An organization described in section 501(c)(18) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) TAXABLE YEARS AFFECTED.—An organization described in section 501(c)(17) or (18) or section 401(a) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) only for taxable years after the taxable year during which it is notified by the Secretary or his delegate that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

(b) PROHIBITED TRANSACTIONS.—For purposes of this section, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this section—

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267 (c) (4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(c) FUTURE STATUS OF ORGANIZATIONS DENIED EXEMPTION.—Any organization described in section 501(c)(17) or section 401(a) which is denied exemption under section 501 (a) by reason of subsection (a) of this section, with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary or his delegate, file claim for exemption, and if the Secretary or his delegate, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years after the year in which such claim is filed.

Mr. ARMSTRONG. I stated it was an arm's-length transaction. We established our procedure to assure it was an arm's-length transaction. I would like to place in the record a copy of our pension trust agreement with particular reference to section 3, which describes the procedures which must be followed, and the rules and regulations would circumscribe the investment by the trust in this kind of property.

(The information subsequently supplied follows:)

10/6/71

PENSION TRUST AGREEMENT
BETWEEN
F. W. WOOLWORTH CO.
AND
IRVING TRUST COMPANY, AS TRUSTEE
FOR BENEFIT OF EMPLOYEES OF
F. W. WOOLWORTH CO.

This Trust Agreement (herein called the "Agreement") made as of January 1, 1951 by and between F. W. WOOLWORTH CO., a New York corporation (herein called the "Company"), and IRVING TRUST COMPANY, a New York corporation (herein called the "Trustee"),

W I T N E S S E T H :

WHEREAS, the Company has heretofore adopted a Retirement Plan, effective January 1, 1946 (which, together with all amendments thereto, is herein called the "plan"), which provides, among other things, for the financing by means of the trust fund hereby created of a part of the Retirement Annuities to be paid pursuant to the plan to certain employees (herein called "members") of the Company and their Joint Annuitants;

NOW, THEREFORE, the Company and the Trustee agree as follows:

SECTION 1. The Company hereby establishes with the Trustee, pursuant to the plan, a trust consisting of such sums of money and of such other property, if acceptable to the Trustee and of such character that the Trustee would be permitted by Section 3 to invest therein, as shall from time to time be contributed by the Company

to the Trustee and of the income therefrom and any increment thereto. When contributing any property to the trust, other than money, the Company shall specify a value thereof and, for all purposes of this Agreement, the Trustee shall be deemed to have made an investment therein in the amount of the value so specified. Such money and other property, the investments made therewith, the proceeds thereof, the income therefrom and any increment thereto, less the payments which at the time of reference shall have been made by the Trustee, as authorized herein, are referred to herein as the "Fund". The Fund shall be held by the Trustee in trust and dealt with in accordance with the provisions of this Agreement. At no time shall any part of the corpus or income of the Fund be used for or diverted to purposes other than for the exclusive benefit of such members and their Joint Annuitants, except that, if the plan be discontinued, any balance remaining in the Fund after the satisfaction of all liabilities under the plan with respect to members and their Joint Annuitants, because of erroneous actuarial computation, shall revert to the Company.

SECTION 2. The plan shall be administered by a Retirement Plan Committee of such number, not less than three nor more than seven, as shall from time to time be fixed by resolution of the Board of Directors of the Company. The members of the Retirement Plan Committee shall be appointed by and shall serve at the pleasure of the Board of Directors of the Company.

The Retirement Plan Committee will direct and control

the operation of the plan and all payments made thereunder and will have full authority to determine all questions in connection therewith, including the interpretation of the language of the plan. The Trustee shall make such payments from the Fund as the Retirement Plan Committee may from time to time direct upon certification by the Retirement Plan Committee that such amounts are to provide for the payment of liabilities under the plan. Such payments by the Trustee may be made directly to the members and their Joint Annuitants or to an insurance company for the purchase of contracts for such individuals or to the Retirement Plan Committee expressly for either of said purposes, as the Retirement Plan Committee may in each instance direct. The Trustee shall not be responsible in any way respecting the application of the moneys so paid or for the administration of the plan. The Trustee shall be under no duty to enforce payment of any contribution and shall not be responsible for the adequacy of the Fund to meet and discharge the liabilities under the plan.

It is expressly understood that the duties and obligations of the Trustee shall be only those expressly stated in this Agreement without reference to the Plan.

In the event that any payment ordered by the Retirement Plan Committee shall be mailed by the Trustee by registered mail directed to the person specified in such order at the latest address of such person filed with the Retirement Plan Committee, and shall be returned to the Trustee because such person cannot be located at such

address, the Trustee shall promptly notify the Retirement Plan Committee of such return. Upon the expiration of sixty (60) days after such notification such order shall become void, and unless and until a further order of the Retirement Plan Committee is received by the Trustee with respect to such payment, the Trustee shall thereafter continue to administer the Fund as if such order had not been made by the Retirement Plan Committee. The Trustee shall not be obligated to search for or ascertain the whereabouts of any such person (or his duly appointed representative).

SECTION 3. Subject to the provisions of Section 4 the Trustee shall hold, invest and reinvest the principal and income of the Fund and keep the Fund invested, without distinction between principal and income, in such investments of the character hereinafter specified whether or not authorized under any present or future law for the investment of trust funds, to wit: stocks, bonds and other securities (including any participating interest in any of the Collective Funds of the Collective Trust described below in this Section 3); real property used or intended for use in whole or in part by the Company in the conduct of its business; improvements, extensions, additions or betterments to such real property; and bonds and notes of the Company secured by purchase money mortgages or deeds of trust made by the Company covering such real property.

Subject to the provisions of Section 4, the Trustee may, in its discretion, as of any valuation date of the Collective Trust created by Irving Trust Company under a Declaration of Trust

dated December 13, 1963 (hereinafter referred to as the 'Collective Trust') transfer any part or all of the assets of the Fund to the Collective Trustee of the Collective Trust. To that end, the Trustee is hereby expressly authorized to permit the commingling of any or all of the assets of the Fund, through the medium of the Collective Trust, with the assets of other trusts eligible to participate in the Collective Trust under the terms thereof. During such time as any part or all of the assets of the Fund are held in the Collective Trust, they shall be subject to all of the provisions of the aforesaid Declaration of Trust as amended from time to time; the Trustee shall have with respect to the interest of the Fund in the Collective Trust the powers conferred by this Agreement to the extent that such powers are not inconsistent with the provisions of said Declaration of Trust. The Trustee may withdraw all or any part of the interest of the Fund in the Collective Trust in accordance with the terms of the Collective Trust. To the extent of the interest of the Fund in the Collective Trust, the Collective Trust shall be part of the plan.

No investment in real property shall be made by the Trustee unless the Company, simultaneously with the acquisition of title thereto by the Trustee, either (1) purchases such property from the Trustee, or, if improvements, extensions, additions or betterments thereto are required to adapt such property for use by the Company, contracts to purchase such property from

the Trustee upon completion of such improvements, extensions, additions and betterments (which shall be within a reasonable time, taking all of the then existing circumstances and conditions into consideration), in either case, for a sum equal to the Trustees' investment therein plus, in the case of a purchase contract, a proper net return on such investment for the period prior to the closing of title, or (2) leases such property from the Trustee at a net rental which will pay to the Trustee a proper net return on its investment therein and will also completely amortize the Trustee's investment therein within the term of the lease, which term in no event shall exceed forty years. Such property may include not only property acquired from third parties, but also property owned by the Company and which the Company intends to continue to occupy. The Trustee's investment in any real property shall be deemed to include not only the original cost thereof to the Trustee, but also such further sums as it shall pay to the Company, as hereinafter provided, on account of improvements, extensions, additions and betterments to such property.

Every such purchase contract or lease shall provide that the Company will pay during the period prior to the closing of title, or, as the case may be, during the term of the lease, all real estate taxes, assessments, water rates and charges, premiums on all policies or insurance which may reasonably be required by the Trustee and all other charges and expenses in connection with the ownership and operation of the property; and that the Company may make improvements, extensions, additions and betterments to the property and require the Trustee to pay to the Company, but only from

the assets of the Fund, the cost thereof. The Company shall forthwith possess and use the property, subject to existing tenancies, and receive for its own account the rents and income thereof. At the election of the Company every such lease shall contain an option to the Company to purchase the property from the Trustee for a sum equivalent to the unamortized balance of its investment therein and a further option to the Company to terminate the lease, provided, however, that the Trustee in the event of such termination may require the Company to purchase the property from the Trustee for a sum equivalent to the balance of its unamortized investment therein. Every such lease shall also, at the election of the Company, contain an option to the Company to extend the term of the lease for such period, or such successive periods, as the Company may determine, at a net annual rental equal to forty per cent of the net annual rental being paid by the Company immediately prior to the expiration of the original term of the lease. During such extended term, the Company shall have the option to cancel the lease at any time upon giving to the Trustee not less than one year's prior written notice and shall not be required to purchase the property from the Trustee.

If the Trustee shall at any time own real property which is neither under contract of sale nor lease to the Company, the Trustee shall have the right, anything herein to the contrary notwithstanding, to sell such property for such price and on such

terms and conditions as it shall determine; or, with the consent of the Company, it may continue to hold such property.

The bonds and notes of the Company in which the Trustee may invest and the purchase money mortgages or deeds of trust securing the same may be executed and delivered by the Company either directly to the Trustee or to the third-party seller of the real property covered by any such purchase money mortgage or deed of trust and assigned to the Trustee simultaneously with the acquisition by the Company of title to such real property. Every such bond or note shall have such maturity not exceeding forty years as shall be determined by the Company, shall bear such interest as shall provide a proper net return on such investment and shall also provide either (1) for equal constant periodic payments of interest and principal, or (2) for the payment of interest and substantially equal periodic payments on account of principal, which in either case will be of such amount as would fully amortize the loan within a term of not exceeding forty years from the date of acquisition by the Trustee of title to the property or, as the case may be, from the date of acquisition of title by the Company from the third-party seller.

Whenever real property shall be purchased by the Company from the Trustee pursuant to any of the foregoing provisions, payment therefor may be made either in cash or by the bond or note of the Company secured by purchase money mortgage or deed of trust

made by the Company covering such property, or partly in cash and partly by such bond or note.

Payments by the Trustee to the Company with respect to the cost of improvements, extensions, additions and betterments shall be made from time to time during the progress of the work or, at the election of the Company, upon the completion thereof.

The value of real property purchased by the Trustee from the Company shall be established by an appraisal made by an independent appraiser selected by the Trustee. The specification by the Company, required by Section 1, of the value of property contributed by the Company to the Fund shall be made in a resolution of its Board of Directors; or it shall be made in a statement of the Company's Treasurer or Assistant Treasurer furnished to the Trustee, pursuant to directions contained in such resolution which shall prescribe the manner in which such value shall be fixed, and such statement shall contain a certification of such officer that the value so specified has been fixed in the manner prescribed. The cost of improvements, extension, additions and betterments to real property made by the Company shall be established by statements furnished to the Trustee and certified to be correct by the Company's Treasurer or Assistant Treasurer. The Trustee shall be entitled to rely conclusively upon such resolutions, certified to it over the signature of the Company's Secretary or Assistant Secretary under the corporate seal, and upon such statements and shall be under no duty or responsibility to make any independent investigation

with respect thereto.

Every such purchase contract, lease, bond, note, purchase money mortgage or deed of trust shall contain such other terms and provisions not inconsistent with the foregoing as the Trustee in its uncontrolled discretion shall determine to be usual and customary at the time for instruments of that character. The rate of interest to provide a proper net return under any contract of purchase or lease made by the Company with the Trustee or on any bond or note of the Company shall be such as, in the uncontrolled judgment of the Trustee, is the rate of interest which is current at the time of acquisition by the Trustee of title to the real property covered by such contract of purchase or lease or, as the case may be, by the mortgage or deed of trust securing such bond or note (or, if title shall be acquired by the Company directly from a third-party seller, then at the time of such acquisition) on well-secured mortgage loans to prime borrowers for the same term. In the absence of bad faith or gross negligence, the Trustee shall incur no liability of any kind whatsoever to any person whomsoever in making any such determination or in selecting any appraiser.

The Company shall furnish to the Trustee at least annually a certificate in such detail as the Trustee may reasonable require, made by the Company's Treasurer or an Assistant Treasurer, to the effect that the Company has paid (to the extent that the same are due and payable) all taxes, assessments, water rates and charges, insurance premiums and all other charges and expenses in connection

with the maintenance and operation of all property leased, mortgaged or under contract of purchase in pursuance hereof. Each such certificate shall include a list of the insurance policies in force pursuant to the undertakings of the Company, the names of the insurance companies which have issued the policies, the amounts thereof and the property covered thereby, and shall include a statement to the effect that in the opinion of the signer the insurance coverage is adequate and complies with such undertakings. Similar certificates as to all or any of the foregoing shall be furnished by the Company at such other time or times as the Trustee may request. The Trustee shall be entitled to rely conclusively upon the completeness and correctness of every such certificate and shall be under no duty or responsibility to make any independent investigation with respect thereto.

No investment shall be made in real property or in bonds and notes of the Company if such investment would bring the then book value of all investments in real property, improvements, extensions, additions and betterments and in notes and bonds of the Company above seventy per cent of the then total book value of the Fund; and no investment shall be made in improvements, extensions, additions or betterments to real property if such investment would bring the then book value of all investments in real property, improvements, extensions, additions and betterments and in notes and bonds of the Company above eighty per cent of the then total book value of the Fund. The book value of any investment

in real property leased to the Company by the Trustee and in any improvements, extensions, additions and betterments thereto shall be deemed to be the cost thereof to the Trustee, less all amounts received by the Trustee as rent in excess of the interest component of such rent.

The Trustee may hold any such real property or any such bond or note of the Company and the mortgage or deed of trust securing the same in its own name or in its name as Trustee, or may cause any such real property or any such bond or note of the Company and the mortgage or deed of trust securing the same to be taken in the name of, or conveyed or assigned to, its nominee or nominees. If deemed expedient by the Company and the Trustee, ⁵⁷⁰⁰any such property may be taken in the name of and held by a corporation ¹⁷⁵⁰organized for the purpose, all of the capital stock of which (except as hereinafter provided) shall be held by the Trustee. The Trustee may do whatever may be necessary in its judgment for the purpose of maintaining, preserving, renewing or extending the corporate existence of any such corporation and, for such purposes, from time to time may sell, assign, transfer and deliver so many shares of its stock as may be necessary to qualify persons to act as directors of such corporation, but shall make such arrangements as it shall deem expedient for the protection of the Fund in respect of the shares so assigned and transferred. The Company shall pay all taxes and expenses incident to the organization, continued existence and ultimate dissolution of every such corporation. The

Trustee shall have power to make such loans from the assets of the Fund to any such corporation as shall be required to enable it to make such payments in respect of the acquisition of its real property and the improvements, extensions, additions or betterments thereto as would have been made by the Trustee, pursuant to the provisions of this Section 3, had it itself acquired such real property. The Trustee shall cause every such corporation to comply with the obligations of the Trustee under this Section 3 in respect of the property held by such corporation.

If at any time or times, because of legal requirements, restrictions or conditions in any state or jurisdiction in which any such real property or the real property subject to the mortgage or deed of trust securing any note or bond of the Company is located, the Trustee shall deem it necessary or desirable that such investment be held by a separate trustee or trustees, or by a co-trustee or co-trustees jointly with the Trustee, the Company and the Trustee shall have power to appoint, and upon the request of the Trustee the Company shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, another corporation or one or more persons, selected by the Company and approved by the Trustee, to act as separate trustee or trustees, or as co-trustee or co-trustees jointly with the Trustee. In the event that the Company shall not have agreed upon and joined in such appointment with fifteen (15) days after the receipt by it of a request

so to do, the Trustee alone shall have power to make such appointment. The powers to be conferred upon any such separate trustee or trustees, or co-trustee or co-trustees, shall be such, and only such, as may be necessary to comply with such legal requirements, restrictions or conditions; and every such separate trustee and every co-trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following provisions and conditions, namely:

- (a) All notes and bonds and all deeds, mortgages, deeds of trust and other muniments of title shall be held by, and all cash payable in respect thereof shall be paid to and deposited with, Irving Trust Company or its successor in the trust hereunder. Any moneys at any time coming into the hands of any separate trustee or trustees, or co-trustee or co-trustees, shall be at once paid over to Irving Trust Company or its successor in the trust hereunder.
- (b) Any request in writing by Irving Trust Company or its successor in the trust hereunder shall be a sufficient warrant for any separate trustee or trustees, or co-trustee or co-trustees, to take such action as may be so requested.
- (c) Any separate trustee or co-trustee may, at any time by an instrument in writing, constitute Irving Trust Company or its successor in the trust hereunder his or its agent or attorney-in-fact, with full power and authority to do all

acts and things and exercise all discretion authorized or permitted by him or it, for and in behalf of him or it, and in his or its name.

- (d) The Company and Irving Trust Company or its successor in the trust hereunder, at any time by an instrument in writing executed by them jointly, may accept the resignation of or remove any separate trustee or co-trustee so resigned or removed, or who shall have died, may be appointed in the manner above provided.
- (e) In case any separate trustee or co-trustee, or a successor to any of them, shall die, resign or be removed, all the estates, property, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee shall, without further act or deed, vest in and be exercised by his or its successor in the trust.
- (f) Irving Trust Company or its successor in the trust hereunder may in its discretion terminate at any time the trust for which any separate trustee or trustees, or co-trustee or co-trustees, shall have been appointed and, upon request and at the expense of the Fund, the then acting separate trustee or trustees, or co-trustee or co-trustees, shall convey, transfer and assign all of his, its of their estates, property, rights, powers, trusts, duties and obligations to, and they shall vest in and be exercised by, Irving Trust Company or, as the

case may be, its successor in the trust hereunder.

- (g) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

The Trustee, at the direction of the Company, shall retain in cash as a reserve and keep unproductive of income such amount as the Company may from time to time direct. The Trustee shall not be required to pay interest on such cash reserve balances or on cash in its hands pending investment.

Whenever it shall appear from the records in the duly established office for the recording or filing of instruments relating to the title to real estate situated in any jurisdiction that the Fund has an interest in real estate situated in such jurisdiction, anyone dealing with such real estate may rely, conclusively and without obligation to make further inquiry, upon such records and upon the certificate of whoever appears, according to such records, to be the Trustee hereunder, (1) as to whether the Trust is in full force and effect, (2) as to whether there have been any amendments hereto and, if so, as to the nature thereof, (3) as to who is the Trustee hereunder, (4) as to whether all conditions precedent to any action proposed by the Trustee have been complied with, and (5) as to any other facts concerning or affecting the trust, the conduct of its affairs or the powers or duties of the Trustee hereunder.

SECTION 4. The Company, by its Board of Directors or the Retirement Plan Committee shall have the right, at any time and from time to time, and for such period or periods as it may desire, either to direct the Trustee in writing as to the investment policy to be followed in the investment of the Fund or to direct the Trustee in writing as to any investments of the Fund. The Company's rights to direct investment policy or to direct investments shall be exercisable in its sole discretion and the existence of either right shall not be construed as imposing on it any obligation to exercise such right.

The Company shall also have the right by its Board of Directors to designate an investment adviser who shall direct the Trustee with respect to the investment of the portion of the Fund allocated to such investment adviser and segregated and held by the Trustee in a separate account in accordance with the terms of an agreement entered into for this purpose by the Company and the investment adviser. The Company will determine the portion of the funds to be allocated to the investment adviser from time to time and will issue appropriate instructions to the Trustee with respect thereto.

SECTION 5. Subject to the provisions of Section 4, the Trustee shall also have the following powers and shall perform the following duties with respect to all the securities and other property at any time, and from time to time, constituting a part of the Fund.

- (a) to sell, lease, exchange, convey, transfer or dispose of, and also to grant options with respect to, any property, whether real or personal, at any time held by it and any sale may be made by private contract or by public auction, and for cash or upon credit, or partly for cash and partly upon credit, and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale, lease or other disposition;
- (b) to acquire any real estate as the result of any foreclosure, liquidation or other salvage of any investment previously made by it; to hold such real estate pending liquidation of the same; and to manage, operate, repair, improve, partition, mortgage or lease for any term or terms of years any such real estate;
- (c) to compromise, compound and settle any debt or obligation due to or from it as Trustee hereunder and to reduce the rate of interest on, to extend or otherwise modify, or to foreclose upon default or otherwise enforce any such obligation;
- (d) to vote on any stocks, bonds or other securities held by it; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any options appurtenant to any stocks, bonds or other

securities for the conversion thereof into other stocks, bonds or securities, or to exercise any rights to subscribe for additional stocks, bonds or other securities and to make any and all necessary payments therefor; to join in, or to dissent from and to oppose, the reorganization, recapitalization, consolidation, sale or merger of corporations or properties in which it may be interested as Trustee, and to accept any securities which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger and thereafter to hold the same; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Fund;

- (e) to accept and hold any securities or other property received by it under the provisions of any of the subdivisions of this Section 5 whether or not the Trustee would be authorized to invest in such securities or other property under the laws of any jurisdiction.
- (f) to make, execute, acknowledge and deliver any and all deeds, leases, assignments and instruments;
- (g) to borrow or raise moneys for the purposes of the trust from any source (including the Company), and for any sum so borrowed to issue its promissory note as Trustee and to secure the repayment thereof by pledging all or any part of the Fund; and no person loaning money to

the Trustee shall be bound to see to the application of the money loaned or to inquire into the validity, expedience or propriety of any such borrowing;

- (h) to cause any investments from time to time held by it to be registered in, or transferred into, its name as Trustee or the name of its nominee or nominees or to retain them unregistered or in form permitting transfer by delivery, but the books and records of the Trustee shall at all times show that all such investments are part of the Fund;
- (i) to employ suitable agents and counsel and to pay their reasonable expenses and compensation; and
- (j) to do all acts whether or not expressly authorized which the Company may deem necessary or proper for the protection of the property held hereunder.

SECTION 6. All brokerage costs and transfer taxes incurred in connection with the investment and reinvestment of the Fund, all expenses (other than fees for legal services rendered to the Trustee) incurred in connection with the acquisition or holding of real or personal property, any interest therein or mortgage thereon, and all income taxes or other taxes of any kind whatsoever which may be levied or assessed under existing or future laws upon or in respect of the Fund, shall be paid from the Fund, and, until paid, shall constitute a charge upon said Fund.

All other administrative expenses incurred by the Trustee in the performance of its duties including fees for legal services rendered to the Trustee, such compensation to the Trustee as may be agreed upon from time to time between the Company and the Trustee

and evidenced by a writing signed by an officer of the Company, and all other proper charges and disbursements of the Trustee, shall be paid by the Company, but until paid shall constitute a charge upon the Fund, and if not paid by the Company within ninety (90) days after becoming due may be withdrawn from the Fund.

SECTION 7. The Trustee shall use ordinary care and reasonable diligence in the exercise of its powers and in the performance of its duties hereunder; it shall not be liable for any action taken or omitted upon the instruction of the Company, its Board of Directors or a committee or investment adviser designated thereby or the Retirement Plan Committee or, in the absence of such instructions, for the omission of any action as to which the Company or its aforesaid agents are required or authorized to instruct it pursuant to any of the terms and provisions hereof; or for any mistake in judgment or for any action taken or omitted by it in good faith; for any loss, unless resulting from its own willful misconduct or gross negligence; or for any failure of the contributions, and the income derived therefrom, to meet pension or other liabilities under the Plan; and it shall not be required to give any bond or other security for the faithful performance of its duties hereunder.

