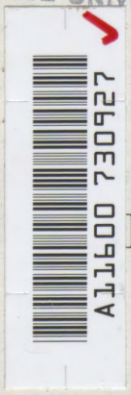
SERVICE CONTRACT ACT AMENDMENTS, 1972



HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON
BOR AND PUBLIC WELFARE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

S. 3827

TO AMEND THE SERVICE CONTRACT ACT OF 1965 TO REVISE THE METHOD OF COMPUTING WAGE RATES UNDER SUCH ACT, AND FOR OTHER PURPOSES

H.R. 15376

TO AMEND THE SERVICE CONTRACT ACT OF 1965 TO REVISE THE METHOD OF COMPUTING WAGE RATES UNDER SUCH ACT, AND FOR OTHER PURPOSES

AUGUST 16, AND SEPTEMBER 6, 1972

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

U.S. GOVERNMENT PRINTING OFFICE

82-582 O WASHINGTON : 1972

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CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

WEDNESDAY, AUGUST 16, 1972

WEDNESDAY, SEPTEMBER 6, 1972

STATEMENTS

ADDITIONAL INFORMATION

SERVICE CONTRACT ACT AMENDMENTS, 1972

WEDNESDAY, AUGUST 16, 1972

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

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

Present: Senators Williams, and Taft.

Committee staff present: Gerald Feder, counsel, Donald Elisburg, associate counsel, and Eugene Mittelman, minority counsel.

The CHAIRMAN. The subcommittee will come to order.

This morning the Subcommittee on Labor will begin its hearing with testimony on S. 3827, a bill introduced by Senator Gurney and myself, on July 2, and the companion House bill, H.R. 15376, passed by the House of Representatives last week by a vote of 274 to 101.

Congress enacted the Service Contracts Act in 1965 to insure that workers under Government service contracts are paid prevailing wages for their labors, and to prevent cutthroat bidding on Government contracts at the expense of the worker.

Our colleagues in the House held 8 days of hearings last year on the inadequacies and the implementation of the act.

Those hearings led to development of the bills before us today.

At this point, I will place both bills in the record.

(The bills referred to follow:)

92D CONGRESS
2D SESSION

S. 3827

IN THE SENATE OF THE UNITED STATES

JULY 21, 1972

Mr. GURNEY (for himself and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Service Contract Act of 1965 to revise the method of computing wage rates under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2 (a) (1) of the Service Contract Act of 1965 is amended by striking out all after "locality," and inserting in lieu thereof the following: "or, where a collective-bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including, if the Secretary so elects, prospective wage increases provided for in such agreement as a result of arm's-length negotiations. In no case shall such

wages be lower than the minimum specified in subsection (b)".

(b) Section 2(a)(2) of such Act is amended by striking out the period after "locality" and inserting in lieu thereof the following: ", or, where a collective-bargaining agreement covers any such service employees, to be provided for in such agreement, including, if the Secretary so elects, prospective fringe benefit increases provided for in such agreement as a result of arm's-length negotiations."

SEC. 2. Section 2(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 of title 5, United States Code, were applicable to them. The Secretary shall give due consideration to such rates in making the wage and fringe benefit determinations specified in this section."

SEC. 3. (a) Section 4(b) of such Act is amended by striking out all after "Act" and inserting in lieu thereof the following: "(other than section 10), but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards."

(b) Section 4 of such Act is amended by adding at the end thereof the following new subsections:

"(c) No contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits and, if the Secretary so elects, any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employee would have been entitled if he were employed under the predecessor contract.

"(d) Subject to limitations in annual appropriation Acts but notwithstanding any other provision of law, contracts to which this Act applies may, if authorized by the Secretary, be for any term of years not exceeding five, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 2 of this Act no less often than once every two years during the term of the contract, covering the various classes of service employees."

SEC. 4. Section 5(a) of such Act is amended by inserting before the first comma of the second sentence the words "because of unusual circumstances" and by adding at the end of such section 5(a) the following: "Where the Secre-

tary does not otherwise recommend because of unusual circumstances, he shall, not later than thirty days after a hearing examiner has made a finding of a violation of this Act, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this Act."

SEC. 5. Such Act is amended by adding at the end thereof the following new section:

"SEC. 10. It is the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 2 should be made with respect to all contracts subject to this Act, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this Act which are entered into during the applicable fiscal year:

"(1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.

"(2) For the fiscal year ending June 30, 1974, all contracts under which more than twenty service employees are to be employed.