If at any time the Company or its aforesaid agents should fail to give instructions to the Trustee as herein provided for, the Trustee may act and shall be protected in acting without such instructions, as in its discretion seems appropriate and advisable under the circumstances, for the carrying out of the purposes of this Agreement.

The Trustee shall not be obliged to determine whether any instructions issued to it as aforesaid are in fact so issued in accordance with the terms of the Plan or pursuant to the powers and duties conferred thereunder.

The Trustee may from time to time employ counsel, who may be counsel to the Company, and shall be fully protected in acting upon the advice of counsel.

SECTION 8. The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Retirement Plan Committee. Within ninety (90) days following the close of each fiscal year, and within ninety (90) days after the removal or resignation of the Trustee as provided in Section 9 hereof, the Trustee shall file with the Retirement Plan Committee a written account setting forth all investments, receipts, disbursements and other transactions of the trust effected during such fiscal year or during the period from the close of the last fiscal year to the date of such removal or resignation. In the event that any assets of the Fund shall have been transferred to the Collective Trust pursuant to Section 3 hereof, such account shall include a copy of the latest written account of the Collective Trust.

Upon the expiration of ninety (90) days from the date of filing such annual or other account (even if not filed within the above-mentioned ninety day period), the Trustee shall be forever

released and discharged from all liability and accountability to anyone with respect to the propriety of its acts and transactions shown in such account, except with respect to any such acts or transactions as to which the Retirement Plan Committee shall within such ninety-day period file with the Trustee written objections.

The Company shall have the sole authority to enforce this Agreement on behalf of any subsidiary or affiliate of the Company which has at any time adopted the Plan, and the Trustee shall in no event be required to deal with any such subsidiary or affiliate except by dealing with the Company as agent of such subsidiary or affiliate.

The Company and the Retirement Plan Committee shall have the sole authority to enforce this Agreement, either jointly or severally, on behalf of any and all persons having or claiming any interest in the Fund by virtue of this Agreement or the Plan. To protect the Fund from the expenses which might otherwise be incurred, it is imposed as a condition to the acquisition of any interest in the Fund, and it is hereby agreed, that no person other than the Company or the Retirement Plan Committee may institute or maintain any action or proceeding against the Trustee or the Trust in the absence of written authority from the Retirement Plan Committee or a determination of a court of competent jurisdiction that in refusing such authority the Retirement Plan Committee has acted fraudulently or in bad faith.

SECTION 9. The Trustee may be removed by the Company at any time upon sixty (60) days notice in writing to the Trustee and the Retirement Plan Committee. The Trustee may resign at any time upon sixty (60) days notice in writing to the Company and the

Retirement Plan Committee.

Upon such removal or resignation of the Trustee the Company shall appoint a successor Trustee who shall have the same powers and duties as those conferred upon the Trustee hereunder and, upon acceptance of such appointment by the successor Trustee, the Trustee shall assign, transfer and pay over to such successor Trustee the funds and properties then constituting the Fund, withdrawing any part of the Fund then held in the Collective Trust. The Trustee is authorized, however, to reserve such sum of money, as to it may seem advisable, for payment of its fees and expenses in connection with the settlement of its account or otherwise, and any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the successor trustee.

SECTION 10. Any action required or permitted to be taken hereunder by the Board of Directors of the Company may be taken by the Executive Committee of the Board of Directors.

Any action by the Company pursuant to any of the provisions of this Agreement shall be evidenced by a resolution of its Board of Directors or Executive Committee, such resolution being certified to the Trustee over the signature of its Secretary or Assistant Secretary under the corporate seal, and the Trustee shall be fully protected in acting in accordance with such resolution so certified to it.

All orders, requests and instructions of the Retirement Plan Committee to the Trustee shall be in writing signed by two members of the Retirement Plan Committee or by its Secretary and one member thereof, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Company shall furnish the Trustee from time to time with certified copies of resolutions of its Board of Directors evidencing the appointment and termination of office of any members of the Retirement Plan Committee and the appointment of successors thereto.

SECTION 11. In the event of the termination of the plan as provided therein the Trustee shall dispose of the Fund in accordance with the written order of the Retirement Plan Committee.

SECTION 12. The Company reserves the right at any time and from time to time by action of its Board of Directors to amend, in whole or in part, any or all of the provisions of this Agreement by notice thereof in writing delivered to the Retirement Plan Committee and the Trustee, provided that no such amendment which affects the rights, duties or responsibilities of the Trustee may be made without its consent, and provided further that no such amendment shall authorize or permit any part of the corpus or income of the Fund to be used for or diverted to purposes other than for the exclusive benefit of such members and their Joint Annuitants, except that, if the plan be discontinued, any balance remaining in the Fund after the satisfaction of all liabilities under the plan with respect to members and their Joint Annuitants, because

of erroneous actuarial computation, shall revert to the Company.

SECTION 13. Nothing herein contained shall be construed to limit the power of the Trustee, which is absolute and unconditional, to enforce the due and punctual observance and performance by the Company of each and every condition and covenant contained in any contract of purchase, lease, bond, note, mortgage or deed of trust made by the Company and to pursue every right and remedy thereby granted to the Trustee, or to secure the judicial approval of its accounts.

SECTION 14. No distribution or payment under this Agreement to any participant or his beneficiary under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, whether voluntary or involuntary, and no attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be valid or recognized by the Trustee, nor shall any such distribution or payment be in any way liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to such distribution or payment, except to such extent as may be required by law.

SECTION 15. This Agreement shall be administered, construed and enforced according to the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized and their corporate seals to be hereunto affixed

and attested as of the day and year first above written.

F. W. WOOLWORTH CO.

By

Vice President

Attest:

Secretary

IRVING TRUST COMPANY

By

Vice President

Attest:

Assistant Secretary

The CHAIRMAN. Who can test that if there were a violation of that agreement? Who would have legal standing to test that?

Mr. ARMSTRONG. The Internal Revenue Service on audit could challenge the contributions as being, as Mr. Gordon indicates, violative of those rules and regulations which the Internal Revenue Service has promulgated, which have some effect upon the transactions in this area. If a pensioner, and this "if" is a colossal "if," as we have already indicated, were to fail to receive his pension and it could be shown that the company had engaged in self-dealing and that the trustee had been derelict in its fiduciary duty, as I am sure your staff attorneys are aware, there is a broad realm of law which governs the activities of fiduciaries in the pension trust as well as the personal trust area.

Every pension trustee who has a fiduciary duty is subject to the threat of suit in the event that he violates that duty. The body of law is vast in this area. I can tell you from my experience I have found corporate trustees very chary of making certain kinds of investments which they deemed to be violative of their fiduciary duties because of the threat of action by the beneficiaries of the trust whose interests were not adequately protected by them. We categorically stated that in our view this is not a threat or possibility but in terms of what overlies it there is a vast body of fiduciary law.

The CHAIRMAN. What pensioners would have a standing to contest this? Those who have vested rights? When does vesting set in?

Mr. GORDON. Age 35 or 15 years, whichever comes later.

The CHAIRMAN. Would it be limited to those whose rights had vested in the plan?

Mr. ARMSTRONG. In my opinion if the plan were terminated or should fail, put it in that sense, any member of the plan would have cause of action against the pension trustee for breach of fiduciary duty if he could sustain that charge.

The CHAIRMAN. Who are the members of the plan?

Mr. ARMSTRONG. All employees who have 5 years of service and attained age 30.

The CHAIRMAN. Five and 30. You said 15 and 35.

Mr. GORDON. That is to get in the plan.

Mr. ARMSTRONG. We have two sets of rules. The entrance into the plan is five and 30. Vesting is 35 and 15. Mr. Noto has indicated he feels this is a confusing area and we should try to make it less confusing. I wish there were a way to do that. If you have a suggestion please let us have it and we will try.

Mr. CUMMINGS. Are you counsel for the firm present?

Mr. ARMSTRONG. I am counsel for F. W. Woolworth Co.

Mr. CUMMINGS. I would like to pursue just briefly the chairman's question as to who could sue. Let us assume you are an individual participant, age 40. Well, you have to be 45. You can get into the plan when you are 30 and you have to have 15 years of service.

Mr. ARMSTRONG. I think I stated in my view any member of the plan would have standing to sue.

Mr. CUMMINGS. Let us take a man 35.

Mr. ZIMMERMANN. If he started at the age of 20 he would be vested.

Mr. CUMMINGS. Suit yourself. I will take an unvested man. Let us start with an unvested member of the plan. He is 35. He has 10 years of

service. He is not vested. Now let us say he feels that the trustees have mis-invested \$20,000 of the trust money in some piece of real estate which is only worth \$15,000. Would you say in your judgment that it would be realistic to expect that employee to sue and for what and who would get the money?

Mr. ARMSTRONG. I would state in the context of the Woolworth plan that it wouldn't be necessary for him to sue because his benefit is fully covered by the total amount of the investment we have today in the fund. On the basis of a raw hypothetical, having nothing to do with my client's situation, it is certainly conceivable that it would be futile for an individual employee to contest a transaction where the fiduciary had misinvested to the extent of a detriment to the fund of \$5,000 where there were a million employees in the fund because that recovery, whatever it was, would accrue to the benefit of all members of the plan.

Mr. CUMMINGS. What is the largest single transaction in terms of investment of funds which the fund has made in the last year?

Mr. ZIMMERMANN. In what period of time?

Mr. CUMMINGS. In the last year. What is the single investment of funds that the fund has made, in a purchase of real estate?

Mr. ZIMMERMANN. We have not purchased any real estate since 1966.

Mr. CUMMINGS. Purchase of anything, stocks, bonds, real estate.

Mr. ZIMMERMANN. Perhaps a purchase of \$1,500,000 worth of common stock.

Mr. CUMMINGS. On \$1,500,000. Let us say you purchased \$1,500,000 of common stock last June. Let us say an individual participant in the plan, vested or unvested, feels that you paid \$200,000 too much for it. Is it realistic to expect that any pensioner or any participant in the pension could bring a lawsuit? Whom would he sue? Who would recover and what good would it do him?

Mr. ARMSTRONG. I think you are stating a question which assumes one basic element which cannot be assumed. That is that there has been a breach of fiduciary duty. There has to be a breach of fiduciary duty, not an erroneous business judgment, before anyone can have a cause or action against a trustee.

I think it is the strength of our trustees and their independence and the hoary area of trust law which overlies their responsibility which precludes the breach of fiduciary duty which would be the only basis for a cause of action. You cannot protect any beneficiary of a plan from erroneous business judgments. But business judgments are the things that our company and the trustees are skilled in making, day after day, and have been eminently successful at. If these people are not capable of doing it I would respectfully suggest no other body of men anywhere is.

Mr. CUMMINGS. The only purpose of my question is not to imply that anyone on the board of trustees would use anything but his best business judgment. I am asking, assuming there is a trust, as is always possible, where you have a trustee who was not using his honest business judgment—I don't mean to imply it is your trust—and that transaction which I just described took place, is it realistic to assume that any participant in the fund could rectify that situation by a private lawsuit?

Mr. ARMSTRONG. Yes, because if that occurred the occurrence would most likely be of an extremely egregious sort because no responsible trustee of the caliber with which we are dealing here today would be involved in that kind of breach of fiduciary duty.

In such event it is likely that a substantial action could be brought because there would have been a chain of transactions amounting to a significant amount and I would bet, in my judgment, that there would be a pretty darn good recovery against both the trustee and its board of trust directors who also have personal liability for those breaches of fiduciary duty, and there would be one whopping significant recovery for the benefit of everybody.

Mr. CUMMINGS. Who would get the money?

Mr. ARMSTRONG. The plan beneficiaries.

Mr. CUMMINGS. The plan would, not the beneficiaries, is that right? The money would go back into the fund.

Mr. ARMSTRONG. The ultimate beneficiaries are the beneficiaries of the plan. The plan has no entity or an existence aside from them.

Mr. CUMMINGS. It is a derivative action where the pension brings the suit really in the name of the fund against the trustee to get money from the trustee back into the fund. Isn't that right? Isn't that essentially the action that you are describing, legal action? The individual participant does not get anything?

Mr. ARMSTRONG. He does not get anything until he is damaged.

Mr. CUMMINGS. He is bringing an action in the name of the fund for the benefit of everybody, and he has to pay the lawyer, is that right?

Mr. ARMSTRONG. I haven't researched the question of who would have to pay the lawyer.

Mr. CUMMINGS. I think before you assume that a private participant can actually protect himself by lawsuit from this kind of venture, how does a salesgirl in Woolworth hire a lawyer to bring this action?

Mr. ARMSTRONG. You know, as I do, that in most derivative action situations counsel fees are ultimately awarded out of the recovery. Therefore, this is a lucrative business for some lawyers to get into, to find the suits and bring them.

Mr. CUMMINGS. I don't know of any law that provides for counsel fees. I thought it just provides for court filing fees.

Mr. ARMSTRONG. In a derivative suit?

Mr. CUMMINGS. Stockholder suit.

Mr. ARMSTRONG. I drew the analogy to a derivative suit which might be one frame in which it was cast. I would say I would certainly try to cast it that way were I the attorney so that I could get my fee out of it.

Mr. CUMMINGS. Then you agree there would be some merit to the notion that whatever law is passed dealing with this field ought to provide that if an individual brings a derivative suit he ought to be guaranteed if he wins he gets his attorney's fee.

Mr. ARMSTRONG. I don't agree with that because I am not sure that is not the law today. If you want to retain me to do a memorandum on the subject of how counsel fees will be paid, I will be happy to do that.

Mr. CUMMINGS. If you are sitting there in your law office and a salesgirl or someone from a company other than Woolworth comes in and describes to you a set of facts, which you say will never happen in Woolworth, she says, "Guess what. I work for this company and the trustees are really fooling around with the fund; they are investing it in themselves, and I don't know what else. Isn't there something I can do to stop it?" She says, "By the way, I make \$104 a week before taxes." This lawsuit is going to involve millions and millions and millions of dollars and it is going to be against this company which is worth millions and they have very good lawyers. Would you take the lawsuit on the supposition that somehow or other you will get paid by someone other than this salesgirl?

Mr. ARMSTRONG. The answer to your question is that I think there are an ample number of highly qualified New York lawyers to whom I could refer this case, who would be delighted to take it, and who would do it quite effectively. It might not be what I would take because I am not a litigator and it is not my thing, but it is other attorneys' thing. There are in addition to that a range of public interest law firms who would just seize upon this as a perfect fulfillment of their public purpose, and I daresay she would have little trouble finding competent counsel. I would be happy to have her come to me and I would find one for her.

Mr. CUMMINGS. How long would it take to bring that thing to judgment, final judgment, after all appeals?

Mr. ARMSTRONG. If I can get into Federal court with the thing I would say we could have final judgment at the district court level within two and a half years. If the company is going to appeal, I would have to go through the second circuit anyway and I would say that gives me another year. I would guess that the Supreme Court would not allow a further appeal.

Mr. CUMMINGS. Three and a half years.

Mr. ARMSTRONG. Yes.

Mr. CUMMINGS. I take it even under the assumption you are going to get counsel fees, which it means your friend has to finance this action for 3½ years without getting a dime from the salesgirl.

Mr. ARMSTRONG. It is done all the time.

Mr. CUMMINGS. You have to do it under the supposition you are going to win, you have to win, and the court has to award counsel fees.

Mr. ARMSTRONG. That is true. This is done constantly. This is the way the self-policing mechanism of the inside trading rules work. These guys bring the actions in the hope of recovery.

Mr. CUMMINGS. The inside trading is done by sophisticated investors who normally have more resources than a salesgirl.

Mr. ARMSTRONG. Counsel in the business of handling derivative action—

Mr. CUMMINGS. This is not a stockholders' derivative action where you are talking about investors. This is a salesgirl derivative action.

Mr. ARMSTRONG. It might be a pretty good one. If your assumed set of facts were really true, the amounts involved could be enormous. If you are telling me it is a hundred-dollar claim and it is specious in its foundation, then I suggest it will be very difficult to obtain adequate counsel to handle the matter. But we are talking about a situation

where there has probably been a substantial breach of trust by persons with assets. I say to you that is not an unattractive case.

Mr. CUMMINGS. It is a \$200,000 loss in value so that presumably you might be able to prove that somebody owes the trust \$200,000. Let us say it is a multimillion-dollar trust. Do you think you could get counsel fees for this?

Mr. ARMSTRONG. I think we are beginning to quibble over the less significant aspect of this argument.

Mr. CUMMINGS. Do you think that whether or not the lawyer is likely to be paid is insignificant, in terms of whether or not the suit is filed in the first place?

Mr. ARMSTRONG. That is not it. You are asking me \$200,000, would I take it, then you go down to \$100,000, \$50,000. I can't answer you on that basis. I have to know all the facts and who the potential defendant was, what other elements of damage might work in this thing which had not occurred to us here.

You are a skillful attorney—I presume you are an attorney; maybe I am mistaken—but let us pretend you are. You would know that there would be probably more than one or two horns to the attack you might mount.

Mr. CUMMINGS. I would like to turn the action around.

You are counsel for the company defending this action. I haven't done this, of course. But you know as well as I do that when you are up against a shopgirl, and you start grinding them down with depositions at a dollar and a quarter a page, and hearing after hearing and motion after motion—somebody has to finance that lawsuit for 3½ years.

You are suggesting that the lawyer, this little fellow who is a litigator whom you are going to recommend the lawsuit to, realistically can be expected to finance a lawsuit for 3½ years, against a corporation whose attorney knows he can grind you down with depositions and motions.

I just put it to you that realistically if there is no Government agency which can "be her lawyer," in other words bring the action in her name one way or another through an administrative proceeding, realistically no lawyer who is not a saint and a millionaire besides is going to take that case.

Mr. ARMSTRONG. I say there are many lawyers who will take that case, because a company of the stature and size involved in that kind of chicanery is always going to lose, and always does, and we lie awake nights figuring out ways to make sure we don't commit any of the egregious acts to which you refer because we are sitting at the pinnacle. We are ripe for attack; we don't want it; we don't feel we can afford it; we know we will lose.

The CHAIRMAN. Cocounsel.

Mr. GORDON. Let's go back to the investment in Woolworth real estate.

Would you state who is the administrator of the Woolworth retirement plan and what individuals are on that administrative body?

Mr. ZIMMERMANN. The retirement plan is administered by a retirement plan committee appointed by the board of directors. Currently

it is composed of six directors of the company: One, the chairman, the president, the two executive vice presidents; the vice president for finance and the vice president for personnel. That is the present composition of the retirement plan committee.

Mr. GORDON. What does your trust agreement with the corporate trustees say as to the responsibility and discretion for investment of the plan?

Does the corporate trustee have unlimited discretion on the retirement plan, or does the committee direct the corporate trustees as to what investments to make?

What arrangement do you have with the corporate trustee?

Mr. ZIMMERMANN. As of today, the corporate trustee has full discretion over the account. The retirement plan committee retains the right to direct policy or direct investment in the event they would want to exercise that discretion.

But, basically, the trustee has the direction of the investment in its hands as of now.

We are also in the process of appointing two investment advisers who will manage a portion of the fund. The trustee will act as custodian of all securities. However, the two advisers will have discretion within the framework of the entire trust and it will be their responsibility to manage the portion of the fund that is assigned to them.

Mr. GORDON. Now, if today or tomorrow the retirement committee, which consists of directors of Woolworth, directed the bank trustee to purchase more real estate of Woolworth, lease it back or compose whatever arrangements they would wish, under the existing trust instrument would the bank trustee have to follow those instructions?

Mr. ZIMMERMANN. The real estate is covered under section 3 of our trust agreement.

Mr. GORDON. I assume there would be adequate rental, adequate consideration, all those things.

The question I have is: If today the retirement committee directed the corporate trustee to buy more properties of Woolworth for the fund, would he have to comply with that directive, assuming that it otherwise met the conditions as to the purchase price, adequate consideration, and so on?

Mr. ZIMMERMANN. Yes. If the trustees determined that this was an adequate investment for the trust fund and acquiesced in that decision, yes, they could buy more. If the trustees felt that this was not a good investment, they could recommend to the retirement committee that they not enter into such a transaction.

If it was still insisted upon by the retirement plan committee, presumably the trustee would take the only other alternative it would have and that would be to resign.

Mr. GORDON. Now, I am assuming that the transaction is perfectly adequate from an investment standpoint, if instructions were issued to the bank to buy more property of Woolworth and the bank regarded it as a sound investment would it have to follow those instructions?

Mr. ZIMMERMANN. They would follow the instructions under those circumstances if it was an adequate investment. They don't have to. It would be judgmental. If their judgment coincided with that of the

retirement plan committee, they would enter into such a transaction and they could under the terms of the trust agreement.

Mr. GORDON. What would happen if the corporate trustee determined that it did not like those investment instructions?

Mr. ZIMMERMANN. In that event, they could recommend to the retirement plan committee that they not enter into such a transaction.

If the retirement plan committee insisted that this be consummated, their only alternative would be to resign as trustees. That is not a step that would be lightly taken, nor is it a step that the retirement plan committee would ignore.

Mr. GORDON. In effect, what you are saying is that the retirement committee, which consists of directors of Woolworth, has the ultimate power and authority to invest the fund even though they may, and probably would, as you say, respect the wishes of the corporate trustee or the opinion of its investment advisers. In other words, legally, the way the trust instrument is constituted now, they have the ultimate authority to invest the funds.

Mr. ZIMMERMANN. Ultimately; yes.

The trust agreement can be amended by the company at any time. So that again it has the ultimate authority.

Mr. GORDON. Let us assume that the value of the real estate held in Woolworth properties declined in value. This is clearly a hypothetical situation. Let us assume that that is the case. The corporate trustee, on the basis of what you have just testified to, would then make a determination to unload that property and get better investments at an appropriate time and in an appropriate way.

Would that be a correct statement?

Mr. ZIMMERMANN. There would be a number of things that would happen.

If there were a decline, and we presume this would be over a period of time, we would feel the impact of this, first from the actuary who would indicate the cost of the plan is going up because of the fact that the value of the investment was going down, and the company would have to put up more money. The company and trustees would have to devise ways of increasing the return into the fund.

If the real estate was one of the affected investments, it would be dealt with.

Mr. GORDON. Let us assume that the bank at some point in time recommends that substantial portions of Woolworth real estate be sold because it has declined in value and better investments should be sought. Would it not be the case, the way the present trust agreement is written, that the retirement committee, which consists of members of the board of directors, could override that advice given by the corporate trustees, even though the corporate trustees might resign?

Mr. ZIMMERMANN. I will answer that question in the context that first off it is an assumption, because this is not happening. The value of the property is not declining in that respect.

However, the company would be faced with the hard choice of ignoring the recommendation of the trustee, the trustee in turn recognizing its fiduciary responsibility in giving the advice. The company would be faced with the prospect of ignoring this advice and perhaps suffering the consequences of ignoring through some outside attack.

Mr. GORDON. Do you see any possible conflict of loyalty which might arise by virtue of the fact that the retirement committee, which consists of members of the board of directors of the Woolworth Co., would be responsible ultimately for making a decision about unloading Woolworth's properties if that necessity should ever arise?

Mr. ZIMMERMANN. I don't see any conflict at all.

I think the interests are really the same. The interest of the trustee is in producing income for the fund and the interest of the board of directors, if you will, is in seeing to it that the fund gets the ultimate in income.

From that standpoint, I don't see any conflict of interest.

Mr. GORDON. I take it in the future, if it should turn out that again, aside from any other consideration about investing in common stocks, that Woolworth real estate appears desirable, that this fund, this committee, and this corporate trustee, would have no hesitation about purchasing Woolworth real estate.

Mr. ZIMMERMANN. That again is an assumption for the future and is something that presupposes a certain set of conditions.

The CHAIRMAN. Thank you very much, gentlemen.

The retirement booklets of F. W. Woolworth Co. will be included in the record.

(The booklets subsequently supplied follows:)

RETIREMENT PLAN

For Employees of

F. W. WOOLWORTH CO.

AS AMENDED THROUGH JANUARY 1, 1958

F. W. WOOLWORTH CO.

OFFICE OF THE PRESIDENT
AND CHAIRMAN OF THE BOARD

WOOLWORTH BUILDING
NEW YORK 7, N. Y.

May 21, 1958

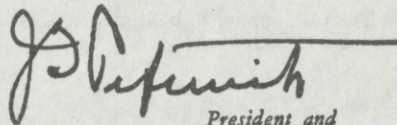
The Retirement Plan for Employees of F. W. Woolworth Co., which became effective on January 1, 1946, was amended on January 1, 1951 to incorporate certain improvements so that an employee with many years of service would upon retirement have some minimum annuity. It is gratifying that the amendment providing a minimum annuity, as approved by our Board of Directors and the majority of the stockholders, has benefited a number of employees whose salary did not exceed \$4,800.00 per year.

Additional amendments, which had been contemplated but have been delayed because of costs, have now been made effective as of January 1, 1958. The new amendments affect only those members of the Retirement Plan whose normal retirement dates and termination of employment are subsequent to January 1, 1958.

The provisions of the amended plan are contained in the following pages of this booklet.

Very truly yours,

F. W. WOOLWORTH CO.

A handwritten signature in dark ink, appearing to read "J. S. Pennington", written over a horizontal line.

*President and
Chairman of the Board*

RETIREMENT PLAN

EFFECTIVE DATE: JANUARY 1, 1946

as amended through January 1, 1958

ELIGIBILITY

Each full-time employee who is performing his work with the Company in the United States or is an Executive Office representative paid from the United States (but not including persons acting only as directors) becomes a member of the plan if he* meets all of the following requirements:

- (a) He was in the employ of the Company on December 31, 1945.
- (b) He had completed at least five years of continuous service as a full-time employee before January 1, 1945.
- (c) He had attained age 35 but had not attained age 65 before January 1, 1945.

Each other present or future full-time employee performing such services will become a member of the plan as of the January 1 next following his 35th birthday or completion of five years of continuous service, whichever is later.

Service rendered to the Armed Forces will be considered as service to the Company in determining length of service as a full-time employee, provided the employee

- (a) was a full-time employee of the Company when he left to enter the Armed Forces,

* The plan applies to both men and women, and the masculine pronoun is used to refer to both sexes.

- (b) makes application for reemployment within ninety days after discharge from the Armed Forces, and
- (c) is reemployed as a full-time employee within ninety days after such application.

If a member of the plan terminates service and is reemployed at a later date, he will be considered as a new employee.

Alaska and Hawaii will be considered as part of the United States for the purpose of determining whether an employee is performing his work with the Company in the United States. Service rendered to a foreign subsidiary of the Company will be considered as service to the Company in determining length of continuous service as a full-time employee, provided the employee was a full-time employee of the Company when he became an employee of such subsidiary.

COST OF PLAN

The entire cost of the plan is to be paid by the Company.

RETIREMENT DATE

The normal retirement date is the January 1st next following attainment of age 65.

At any time after the calendar year in which a member has both completed fifteen years of continuous service as a full-time employee and attained age 55, he may, with the consent of the Company, retire on a reduced amount of Retirement Annuity, computed as provided under the heading "Amount of Retirement Annuity".

RETIREMENT ANNUITY PAYMENTS

Retirement Annuity payments commence on the normal retirement date and will be payable in monthly installments ending with the last monthly payment preceding the member's death. In case he shall have elected the joint annuity form of Retirement Annuity and shall be survived by his Joint Annuitant, then payments will continue after his death until the last monthly payment preceding the death of the Joint Annuitant.

If a member is permitted to remain in service after his normal retirement date, his Retirement Annuity payments will commence on the first day of the month coinciding with or next following his actual retirement and will be payable at the same monthly rate as if he had actually retired on his normal retirement date.

Any retirement income amounting to less than \$120 a year may, at the option of the Company, be paid in a lump sum or in installments which shall be the actuarial equivalent of such retirement income.

Social Security old age insurance benefits do not commence before age 65 except that in the case of a female they may commence as early as age 62. A member retiring before the date on which such benefits commence may elect, by not less than 60 days' written notice to the Company, to anticipate them and thereby receive a larger Retirement Annuity until they commence, reduced thereafter by the estimated amount of his old age insurance benefits under the Social Security Act, to provide, insofar as practicable, a uniform income, including his old age insurance benefits, throughout his lifetime after retirement. If the member has elected the joint annuity form of Retirement Annuity, such election may be made only with the consent of the Company.

AMOUNT OF RETIREMENT ANNUITY

(A) *For Service After 1956*

The Company intends to provide in each year, commencing with the year 1958, for each employee who was a member of the plan on the first day of the preceding calendar year and who had not then reached his normal retirement date an annual Retirement Annuity equal to $11\frac{1}{4}\%$ of the first \$4,200 plus $11\frac{1}{2}\%$ of the balance (if any) of his annual base earnings as a full-time employee during such preceding calendar year; but this provision does not apply to those whose employment was terminated on or before January 1, 1958.

(B) *For Service Before 1957*

The Company intends to provide an additional Retirement Annuity for each employee who was a member of the plan on January 1, 1958 and whose normal retirement date and termination of employment are subsequent thereto, the annual amount of such additional Retirement Annuity to be equal to the greater of

- (a) $11\frac{1}{4}\%$ of the member's average annual base earnings (excluding, however, any earnings in any year in excess of \$40,000) as a full-time employee during his credited service in the years 1937 to 1944 inclusive, multiplied by the number of calendar years of his credited service to December 31, 1944, plus $11\frac{1}{4}\%$ of his annual base earnings (excluding, however, any earnings in excess of \$40,000) for each succeeding calendar year of his credited service to and including the year 1956,

or

- (b) 1% of his annual base earnings as a full-time employee for the year 1956, multiplied by the number of calendar years of his credited service to December 31, 1956.

In the case of any member who was also a member of any of the Company's prior retirement plans, the retirement annuity which has been purchased for him under such prior plans will be deducted, for the purpose of the computation under (a) above, from that portion of the Retirement Annuity to be provided for him with respect to his credited service to December 31, 1944, or, for the purpose of the computation under (b) above, from the total amount of Retirement Annuity to be provided for him with respect to his credited service to December 31, 1956.

(C) *"Annual Base Earnings" and "Credited Service" Defined*

"Annual base earnings" as used above in (A) and (B) of this section means the member's total earnings for the year, excluding overtime payments, earnings received for work performed outside of the United States (except as an Executive Office representative paid from the United States) and earnings received for work in any year at the end of which the member is not in the service of the Company as a full-time employee for any reason other than authorized leave of absence. For the purpose of determining the average annual base earnings during the credited service from January 1, 1937 to December 31, 1944, inclusive, of a member who was on authorized leave of absence, other than for service in the Armed Forces, during part or all of a year in this period, his annual base earnings for that year or for the preceding year, whichever are greater, will be used; and if the member was absent by reason of service in the Armed Forces during part or all of a year in this period his annual base earnings with respect to such year will be considered as equal to his annual base earnings during the year preceding the year in which he entered the Armed Forces. With respect to any year after 1944 during part or all of which the member was in the Armed Forces, his annual base earnings during the year preceding the year in

which he entered the Armed Forces or during the year in which he returned, whichever is greater, will be used. If a member is in the Armed Forces at the time a Retirement Annuity would otherwise be provided for him, it will be provided for him after he meets the requirements described in the third paragraph under the heading "Eligibility".

If an employee of the Company becomes an employee of a foreign subsidiary of the Company as an Executive Office representative, and if he is then a member of the plan, his earnings as such employee, so long as he shall continue to act as an Executive Office representative, will be considered, for all purposes of the plan, as earnings received as an Executive Office representative paid from the United States, although not in fact so paid; and in computing the amount of his Retirement Annuity, such earnings will be expressed in terms of United States currency on such reasonable basis as he and the Company shall from time to time agree.

"Credited service" as used above in (B) of this section means the member's continuous service as a full-time employee from the January 1st following the date he attained age 35 or the date he completed five years of continuous service as a full-time employee, whichever is later, but shall not include his service in any year after the year in which he attains age 65. Credited service includes service rendered to the Armed Forces and service rendered to a foreign subsidiary of the Company, subject to the conditions stated under the heading "Eligibility".

(D) Minimum Retirement Annuities

The Company intends to provide for each employee who has completed twenty five years of continuous service as a full-time employee at his normal retirement date a Retirement Annuity which, when added to his Primary Insurance Benefit under the Social Security Act and any retirement annuity which has been purchased for him under prior plans, will produce a monthly

retirement income, computed on the basis of his average monthly earnings (excluding overtime payments and earnings received for work performed outside of the United States except as an Executive Office representative paid from the United States) for the last five calendar years of his service, of not less than the following:

90% of such average monthly earnings up to \$100

40% of such average monthly earnings above \$100 and up to \$200

35% of such average monthly earnings above \$200 and up to \$400

If the member has elected the joint annuity form of Retirement Annuity, the above minimum would necessarily have to be reduced.

(E) Early Retirement

The Company intends to provide for a member retiring before his normal retirement date pursuant to the second paragraph under the heading "Retirement Date", at his election, either

- (a) commencing on his normal retirement date, the amount of Retirement Annuity accrued for him to the end of the calendar year coinciding with or next preceding such retirement,

or

- (b) commencing on or after his early retirement date, the amount of Retirement Annuity so accrued for him, reduced for the rest of his life at the rate of 4% for each year from his annuity commencement date to his normal retirement date.

If, however, the member so retiring (1) has completed not less than twenty-five years of continuous service as a full-time employee to the end of the calendar year coinciding with or next preceding such retirement and (2) is within six years of his

normal retirement date, then the Company intends to provide for him, at his election, either

- (a) commencing on his normal retirement date, not less than the amount of Retirement Annuity provided for under the heading "Minimum Retirement Annuities",

or

- (b) commencing on or after his early retirement date, not less than the amount of Retirement Annuity provided for under the heading "Minimum Retirement Annuities", reduced for the rest of his life at the rate of 4% for each year from his annuity commencement date to his normal retirement date. In order to elect this option (b), he must exercise the option respecting his Social Security benefits provided for in the fourth paragraph under the heading "Retirement Annuity Payments".

(F) *Benefits under Social Security Act*

Except as above provided in respect of Minimum Retirement Annuities, all benefits provided by this plan are separate from and in addition to the benefits provided by the Social Security Act.

JOINT ANNUITY OPTION

Any member may elect, on a form which will be supplied by the Company on request and subject to the conditions hereinafter stated, to convert the Retirement Annuity otherwise payable to him into a joint and survivorship Retirement Annuity which is the actuarial equivalent thereof, in which case a reduced Retirement Annuity will be paid to him as long as he lives and, after his death, will be continued in the same amount or in a reduced amount, as designated by the member, during the remaining lifetime of a person (known as the Joint Annuitant) named by him.

This optional form of Retirement Annuity may be elected at any time more than five years before the member's Retirement Annuity payments commence; otherwise, satisfactory evidence of his good health will be required.

At the time the election is made, the member names his Joint Annuitant, the date on which his Retirement Annuity is to commence and the proportion of the Retirement Annuity that the Joint Annuitant is to receive after his death. The reduction in Retirement Annuity depends upon the age and sex of the member and the Joint Annuitant when Retirement Annuity payments are to commence and on the proportion of the member's Retirement Annuity that the Joint Annuitant is to receive. If the member dies before Retirement Annuity payments commence, there are no benefits payable to the Joint Annuitant or to any other beneficiary. If the Joint Annuitant dies before the Retirement Annuity payments commence, the election of the option is cancelled automatically, and payments will be made as though the election had not been made.

The provisions of the next preceding paragraph do not apply in the case of a member who is permitted to remain in service after his normal retirement date and whose Joint Annuitant is living on such date. In that case the election of the option remains in effect. If such member shall die after his normal retirement date, but before his Retirement Annuity payments commence, then payments to his Joint Annuitant, if living, will commence on the first day of the month next following the month in which such member died.

A member who has elected this optional form of Retirement Annuity cannot revoke or change the election in any way, nor may an early retirement date be elected, except with the consent of the Company.

TERMINATION OF SERVICE BEFORE RETIREMENT

If a member's service as a full-time employee is terminated before his Retirement Annuity payments commence, and before his rights become vested as provided in the following paragraph, he will receive no benefits under this plan.

If a member's service as a full-time employee is terminated before his Retirement Annuity payments commence, and after December 31 of the year in which he has completed fifteen years of continuous service as a full-time employee after the year in which he attained age 35, he will retain full credit for the amount of Retirement Annuity, commencing on his normal retirement date, accrued for him prior to termination of his service.

CLAIMS OF CREDITORS AND ASSIGNMENTS

No benefits under this plan may be assigned.

The Retirement Annuities payable under this plan are exempt from the claims of creditors except so far as may be contrary to the laws governing in each set of circumstances.

GENERAL PROVISIONS

Group Annuity Contract No. GA-0170-R issued by Aetna Life Insurance Company constituted the entire plan until the year 1951, when the Company entered into a Trust Agreement, dated as of January 1, 1951, with Irving Trust Company for the purpose of establishing with the Trustee a Trust Fund consisting of contributions to be made by the Company from time to time to provide for the purchase of annuities from the Insurance Company when and as required by the provisions of the plan. The Company may at any time and from time to time change

the Trustee and any or all of the provisions of the Trust Agreement, provided that no change in the Trust Agreement shall authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the members of the plan and their Joint Annuitants, except as provided under the heading "Change, Suspension or Discontinuance of Plan".

Prior to the end of the year 1958, the Company will have purchased from the Insurance Company, or will have contributed to the Trust Fund an amount estimated to be sufficient to purchase from the Insurance Company, for each employee covered by the plan the full amount of Retirement Annuity accrued for service before January 1, 1958 under the provisions of the plan as in effect prior to January 1, 1958. The Company intends to contribute annually to the Trust Fund over a 20-year period, beginning with the year 1958, a total amount estimated to be sufficient to purchase from the Insurance Company the additional amounts of Retirement Annuity for service before 1957 called for by the plan as it has now been amended. The Company also intends in each year after the year 1958 to contribute to the Trust Fund an amount estimated to be sufficient to purchase from the Insurance Company for each employee covered by the plan the amount of Retirement Annuity accrued for service during the preceding calendar year.

Before any member's Retirement Annuity commences, he will be required to furnish to the Company a birth certificate. If an optional form of Retirement Annuity has been elected, a birth certificate of the Joint Annuitant is also required at the time when the option is elected. If a birth certificate cannot be obtained, such other evidence of date of birth as can be obtained may be submitted.

The Company may from time to time establish such rules for the administration of the plan as shall not be inconsistent with the provisions thereof.

The Company's determination, in accordance with its rules, shall be final and conclusive in respect to all questions relating to the plan, including questions as to eligibility, earnings, length and continuity of service, and termination of employment.

The plan will be administered by a Retirement Plan Committee appointed by and holding office during the pleasure of the Board of Directors of the Company.

Inquiries regarding the plan should be addressed to:

Secretary, Retirement Plan Committee,
F. W. Woolworth Co.,
Woolworth Building, New York 7, N. Y.

The establishment of the plan shall not be held or construed to create a contract between the Company and its employees or to give any employee of the Company a right to be retained in its service or any right to benefits except in accordance with the provisions of the plan as herein set forth or as subsequently modified.

CHANGE, SUSPENSION OR DISCONTINUANCE OF PLAN

It is hoped and expected that the plan will be permanent, but the Company necessarily reserves the right to change, suspend or discontinue it at any time without previous notice to or consent of employees.

No change, other than the suspension or discontinuance of the plan, will adversely affect the amount of Retirement Annuity accrued for any member or his Joint Annuitant at the time of such change.

The Company may at any time or from time to time suspend, for such period as its Board of Directors shall deem advisable, its contributions to the Trust Fund and the accrual, during

such period of suspension, of benefits to the members under the plan.

If the plan is discontinued, no further contributions will be payable by the Company to the Trust Fund; each member, whether or not he remains in the service of the Company will receive, commencing at his normal retirement date, the Retirement Annuity which the Company has purchased for him from the Insurance Company; and the cash and other property then held in the Trust Fund shall be allocated for the benefit of the members and their Joint Annuitants, as follows:

First. There shall be set aside an amount equal to the reserve necessary to provide in full the Retirement Annuities payable in respect of members who have retired or who have reached their normal retirement dates. Such amount shall be apportioned among such members and their Joint Annuitants on the basis of the reserves necessary to provide their respective benefits. If the amount in the Trust Fund be insufficient for such purpose, the amount apportioned to each member and Joint Annuitant shall be reduced in proportion to the ratio which the amount in the Trust Fund bears to the reserve necessary to provide such benefits in full.

Second. The balance in the Trust Fund shall be apportioned among the remaining members on the basis of the reserves necessary to provide their respective benefits accrued to the end of the calendar year coinciding with or next preceding the date of termination. If the balance in the Trust Fund be insufficient for such purpose, the amount apportioned to each member shall be reduced in proportion to the ratio which the amount in the Trust Fund bears to the reserve necessary to provide such benefits in full.

The amount apportioned for the benefit of each member and Joint Annuitant in accordance with the foregoing para-

graphs shall be applied, as shall be directed by the Retirement Plan Committee, (1) to payment in cash to such individual, or (2) to purchase of an insurance company contract for such individual, or (3) to the payment of a Retirement Annuity to such individual, by continuing the Trust Fund under the plan, of such amount as may be provided by such apportionment. Any balance remaining in the Trust Fund after the discontinuance of the plan and after the satisfaction of all liabilities thereunder with respect to members and their Joint Annuitants, because of erroneous actuarial computation, shall revert to the Company.

LIMITATIONS ON USE OF COMPANY CONTRIBUTIONS

(Ineffective After December 31, 1967)

In case at any time prior to December 31, 1967 (a) the plan shall be terminated, or (b) the full current costs of the plan shall not then have been met, then, notwithstanding anything in the plan to the contrary, the Company's contributions to the Trust Fund which may be used for the benefit of any employee who on January 1, 1958 was one of the 25 highest-paid employees, and whose anticipated annual Retirement Annuity under the plan exceeds \$1,500 shall not exceed the largest of the following amounts: (1) the contributions (or funds attributable thereto) which would have been applied to provide the Retirement Annuity for the member if the plan as in effect on December 31, 1957 had been continued without change, (2) \$20,000, or (3) the sum of (a) the contributions (or funds attributable thereto) which would have been applied to provide benefits for the member if the plan had been terminated on December 31, 1957, plus (b) an amount computed by multiplying the number of years after December 31, 1957 for which the current costs of the plan are met by (A) 20% of his annual compensation, or (B) \$10,000, whichever is smaller.

F. W. WOOLWORTH CO.

Retirement Plan



Revised January 1, 1971

To Woolworth and Woolco Employees:

In appreciation of the continued efforts of our employees the Company, years ago, installed a Pension Plan designed to supplement personal savings and social security benefits, and to provide members of the Plan who meet its requirements with a full measure of security during their retirement years. In order that you may more fully enjoy this period of future retirement, the Board of Directors has recently amended your Retirement Plan to provide you with the best of what is available among the various improvements inaugurated in the field of pension planning. Each of you will be advised of amendments made to the Plan as they occur from time to time.

The retirement benefit to which you may be eligible will be in addition to your Social Security benefit and any other provisions you may have made.

The keynote of this Plan is SECURITY — security for you. This is your Plan—exclusively for your benefit and you owe it to yourself as well as to your dependents to be fully acquainted with its terms and provisions.

The purpose of this booklet is to describe the provisions in terms of what they mean to you. If, after reading this booklet, you have any questions, your supervisor and/or manager will be glad to discuss the Plan with you or secure additional information for you.

Lester A. Burcham
Chairman of the Board

Highlights of the Pension Plan

Social Security Benefits are in addition to retirement plan benefits.

Enter in the Plan is automatic as of the January 1st following attainment of age 30 or completion of 5 years of continuous service, whichever is later. The

Company pays all of the cost.

Under the Plan, benefits are payable for life.

Retirement on the January 1st following age 65, or with Company consent even as early as the January 1st following age 55 and 15 years' continuous service.

Individual earnings and service determine benefits.

Termination with vested rights provides retirement benefits in the future.

You may, by selecting one of the options, continue retirement benefits to a named beneficiary after your death.

The big question: how much will my benefit be?

The amount of your benefit is based on two items:

- (a) Past Service Benefits.
- (b) Future Service Benefits.

Past Service Benefits

For service before January 1, 1971, the following formula will apply to the lesser of (i) 1970 annual earnings, or (ii) the average of the highest five consecutive years' annual earnings during the last ten years preceding retirement:

- 1% of the first \$4200 of earnings, plus
- 1½ % of the next \$15,800 of earnings, plus
- ½ % of the next \$80,000 of earnings, plus
- ¼ % of the balance;

multiplied by the number of years of service in the Plan before January 1, 1971.

If the benefits that you have already earned under the Plan as of December 31, 1970 are greater than those provided by the above formula, you will receive the higher benefit.

Plus Future Service Benefits

For service after January 1, 1971:

- 1¼ % of the first \$6,600 of annual earnings,
- plus
- 1½ % of the balance in excess of \$6,600.

Entry in the Plan is automatic

If you are not already a member of the Plan and have not attained your 65th birthday, you will automatically be enrolled and start to accrue benefits as of the January 1st following your attainment of age 30 and your completion of 5 years of continuous service with the Company.

You do not have to do anything to join, as enrollment is automatic. A certificate of membership will be issued after you have accrued benefits for one full calendar year.

Cost of the Plan

The Company assumes the entire cost of the Plan. No employee contributions are required.

The Company, of course, also matches your contribution to Social Security.

Retirement benefits begin

At Normal Retirement Date

This date is the January 1st next following your 65th birthday. Benefits may, however, begin:

At an Early Retirement Date

This date can be as early as the January 1st following your 55th birthday provided you have then completed at least 15 years of service as a full-time employee and obtained the consent of the Company. The monthly retirement benefit payable at an early retirement date will be less than the benefit payable at your normal retirement date because:

- (a) Your period of participation in the Plan will be shorter, and
- (b) The amount of retirement benefit will be reduced at the rate of 4% for each year of early retirement.

Here's how your benefits are figured

As soon as you become a member of the Plan, you begin to build up benefits for your retirement. Your retirement benefit for each year of membership prior to January 1, 1971 is based on the Past Service Benefit Formula described on page 4.

Benefits for each year after January 1, 1971 are based as follows:

1¼ % of the first \$6,600 of annual earnings,
plus

1½ % of the balance in excess of \$6,600.

Annual earnings means your total pay for the year but does not include overtime.

Example 1

Here are two examples

Let's say you entered the Plan on January 1, 1951 and that you will have 35 years of coverage when you retire as of your normal retirement date — January 1, 1986. Your annual earnings for 1970 were \$5,000 and for this example we will assume annual earnings will be the same through 1985.