"(3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.

"(4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.

"(5) For the fiscal year ending June 30, 1977, all contracts under which more than five service employees are to be employed.

"(6) For the fiscal year ending June 30, 1978, and for each fiscal year thereafter, all contracts subject to this Act."

92D CONGRESS
2D SESSION

H. R. 15376

IN THE SENATE OF THE UNITED STATES

AUGUST 8, 1972

Read twice and referred to the Committee on Labor and Public Welfare

AN ACT

To amend the Service Contract Act of 1965 to revise the method of computing wage rates under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2(a)(1) of the Service Contract Act of 1965 is amended by striking out all after "locality," and inserting in lieu thereof the following: "or, where a collective-bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including, if the Secretary so elects, prospective wage increases provided for in such agreement as a result of arm's-length negotiations. In no case shall such

wages be lower than the minimum specified in subsection (b)".

(b) Section 2 (a) (2) of such Act is amended by striking out the period after "locality" and inserting in lieu thereof the following: ", or, where a collective-bargaining agreement covers any such service employees, to be provided for in such agreement, including, if the Secretary so elects, prospective fringe benefit increases provided for in such agreement as a result of arm's-length negotiations."

SEC. 2. Section 2 (a) of such Act is amended by adding at the end thereof the following new paragraph:

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"(d) Subject to limitations in annual appropriation Acts but notwithstanding any other provision of law, contracts to which this Act applies may, if authorized by the Secretary, be for any term of years not exceeding five, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 2 of this Act no less often than once every two years during the term of the contract, covering the various classes of service employees."

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tary does not otherwise recommend because of unusual circumstances, he shall, not later than thirty days after a hearing examiner has made a finding of a violation of this Act, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this Act."

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"(3) For the fiscal year ending June 30, 1975,

all contracts under which more than fifteen service employees are to be employed.

"(4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.

"(5) For the fiscal year ending June 30, 1977, all contracts under which more than five service employees are to be employed.

"(6) For the fiscal year ending June 30, 1978, and for each fiscal year thereafter, all contracts subject to this Act."

Passed the House of Representatives August 7, 1972.

Attest: W. PAT JENNINGS,

Clerk.

The CHAIRMAN. This morning we are pleased to have with us a number of persons who know firsthand the problems faced by the many service workers in the State of Florida. We will appropriately begin our hearing with the chief sponsor of this legislation, the Senator from Florida, Senator Gurney.

STATEMENT OF HON. EDWARD J. GURNEY, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GURNEY. Thank you, Mr. Chairman.

I appreciate the opportunity to testify first, as I have an Executive Judiciary Committee meeting right after this.

These bills, one of which you and I introduced, Mr. Chairman, are aimed to rectify the situation which is both troublesome and unjust, a situation which has been of great and increasing concern to myself and many of my colleagues, and in particular, I note the distinguished chairman of this committee.

My support of this legislation comes from more than an abstract understanding of the problem. It comes from lengthy and detailed experience with the defects in the present Service Contract Act.

Time and time again, I have seen my constituents in Florida, who fall within the category of service contract employees, have their wages ruthlessly and unconscionably cut under circumstances which wreak havoc not just among the employees themselves, but throughout the entire community in which they live.

The experiences of employees at Kennedy Space Center and Patrick Air Force Base clearly indicate that it makes little difference how loyal or hardworking or how skilled an employee is. It is immaterial how long he has been working. Regardless of these factors, he faces the possibility that some company who has never before shown any interest in the State of Florida may come into the State and successfully underbid his employer.

When this happens, he quite possibly will find himself out of work. If he is fortunate enough to retain his job, he will definitely find himself stripped of pension rights and confronted with drastically reduced income, fringe benefits and, of course, seniority.

In these service contract bids, a challenger to an incumbent contractor keeps his bid price low by undercutting wages and fringe benefits. He wins the award not on the basis of the quality of the product or on increased productivity or on more adequate management techniques: he earns it simply and solely by basing his bid on a wage and fringe benefits scale that takes a man who may have worked for many years and reverses his salary to where it was when he began his particular job.

And so, in places like Cape Kennedy, these employees who work hard, doing the best they can, fulfilling their jobs as well as anyone could, find themselves out on the street with their homes in danger of foreclosure and their families torn apart by financial crisis.