Past Service Benefit (1951-1970)

$$1\% \text{ of } 4,200 = 42.00$$

$$1\frac{1}{2}\% \text{ of } 800 = 12.00$$

Yearly past

$$\text{service benefit } 54.00 \times 20 \text{ years} = \$1,080.00$$

Future Service Benefit (1971-1985)

$$1\frac{1}{4}\% \text{ of } 5,000 = 62.50 \times 15 \text{ years} = 937.50$$

$$\text{Total annual benefit} \quad \$2,017.50$$

Example 2

Let's say you entered the Plan on January 1, 1951 and that you will have 35 years of coverage when you retire as of your normal retirement date — January 1, 1986. Your annual earnings for 1970 were \$6,000. We will assume that beginning January 1, 1976 annual earnings will increase to \$7,500 and remain at that amount through December 31, 1985.

Past Service Benefit (1951-1970)

$$1\% \text{ of } 4,200 = 42.00$$

$$1\frac{1}{2}\% \text{ of } 1,800 = 27.00$$

Yearly past

$$\text{service benefit } 69.00 \times 20 \text{ years} = \$1,380.00$$

Future Service Benefit (1971-1985)

$$1\frac{1}{4}\% \text{ of } 6,000 = 75.00 \times 5 \text{ years} = 375.00$$

plus

$$1\frac{1}{4}\% \text{ of } 6,600 = 82.50$$

$$1\frac{1}{2}\% \text{ of } 900 = 13.50$$

$$96.00 \times 10 \text{ years} = 960.00$$

$$\text{Total annual benefit} \quad \$2,715.00$$

Alternate forms of benefit payments

You may elect an optional form of payment available under the Plan. Such election must be made at least two years prior to the date it is to take effect. These options are as follows:

(a) — Joint and survivor annuity option effective upon retirement

At retirement, this option provides reduced payments to you for life; however, upon your death, after retirement, the same payment or some percentage of it, depending upon your election, will be paid to the person that you name as your joint annuitant for the rest of his or her life.

(b) — Joint and survivor annuity option before retirement

At retirement, this option provides reduced payments to you for life. In the event of your death prior to retirement, but after the designated effective date of this option, payments will be made to the person that you name as your joint annuitant for the rest of his or her life.

(c) — Certain Payment Option

At retirement, this option provides reduced payments to you for life. In the event of your death, before payments have been made for a certain period of either 60 or 120 months, whichever you elect, your beneficiary will receive the same payments for the balance of the period certain, at which time they will cease.

Social Security adjustment option

In the event you retire before you are eligible for Social Security Benefits, you may elect this option and thereby receive a higher benefit prior to Social Security date, reduced thereafter by the estimated amount of your Social Security Benefit.

Vested Rights

Your rights in the Plan become vested on the January 1st following age 35, or the January 1st following 15 years of continuous service, whichever is later. Service must be continuous and a break in service will require complete requalification. If your service with the Company terminates before you have attained vested rights, there will be no benefits payable under the Plan.

Future of the Plan

It is hoped and expected that the Plan will be permanent; however, the Company does reserve the right to change, suspend or discontinue the Plan at any time without previous notice to or consent of employees.

If the Plan is discontinued, each member, whether or not he remains in the service of the Company will receive, beginning at his normal retirement date, the retirement annuity which the Company may have purchased for him from an insurance company under a prior plan. In addition, the cash and other property then held in the Trust Fund will be allocated for the benefit of the members and their joint annuitants or beneficiaries in accordance with the terms of disposition as set forth in the Retirement Plan.

Briefly that is the story of your Retirement Income Plan

It is a good plan, one which provides excellent benefits at no cost to you. This booklet contains the basic points of the Plan, but is not the official document. The full text of the Plan governs.

A copy of the Plan may be obtained by written request. Inquiries regarding the Plan should be addressed to:

Secretary,
Retirement Plan Committee
F. W. Woolworth Co.
Woolworth Building
233 Broadway
New York, New York 10007

Mr. ZIMMERMANN. May we also place in the record the certificate of membership which we provide for our employees when they become members of the pension plan?

We would also like to place in the record the individual statements which we give to our employees annually.

Senator WILLIAMS. When do they get that?

Mr. ZIMMERMANN. During the course of the year, after the pension benefit is computed.

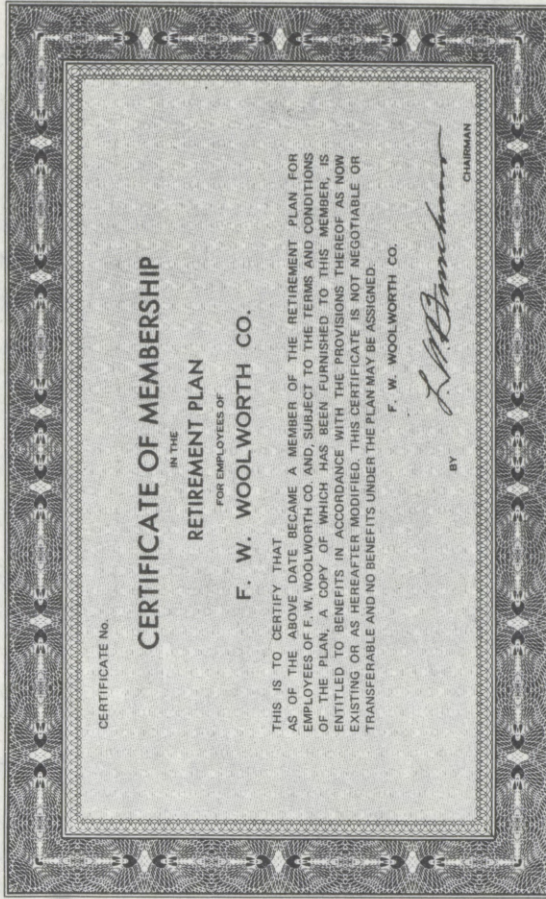
Senator WILLIAMS. After they have vested?

Mr. ZIMMERMANN. No, sir. They get that immediately upon becoming a member.

Senator WILLIAMS. A member or an employee?

Mr. ZIMMERMANN. A member of the pension plan, age 30 and 5 years service.

(The certificate of membership and the individual statements subsequently supplied follow:)





**F. W. WOOLWORTH CO.
RETIREMENT PLAN**



NAME	CERTIFICATE NUMBER	NORMAL RETIREMENT DATE	NO. OF YRS. TO NORMAL RETIREMENT DATE	STATEMENT COVERS PERIOD ENDED DEC. 31	STORE NUMBER

Your Annual Pension Accrued to January 1, 1971 Under Prior Plan (1)	Additional Pension Granted because of Plan Revisions Effective January 1, 1971 (1)	Your Annual Pension Accrued to January 1, 1971 Under Revised Plan (1)	Your Total Estimated Annual Pension at Normal Retirement Date (2)	Your Estimated Annual Primary Social Security Benefit (3)	Your Total Estimated Annual Income at Normal Retirement Date
\$	\$	\$	\$	\$	\$

- (1) If you elect an early retirement date this amount will be reduced. (See over—"Early Retirement".)
- (2) This assumes that your service will be continuous and that your current compensation will not change. **AS YOUR EARNINGS INCREASE, SO DOES YOUR PENSION BENEFIT.**
- (3) If your Spouse is age 65 or over, this benefit will be increased by 50%. This estimate is based on your current earnings. The exact amount can not be determined until you retire.

If you leave the service of the Company, you may still be entitled to a benefit from the Plan. (See over—"Termination of Service".) Your vesting Status is

Vested ☐ Not Vested ☐

If you will be eligible to retire at Normal or Early Retirement Date within 2 years, and if you have not already done so, you may wish to elect an optional form of benefit, providing Death Benefits for your beneficiary. Election of an option will result in a reduced benefit, depending on your age and the age and sex of your beneficiary.

Please note that, to comply with Internal Revenue Service requirements, it was necessary to provide that the earnings used for computing past service benefits, 1970 earnings, not exceed the average of the 5 highest consecutive years' earnings during the 10 years preceding retirement. The above figures assume that 1970 earnings apply. If they do not apply, the revised Plan benefits shown are somewhat overstated.

All possible care was taken in completing this report, however, any error will not alter the terms of the Plan. Your rights, privileges and benefits under the Plan are in accordance with the terms, provisions and conditions contained in the Plan.

SUMMARY OF PLAN PROVISIONS

EFFECTIVE DATE:	January 1, 1946 as amended through January 1, 1971.
ELIGIBILITY:	January 1st next following 30th birthday and completion of 5 years of continuous service. Any employee working 60% or more of the regular work week is considered a full-time employee. A change to part-time employment (less than 60% of the regular work week) cancels your coverage in the Plan unless you have vested rights. There is no provision in the Plan for any break in service other than authorized Leave of Absence.
NORMAL RETIREMENT:	
DATE—	January 1st next following 65th birthday.
BENEFIT—	A. For service after 1970—$1\frac{1}{4}\%$ of the first \$6,600 plus $1\frac{1}{2}\%$ of excess annual base earning in prior year. B. For service prior to 1971—the greater of (1) 1% of first \$4,200 of 1970 earnings* plus $1\frac{1}{2}\%$ of next \$15,800 plus $\frac{1}{2}\%$ of next \$80,000 plus $\frac{1}{4}\%$ of earnings over \$100,000, times credited service, or (2) Prior Plan benefit accrued to December 31, 1970. * not greater than average of highest 5 consecutive years' earnings prior to retirement.
EARLY RETIREMENT:	
DATE—	January 1, after age 55 and completion of 15 years of continuous service is the earliest date on which you may retire.
BENEFIT—	Normal Retirement Benefit accrued to Early Retirement Date reduced by $\frac{1}{5}\%$ for each month by which Early Retirement Date precedes Normal Retirement Date.
TERMINATION OF SERVICE:	If Non-Vested (Prior to January 1 after age 35 or prior to January 1 after completion of 15 years continuous service)—No benefit payable from Plan. If Vested (January 1, after age 35 and completion of 15 years' continuous service)—Normal Retirement Benefit accrued to Date of Termination payable at Normal Retirement Date, or on reduced basis at Early Retirement Date.
DEATH BENEFITS:	Payable prior to or after retirement only if optional form of benefit payment has been elected.
FORMS OF BENEFIT PAYMENT:	
NORMAL—	Monthly payments from Date of Retirement until death of member.
OPTIONAL—	Joint Annuity Option Prior to Retirement (2-year election period, must be eligible for Early Retirement). Joint Annuity Option at Retirement (2-year election period). Social Security Option. 60 or 120 month Certain and Continuous Option (2-year election period).
CONTRIBUTIONS:	
MEMBER—	None.
COMPANY—	Woolworth pays all costs.

The CHAIRMAN. Now the Kendall Corp. is our final witness this morning.

Mr. Boekenheide and Mr. Sullivan.

STATEMENT OF RUSSELL W. BOEKENHEIDE, CORPORATE DIRECTOR OF PERSONNEL OF THE KENDALL CO.; ACCOMPANIED BY WILLIAM D. SULLIVAN, MANAGER, CORPORATE INSURANCE AND PENSIONS DEPARTMENT

Mr. BOEKENHEIDE. I have a statement I would like to read into the record.

The CHAIRMAN. Very good.

Mr. BOEKENHEIDE. My name is Russell W. Boekenheide, corporate director of personnel of the Kendall Co. In this position I report directly to the president and chief executive officer of the company and am responsible for the development of Kendall's personnel, compensation and labor relations programs.

With me is my associate, William D. Sullivan, who has managed our corporate insurance and pensions department since 1961, and who is secretary of the corporate pension committee.

We are pleased to be here and we are hopeful that we can be of assistance to the committee. Unfortunately, we did not receive our invitation to appear until last Wednesday. As a result, we were not able to supply you with a prepared statement in advance.

In addition, the intervening weekend and Monday holiday has limited our preparations.

We had suggested a postponement, but your staff people preferred that we proceed. Accordingly, we are here and we will make every effort to supply you with as much meaningful information as possible.

COMPANY BACKGROUND

I might open by giving you a brief outline of the Kendall Co. as a background to the discussion of our supplemental retirement plan for hourly employees.

Kendall produces woven and nonwoven fabrics through its textile and fiber products divisions, and manufactures health and hygienic products through its other divisions.

The company sales were approximately \$237 million in 1970, on which net earnings were 3.9 cents per dollar of sales. We consider ourselves in a labor intensive industry.

Kendall is a national company with its corporate headquarters in Boston, Mass. The majority of our 6,000 hourly employees work in 24 of our manufacturing facilities located in the New England, Southeast and Midwestern parts of the country.

KENDALL SUPPLEMENTAL RETIREMENT PLAN FOR HOURLY EMPLOYEES

The Kendall Co. completed and returned the detailed questionnaire for the committee outlining our supplemental retirement plan for hourly employees. We also have presented further background to members of the committee staff during an interview in our Boston offices on September 28, 1971.

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

STUDY OF THE CHEMISTRY OF THE
POLYMERIZATION OF THE VINYL MONOMERS
BY THE METHOD OF KINETIC ANALYSIS
OF THE POLYMERIZATION OF VINYL MONOMERS
BY THE METHOD OF KINETIC ANALYSIS

BY
J. H. KILPATRICK
AND
J. H. KILPATRICK

CHICAGO, ILLINOIS
THE UNIVERSITY OF CHICAGO PRESS
1950

CHICAGO, ILLINOIS
THE UNIVERSITY OF CHICAGO PRESS
1950

CHICAGO, ILLINOIS
THE UNIVERSITY OF CHICAGO PRESS
1950

CHICAGO, ILLINOIS
THE UNIVERSITY OF CHICAGO PRESS
1950

CHICAGO, ILLINOIS
THE UNIVERSITY OF CHICAGO PRESS
1950

IS THE SERVICE

3. Employees retiring at age 65 with less than 25 years of service have their benefits appropriately reduced for each year under 25 years of service.

4. Employees may be permitted to retire early when they reach age 60 with 20 years of service. In this event, also, their benefit is reduced for each month they retire before age 65.

5. The plan contains an appropriate appeals procedure should an employee question his status under the plan.

FUNDING

Commencing with the adoption of the plan in 1951, the company's plan was to fund current cost (normal cost) and accrued interest each year and to amortize initial liability over 30 years. Actually, the company funded substantial amounts which were in excess of the minimum required for qualified plans under Treasury regulations.

This approach, coupled with changes in social security levels, has resulted in a fully funded position for the plan since 1960.

From its start, the plan has been funded with a financial trustee, the First National Bank of Boston. The company feels its funding approach has been most sound. There has never been any investment in Kendall stock or Kendall borrowings from the trust since its inception.

VESTING

As you will note from the questionnaire, the company can only estimate the number of plan participants since its inception—we indicated that probably about 24,000 people have participated over the years with approximately 6,000 active employees now eligible to receive benefits upon retirement. We estimate that no more than 3 percent of the 18,000 employees who left the company had as much as 15 years service.

Under our plan, the earliest vesting occurs at age 65 with 15 years service. The plan was designed initially to provide supplemental benefits to social security for long service Kendall employees and such an approach has been continued over the years.

We recognize that earlier vesting is an increasingly important consideration in evaluating a pension plan. It is one of several significant changes under current discussions in retirement planning. Up until this time, a shorter vesting provision has not been a significant item in our plans.

SUMMARY

With this, we believe we have highlighted the significant features of our plan and the reasons for certain of its provisions. For further specific details, you have copies of our questionnaire.

Beyond this, we are available for any further questions you might have.

I have asked Mr. Sullivan, our insurance and pensions manager, to answer any questions concerning the plan of a technical or financial nature since he is most familiar with these matters.

Thank you for your attention.

We appreciate this opportunity to discuss this very important subject with you.

The CHAIRMAN. Thank you very much.

Now let me get this straight in my own mind how you link with social security.

The way I heard it, it seems to me that as social security benefits go up, your benefits go down.

Mr. BOEKENHEIDE. That is true.

We compensate for this by raising the maximum level of the plan. Initially, when the plan was put in in 1951, there was \$100 maximum. That has moved up to \$215 maximum, so that the amount payable to the employee as supplemental retirement benefit has remained relatively constant.

The CHAIRMAN. The dollars remain constant?

Mr. BOEKENHEIDE. For example, as I pointed out, presently employees who have achieved 25 years of service by age 65 will receive a benefit of \$215 per month less:

- (a) their primary social security benefit; or
- (b) 80 percent of the maximum primary social security, whichever is the smaller.

In this case, assuming a maximum social security benefit of \$218.80, we would take 80 percent of that maximum figure which would come to \$175.04 and the employee would in that particular example receive about \$40.00.

Now, if social security goes up again, the way we would normally do it is raise the maximum under our plan. We would raise the \$215 figure.

The CHAIRMAN. This is one group of employees who are not clamoring for social security increases.

Mr. BOEKENHEIDE. As I indicated, that is considered a supplement to the social security plan.

The CHAIRMAN. This was the thinking back at the inception of the plan in 1951?

Mr. BOEKENHEIDE. Yes; it was.

The CHAIRMAN. Are you revising that thinking?

Mr. BOEKENHEIDE. We are engaged in a continual review of all our benefits. This is the one that is on the agenda to see if this is the same concept that we ought to continue at this time.

As I indicated, it has been a matter over these years of priorities in terms of available compensation dollars. The emphasis, in our organization, at least, has been on other areas.

The CHAIRMAN. What is the annual contribution of the company to the plan since 1960?

Mr. SULLIVAN. We have not put a cent in since 1960 because of the fact that when we started the plan there were capital moneys available to rather heavily fund initially. That, plus the fortuitous investments by the same corporate trustees that have always handled the fund, coupled with turnover and the increases in social security, has put us in a position since 1960 where we were fully funded.

As a result, we have chosen through negotiations and employee surveys and the like to put our dollars into hospital, surgical, major medical, life insurance, and, of course, wages, rather than in the pension areas, and the demand in the pension areas has not been that significant.

The CHAIRMAN. Now, is a brand-new employee covered under medical?

Mr. BOEKENHEIDE. Yes; he is; in most of our companies, it is paid fully by our company.

The CHAIRMAN. If the wife has a baby, you pay the hospital expenses, the maternity expenses, and the doctor?

Mr. BOEKENHEIDE. Yes.

The CHAIRMAN. What is the procedure there?

Mr. BOEKENHEIDE. In practically all our facilities, full room and board, hospitalization coverage is included, semiprivate room.

Our surgical schedule varies somewhat, based upon location. We consider them to be competitive. In some instances, they include payment for usual and customary surgical procedures which is considered one of the better plans.

We provide a \$15,000 major medical maximum in most of our plants; \$10,000 elsewhere.

We provide a weekly accident and sickness benefit which varies again according to plant and location, but runs up to \$60 per week.

We provide fully paid up life insurance that ranges from \$1,000 to \$3,000.

The CHAIRMAN. Do you fund that as a company matter or do you put all your employees into another insurance plan?

Mr. BOEKENHEIDE. Most of those coverages are either through John Hancock Insurance Co. or through Blue Cross or Blue Shield.

The CHAIRMAN. How do you handle dental in that?

Mr. BOEKENHEIDE. We do not have dental coverage at present in our plan.

The CHAIRMAN. How about the other disciplines in medicine, podiatry, is that in there?

Mr. BOEKENHEIDE. I assume that would be in the schedule.

The CHAIRMAN. Chiropractor?

Mr. SULLIVAN. I am not sure of that one now.

Mr. BOEKENHEIDE. It would be governed by the details of the plan as determined by the carrier. I couldn't answer that.

The CHAIRMAN. There is no vesting in your retirement fund?

Mr. BOEKENHEIDE. Well, vest at age 65. Some employees work beyond age 65. Assuming a normal retirement age, there is no vesting.

The CHAIRMAN. Therefore, portability is no problem; there is nothing to carry anywhere. There is no right.

Well, we will call this a "bare-bones" plan.

Mr. BOEKENHEIDE. We represent it as a supplement to social security.

The CHAIRMAN. You don't euphemize then; you tell your employees exactly that?

Mr. BOEKENHEIDE. That is correct. It is based upon the areas in which our plant is located, the nature of competitive plans in the area.

As I indicated, in 1951 this type plan in some areas in which we were located was considered a meaningful introduction in the pension planning area.

The CHAIRMAN. You have about 500 retired employees now beneficiaries under the plan?

Mr. BOEKENHEIDE. 631, I believe.

The CHAIRMAN. I have a note that says that their average monthly return under the plan is \$29.96.

Does that sound right?

Mr. SULLIVAN. I would say so because some of the members retired some time ago. We have a long-service group, particularly in the textile area. It is not unusual for them to have 40 or 50 years' service, quite a bit of longevity beyond the time required to qualify.

The CHAIRMAN. You are a national company?

Mr. BOEKENHEIDE. Yes.

The CHAIRMAN. You have employees in how many States?

Mr. BOEKENHEIDE. I would say at least a dozen. It would be Massachusetts, Wisconsin, Illinois, Kentucky, North Carolina, South Carolina, Alabama, Georgia, and Connecticut. I think I have covered them all.

The CHAIRMAN. We will include the company responses to our questionnaire where we think appropriate.

Thank you very much.

Mr. BOEKENHEIDE. Thank you, Mr. Chairman.

(The information subsequently supplied follows:)

United States Senate

SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D. C. 20510

April 5, 1971

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 73816
(Give No. assigned by U.S. Department of Labor.)

Part I. Identification

1. A. Name of Plan THE KENDALL COMPANY
- B. Address of Principal Office
of Plan 95 West Street Walpole, Mass. 02081
(Street) (City) (State) (ZIP Code No.)
- C. Name of Administrator W. D. Sullivan
- D. Name and title of individual(s) who prepared response for this study:
Warren H. Lovelace
- Telephone: 617-668-0175

Part II. Plan Profile

2. A. Year of Plan establishment Various
- B. Is the Plan qualified by the Internal Revenue Service?
- (1) Yes ☒ (2) No ☐ If "No," explain.

2. A -
The above-captioned File No. 73816 covers a number of plans making up our Non-Salaried Pension Trust Program. Many plans became effective at the inception date of the program November 1, 1951; others have been added since that time.

3. A. Date employer contributions to the Plan commenced (or reserves created) 1951
- B. Date initial benefit payments under the Plan were made (other than refund of employee contributions) 1951

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 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 6348B. Retired 563

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
530 CHICAGO
CHICAGO, ILL. 60637
U.S.A.

10. 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

1. Age 65 with 25 years of service: \$200 less the smaller of:
 - a) Employee primary Social Security benefit or
 - b) 80% of maximum primary Social Security benefit
2. Age 65 with less than 25 years of service: same as above except reduced 10% for each year less than 25.

B. Early retirement

1. With 25 years of service: same as 11 A. 1 except reduced by 1/2% per month for each month less than 65.
2. With less than 25 years of service: same as 11 A. 2 except reduced as in 11 B. 1

C. Disability

NO BENEFIT

D. Death

NO BENEFIT

E. Other (e.g., survivorship, temporary retirement, etc.) (specify)

NONE

12. Age and service requirements for obtaining benefits.

A. Normal retirement

Age 65 - 25 years of service

No

B. Early retirement

Age 60 - 20 years of service

C. Disability

Not applicable

D. Death

Not applicable

E. Other (e.g., survivorship, temporary retirement, etc.) (specify)

Not applicable

13. A. Specify the requirements of the vesting provision, i.e., age, service, type of separation, etc.

NO VESTING

- B. What percentage of accrued benefits are initially vested? ~~Not applicable~~
C. After how many years are all accrued benefits vested? ~~Not applicable~~
D. Specify the vesting formula (including whether such formula has retroactive effect).

NOT APPLICABLE

E. Specify any survivorship rights under the vesting provisions.

NONE

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.

NONE

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 arrangement (include data on any reciprocal arrangements entered into with other plans, including the identity of such other plans).

Full credit for service with The Kendall Company in transferring from one plan to another without a break in service

-
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.

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.

Not applicable

17. Specify the maximum age, if any, at which an employee is barred from membership in the Plan 50

*An employee with less than 15 years of service would not receive a pension.

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	514
(2) Early retirement	365
(3) Disability retirement	N.A.
(4) Death	N.A.
(5) Other	N.A.

- 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

None

- 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

None

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)

18,000 est.

- 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

17,100 est.

- 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)

5,000 est.

- 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

4,650 est.

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

18,000 est.

- 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

500 est.

- 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

1,000 est.

- 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

3,000 est.

- E. Within the past 5 years

5,000 est.

- F. Within the past 5 years with more than 15 years service under the Plan

100 est.

- G. Within the past 5 years with more than 10 years service under the Plan

300 est.

- H. Within the past 5 years with more than 5 years service under the Plan

2,000 est.

- I. Within the past 5 years due solely to voluntary separation

4,000 est.

- J. Within the past 5 years due solely to failure to meet continuous service requirements

10 est.

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..... 35-40 est.
- B. Within the past 5 years with more than 10 years service under the Plan..... 30 - 35 est.
- C. Within the past 5 years with more than 5 years service under the Plan..... 25 - 30 est.
-
24. A. Indicate the average monthly benefit paid to retirees 5 years ago.
- (1) Normal \$27.86 (2) Early \$15.10 (3) Disability N.A.
- B. Indicate the average monthly benefit paid to retirees within the last year.
- (1) Normal \$29.96 (2) Early \$26.66 (3) Disability N.A.

Part IV. Funding Status Data

20. Specify the following (give the latest figures) :
- A. Total assets of Plan (at cost, book, and market value) :
- (1) \$5,879,861 (2) \$5,879,861 (3) \$5,010,060 (4) 6-30-70
(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) \$1,882,820 est. 11-1-70
(Date of latest evaluation)
- C. Total value of all accrued benefits, treating all such benefits as if they were vested (give present dollar value) \$8,260,107 est. 11-1-70
(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).

The actuarial method used is the entry age normal with an assumed retirement age of 65, a 4% interest assumption and termination table T-5 from "Crocker, Sarassen and Straight Group Annuity Mortality Table for 1951 Projected to 1960 by Scale C"

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.

No contributions made after 1970¹⁹⁶⁰ because of overfunded position chiefly arising from increased Social Security benefits which are an offset to plan benefits

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**

-
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.

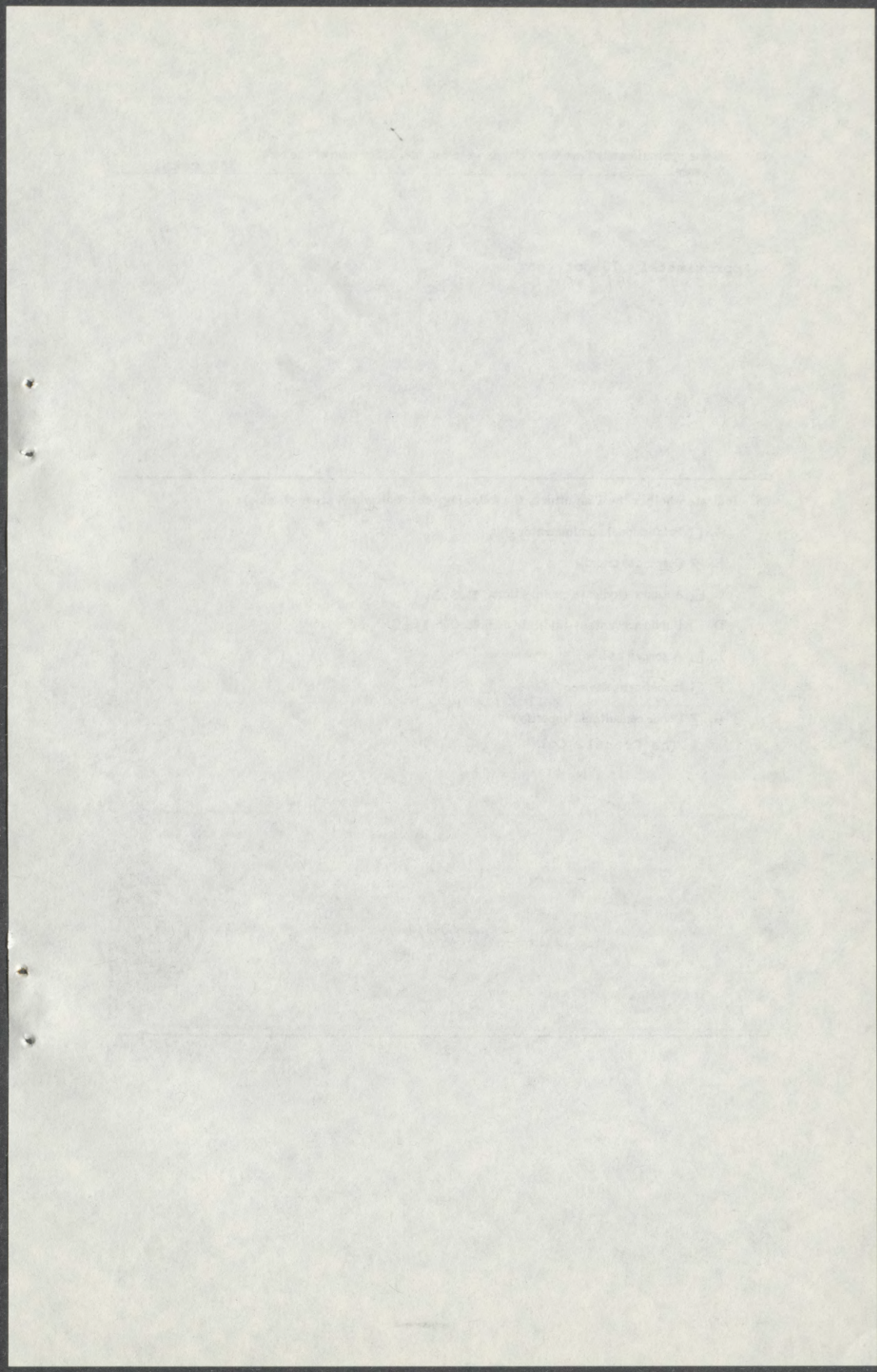
NONE

-
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..... | 10,246.45 |
| B. The ratio (percent) of current administrative costs charged to the Plan to total fund assets calculated at current market value..... | 350 |
| 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..... | 4.60 |
| 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..... | 9.50 |
-



34. Indicate approximately how many claims were considered for each of the last 5 years _____

350 total

Approximately 70 per year

-
35. Indicate whether the Plan utilizes the following (check all which are applicable):

- A. ☐ Professional administrator
- B. ☒ Corporate trustee
- C. ☒ Actuary (indicate qualifications) F.S.A.
- D. ☐ Public accountant (indicate qualifications)
- E. ☐ Attorney at law
- F. ☐ Investment advisor
- G. ☒ Other consultants (specify)
The Connell Co.

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.

Union members

Hourly employees

37. A. Specify the procedure for amending the Plan.

On recommendation from the Central Pension Committee and supported by actuarial opinion the Board of Directors may vote to amend.

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.....

45

C. Indicate approximately the intervals at which the Plan is codified in a single document to incorporate all amendments.....

Continuously

-
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)

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.)

NONE

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.

Not Applicable

- (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.

N.A.

- (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.

N.A.

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.

SEE ATTACHMENT #2.

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 ☐ (2) No ☒ If "Yes," furnish the following details:

(a) Name of the predecessor corporation _____

(b) Date of the acquisition, merger, consolidation, lease, 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 currently covered by the Plan who received vested rights under other plans of the same or a predecessor employer None

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 FOUR TIMES

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. NONE

B. Of the total figure furnished in (A), specify the number which were successfully resolved in favor of such persons or which were settled. N.A.

C. Of the total figure furnished in (A), specify the number of suits which were based on claims for benefits. N.A.

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 Not applicable

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)

Not Applicable

(2) Date

(3) Law reporter citation(s) (if any)

(4) Nature of issue

(5) Outcome

The CHAIRMAN. We will recess now until 2:15 p.m.
(Whereupon, at 1:30 p.m., the subcommittee recessed, to reconvene at 2:15 p.m. of the same day.)

AFTERNOON SESSION

(The subcommittee reconvened at 2:15 p.m., pursuant to recess.)

Senator SCHWEIKER (presiding pro tempore). The subcommittee will come to order.

I have been asked on behalf of Senator Williams to go ahead, since he has been detained for about 10 minutes. So we will reconvene the hearing of the Subcommittee on Labor.

And our first witnesses this afternoon are from the Joseph Horne Co. And I understand that Mr. Palmer, Mr. Swaim, and some others are here. So Mr. Palmer or Mr. Swaim may proceed.

Introduce your other colleagues, if you will, and then go ahead with your testimony.

STATEMENT OF GEORGE A. PALMER, JR., RETIRED VICE PRESIDENT OF JOSEPH HORNE CO., 501 PENN AVENUE, PITTSBURGH, PA., ACCOMPANIED BY H. V. COCHRANE, VICE PRESIDENT AND TREASURER; GEORGE A. PALMER III, PERSONNEL DIRECTOR; JOSEPH SWAIM, ESQ., CORPORATE COUNSEL; AND J. E. DWYER, PENSION PLAN CONSULTANT, PEAT, MARWICK & MITCHELL

Mr. PALMER, JR. Thank you, Mr. Chairman. I am George A. Palmer, Jr., retired vice president of the Joseph Horne Co., retreaded on this occasion primarily, I think, because I am the last survivor of the management group which is responsible for developing and installing the pension plan which is under consideration.

I should like to introduce, if I may, H. V. Cochrane, on my right, vice president and treasurer of the Joseph Horne Co.

On my immediate right, George A. Palmer III, presently personnel director of the company.

On my left, Joseph Swaim, Kirkpatrick, Lockhart, Johnson & Hutchison, corporate counsel for the company.

And J. E. Dwyer, pension plan consultant from Peat, Marwick & Mitchell.

If I have your permission, I should like to read the presentation which I think you have before you.

The company, a general merchandise department store, was founded in 1849, and has operated continuously as an independent company until 1966, when it became a division of Associated Dry Goods Corp. The company presently operates a large downtown facility and nine branch suburban stores in the Pittsburgh market area. It employs approximately 3,200 regular full-time employees, and between 4,000 and 8,000 seasonal and part-time employees, depending upon the fluctuating needs of the business.

The plan, described in the subcommittee's pension study Form P-1 (S. Res. 360), bearing file No. WP01-03-45, was established in 1944 and is a qualified noncontributory plan under the Internal Revenue Code of 1954, as amended.

The plan, from 1944 to 1956, was a fully insured plan, funded through the medium of a group annuity contract purchased from John Hancock Mutual Life Insurance Co. In 1956, the plan was amended so as to provide for its funding through the medium of a trust agreement between the company and the Union National Bank of Pittsburgh. Out of the trust fund created pursuant to such trust agreement, as well as out of an insured deposit administration fund created with moneys contributed by the company under the trust agreement, annuities are purchased from John Hancock Mutual Life Insurance Co. for the benefit of participants who retire under the plan.

The plan covers every eligible regular, full-time employee of the company. An employee becomes eligible to participate in the plan upon the completion of 5 years of credited service, provided that the employee is at least 24 years and 6 months in age, but has not yet reached 55 years and 6 months in age.

Normal retirement date under the plan is the February nearest the participant's 65th birthday. A participant receives a fully vested benefit under the plan in the form of a right to early retirement after the completion of 15 years of credited service and the attainment of age 55.

The plan is a unit benefit plan. Although benefits for both past service and future service are computed on the basis of tables, these tables reflect an average unit benefit rate of three-fourths of 1 percent times past service accredited compensation for each year of service, plus three-fourths of 1 percent times future service accredited compensation for each year of such service.

Past service accredited is defined to mean a participant's average annual compensation during a period of years of credited service immediately preceding the calendar year in which he becomes a participant. Future service accredited compensation, in most cases, means a participant's average annual compensation during the 10 years immediately preceding 5 calendar years preceding the participant's normal retirement date.

As reflected in both the Form P-1 furnished to the subcommittee by the company, and a recent form D-2 filed with respect to the plan by the company with the U.S. Department of Labor under the Welfare and Pension Plans Disclosure Act, the total assets of the trust fund under the plan exceed all accrued liabilities under the plan, vested and contingent.

There are four particular factors applicable to the plan, as well as to pension plans generally in the department store and retail trade industry, of critical significance. Each of these factors operates to cause the company to hire seasonal and short-term employees, who are not normally considered to be within the ambit of retirement plan coverage. These four factors are as follows:

1. A great many of the employees hired by the company are young females right out of school who work for a few months or a few years, and then leave the employ of the company to get married or to have children. In addition, some of these young female employees, as well as some young male employees, work part-time for the company while they are going to school or carrying out other responsibilities. It would

be prohibitively expensive and administratively burdensome for the company to permit participation of any of these employees in its plan.

2. A great number of the total employees of the company are seasonal employees, hired by the company on a temporary basis immediately prior to Christmas and Easter. In point of fact, approximately 33 percent of the gross sales of the company occur within the two periods of 6 weeks prior to Christmas, and 4 weeks of the Easter season.

As another example, during calendar year 1970, the total number of employees of the company varied from a low of 4,191 during the week ending March 7, 1970, to a high of 6,214 during the week ending March 7, 1970, almost a 50 percent variation in employment. It would likewise be prohibitively expensive and administratively burdensome to permit such temporary seasonal employees to participate in the plan.

3. A number of employees of the company are young persons who commence their working careers as department store salespeople pending the availability of employment opportunity in their long-range career plans. Many of these employees work in such a capacity with the company for a short time only, until a different occupation or working opportunity opens up to them. In the same manner as the two categories of employees described immediately above, it would be prohibitively expensive and administratively burdensome to permit such employees to participate in the plan.

4. It should be pointed out that at the present time, 55 percent of the company's total sales volume is produced in the nine suburban facilities. In these local markets, by far the biggest volume of each day's total business comes between the hours of 4:30 and 9:30 p.m. Sales staffs must therefore be augmented during these peak hours. The vast majority of people in this augmented staff are high school and college students, teachers, housewives living in the neighborhood, and "moonlighters" fully employed in other occupations.

All of the employees mentioned in the four special categories above generally have no interest in the availability of any pension plan while they are employed by the company. Such employees have no identification with the company, know they will be working with the company only for a short time, and have no intention of remaining with the company until retirement, whether early retirement or normal retirement.

The plan has thus been structured so that it provides meaningful pension benefits for all of the employees of the company, regardless of the level of income, who undertake a career with the company. The eligibility period of 5 years, and the eligibility age of 24 years and 6 months, serve to make ineligible to participate in the plan those special groups of employees referred to above. The company is thus enabled to make significant contributions to the retirement security of its long-term and valued employees.

The company submits that the plan is a liberal pension plan for the department store industry. The company believes that the plan provides meaningful security to the retirement years of those of its employees at all levels who should be of primary concern to the company.

That concludes our statement, Mr. Chairman, and we are now available to answer such questions as the committee may have with regard to the P-1 or with regard to any of the matters in this statement.

Senator SCHWEIKER. Thank you very much. I have a few questions I would like to ask. Is your plan fully vested after 15 years of service and attainment of age 55?

Mr. PALMER. Yes, sir.

Senator SCHWEIKER. Is this contributory by the employee or fully paid by the company?

Mr. PALMER. Fully funded by the company, entirely noncontributory, as are nearly all of our employee benefits.

Senator SCHWEIKER. And has been since its inception?

Mr. PALMER. Consistently, since its beginning.

Senator SCHWEIKER. Are the four factors, which you outlined in your testimony, characteristic of the retailing industry and fairly applicable to other retail establishments?

Mr. PALMER. I think you would find it primarily so. The basic philosophy of retailing is to have a good base of full-time people who are necessary to open the doors. And then supplement as the needs of the business require with part-time, short-term seasonal people.

Senator SCHWEIKER. And 33 percent of the gross sales of the company occur either prior to Easter or prior to Christmas?

Mr. PALMER. The total of the 6 weeks prior to Christmas, plus the 4 weeks around Easter, make up a total of 33 percent of the gross sales.

Senator SCHWEIKER. Because of that seasonal variation, you have a work-force variation of 50 percent of a pre-Christmas high to some other low point in the year?

Mr. PALMER. From 42 to roughly 62.

Senator SCHWEIKER. Is this a normal variation?

Mr. PALMER. I think you would find this true in the majority of markets around this country.

Senator SCHWEIKER. I was interested, too, 55 percent is produced in suburban stores, and most of that between the hours of 4:30 and 9:30?

Mr. PALMER. Yes, sir.

Senator SCHWEIKER. What days of the week are you suburban stores open?

Mr. PALMER. Six days a week, Monday through Saturday.

Senator SCHWEIKER. Are the hours 4:30 to 9:30?

Mr. PALMER. No; the stores are open generally from 10:00 a.m. to 9:30 p.m. in the evening.

Senator SCHWEIKER. This is the peak of the business?

Mr. PALMER. Yes; with the possible exception this may shift a little on Saturday. Sometimes you get an earlier response on Saturday than you do the other 5 days of the week. But, generally, the statement is factual.

Senator SCHWEIKER. Because of these facts, I gather that you have designed your pension plan, then, to benefit the people who do stay long, making a career with the company?

Mr. PALMER. That's right.

Senator SCHWEIKER. And your benefits of vesting as well as eligibility reflects the fact that a high percentage of your work force would be either part time or would be short-term employees?

Mr. PALMER. Or very young people who are just getting started in the world or try it for size until something more appropriate comes up. (Senator Williams entered the hearing room at this time.)

Senator SCHWEIKER. Do you have any idea how many retired people are now on the pension? Do you have those figures?

Mr. PALMER. Yes. Under the plan, there are approximately between 500 to 600 who have retired since 1954 through January 1971.

Senator SCHWEIKER. That's all the questions I have, Mr. Chairman. He just completed his opening statement, and I just asked him a few questions. Thank you very much.

The CHAIRMAN. Unfortunately, I was delayed and haven't had an opportunity to read your statement.

Mr. GORDON. Is this company appearing voluntarily before this subcommittee to testify?

Mr. PALMER. May I refer this to counsel?

Mr. SWAIM. It is not. It is appearing pursuant to a subpoena directed to the corporation that the testimony of those persons knowledgeable with its pension plan be presented today.

Mr. GORDON. I would like the record to reflect that this witness is appearing involuntarily.

Any comments you wish to make about that?

Mr. SWAIM. It is the feeling of the company that matters concerning pensions and other sensitive employment data can be of significance in upcoming labor negotiations in dealings with various unions, and, therefore, there is a natural reluctance to spread on the public records certain of this information.

This is not at all to say that there is anything about any information that the company is in any way ashamed of. The company feels it does have a good, representative—better than a good representative, pension plan in the retail trade area. But we do not feel that voluntarily we should come down to testify. But we certainly will be cooperative in any respect and shall furnish any information that you now request.

Mr. GORDON. As I heard your testimony, there seemed to be an emphasis on the fact that most of the employees who are covered by the pension plan of your company are relatively short-term employees. Is that the impression you wish to give?

Mr. PALMER. No, sir; a bulk of the people covered are the long-term permanent employees, and no extra short-term or part-time people are covered.

Mr. GORDON. Was it your intention in presenting this testimony to emphasize the short-service employees and to indicate you designed the plan in such a way to try to preclude them from consideration?

Mr. PALMER. Also, in the retail trade, this is a common practice: To use such a large proportion of short-time people.

Mr. GORDON. In that connection, passing on to the P-1 form which you submitted to this subcommittee. That one indicates that the plan was established in 1954—

Mr. PALMER. 1944.

Mr. GORDON. Excuse me.

Mr. PALMER. In other words, there were no retirements under the plan until 10 years after.

Mr. GORDON. Since 1950 approximately 2,000 participants have left the scope of the plan without entitlement to benefits, and that out of that 2,000, some 300 had more than 15 years of service, some 500 had more than 10 years of service, and some 1,200 had more than 5 years of service.

Within the past 5 years some 600 participants have left the scope of the plan without entitlement of benefits. Of that number, 75 had more than 15 years' service, 175 had more than 10 years' service, and 195 had more than 5 years' service.

In view of those statistics you have provided to the subcommittee, which indicate some substantial numbers of fairly long-service employees who left without entitlement to benefits, could you tell us what your reaction to that is in light of the fact that the plan provides for early retirement or vesting only at age 55 and 15 years of service?

Mr. PALMER. Yes; the reaction, I think, would be that this is the way it happens. It also, I think, illustrates if we were to go through the individuals represented by those numbers we would find many of them were youngsters who came to work, for instance, at 18 or 19, stayed perhaps until they were 35 or 36, had a late marriage, or it was necessary to leave the city with their husbands, things of that sort.

May I say, sir, one thing we did not mention in our brief: Retailing is an industry, at least the department store aspect of it, which employs about 80-percent female employment. The great majority of these are not primary wage earners. A great many of them are wives who are subject to the mobility of the family and subject to pregnancy, things of that sort.

Mr. GORDON. So I take it that what you are saying is the plan is designed to take care of the long-service employees who remain all the way, until at least age 55 and 15 years of service, and you do not feel it desirable to provide vesting protection earlier than that period of time because of these factors that you mentioned?

Mr. PALMER. We have found very little interest in it. Also, that this is quite the common pattern in the whole department store industry.

Mr. GORDON. Turning to your funding, you pointed out that you are in a well-funded position. Indeed, according to your P-1 form which you submitted, you said that you had some \$4 million in assets in the fund; you only have \$3.9 million in liabilities, so that in point of fact your plan is really just about overfunded at this point in time.

Continuing on with that point, it appears that you did not have to make contributions and perhaps did not make contributions in 1968, 1969, or 1970.

Also, you evidently had a very good plan experience. What was that plan experience that provides such a favorable financial climate?

Mr. PALMER. Mr. Dwyer, can you answer that?

Mr. DWYER. I don't recall.

Mr. PALMER. I think it may reflect that in 1966, as I indicated in our statement, we became a division of the Associated Dry Goods Corp. Prior to that, as a local independent store, we operated on very conservative actuarial assumptions. We felt that we had an obligation to our people to keep this as fully funded as possible. Therefore, we had made no change in the actuarial assumptions between 1944 and 1956.

Quite obviously, the money market has changed over that period; mortality rates have changed over that period. That, when we became a division of Associated Dry Goods, the actuarial responsibilities were shifted to another firm of actuaries who, upon taking a look at the status of the plan in the light of the then existing current situation, indicated that we should be more liberal in our assumptions and in applying those assumptions then to the funds available. And they found it was not necessary to make contributions during those years.

Mr. GORDON. Is it at all possible that some of this favorable experience in terms of the funding position of the plan reflects the rate of forfeiture of longer service employees, such as the 300 with more than 15 years of service, the 500 with more than 10 years of service, et cetera, who left the plan without benefit rights?

Mr. PALMER. To a degree, that could be part of the basis for the change in the valuation. I think it is no secret that the world has changed. People are much more mobile now. There has been a relatively higher rate of turnover in the last 10 years than there was in the preceding 20 years. So it does, to a degree, reflect a "favorable experience," which would be reflected in the lower obligation of the fund.