The economic aspects of such catastrophe are not limited to the family—they are communitywide. Banks find themselves in the position of having to foreclose on houses which become a glut on the market. Property values decline sharply. Automobiles and other personal property are foreclosed. Merchants are hit hard because

people cannot afford to purchase their goods. The entire economy of the area which depends on Government operations is quite literally blown apart.

Believe me, Mr. Chairman, this has happened in our Kennedy Space Center area because I have seen it, every one of these examples.

The question this committee and this Congress is facing is, as my distinguished colleague in the House, Mr. Ashbrook, pointed out, one of equity.

These bills merely require that a successful bidder on a service contract cannot pay less to employees than they were receiving from their former employer. These provisions are long overdue. They should have been incorporated in the Service Contract Act when it was passed on 1965.

Many of us thought with the passage of this legislation that the problem confronting these service contract employees was solved.

However, we have seen all too often situations where the Department of Labor refused to make any wage study as provided under the act at all, choosing to totally abandon these employees.

And when, as occurred last year at Patrick Air Force Base, through active congressional intervention on the part of myself and others, we were able to get the Department of Labor to make a wage survey, the criteria selected was such that the employees were still forced to take drastic cuts in wages. Thus, it became clear that the one possible saving grace of the whole bill; namely, the possibility of wage surveys to establish levels of wages and fringe benefits did not function at any adequate level.

For example, in that Patrick Air Force Base situation, a wage survey was conducted over a multicounty area, much of which was rural with a lower economic base. Thus, the wage study, while an improvement over what might have occurred had one not been conducted still was not an adequate safeguard against the kind of unfair practices that we are concerned with.

To offer lower wages and reduce benefits to a man of 40-plus years of age who has worked hard all his life to build up some financial security and seniority, to literally pull the financial rug out from under him, is not only unjust but unconscionable.

Extensive oversight hearings by the Special Subcommittee on Labor of the House Education and Labor Committee produced findings which support my personal experience.

Among the findings of the committee were these:

1. The Department of Labor has failed to make wage and benefit determinations for almost two-thirds of those contracts subject to the act. Indeed, as I have pointed out in the case of Patrick Air Force Base in Florida, only the firmest of congressional pressure was able to penetrate the Department's bureaucratic inertia and get a study undertaken.

2. A section of the act giving the Secretary of Labor discretion in administering the act has been stretched far beyond what the Congress intended.

3. The practice of rebidding contracts, either without wage and fringe determinations, or with unrealistically low determinations, is creating chaos for reputable contracts and great hardships for employees.

82-582 O—72——2

The legislation before this subcommittee will end these problems. It will insure that wages and fringe benefits are not cut to ribbons in the process of contract bidding. It will help establish some equality between these service contract employees and those performing the same jobs for a Federal agency under title 5, United States Code.

I should like to make one final point.

In all of these service contract situations, the ultimate employer is in fact the Federal Government. It is the Federal Government who decides if an installation is going to be placed in a particular area.

It is the Federal Government who decides the work to be done on that installation. It is the Federal Government who puts out the bids for the service contract which employ the people that we are concerned with protecting.

The Federal Government, therefore, has a very, very strong responsibility to these people and to their communities. It does not meet these responsibilities by sitting back and through inaction or inappropriate action, permit the economic lives of individuals and the economic lives of communities to be placed on the auction block and sacrificed.

These people have worked hard all their lives and their performance would cast merit on any one of us. The Federal Government has the responsibility for these people—a responsibility which it must meet. It appears that it can only meet it through the passage of legislation such as this subcommittee is examining today.

I would submit to you that this legislation is long overdue. Much damage has been done. Much more can and will be done unless Congress acts and acts promptly to pass these amendments to the Service Contract Act.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Gurney.

It seems to me we would expect our Government to be a model employer, but in this case, it is just the opposite. We find our Government undercutting wages. Now, we have to pass a law to prevent that. It seems to me that the original law was adequate to do the right thing; but it was not done. I know that you made earnest efforts to get the right results without additional legislation. It did not work, and here we are considering legislation that will make it work.

Senator GURNEY. I could not agree with the chairman more; and I hope we can get our legislation this session of Congress.

The CHAIRMAN. That is our objective.

Senator GURNEY. Thank you.

The CHAIRMAN. Thank you very much, Senator Gurney.

Next we have Richard J. Grunewald, Assistant Secretary for Employment Standards, Department of Labor. Mr. Grunewald is accompanied by Alfred Albert, Deputy Solicitor, Department of Labor.