Mr. SWAIM. I notice over the last few years there has been an upgrading in the interest rate assumption.

For example, the most recent actuarial report has an interest assumption of 4 percent. At the time the P-1 was filed, it was $3\frac{1}{2}$. I think in earlier times it was much below that. So there has been an upgrading in the interest assumptions to reflect the fact there has been an increase in interest rates.

Mr. DWYER. One other thing, when the plan was fully funded with John Hancock, I remember because I was with them in those days, there was a 2 percent interest assumption.

Mr. GORDON. What is your current interest assumption?

Mr. PALMER. Four percent. So we obviously had a big surplus with the items bought under the old Hancock contract because of the interest rate then.

Mr. GORDON. What was your investment return in the last year or so?

Mr. DWYER. I can make one point clear: There was an actuarial gain last year of roughly \$138,000 in the latest actuarial report, which reflects not only experience in invested assets but also gains in mortality and possibly unrealized gains as far as investments are concerned.

Mr. GORDON. Could you furnish the data?

Mr. SWAIM. We have reports from the trustee, which indicate what the actual income return, for example, on dividends on stock held by the trustee amount to.

Then we have the actuarial report which indicates what the actuarial experience has been, but on a strictly summary basis.

The CHAIRMAN. Thank you very much.

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

THE UNION NATIONAL BANK OF PITTSBURGH

POST OFFICE BOX No. 837

PITTSBURGH, PA. 15230

J. DONALD PATTON
SENIOR VICE PRESIDENT

October 22, 1971.

Joseph C. Swain, Jr., Esq.
Kirkpatrick, Lockhart, Johnson & Hutchison
1100 Oliver Building
Pittsburgh, Pennsylvania, 15222

In re: Joseph Horne Company Pension Plan

Dear Mr. Swain:

After your return from Washington, D. C., and the hearing, you called and indicated that the Committee was interested in having yields or earnings on this Pension Plan and so that you may have available for presentation or reference, the data on the semi-annual periods indicated would be as follows:

<u>YEAR ENDING</u>	<u>ESTIMATED ANNUAL INCOME</u>	<u>LEDGER VALUES</u>	<u>MARKET VALUES</u>	<u>YIELD ON MARKET</u>
7/29/66	\$116,667.00	\$2,734,361.00	\$2,955,177.00	3.95%
1/31/67	120,514.00	2,791,810.00	3,055,625.00	3.94%
7/31/67	125,215.00	2,854,856.53	3,182,489.82	3.93%
1/31/68	128,461.00	2,919,779.51	3,177,080.38	4.04%
7/30/68	131,524.00	2,986,183.61	3,438,165.52	3.83%
1/31/69	134,889.00	3,053,992.36	3,692,436.03	3.65%
7/31/69	136,012.00	3,086,307.41	3,362,941.23	4.04%
1/30/70	137,582.00	3,138,615.97	3,149,066.71	4.37%
7/31/70	139,008.00	3,208,168.82	3,075,428.62	4.52%
1/29/71	136,389.00	3,209,265.92	3,738,427.20	3.65%
7/30/71	134,277.00	3,269,196.35	3,865,757.34	3.47%

During the above period of time, the account held only common stocks and prior to July 29, 1966 the account held both equities and fixed income assets.

From the John Hancock contract, a copy of which I am enclosing, you will note the yields for the periods indicated:

On and after 1/31/57 - .002263 x 12 - .027156

On and after 1/31/60 and prior to 1/31/65 - .002871 x 12 - .034452

On and after 1/31/65 - .002669 x 12 - .032028

Very truly yours,

J. Donald Patton
J. Donald Patton
Senior Vice President

JDP/dmd
Enclosure
#3914

STATEMENT OF N. H. FLETCHER, ASSISTANT TREASURER, UNIROYAL, INC., ACCOMPANIED BY MYRON KALISH, GENERAL COUNSEL, UNIROYAL, INC., AND HENRY J. L. FORTUIN, JR., SENIOR VICE PRESIDENT AND ACTUARY, MARSH & McLENNAN, INC.

The CHAIRMAN. Representatives from Uniroyal Co., please come forward.

All right, gentlemen. Mr. Fletcher; Mr. Kalish.

Mr. FLETCHER. I am N. H. Fletcher, assistant treasurer, Uniroyal, Inc.

On my right is Mr. Henry Fortuin, who is also here this morning. He is senior vice president and actuary of Marsh & McLennan, Inc.

Mr. Myron Kalish, I might say, is our general counsel, and with me serves on the company board of benefits and awards, which administers the pension plan.

The CHAIRMAN. You may proceed to read your statement, if you care to.

Mr. FLETCHER. We are glad to respond to the invitation of the Subcommittee on Labor extended in the letter of Mario T. Noto, Esq., Special Counsel, under date of October 1, 1971—which we received on October 6, 1971—to submit a statement to the committee.

We understand that the committee has asked for our appearance in order to assist them in understanding the present status, operation, and administration of private pension plans as related to the possible need for pension legislation.

The subject matter is important to us as well as the committee, since the financial security of our employees is indispensable to the continued successful operation of the company.

As requested by the staff, the statistics and provisions of the particular plan to which these comments refer, are those of our Retirement Plan A. This is the largest plan and covers some 23,500 active wage employees and 8,500 retired wage employees. Most of these employees either are or were members of the United Rubber, Cork, Linoleum, and Plastic Workers of America.

We have other domestic pension plans covering approximately 20,000 employees; however, our policies in respect of vesting and funding are identical for most of these employees.

Including predecessor companies, Uniroyal, Inc., has been active in the rubber industry for well over 100 years. It was and is a very competitive industry; however, we have been able to survive in this rough-and-tumble industry, and expect to continue to do so.

Uniroyal has an excellent noncontributory retirement plan, both as to the retirement rate paid and the vesting coverage. It pays identical benefits to those provided by the plans of our major competitors in the rubber industry and is comparable to plans existing in the automotive industry. We began our pension program in 1917, more than 54 years ago, and we have made payments continuously since then. One employee has been receiving a pension since 1922.

Since we began funding in 1960, our actuarial reports prepared annually by independent actuaries furnish us with pertinent statistics relating to our plan. These reports show that the pension roll for retirement plan A has grown from 2,161 in 1960 to 8,326 in 1971. Annual

benefits have increased from \$1,784,000 to \$17,527,000, or tenfold. While the number on the retirement roll is almost four times what it was in 1960, benefits are 10 times as large.

Part of this increase is due to the large additions to the rolls which reflect the aging of our employee group. Another major part of the increase is caused by the large jump in retirement benefits which are the result of union negotiations in the years 1964, 1967, and 1970. Prior to 1964, most pension benefits were determined by our old formula: 1 percent of average monthly pay over the final 10 years, less an amount equal to 50 percent of the social security benefit. This was the original formula going back to 1917, although there was no social security deduction until 1940.

We had a minimum benefit of \$2.10 per month per year of service in 1960. Beginning in 1964, the flat monthly benefit which had formerly been the minimum, became the benefit under which most retiring employees received their allowance. Stated in these terms, the monthly minimum benefit per year of service was:

1959-64	-----	\$2.10
1964-67	-----	3.25
1967-70	-----	5.50
1970	-----	7.75

Obviously, with increases in the formula of this magnitude pension benefits have increased substantially.

As described more fully below, we began funding for these benefit payments in 1960. To provide for the plan benefits, we make annual contributions to a trust fund as determined by independent actuaries.

Contributions to the fund were greatly increased to cover the additional costs, which have been determined upon a consistent actuarial basis. These contributions were as follows:

	Annual con- tributions
1961	----- \$8,499,000
1965	----- 11,705,000
1968	----- 15,916,000
1971	----- 22,886,000

Our pension plan and the wages we pay have always been comparable to the plans of other companies with whom we compete. The rubber industry was one of the first to adopt a fully paid company hospitalization and surgical program for its employees. Everyone is familiar with how the costs of this program have risen in recent years. Life insurance, accident and sickness benefits, and supplemental unemployment compensation are other employee benefits which are far from "fringe" in nature. In addition to the benefits provided directly by the company, there are benefits required by law. A listing of these benefits and their anticipated costs is as follows.

Expected 1971 payments to plan A employees:

Cash payroll	-----	\$193,000,000
Group life	-----	1,566,000
Accidental death and dismemberment	-----	92,000
Hospitalization and surgical	-----	7,820,000
Accident and sickness	-----	3,100,000
Prescription drug	-----	500,000
Survivors benefit	-----	70,000
Workmen's compensation	-----	2,050,000

Supplemental unemployment compensation-----	\$2, 612, 000
Unemployment compensation-----	1, 855, 000
Social security-----	8, 500, 000
Retirement contribution-----	22, 886, 000
Total benefits-----	244, 051, 000

Total payments for cash and benefits to plan A employees is \$244,051,000.

It should be noted that while pension cost is substantial, it is still less than 10 percent of the total employee cost and 45 percent of total benefit cost.

Our pension plan has contained a vested benefit since 1959. It now provides for a vested benefit payable at age 65 in the amount of 100 percent of the employee's accrued pension to the date of leaving the service of the company. To be eligible to receive this benefit, the terminating employee must have completed 10 years of service and be at least age 40.

In addition to the pension benefit described above, our retirement program provides a termination allowance to an employee, regardless of age, who has more than 5 years' service, in the event he is separated involuntarily from the company's employment. This termination allowance is a lump sum amount based on service and earnings and is in nearly every case, much greater than the present value of the vested benefit payable at age 65.

We have been asked why we have this particular vesting formula for the age-65 benefit. This formula was the result of extensive negotiations with the union in 1959 and the same solution was accepted by the rest of the industry as a result of their individual negotiations. It was the common feeling of industry that vesting was not really needed for individuals under age 40, and that the cost of providing this benefit for employees under this age was not justified as it entailed the sacrifice of other benefits which were more valuable to the total employee group. We do not believe that the great majority of our employees would prefer to sacrifice some of their present benefits to give small pensions to employees who change jobs frequently before settling down to a final career.

Basically, we feel that vesting provisions should be such that they represent a balance between the need to relieve employees of anxieties related to a means of decent livelihood in their senior years, and a realistic appraisal of the costs of doing so and an appropriate age at which this becomes a realistic concern. We think our present formula meets these goals.

Prior to 1960, we utilized a balance sheet reserve method of accruing for pension cost. While this method is seldom followed in the United States today, it once was more widespread. It is still widely employed in Europe, particularly in Germany. The basic premise is that a company can use the funds set aside for the payment of pensions in its own business more effectively than if it utilizes the funds so set aside for the purchase of securities of other companies. This approach has merit when the company is sufficiently diversified in the various product lines which it makes and sells.

However, in 1960, we began to follow the now more common practice of contributing money to a trust fund for the benefit of our em-

ployees. These amounts were calculated in accordance with the regulations of the Internal Revenue Service and invested by bank trustees. For plan A, these assets have grown rapidly from a standing start to \$75,000,000. Incidentally, this amount was approximately the same as the amount of our unfunded prior service cost in 1960. In 1966, we began to amortize our unfunded prior service cost over 40 years in compliance with opinion No. 8 of the Accounting Principles Board.

We know, of course, of the proposed legislation which would increase the amortization of unfunded prior service costs over shorter periods; 25 years has been suggested as a more desirable figure.

While this shorter period might have some appeal, any policy for amortizing prior service cost should be flexible enough to allow for the deployment of a company's capital so as to best serve the long-term interests of its stockholders and its employees, as well as its retirees.

Major technological changes have required and will continue to require vast amounts of capital. With the large amounts which have been spent in the past years for buildings and equipment, a further strain will be placed on our capital resources if large additional contributions to the pension fund are required by law. Some data on capital requirements of the last few years is:

(In thousands of dollars)

1966	79, 400
1967	66, 600
1968	100, 900
1969	122, 900
1970	81, 800

We regard the security of the pensions of our active and retired employees as vital; however, this security can be achieved only if the economic health and well-being of the company itself is preserved.

Obviously, a funding requirement which materially interferes with a company's ability to be productive and profitable will, in time, impair the financial condition of the company and its ability to meet its pension obligations. Experience has demonstrated that the present standards adopted by the Accounting Principles Board and accepted by the Internal Revenue Service, if properly followed, are fair and reasonable to both interests.

Another factor which the committee should consider is that our annual retirement costs are large, but are less than 10 percent of the total cost for employees. We do not feel that pension costs should receive more attention than cash compensation or insurance benefits which are equally important in the total employee compensation package.

Another consideration is that the required annual contributions—which can be compared to the amortization of a mortgage—are determined on the basis of a stated interest assumption.

In our case, we use 5 percent, which is widely used by other companies in their calculations. If the assets which have been contributed to the trust fund, and will be contributed in the future, earn more than 5 percent, then obviously we would not need to make contributions as large as we are now making to amortize unfunded prior service cost over 40 years.

Stated another way, a rough calculation made by our actuaries indicates that if the assets in the trust fund can earn 6 percent, we will amortize our unfunded prior service costs over 25 years with present contributions. Since bonds yielding 8 percent are readily available, we believe this is a conservative estimate.

Under the present calculation of unfunded prior service cost, we would incur a substantial premium for "reinsurance" under proposed legislation. While such a feature might serve a purpose in the case of poorly financed and under-capitalized companies, we do not favor such an additional cost for companies such as ours, where it is not required to protect employees' pension rights.

Much of the criticism of the proposed legislation is directed to the fact that the welfare of the 30,000,000 employees not now covered by private pension plans is ignored. Obviously, if large reinsurance premiums are imposed upon companies who adopt pension plans in the future, there is a likelihood that fewer employers whose employees are not now protected will adopt pension plans.

Therefore, we think it would not discourage the adoption of new plans if any legislation in this area were to be funded from the social security tax. This is logical, in that it serves to protect retirement income and at the same time it would help to stimulate private plan coverage for those not now covered. Alternately, the corporate income tax could be used as a source of funds.

That is the end of our statement.

The CHAIRMAN. Thank you very much.

Mr. Fletcher, your plan is the second or third today that has a comparable vesting period and 10 years of service, and age 55 for early retirement.

Mr. FLETCHER. Ten years, yes.

The CHAIRMAN. There is a vesting at 10 years at age 40?

Mr. FLETCHER. Correct.

The CHAIRMAN. When did you go to 10 and 40?

Mr. FLETCHER. In 1959.

Mr. NOTO. Mr. Fletcher, just one or two questions.

Mr. FLETCHER. Yes, sir.

Mr. NOTO. Just as a follow-through on what the chairman said, what factors enter into a determination that age 40, coupled with 15 years of service, would be a basis for vesting? Why age 40? What are the considerations that enter into it?

Mr. FLETCHER. I would say that the age 40 limitation is the result of a compromise that developed from the union negotiations of 1959. I think the union originally wanted only a 10 years' service requirement, but we settled on this basis. This was the industry pattern.

Mr. NOTO. Age 40?

Mr. FLETCHER. Age 40, right.

Now, obviously, as we have pointed out here, the more liberal the vesting requirements are, the costlier the vesting benefit becomes. You are taking something away from the other people to give more to this group under age 40. And sure, you could argue that age 39 ought to be just about as good as 40. That is true. There isn't much difference. But you have to draw the line somewhere. We do recognize that an employee after substantial service and after he has been with us a

long time, is entitled to the pension program at age 65, even though he quits and goes somewhere else.

Mr. NOTO. The age factor would defeat any vesting rights regardless of the period of service prior to age 40?

Mr. FLETCHER. That is true for those who resign.

Mr. NOTO. On the form D-2, which is filed by the company with the Department of Labor, for the year 1970, the assets listed for the pension fund were \$69,291,725?

Mr. FLETCHER. Yes.

Mr. NOTO. There was no comparable listing for accrued vested benefits, but for the prior year for accrued vested benefits in 1969 was \$198,810,277. That would indicate on its face a serious question of underfunding. Would you comment on that?

Mr. FLETCHER. That \$198 million figure included the assets, so you have to subtract the assets from \$198 million to get the unfunded part.

Mr. NOTO. How would it include the assets when it is listed as your accrued liabilities? These would be the liabilities of the pension fund.

Mr. FLETCHER. Right. These are the liabilities, part of which are funded, and part of which are not funded.

Mr. NOTO. Reading this, on its face it would look like you have on hand \$69 million as assets, and you have liabilities of \$198 million.

Mr. FLETCHER. You could put it that way.

Mr. NOTO. If that would be correct on its face, in the absence of any explanation from you, would it not be a proper inference that, assuming that you have plan termination now, you would not have sufficient funds, sufficient assets, to pay off your liabilities under the pension fund?

Mr. FLETCHER. If you ignore the earning power of the company, that is true. However, I would say this: it is a fairly unrealistic assumption.

Mr. NOTO. You say "unrealistic." Will you indulge me for a moment.

If you only have \$69 million in the assets of the pension fund, and you owe, in the event or in the contingency of the accrued benefits becoming due and owing, and you would be owing approximately \$198 million, it would seem that your liabilities are far in excess of your assets. Consequently, in the event of a plant termination, you would be seriously unfunded?

Mr. FLETCHER. Yes. And the reason is that in the 1967 negotiations we added some \$80 million of liabilities, just like that, by increasing the benefit from \$3.25 per month to \$5.50 per month.

Mr. NOTO. Is it fair to say as you increased the benefits you decreased your funding?

Mr. FLETCHER. Your funding position, I would say.

Mr. NOTO. What were the changes which occurred in 1966 with respect to your funding schedules?

Mr. FLETCHER. In 1966, I guess you are referring to the fact we went to 40-year funding instead of paying interest only?

Mr. NOTO. Yes.

What were the changes which occurred to bring that about?

Mr. FLETCHER. We made the change, partly in order to conform to Opinion No. 8 of the Accounting Principles Board.

Mr. CUMMINGS. You suggested that the plans are in existence quite a while, and that the reasons that the ratio of assets to vested liabilities is 1 to 3 is because in recent negotiations and, I suppose in prior negotiation, you raised benefits and the raising of benefits results in actuarial loss in funding; is that correct?

Mr. FLETCHER. Yes. By increasing the benefit from \$3.25 to \$5.50, we added on \$75 million to unfunded liabilities just like that, in one shot. And we did the same thing again in 1970. So that we have picked up a total of \$156 million in 4 years.

Mr. CUMMINGS. What would you think—or what would your actuary think, since he is sitting next to you, I understand—of a legislative requirement which would provide that each time you put in a new layer of benefits the funding, as to the new layer would be separate, so that if you take a basic level of benefits and set it up on amortization of 20, 30, or how many years it is that you are going to fund it, at end of those 30 years at least that basic benefit would be fully funded and each new layer would begin to be funded when it is adopted? That is, you would not dilute the basic benefit indefinitely each time you raise benefits. Would you give us your reaction to that?

Mr. FLETCHER. I will let Mr. Fortuin answer.

Mr. FORTUIN. Actually, we are beginning that practice here in that we are beginning funding one liability over 38 years and the additional liability—due to increased benefits—over 40 years.

Certainly, for any actuary, the idea of funding is dear to his heart. On the other side of the picture, here of course is the fact that we had a management which did not fund. And the existing management began funding at a level which was the minimum permitted by IRS, which was normal cost plus interest on the unfunded liability. Then we commenced 40-year funding on the unfunded liability, and when the unfunded liability was increased—due to increased benefits—we commenced a 40-year funding on the additional liability.

Along the lines you are talking, we are using 40 now, rather than any other number.

Mr. CUMMINGS. I take it your feeling would be that if a law were passed in this field it should have the effect, in effect, of treating each substantial new increase in benefits as a separate pension fund for funding purposes? That would conform with what you think of as a progressive view of the matter; is that right?

Mr. FORTUIN. I would say yes they should be recognized separately, unless you reduce that period too much. If you were using it as 10 percent funding, and if you made your period comparable, as 13 years, in 13 years it couldn't be done.

But if your period was long enough, it could be done. There are tremendous amounts of money required for any increase in benefits. But if you make the amount required high (by a short funding period), you are in trouble.

Mr. CUMMINGS. The question is separating the funding at various levels. Do you agree with that?

Mr. FORTUIN. Yes, however, there is no need to physically separate the assets of the fund.

Mr. GORDON. Gentlemen, with respect to your comments on reinsurance, you indicated that you felt that such a feature might serve

a purpose in the case of poorly financed and undercapitalized companies but you do not favor such an additional cost for companies, such as your own, where you do not believe it required to protect employees' pension rights.

Isn't your assumption in making a statement like that, which seems perfectly valid on its face, that there is not going to be any kind of technological or economic change or circumstance which would remove Uniroyal from the scene?

Mr. FLETCHER. Yes, that's correct. I am sure there will be many economic and technological changes, but I expect that we are going to keep adjusting to them just like we have for all these years.

Mr. GORDON. The point I am driving at, though, is: Isn't it possible that you may have a well-capitalized company which simply is compelled to curtail its operations or, in fact, go out of business because of technological or economic reasons no longer making its product salable?

Mr. FLETCHER. Theoretically, it is possible; but the instances are very rare. And, certainly, when you get to a corporation with \$1.5 billion in sales and nearly \$1.5 billion in assets, it is just a very, very remote contingency and doesn't seem to us, at least, a basis for this legislation.

Mr. GORDON. How would you react to—I assume you have all read about it and heard about it—the Studebaker case?

Mr. FLETCHER. That's the one isolated case that I know of.

Mr. GORDON. You don't think there would be other cases like that?

Mr. FLETCHER. I think it is a very remote contingency.

Mr. GORDON. Possibly it is a remote contingency, but with the possibility existing that the contingency might occur, as it did in the case of Studebaker, wouldn't that mean that the reinsurance program would be quite feasible because the risks involved to the insurance program would be relatively small?

Mr. FLETCHER. That could follow.

Of course, that is an area in which I have never seen any statistics. I just don't know. I have seen somewhere a figure of 30,000 people a year. I don't know where that comes from.

Mr. GORDON. That figure came, as I recall, from the Bureau of Labor Statistics' study based upon a decade of experience from around 1950 to 1960.

Mr. FLETCHER. Yes.

Mr. GORDON. It did not reflect, I don't believe, the decade between 1960 and 1970. The experience might be different.

Mr. KALISH. Mr. Gordon, I think the thought that we have here is that the punishment should fit the crime, so to speak.

If you have a situation where a company's financial situation seems to require protection, maybe in considering legislation, a more flexible system than that which is contained in the proposed bill should be considered. Even under the type of assumption that you are indulging in, it would seem to me better if you had a more flexible type of arrangement so that a company that is well-funded and in a sound competitive position on the basis of reasonable standard that would be set up, would not be required to pay any reinsurance.

If its situation changed to the point where you could see that it was beginning to get in trouble, at that point in time it might become sub-

ject to a reinsurance payment. This is just a thought that we have: that the thing shouldn't be nailed down tight but made flexible so that you tax those that really are creating the danger.

Mr. GORDON. There are two dangers: one is the danger you point out, of poor financing, poor competitive position, and so on; the other is the danger, which is almost completely unforeseen, of technological change, which simply makes the company's products or services obsolete.

Mr. KALISH. Again, following the line of the same philosophy, that might be true of a company that, let's say, is completely tied up in one product. As you get into an area where you have a diversified company such as ours is, the chance of that becomes more and more remote. We are in a number of very greatly diversified fields, and the possibility of being injured in one field need not necessarily change your sound economic position with respect to your ability to respond to your pension obligations.

Mr. GORDON. Do you feel that, speaking now as a businessman, it would be in the interest of the business community to have enacted legislation which would cover the risk of plan termination by the Federal Government evaluating the financial stability of businesses in this country?

Mr. KALISH. I don't know that that is what I have in mind.

Mr. GORDON. How would this proposal of yours be implemented except in that kind of fashion? Wouldn't the Federal Government have to draw up a list of the acceptable risks and unacceptable risks, and, if unacceptable, they would have to tell them to get insurance?

Mr. KALISH. That is not such a novel or strange idea. There are certain precedents that come to mind.

For example, although it might not be a perfect analogy, in the securities field the Government or the Securities and Exchange Commission has set up standards which determine, for example, that if you are a company that is well-financed with a good financial history, you can register securities on an S-7 form. Whereas, if your economic position is must less secure, you have to go to an S-1 form. That is the same sort of judgment—not exactly the same sort, but it is analogous of what you are talking about. The same thing applies in the workman's compensation field.

Many States—most States—have certain standards by which a corporation is judged as to whether it is allowed to be a self-insurer or whether it must go outside and insure its risks.

So, although I am sure that an approach such as we have suggested would need a considerable amount of further consideration, there are precedents that are in the field or in existence which call for the same sort of thinking.

Mr. GORDON. Thank you. I am glad to hear you say that. And I think we will want to look into those precedents. It might be very helpful to us.

The CHAIRMAN. What does the investment portfolio look like? We are sure it is here somewhere in the IRS filings.

Mr. FLETCHER. Do you mean stocks, bonds, that sort of thing?

The CHAIRMAN. Yes.

Mr. FLETCHER. For the large portion it is managed by one bank. We had on June 30, 28 percent in bonds, 1.8 percent in cash, 3.8 percent in convertibles, 6.4 percent in utility common stocks, and 59.7 percent in industrial common stocks.

The CHAIRMAN. Who is your investment counsel?

Mr. FLETCHER. Well, the major portion of the assets from the investment standpoint are managed by the trustee, the Chemical Bank.

As to about 15 percent of the fund, we have an outside investment counsel who we utilize, who makes recommendations and who tries to outperform the bank, and often succeeds.

The CHAIRMAN. He tries to do what?

Mr. FLETCHER. Outperform the bank as far as its investment results are concerned.

The CHAIRMAN. Does he represent you, counsel you, and suggest changes?

Mr. FLETCHER. Yes. He comes to us. We have an investment committee and he comes in once a month and makes recommendations on buys and sales for the portion that he advises on, about 40 stocks.

We then pass those recommendations on to the bank as trustee, who is free to not follow them if it so chooses, but it generally does.

The CHAIRMAN. Do you know personally whether there is much turnover in the portfolio?

Mr. FLETCHER. Well, that's hard to say. I wouldn't know the percentage of turnover in 1 year. I would personally not characterize it as an undue amount of turnover. There are purchases and sales going on all the time. We have some securities we have held for years.

Mr. CUMMINGS. In your statement concerning reinsurance, you make the point that a corporation that is as substantial and solvent and diversified as yours ought not to be required to pay insurance premiums to reinsure the liabilities of the fund, since you are such a substantial corporation.

Would you think it fair that in lieu of that, any corporation which is that solvent ought to be permitted, instead of purchasing reinsurance, to pledge the general credit of the corporation to make up any unfunded past service liabilities?

Mr. FLETCHER. Well, from a financial aspect, that would cause so many problems that I think we would have to say very emphatically, no, to that suggestion.

Mr. CUMMINGS. That's what you are arguing: that the reason you need not be reinsured is because your corporation is so substantial? Yet, you say that the substance of this corporation couldn't be pledged in lieu of the reinsurance? What good is the substance, then?

Mr. FLETCHER. We are saying that the real protection of the retiree and the employees actively at work is the successful and continued successes in operations of the company. Sales and income each year are the source of all employee compensation.

Mr. CUMMINGS. Suppose that the company determines to terminate the plan, substantial though it may be?

Mr. FLETCHER. I would like to introduce you to the United Rubber Workers someday.

Mr. CUMMINGS. Suppose the United Electrical Workers get in and they say, "We don't want the rubber workers fund; we want our own

so we will terminate the old one and start a new one"? This is conceivable, isn't it?

Or suppose a larger conglomerate gobbles up yours and merges your fund with theirs and terminates your fund and puts your employees into their fund? There are such circumstances where these people could find themselves participants in such a fund, notwithstanding the substance of Uniroyal.

Mr. FLETCHER. Again, picking remote possibilities, I can't quarrel with that. I just don't think that is a reasonable basis on which to base legislation.

The CHAIRMAN. None of the investments are in Uniroyal?

Mr. FLETCHER. No, that is not correct, sir. There are 10 percent of the funds we keep in Uniroyal common stock. By that I mean this: that when the number of shares drops below 10 percent, we buy additional shares to bring it to 10 percent. When I say "we buy," we recommend to the trustee to buy. And our basis for that is that we think our common stock is a good investment. We think we know more about it than anybody else going, and how it is valued. And this is a program that we follow.

Now, we do try to keep it to 10 percent, because I know there is proposed legislation to limit it to 10 percent, and we don't want to get caught with a big bundle.

The CHAIRMAN. We had a question here that was answered otherwise, but I have a feeling that the question perhaps wasn't understood.

The answer is that you have been operating at about 10 percent of your equity?

Mr. FLETCHER. Correct—10 percent of the fund.

The CHAIRMAN. Thank you very much.

STATEMENT OF JAMES CAMERON, VICE CHAIRMAN, PROFIT SHARING COMMITTEE, WINN-DIXIE STORES, INC., ACCOMPANIED BY SHEPARD BRYAN, GENERAL COUNSEL

The CHAIRMAN. Winn-Dixie, Mr. James Cameron.

Mr. CAMERON. Yes, sir.

Mr. BRYAN. My name is Shepard Bryan, general counsel, Mr. Chairman.

Mr. Cameron, who is the director of our employee benefit programs and the Winn-Dixie profit-sharing trust, will testify on behalf of our company.

The record should reflect, Mr. Chairman, that Mr. Cameron appears voluntarily in response to the invitation from the subcommittee.

Mr. CAMERON. My name is James Cameron. I am the vice chairman of the profit-sharing committee of the employees profit-sharing program of Winn-Dixie Stores, Inc., located in Jacksonville, Fla.

On October 6, 1971, Winn-Dixie Stores, Inc., received a letter of invitation dated October 2, 1971, from Special Counsel Mario T. Noto to testify in these proceedings with respect to our pension plan, expressing particular interest concerning the vesting and funding of such plan.

For the record, Winn-Dixie Stores, Inc., does not maintain a pension plan. Our plan is a profit-sharing retirement plan. While the final objectives of pension plans and profit-sharing plans may be considered

to be somewhat similar, the underlying philosophies and operation of the two retirement systems encompass wide differences. A pension plan generally is predicated upon an actuarial formula which requires a fixed amount of dollars to be available on the retirement date of the employee in order to provide a promised amount of retirement income. A profit-sharing retirement plan offers an invitation to participating employees to share in the profits of the sponsoring employer and thereby to build their own retirement estates through individual and collective efforts in contributing to the creation of such profits.

Suffice to say the foregoing is but a brief sketch of the two systems. We feel sure the committee is aware of the basic differences between "pension plans" and "profit sharing retirement plans."

Obviously, we believe that a profit-sharing retirement system offers the better long-range opportunity to provide adequate retirement benefits to retired Winn-Dixie employees. The history of our program has proved the wisdom of this belief.

Our program was instituted in 1946 with a corporate contribution of \$220,110 for 325 employees. A most significant feature of our program is that the entire cost of the contributions is borne by Winn-Dixie Stores, Inc. Participating employees are not required to contribute any part of their own funds to the program through payroll deductions or in any other manner.

Since 1946, the corporation has contributed a total of \$55,835,288, of which \$13,551,395 has been paid to participants in the form of year-end cash profit-sharing bonuses, pursuant to the provisions of the program. In addition, \$11,181,318 has been paid out to retired, disabled, and terminated participants, as well as beneficiaries of deceased participants. During the same period, a total of \$30,649,082 net investment income has been realized from the net corporate contributions of \$42,283,893. At June 30, 1971, approximately 7,100 active and retired participants had an equity of \$61,751,657.

We believe that we have maintained a balanced investment portfolio, consisting of Government and corporate bonds, common stocks, mortgages, and rental properties. Outside professional counseling services are employed to assist in management of our investment portfolio.

At September 24, 1971, our investment fund was comprised of 41 percent bonds, 37 percent common stocks, 20 percent rental properties, and 2 percent mortgages. Approximately 28 percent of the assets of the fund at September 24, 1971, were composed of investments in common stock of Winn-Dixie Stores, Inc., rental properties under lease to Winn-Dixie Stores, Inc., or its subsidiaries, and loans secured by mortgages on properties under lease to Winn-Dixie Stores, Inc.

Ownership of 110,000 shares of Winn-Dixie Stores, Inc., common stock represented approximately 7.2 percent of the fund. The cost of the shares was \$2,876,698. The market value at September 24, 1971, was \$4,922,500. Investments in rental properties at September 24, 1971, which are currently under lease to Winn-Dixie Stores, Inc., or its wholly-owned subsidiaries, amounted to approximately \$13,300,000, representing approximately 19.4 percent of the fund, which produce an average annual rate of return of 7.98 percent. The investments in

rental properties are calculated to be fully amortized at lease expirations leaving the fund with substantial residual property values.

Mortgage investments at September 24, 1971, amounted to \$1,476,703, including \$960,380 in mortgage loans to corporations in which officers and/or directors of Winn-Dixie Stores, Inc., have some interest. Such mortgage loans represent only 1.4 percent of the assets of the fund. All such mortgage loans will be amortized during the term of the securing leases.

The latest report of investment performance of our fund by A. G. Becker and Co., Inc., for the year ending June 30, 1970, shows our fund to have achieved the highest cumulative annual rate of return of all reporting funds having assets of \$10 million to \$50 million for the years 1961 through 1970. We indeed are proud of this record.

In mid-1971, the Internal Revenue Service conducted an intensive examination of our program for the years 1967, 1968, 1969, and 1970. No deficiencies were cited in connection with our investment portfolio.

Gentlemen, we believe we have an excellent profit-sharing retirement program for the employees of Winn-Dixie Stores, Inc., one which offers as much protection as possible to the interest of the participating employees, and a plan which, barring unforeseen events, will provide adequate retirement benefits to our employees upon completion of their working careers with our company.

We will be pleased to answer your questions to the best of our knowledge and ability.

The CHAIRMAN. Thank you very much, Mr. Cameron. Your approach, your thrust, or the philosophy of your plan is not a fixed benefit to a retiree? It is based on a share of profits from the return on investments in the fund?

Mr. CAMERON. Senator, it is based on a share of the profits of the corporation and, added to that is whatever income the fund investments may yield.

The CHAIRMAN. When does an employee realize any return on the income from the company and from the invested funds?

Mr. CAMERON. Well, of course, at retirement when the employee retires or becomes disabled.

The CHAIRMAN. Let's deal with the retirement situation.

When does he have a vested right or interest in part of the profits from the company and the fund? When does he have that right?

Mr. CAMERON. When does he have some of the action?

The CHAIRMAN. Yes.

Mr. CAMERON. We have perhaps more than one method of vesting, so-called. First, if an employee participant voluntarily leaves the employment of the employer prior to reaching age 35, he is required to forfeit all the funds theretofore credited to his account.

The CHAIRMAN. What is credited to his account during that period?

Mr. CAMERON. A percentage of his compensation as represented by the amount of the profits of the company which has been contributed to the plan.

In addition to that, of course, is the investment revenue that has been achieved. So this is credited every year to each individual account. In other words, each participant is furnished with a bank ac-

count, if you would, showing how much he started with the previous year, what the corporation has contributed to his account, the amount that may have been paid out to him in a cash bonus, the investment earnings credited to his account, which is his proportionate share of the total earnings of the fund and shows, of course, the new balance.

So he knows every year the amount of money that is credited in his retirement account and what has occurred during the year, as a matter of fact.

The CHAIRMAN. This would be forfeited under what circumstances?

Mr. CAMERON. It would be forfeited if he voluntarily left the service of the company prior to reaching age 35. The entire amount credited would be forfeited.

For example, if he is found guilty of a theft of embezzlement from the employer, he would be required to forfeit all of his funds at any age, as a matter of fact.

The CHAIRMAN. What if he were discharged for normal reasons?

Mr. CAMERON. If he were discharged for cause prior to age 35, he would be required to forfeit all of his funds.

The CHAIRMAN. There is a cause for everyone to be discharged. How about a reduction in force?

Mr. CAMERON. I am coming to that.

If the employee is discharged for what we characterize as "for the convenience of the company," he is then fully vested, regardless of his age.

The CHAIRMAN. But if the cause is a wrongdoing on his part?

Mr. CAMERON. Yes.

The CHAIRMAN. So, even under 35 if discharged for the convenience of the company, he picks up whatever his bankbook shows at that point?

Mr. CAMERON. That's correct.

The CHAIRMAN. And then after 35?

Mr. CAMERON. From 35 to, essentially, to 50, because our participants become fully vested at age 50, after having 10 years' service, but between 35 and 50, if he is discharged by the employer for other than convenience termination, for wrongdoing, then he is entitled to a portion of his account based on a formula which provides for a fraction to be developed, using the number of years he actually served the employer as the numerator and the number of possible years from the date of his employment after age 20 to normal retirement age 60 as the denominator. That fraction is applied to his account and he is entitled to that portion of the fund in his account.

For example, if I may, Senator, maybe it will clear it up a little:

The example of a person aged 36 and he is discharged or voluntarily terminates his services with the employer. Assuming he was employed at age 20, for ease in this illustration, if he began his employment at age 20, he would have a potential number of service years at age 60 of 40 years. If he left the employment at age 36, he would be entitled to 16-40ths of the amount credited to his account.

Under our plan, if this vested amount is sufficient to purchase for him a deferred noncommutable, nonassignable annuity through any insurance company of his choice, if that annuity, or that amount would purchase an annuity which would provide at least \$10 per month

beginning at age 60, such an annuity is purchased. Otherwise, the funds are generally paid in cash.

I might add parenthetically, that this is probably the one feature of our plan terminated employees complain about the most. They say they don't want the annuity; they want the cash.

The CHAIRMAN. I wondered about the funding of those who have a vested position.

Mr. CAMERON. Our plan is fully funded, Senator, each year. In other words, each year when the corporation makes its contribution to the plan, that funds the plan up to that date. So there is no question of funding liability.

The CHAIRMAN. There is still a little ambiguity. The vesting is not in a dollar figure but in a percentage. Now, his bankbook in the situation you are talking about does not show percentages, does it, for the year?

Mr. CAMERON. No, sir; it shows his dollar balance.

The CHAIRMAN. It shows an annual dollar balance?

Mr. CUMMINGS. But the dollar balance is the result of the application of some percentage credits to the total funds, whatever it may be; is that right?

Mr. CAMERON. The dollar value is accumulated on the basis of the earnings of each individual. We have \$50 million—and—

Mr. CUMMINGS. The structure of the profit-sharing fund, correct me if I am wrong, provide that, instead of the fund guaranteeing in advance that 20 years from now if you work so many years you will get so many dollars—instead, the guarantee is that 20 years from now you will get some portion of whatever is in the fund in the meantime, by virtue of the profit-sharing provisions of the plan; is that right?

So that by definition you are always fully funded because what you are entitled to is what is there?

Mr. CAMERON. That's right.

The CHAIRMAN. That's not what you said before. You said every year there is an annual dollar accounting. It is like a passbook to a saving account?

Mr. CAMERON. Yes, sir.

The CHAIRMAN. There is a difference here.

Mr. CUMMINGS. You make the dollar accounting after the money is in the fund so that the determination of what the account would be is based on what you put in there; isn't that right?

Mr. CAMERON. Let me see if I can explain it in this fashion:

If the corporation has last year contributed, as I recall \$4,850,000, I believe the figure was, this figure is determined—we take the entire compensation of all the participants and determine what percentage of that figure they own. It turned out last year it was approximately 8½ percent. So everybody got 8½ percent of total compensation.

The CHAIRMAN. Do you translate that into that year's dollar amount for the employees?

Mr. CAMERON. Yes, sir; I believe I have, Senator. I think perhaps the staff has—

The CHAIRMAN. When he retires, when we talk about funding, we mean he picks up 10 years later that dollar amount that was put in his book 10 years earlier? That's what "funding" means to me.

Mr. CAMERON. It is brought up to date every year.

Here, for example, I am holding a certificate of participation which is furnished each year, a new one, to each participant of the plan.

In addition to the name, it contains the social security number, et cetera, opening retirement account, balance, and under the general heading of "Additions," deposit, meaning the corporate contribution, earnings, and forfeitures, less cash bonus deductions, and the ending retirement account balance at this date this year.

Mr. CUMMINGS. Mr. Chairman, if I may?

The CHAIRMAN. Yes, go ahead.

Mr. CUMMINGS. It is clear, is it not, that the sum total of the amounts credited to various accounts of participants in each year is the sum total of the amount of the contribution; is that right?

Mr. CAMERON. That's correct.

Mr. CUMMINGS. So that the amount that is credited is the same amount as is defined by the extent of your contribution? So by definition, you can never be unfunded?

Mr. CAMERON. That's correct. We have no problem of funding past service credits.

Mr. CUMMINGS. The risk, then, is not a risk that the unfunded liability won't be paid; the risk is that you won't make any profits and, therefore, in some future year where you make no profits you make no contribution, and there is no contribution to the employee's account. That's the gamble in a profit-sharing plan.

Mr. CAMERON. That's correct. That's the basis of the profit-sharing plan.

We think, as a matter of fact, this profit-sharing system more closely parallels the concept of the free enterprise system than any other type of retirement plan.

The CHAIRMAN. The question is raised here, on page 2 of your statement at the bottom:

The mortgage investments include \$960,380 in mortgage loans to corporations in which officers and/or directors of Winn-Dixie Stores, Inc., have some interest.

Well, now, how does that work out? Are these loans to officers for their other business activities? Is that what that means?

Mr. CAMERON. These are loans to bona fide real estate corporations in which officers and directors have an interest.

The CHAIRMAN. What kind of return do they pay to the fund?

Mr. CAMERON. Our present rate of return, Mr. Chairman, I believe is 5.65 percent.

The CHAIRMAN. Just on these in-house mortgage loans?

Mr. CAMERON. Well, of course, substantially all of these mortgage loans are secured by property. Most of them are on Winn-Dixie store locations. And the overall yield on the mortgages, as September 24, is 5.65 percent.

I might add that no such mortgage loans have been made since, I believe, 1964-65.

The CHAIRMAN. Do the transactions that revolve around Winn-Dixie stores include Safeways, too?

Mr. CAMERON. Well, we don't currently have any Safeway stores.

Mr. Noto. Mr. Cameron, we have a list of companies or corporations which our inquiry leads us to believe are owned either in whole or in part by officers or directors of Winn-Dixie and, which, in fact, have been loaned moneys by Winn-Dixie's profit-sharing plan to the corporation, and the corporation, in turn, has executed a mortgage for its purchase to secure the loan, a mortgage on property that would belong to the real estate corporation. Let me show this to you, and perhaps you would explain it. The list follows.

(The information subsequently supplied follows:)

U. S. SENATE
SUBCOMMITTEE ON LABOR
MEMORANDUM

October 8, 1971

TO: Mario T. Noto, Special Counsel

FROM: Roy Wade

SUBJECT: Examination of records of Winn-Dixie Stores, Inc.

On October 1, 1971, at 1:00 p.m., I called at the offices of the Winn-Dixie Stores, Inc. I was directed to J. Sheppard Bryan, General Counsel, who took me to a conference room, where we were joined by James Cameron of the Employees Benefits Division. I explained the purpose of my examination and requested information relative to the investments of the profit-sharing plan. Mr. Bryan had the financial records of the pension plan brought in and presented them for my examination. Mr. Bryan and Mr. Cameron left to go to a funeral at about 2:00 p.m. and returned at about 4:00 p.m. During their absence, Mr. Robert Sheridan, attorney, was present while I looked through the records.

I had noticed that there were many mortgages with various real estate companies and asked Mr. Bryan if he could identify those companies which were either partly or wholly controlled by officers or directors of the company. He went through the list and checked off those firms that he knew were owned or controlled by corporate officers or directors. A schedule of those companies either wholly or partly owned by Winn-Dixie officers or directors are listed below, along with the specific pieces of real estate owned by those firms, and mortgaged to the profit-sharing fund.

Avery Properties
 Barbee, Inc.
 Dade Business Locations
 Dade Business Locations
 Dade Business Locations
 D. D. I., Inc.
 D. D. I., Inc.
 D. D. I., Inc.
 Duval Locations
 Duval Locations

Winn-Dixie Store #99
 Winn-Dixie Store #69
 Winn-Dixie Store #49
 Winn-Dixie Store #226
 Safeway Store, Stephenville, Texas
 Safeway Store, Stephenville, Texas
 Safeway Store, Eastland, Texas
 Safeway Store, Temple, Texas
 Safeway Store, Waco, Texas
 Safeway Store, Waco, Texas
 2nd Mortgage, Miami Warehouse

Estate Locations	Winn-Dixie Store #623
Estuary Corporation	Winn-Dixie Store #78
Estuary Corporation	Winn-Dixie Store #219
Deriso Properties, Inc.	Winn-Dixie Store #285
Flaky, Inc.	Winn-Dixie Store #2
Jansu Adams, Inc.	Winn-Dixie Store #214
Jimar, Inc.	Winn-Dixie Store #629
Jimar, Inc.	Winn-Dixie Store #684
Miami First & Eight Corp.	Winn-Dixie Store #221
Miami First & Eight Corp.	Winn-Dixie Store #225
Red Wing Properties, Inc.	Winn-Dixie Store #67
Red Wing Properties, Inc.	Safeway Store, Gainesville, Texas
Sivad Corporation	Winn-Dixie Store #220
Sivad Corporation	Winn-Dixie Store #280
Vadis, Inc.	Safeway Store, Eastland, Texas
Vadis, Inc.	Safeway Store, Temple, Texas
Volusia Locations	Winn-Dixie Store #52
Volusia Locations	Winn-Dixie Store #279
WaDaCa Plantations, Inc.	Winn-Dixie Store #663
WaDaCa Plantations, Inc.	Winn-Dixie Store #634
WaDaCa Plantations, Inc.	Winn-Dixie Store #47
Winn-Dixie Locations, Inc.	Miami Warehouse
Norsta Corporation	Tampa Warehouse

Mr. CAMERON. I think this is the information furnished your representative when he was in our office.

Mr. NOTO. That's right. Is that information correct as furnished to us by you?

Mr. CAMERON. Yes, sir.

Mr. NOTO. Could you tell us which officers who are members of the board of directors of Winn-Dixie are either owners in whole or in part or hold a controlling interest of the companies that are listed?

Mr. CAMERON. Mr. Noto, I could not specifically tell you in each instance.

Mr. NOTO. I appreciate that. Would you furnish that for the record?

Mr. CAMERON. I think I can. We can confirm it for the record, and I think I can say that a majority of these are real estate corporations which are owned by the controlling stockholders of Winn-Dixie Stores, Inc.

Mr. NOTO. I would like to also invite your attention to another memorandum dated October 8, 1971, also prepared by Mr. Wade, which relates an account of the records that you furnished to him on that date, which contains a listing also of companies that are either wholly or partly owned by Winn-Dixie, the officers or directors, and, in turn, showing which firms executed mortgages on which stores, which are Winn-Dixie or Safeway stores.