Mr. GRUNEWALD. Also with the panel is Mr. Warren Landis, Mr. Chairman, who is Assistant Administrator of Fair Labor Standards.

The CHAIRMAN. If you support this legislation, you can submit your statement, and we will not have to take up your time. If you do not support it, then we will have to listen.

Mr. GRUNEWALD. We do not support it, and we would like to make our statement.

The CHAIRMAN. We will give you all the time you need.

STATEMENT OF RICHARD J. GRUNEWALD, ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS, DEPARTMENT OF LABOR; ALFRED ALBERT, DEPUTY SOLICITOR, DEPARTMENT OF LABOR; AND WARREN LANDIS, ASSISTANT ADMINISTRATOR, FAIR LABOR STANDARDS

Mr. GRUNEWALD. Mr. Chairman and members of the subcommittee:

I appreciate this opportunity to present the views of the Department of Labor on S. 3827, a bill which would make momentous changes in the Service Contract Act.

Because the bill proposes these truly significant changes, and bearing in mind that an identical bill, H.R. 15376, has passed the House and requires only an affirmative vote by the Senate in order to place it before the President, it is especially important that this subcommittee understand fully what the Service Contract Act would become if amended by this bill.

The act became law in 1965. Like the bill now before you, it originated in the House and the House Report—No. 1948, September 1, 1965—set out the rationale for the new legislation:

> The Federal Government has added responsibility in this area because of the legal requirement that contracts be awarded to the lowest responsible bidder.
>
> Since labor costs are the predominant factor in most service contracts, the odds on making a successful low bid for a contract are heavily stacked in favor of the contractor paying the lowest wage.
>
> Contractors who wish to maintain an enlightened wage policy may find it almost impossible to compete for government service contracts with those who pay wages to their employees at or below the subsistence level. When a government contract is awarded to a service contractor with low wage standards, the government is in effect subsidizing subminimum wages.

The Senate Report—No. 798, September 30, 1965—explained the "locality" wage determination machanism that lies at the heart of the act:

> Persons covered by the bill must be paid no less than the prevailing rate in the locality as determined by the Secretary, including fringe benefits as an element of the wages.
>
> No less than the applicable minimum wage provided in the Fair Labor Standards Act, as amended, can be paid. In determining the prevailing rate in the locality, the Secretary will consider the compensation paid persons engaged in such service-type work and work of a similar type in the locality.
>
> The Secretary in determining the locality for such purpose would take a realistic view of the type of service contract intended to be covered by the determination.

As these quoted passages show, the act was passed to provide wage, fringe benefit and working condition protections to employees whose occupations were of a type particularly susceptible to competitive pressures leading to undercutting of such labor standards.

The central concept of the legislation was the "prevailing rate in the locality" wage and fringe benefit determination. This is important, because it assures that wages and fringe benefits paid to service employees accurately reflect the wages and fringes prevailing for similar private-sector employment in the locality or area.

It was designed to end exploitation of service workers, but at the same time prevent disruption of the area wage and fringe scales by keeping compensation at Federal installations and facilities in line with that prevailing in the surrounding locality. It is the same concept which is prescribed in other Federal laws, such as the Davis-Bacon Act.

The Department of Labor wholeheartedly supported the act in 1965 and does so today. In the course of 6½ years of administering the act, we have gained valuable experience, helping us to understand the service industry, and to allocate resources available under the act consistent with its intent to provide essential protections to service employees, facilitate efficient Federal procurement and promote wise public policy in the service contracting process.

Our experience requires that we strongly oppose the bill now before you, because we believe that it is confusing on its face, poor public policy, and destructive to the interests of those whom it is intended to help.

As the record shows, Department officials have testified on three separate occasions in the past 16 months before the House Special Subcommittee on Labor, which is charged with oversight of the Service Contract Act.

The bill you are now asked to consider presumably is intended to deal with certain problems which were discussed at great length during those hearings.

But I must emphasize the word "presumably" because the bill contains so many elements of confusion that we honestly are not sure what it is intended to do, nor do we know how we would be required to administer it if it should become law.

A moment ago, I explained the central concept of the act, the "prevailing in the locality" wage and fringe benefit determinations, and I explained why it is a wise and prudent concept.

This bill would severely alter that concept, in some cases completely destroying it. It also would limit greatly the flexibility now available to the Secretary which allows him to direct resources available under the act to those areas and contracts where they will be most beneficial to the greatest number of service employees.