Would you look at this also and say whether it is accurate as to what was furnished to Mr. Wade.

Mr. CAMERON. I think, Mr. Noto, I would like to confirm this list from our records and we can then furnish that to you.

Mr. NOTO. Could you furnish that to us?

Mr. CAMERON. Yes. I thought we already had furnished them to Mr. Wade.

Mr. NOTO. Except that this second sheet of paper has related the name of the store which the company has purchased and subsequently leased it to Winn-Dixie.

Mr. CAMERON. I don't quite follow that, sir.

Mr. NOTO. You have on the list that you are looking at a company which is listed in the left column. Now, we have been told that those are companies owned wholly or in part by officers or directors of the board of directors of Winn-Dixie. These are organizations to which the profit-sharing plan has loaned money. That money was in turn used to purchase property. That property was mortgaged to Winn-Dixie, to the profit-sharing plan, and the property purchased was then leased to Winn-Dixie. And the properties leased and purchased are represented on the right-hand column.

Mr. CAMERON. I think that's right. I think, if I understand what you are saying, construction loans were made and then the property built and leased back and the mortgage was taken with the fund, and the store leased to Winn-Dixie. That is substantially correct.

Mr. NOTO. Would you comment on this to see if our understanding of the transaction is correct? And I think we would appreciate it if you would give us any explanation for it.

Our staff inquiry would indicate that the profit-sharing plan of Winn-Dixie lends money to companies. These companies are owned either completely or substantially by individual officers or members

of the board of directors of Winn-Dixie. The officers, through these companies, procure a loan from the profit-sharing plan. They use the proceeds of that loan to make a purchase of realty. To secure the loan they execute a mortgage to the profit-sharing plan. The property purchased is then, in turn, leased to Winn-Dixie so that it would seem, at least on the surface, that you have a circle whereby a director of Winn-Dixie, through either a full or shell corporation borrows money from Winn-Dixie's profit-sharing plan, makes a purchase of property, then takes that property and leases it back to Winn-Dixie.

Would that be a fairly accurate statement of the transactions that those items represent?

Mr. CAMERON. Not altogether, Mr. Noto.

First, these transactions are generally simultaneous. Generally, if I may use the word, a "package" is put together before anything happens.

Second, these corporations, I notice you refer to them as possibly "shell corporations," this is certainly not correct. These are qualified corporations. They are chartered corporations in the State of Florida, and they are not shell corporations.

My understanding of them, many of these real estate corporations own property and other assets which are not simply Winn-Dixie stores.

Mr. Noto. Aside from that, though, notwithstanding the fact that they could own a substantial number of properties, the fact though is this: Would this be accurate? What I am saying, is that there are companies or corporations which are owned or substantially controlled by the officers of Winn-Dixie or a member of the board, which in turn is borrowing money from the profit-sharing plan, making a purchase of realty and in turn leasing that realty to Winn-Dixie? Is that a fair statement?

Mr. CAMERON. Well, yes, sir, except the way you expressed it perhaps connotes some wrongdoing.

Mr. Noto. I don't mean to imply anything improper about it.

Mr. CAMERON. The sequence, Mr. Noto, is not as you indicated, as I have said, these are package deals. These are simultaneous transactions that, the mortgages, the leases, the properties, are all put together at one time. So that there is no question of this fund loaning any corporation or any officer or any director or anybody else any type of interest-free unsecured loan. These investments have been fruitful to this profit-sharing fund. The loans, mortgage loans, are well secured by the property, mortgage on the property, and the assignment of leases to Winn-Dixie.

I might say we have never had a defaulted mortgage.

Mr. Noto. Notwithstanding its success, though, the facts are substantially correct; that that would be the route of the loan?

Mr. CAMERON. The loans are in the portfolio and they have been furnished to the committee, Mr. Noto, and the information is available to the committee. It has been made available to it.

Mr. Noto. Would you do as we suggest? Would you furnish the identity of the officers or members of the board of directors of Winn-Dixie who are identified either as owners in whole or in part of the corporations?

Mr. CAMERON. Yes. May I make one statement here regarding the list which you have placed before me, Mr. Noto?

You list one corporation, Winn-Dixie Locations, Inc., covering a warehouse. This is not such a corporation as we have been discussing. This is not a real estate corporation in which officers and directors—

Mr. NOTO. We appreciate that. I think that will be explained.

May I ask you this, Mr. Cameron:

If you turn to your pension plan, I may quote from section 8.2 and then a small "i" in brackets, and it provides as follows—and may I quote. It provides:

The Committee, composed of three to seven persons appointed by the employer's Board of Directors may direct the trustee to purchase or lease property from, or sell or lease property to, or exchange property with, or lend money to the company or any director or officer of the trustee or the company, or any member of the profit sharing committee, or any corporation which such officer or such committee may own, control, or have an interest in.

Now, it would seem—and this is one of the reasons that we have made inquiry into this—it would seem that this is almost a mandate because the committee, in fact, is the board of directors, or vice versa, and they are more or less specifically committed to making investments with the company, its officers, or any of its directors, or any member of the committee.

Would you comment on that?

Mr. CAMERON. Well, Mr. Noto, I don't read any mandate in this provision. This provision, as we envision it, is a provision which simply clearly sets forth these possibilities so that nothing would be hidden, so that in the event an investment should become available to this fund, which would be an investment in which the fund could derive a return which would benefit its participants, we would not want any hint that anything is being done under the table. This was put in the plan specifically to guard against that.

Also, of course, for full protection of the trustee in that same regard.

Mr. NOTO. With that provision in the pension plan, would it not, though, actually authorize substantial portions of the profit-sharing assets to be invested in any company or organization that would be under the control either in whole or in part by any of the Winn-Dixie officers or members of the board?

Mr. CAMERON. We don't think any substantial part of the assets of this fund are so invested. Our records of September 24 statements shows 1.4 percent of the investment. We don't think that is substantial.

Mr. CUMMINGS. When that list is completed that you so graciously offered to complete, won't that reflect that you have a substantial number of organizations where officers and members of the board of Winn-Dixie have a substantial interest, and they have acquired funds by way of a loan from the profit-sharing plan?

Mr. CAMERON. Well, again, you used the word "substantial." We don't happen to think that there ever has been a substantial portion of these funds so invested.

Mr. NOTO. Would you do just one other thing in computing that data, sir? Would you furnish the total amount that would be represented percentagewise in relationship to the assets of the profit-sharing

plan? In other words, of all the moneys that are listed as loans made to those corporations listed on the left, what ratio would they have to the full amount or the full fund of all the assets of the profit-sharing plan? Could you do that in the statement?

Mr. CAMERON. That's in the statement: 1.4 percent.

Mr. NOTO. I am aware of this, but this might not relate, in fairness to yourselves, with respect to those corporations which are listed in the sheet that I have given you. If this is based upon all of those corporations, then yes. But if it is not, I would suggest—

Mr. CAMERON. Yes, sir; you have to understand that in order to do that accurately, you would have to use some date upon which to settle, because the list that you have here—

Mr. NOTO. Is as of the end of the last calendar year or fiscal year.

Mr. CAMERON. We will give you that statement. Because some of these mortgages, I'm sure, have been paid up and no longer are in the trust. You understand my problem in complying with what you are requesting.

Mr. NOTO. Thank you.

Mr. CUMMINGS. Mr. Cameron, I take it that some of these corporations, real estate holding corporations, are actually owned by officers or directors of the corporation; is that right?

Mr. CAMERON. Yes.

Mr. CUMMINGS. In any such corporation where the corporation borrows at $5\frac{3}{4}$ percent from the profit-sharing fund, buys a piece of property and then leases it to Winn-Dixie, does the dollar figure representing rent from Winn-Dixie exceed the dollar figure representing the $5\frac{3}{4}$ percent interest going back into the profit-sharing fund?

Mr. CAMERON. If I understand you correctly, the answer is no. The entire lease is assigned to the fund.

Mr. CUMMINGS. So it is a straight pass-through? These are not profitmaking corporations?

Mr. CAMERON. Well, now, I honestly can't answer that.

Mr. CUMMINGS. If the lease was assigned as security rather than just assigned, then the rent still belongs to the real estate company as long as the real estate company is paying the interest; is that correct?

Mr. CAMERON. That's correct.

Mr. CUMMINGS. Do you know whether the rent exceeds or is the same as the interest on the loan?

Mr. CAMERON. My understanding is it is the same, but I am not sure.

Mr. CUMMINGS. Could you provide the details of that so the committee will be able to tell?

The CHAIRMAN. Do you say it was your understanding it was the same?

Mr. CAMERON. Yes.

Mr. BRYAN. Is that the interest?

Mr. CUMMINGS. Is the amount of money that the holding company takes in, in rent from Winn-Dixie, the same as the amount of money the holding company pays out in interest on the mortgage to the profit-sharing fund? We are asking you to supply that information.

Mr. CAMERON. It is paid fully.

Mr. CUMMINGS. But is there any profit made by the real estate company in the interim?

Mr. CAMERON. It is my understanding that all of the income from the rental goes right into the profit-sharing plan.

Mr. CUMMINGS. Thank you. Then you will be able to supply that information?

Mr. CAMERON. Yes.

Mr. CUMMINGS. Even assuming that it is a straight passthrough transaction it is a fact at the end of the transaction the real estate company ends up owning outright a piece of property which the owner of the real estate company can then sell for a very substantial capital gain; is that right?

Mr. CAMERON. I think that's correct.

Mr. CUMMINGS. And that would belong to the director, is that right?

Mr. CAMERON. That's correct.

Mr. CUMMINGS. You said in your annual report to the Labor Department on form D-2, filed in 1968, 1969, and 1970, that there were no outstanding party-in-interest loans. Is there any reason why you felt these were not party-in-interest loans? You left all this blank. It is on page 14 of D-2.

Mr. CAMERON. I am afraid I would have to review that D-2 report before I could answer.

Mr. CUMMINGS. Would you do that and supply to the committee some explanation as to how it is possible that you have no outstanding party-in-interest loans shown on any of these D-2 forms, and no outstanding party-in-interest investments—on these tables 1 and 3 on page 14 of D-2 form for 1970, and comparable questions for 1968 and 1969.

Mr. CAMERON. That would make it 1968, 1969, and 1970?

Mr. CUMMINGS. Yes. We have the forms here if you would like to look at them at the close of the hearing. The typical question is, for example—

List moneys made during the year or outstanding at end of year to parties in interest, showing names and addresses of debtors.

Then—

List all investments held at year end in bonds and stocks.

Bonds, I would take it, would include loans—"of parties in interest." And the words "party in interest" are defined to mean any administrative officer, trustee, custodian, counselor, or employee of any employee welfare benefit plan, or employee pension plan, or a person providing pension plans, or an employer any of whose employees are covered by such plan, or officer or employee or agent of such employer.

And I take it that these officers who secured these loans through control of corporations are officers or employees of the employer. So what we are curious to know is why they don't appear in the report to the Labor Department.

Mr. CAMERON. We will be glad to furnish that.

(The information subsequently supplied follows:)



WINN-DIXIE

STORES, INC. *Nov 4 12 47 PM '71*

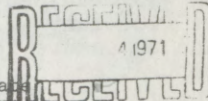
PENSION STUDY
NOV 8 1971

GENERAL OFFICES
5090 EDGEWOOD COURT — P.O. BOX 8 — JACKSONVILLE, FLORIDA 32203
(904) 384-5511

November 3, 1971

Honorable Harrison A. Williams, Jr.
Chairman
Committee on Labor and Public Welfare
United States Senate
Washington, D. C. 20510

SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE



Re: Testimony before Senate
Subcommittee on Labor
October 13, 1971

Dear Chairman Williams:

Pursuant to the request of the Senate Subcommittee on Labor, I submit herewith information to supplement my testimony before the Subcommittee on October 13 relating to the Winn-Dixie Profit Sharing Plan.

The principal shareholders of the affiliated real estate corporations of Winn-Dixie Stores, Inc. who also served as officers and directors of Winn-Dixie Stores, Inc. at the time of the mortgage loans reflected on the schedules for the periods June 1961 to 1971, inclusive, previously furnished to the staff are shown on the schedule enclosed with this letter.

Except for the addition of Wilco Properties, Inc., B. B. H., Inc., and Sumetra, Inc., the "Schedule of Mortgage Loans Outstanding of the Winn-Dixie Profit Sharing Plan" prepared by Mr. Wade from the schedule of Profit Sharing Investments for the years 1961-1971, inclusive, reflect the real estate corporations owned or controlled by the officers and directors of Winn-Dixie Stores, Inc. who were serving as such at the time of the loans.

In further explanation I would like to point out that no mortgage loan has been made by the Winn-Dixie Profit Sharing Trust since 1964 to any of the real estate corporations owned or controlled by officers and directors of Winn-Dixie Stores, Inc. Further, at no time did the principal amount of any mortgage loan made to an affiliated real estate corporation exceed 66 2/3% of the total investment cost of the real property; and all loans were made at interest rates not less than prevailing interest rates for commercial mortgage loans. Each mortgage loan was secured by additional collateral assignment of lease with Winn-Dixie

Re: Testimony before Senate
Subcommittee on Labor
October 13, 1971

November 3, 1971

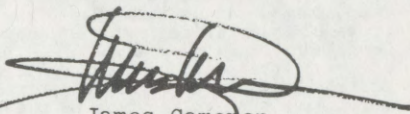
Stores, Inc. Each loan has been liquidated on schedule and has been an excellent investment for the Trust.

In each situation, the real estate corporation purchased the property, constructed the store building and then leased store building to Winn-Dixie before permanent mortgage financing was obtained from the Profit Sharing Trust. Because of the fiduciary obligations of management, special effort was made to assure that rentals paid under leases with affiliated corporations did not exceed that paid to outside landlords. Rentals paid by Winn-Dixie on each location financed by the Profit Sharing Trust were approximately equal to the amount of taxes and insurance and debt service on the mortgage loan.

I regret that the Forms D-2 filed by the Winn-Dixie Profit Sharing Plan for 1968, 1969 and 1970 erroneously omitted a separate listing of outstanding party in interest transactions. This supplementary information will be filed immediately with the U. S. Department of Labor.

I trust that the above information further clarifies my testimony. If additional information is necessary, we shall be pleased to furnish it to you.

Very truly yours,



James Cameron

JC/fb

SCHEDULE submitted with letter dated November 3, 1971 addressed to Hon. Harrison A. Williams, Jr., Chairman, Senate Committee on Labor & Public Welfare, relating to testimony of Mr. James Cameron before Senate Subcommittee on Labor on October 13, 1971.

CONTROLLING SHAREHOLDERS OF
AFFILIATED REAL ESTATE COMPANIES OF
WINN-DIXIE STORES, INC. AND
WINN-DIXIE OFFICES HELD AT TIME OF MORTGAGE LOANS

<u>COMPANY</u>	<u>SHAREHOLDERS</u>	<u>WINN-DIXIE OFFICE</u>
AVERY PROPERTIES, INC.	H. L. Avery	Vice President
BARBEE, INC.	B. L. Thomas	Vice President
DADE BUSINESS LOCATIONS, INC.	T. W. Davis	Vice President & Director
D. D. I., INC.	A. D. Davis) J. E. Davis) and M. A. Davis) families T. W. Davis)	President & Director Chairman of Board & Director Vice President & Director Vice President & Director
DERISO PROPERTIES, INC.	J. G. Deriso	Vice President
DUVAL LOCATIONS, INC.	A. D. Davis	President & Director
ESTATE LOCATIONS, INC.	A. D. Davis) J. E. Davis) 80% M. A. Davis) interest T. W. Davis)	President & Director Chairman of Board & Director Vice President & Director Vice President & Director
ESTUARY CORPORATION	J. E. Davis	Chairman of Board & Director
FLAKY, INC.	M. A. Davis	Vice President & Director
JANSU ADAMS, INC.	Joe A. Adams	Vice President
MIAMI FIRST-AND-EIGHTH CORPORATION	M. A. Davis	Vice President & Director
NORATA CORP.	A. D. Davis J. E. Davis M. A. Davis T. W. Davis	President & Director Chairman of Board & Director Vice President & Director Vice President & Director
JIMAR, INC.	M. H. Hollingsworth	Vice President
RED WING PROPERTIES, INC.	T. W. Davis	Vice President & Director
SIVAD CORPORATION	J. E. Davis	Chairman of Board & Director
VADIS, INC.	J. E. Davis	Chairman of Board & Director
VOLUSIA LOCATIONS, INC.	A. D. Davis	President & Director
WaDaCa PLANTATION, INC.	A. D. Davis	President & Director
WILCO PROPERTIES, INC.	J. P. Williamson (deceased)	Vice President & Director
B. B. H., INC.	J. S. Bryan, Jr.)2/3 R. J. Head)interest	Assistant Secretary Assistant Treasurer
SUMETRA, INC.	A. D. Davis	President & Director

The CHAIRMAN. Thank you very much.
 Senator Javits.

CLOSING STATEMENT OF SENATOR JAVITS

Senator JAVITS. As in the case of the prior hearings, I would again like to note the unusual degree of diligence by the chairman and the staff in preparation for these hearings. After yesterday and today, I am sure we all realize the wide-ranging scope and complexity of private pensions and the effort required to penetrate the technicalities and get at the basic factors giving rise to employee hardships. The activities of this subcommittee—its ongoing statistical survey and both these and the prior hearings—have served to catalyze public opinion and bring about a national awareness of the need for pension reform.

To those witnesses who voluntarily appeared before this subcommittee and, in a spirit of healthy give and take, furnished us with a direct and candid expression of views, I convey my appreciation. This kind of vigorous discussion is essential to the legislative process. Without it we cannot frame intelligent and rational legislation. And let me say that in causing the spotlight to fall on the specific plans that were the subject of these hearings, it was not our intention to generate publicity for any particular employer, union, or plan administrator as such. Instead, our purpose was to examine in depth plans which may illustrate shortcomings in the private pension system—the very shortcomings which are treated by proposed legislation—such as my own bill, S. 2, which is now pending before the subcommittee.

VESTING

Lack of adequate vesting has been justified on three main grounds: First, the absence of vesting serves to deter employees from leaving their employer; second, vesting is too expensive; and third, it is not always a priority item and available funds are shifted to improve or provide for other forms of fringe benefits.

As to the first, it seems to me that it is highly dubious policy to inhibit employee mobility by lack of vesting. It is tantamount to freezing employees in a feudal system, and I don't believe that the American taxpayer can continue to subsidize plans that operate on the basis of this kind of management policy. Moreover, the provision of essential retirement income is of such great importance that it should not be blocked by employer objectives of this kind—particularly when other forms of incentives can be offered in order to retain valuable employees.

Concerning the burden of additional cost, I recognize that this question is perhaps the critical one, and one which this subcommittee will study very carefully.

Nonetheless, I would point out that the controversy over costs reveals a great deal more about the design of most private pension plans than the designers would care to admit. For the central truth that

emerges is that there is no inherent management justification for lack of adequate vesting; it is simply a cost-cutting device, nothing more and nothing less.

And as a cost-cutting device it is undoubtedly effective, which is why those who have designed plans in this manner are reluctant to part with the technique and anticipate financial burdens if they do.

There are, however, other money-saving devices which would not result in unjustly depriving long-service employees of the pension credits that have been built up on their behalf in return for their economic contribution to the employer.

I strongly believe that, in general, the financial burden of reasonably early vesting will not be as great as it might appear to some for two principal reasons: First, when the employee is convinced—as is clearly not the case at present—that his legitimate pension expectations are secure, he will be more willing to assume some of the cost burden himself by rearranging his demands in the other areas of compensation; second, the existence of a pension acquired from a previous employer—owing to the vesting requirements—will relieve subsequent employers from providing pensions for earlier working years. In effect, the costs of providing pensions will be distributed among a number of employers instead of one employer having to bear the brunt of it.

So—in my opinion—the concern that vesting is impractical is not well-founded.

Of course, if I am wrong about this—if it is truly impractical for private pension plans to absorb the costs of reasonably early vesting—then we are confronted with the grim prospect of a system which will continue to work hardships and inequities on large numbers of workers—perhaps the majority. I doubt that I need dwell on the implications involved with respect to the survival of private pensions.

Finally, I do not maintain that, intrinsically, vested pensions are more necessary than other benefits, and that employers should not have put their money, for example, in medical insurance. I do assert, however, that the time has come when vested pensions must have an equal if not greater priority than has been previously the case.

FUNDING AND REINSURANCE

After reviewing the evidence presented at these hearings, the eye can see that the funding procedures of many plans are inadequate. There may appear to be good and substantial business reasons for not making sufficient contributions to the plan on the basis of a disciplined funding schedule, but the fact remains that if any of these firms closed down their plants for business reasons, it would be Studebaker all over again.

Naturally, we don't anticipate that companies like Western Union and Uniroyal will disappear and leave their workers with worthless pension rights. But neither did we anticipate that Studebaker would disappear from the auto industry—and that is the point.

In this era of rapid technological and economic change, it is unsafe to assume that things will always remain precisely as they are today. And yet, this is exactly the assumption made by the actuaries.

Lest there be any misunderstanding, it should be made clear that I am not suggesting there should be full funding of fixed benefit plans from the outset. We all realize that this is impractical.

What is required, however, is a combination of disciplined funding under law and reinsurance of appropriate funds to protect against adverse business contingencies before the funding can be reasonably completed.

Only then will the benefit promises made on paper to employees—on which they rely—be secure.

CONFLICT-OF-INTEREST

As every first year law student knows, it is a time-honored legal principal that "no man can serve two masters." How pension trusts have escaped application of this principle eludes me—but apparently they have, and now the results are apparent for all the world to see.

The main justification for conflict of interest use of employee benefit funds seems to be that as long as they are good investments there is no reason for concern. This will not do.

The massive use of tax-free funds set aside for employees as if they were an adjunct to the corporate treasury or to serve the interests of company officers is incompatible with a fiduciary's obligation. It is deplorable to assert before this committee that this sort of thing is in the employees' interests because the investment is sound.

What is sound today may not be sound tomorrow, and what assurance is there to the employees that the persons responsible for this self-dealing will consider the employees' interests first if a decision should be called for concerning the wisdom of maintaining the conflict-of-interest arrangement? It would be instructive, I think, to find out whether those who sanction this practice would permit their personal funds to be handled by a similar trustee. I doubt it.

But whether they would or not is really irrelevant. Fiduciaries must adhere to a higher standard, particularly since the investment of any significant proportion of a pension fund's assets in the employer involves serious risk inasmuch as failure of the company would jeopardize not only the employee's job but also his retirement benefits.

The fiduciary's obligation of undivided loyalty cannot and must not be so readily compromised, and no one has put it better than Chief Judge Cardozo in the famous case of *Meinhard v. Salmon*:

Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the role of undivided loyalty by the "disintegrating erosion" of particular exception. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.

And I am confident that this subcommittee will take the action that is necessary to see to it that the level of conduct for pension trustees is "kept at a level higher than that trodden by the crowd."

Mr. Chairman, these hearings have performed a major service by providing to the public an intimate glimpse into private pension plan design and operation.

I thank the Chair for his keen interest and also for his effectiveness in helping to amass such a wealth of testimony and for his impressive conduct of these hearings.

One thing is certain: pension reform legislation is going to receive the attention of this Congress; and it now appears that this subcommittee is well on its way toward active consideration of an appropriate bill.

The CHAIRMAN. This concludes the afternoon session.
(Whereupon, at 4:20 p.m. the hearing was recessed.)