It seems to mandate duplication of effort and waste. It appears to open the door wide to highly inflated wages and fringe benefits under the certain service contracts, possibly far above the wages and fringes prevailing in the locality for the same jobs.

And it would freeze the enforcement mechanism of the act into a rigid and grossly inequitable device requiring that the harshest penalty available under the act be applied to virtually every violation, including minor, technical ones where there is no element of willfulness.

Let me explain these problems in greater detail.

Section 1 of the bill would amend section 2(a) of the act to require that where a collective bargaining agreement covers any of the workers employed under a service contract, the wage and fringe benefit determination must be "in accordance" with the rates for such workers provided for in the agreement.

The proposed amendment does not in any way disturb the existing language of section 2(a) of the act up to the word "locality" in paragraphs (1) and (2).

Thus, the law would continue to require that every contract under the act, and any bid specification therefor, must contain a statement of the determined wage and fringe benefits.

This means that before an agency could issue bid specifications for any proposed service contract, the Secretary would have to determine, just as he must now determine, what the minimum wage and fringe benefits allowable under the contract will be so that they can be

stated in the bid speculations and, of course, in the contract that is ultimately awarded to the successful bidder.

If none of the potential service workers are covered by a bargaining agreement, the problem of interrupting the language would not arise.

If there is only a single bargaining agreement covering any of the potential workers, the rate could be determined by reference to that agreement.

However, because of the necessity to find out whether there is a collective bargaining agreement covering any of the workers who may be employed by the successful bidder, an additional time-consuming and expensive step will have been added to the determination process.

It will no longer be possible to look solely at the survey of prevailing wages in the locality. Instead, the Secretary will have to see who the possible bidders on the contract may be, so that he can determine whether any of them have employees who are covered by a collective bargaining agreement.

How wide a search must be conducted? Does he look only to possible bidders operating in the locality? It would seem so, but it is really impossible to be sure that this is what the bill intends.

In addition, it will be extremely difficult, if not impossible in some cases, to find out prior to the time that bid specifications are issued, whether any of the service workers who are or may be employed by the ultimately successful bidder are covered under a bargaining agreement.

This problem will be especially acute in populous localities where there are numerous Federal facilities and with respect to contracts which may be bid on by large contractors who hire workers over a widespread geographical area.

Notwithstanding the difficulties presented by proposed service contracts where there is no collective bargaining agreement or only a single agreement covering workers who might be employed under the contract ultimately awarded, and if each agreement calls for a different rate of pay, even greater confusion is added.

Such a situation would not be uncommon in urban areas, especially as respects certain jobs or occupations such as custodians or janitors, as to which no single union has gained ascendency.

Even assuming that the Secretary, before the bid specifications are issued, can identify all the potential workers, which rate is he to require in the specification and in the contract ultimately awarded?

Should it be the highest of the rates specified in the two or more agreements? The lowest? Should the Secretary split the difference and put that rate in?

Or should he put each rate in, leaving it to the agency or the contractor to determine which minimum rate applies to which employees.

I would also point out that there are cases in which a collective bargaining agreement provides a rate of pay which is lower, not higher, than the prevailing wages in the locality. In such a case, which rate is the Secretary to require be put in the bid specification?

We do not think it unreasonable to assert that section 1 of the bill reflects a basic misunderstanding of the service industry and of how the service contracting determination procedure works under the act.

There will be cases in which it will be impossible or, at best, extremely difficult, time-consuming, and expensive, to identify which workers may be employed by the successful bidder in order to determine whether any of them are covered by a collective bargaining

agreement, and to find out whether there is more than one applicable agreement covering the same occupation.

If there is more than one such agreement, and if the agreements specify different rates of pay and fringes, the Secretary is left with no guidance whatsoever to aid him in making the necessary determination. The only thing that would remain certain under the act would be that service workers could in no event be paid less than the minimum wage provided in the Fair Labor Standards Act.

Section 2 of the bill raises problems akin to those described above. It would require each contract and bid specification therefor to contain a statement of the Wage Board rates that would be applicable to the service employees to be employed thereunder if such workers were employed directly by the agency awarding the contract.

Some service employees subject to the act are in occupational classifications which are not subject to Wage Board rates under 5 U.S.C. 5341.

There is no way to determine what rates they would be paid if employed directly by a Federal agency. Also, given the requirements of section 1 of the bill, discussed above, and the requirements of section 2 of the act, the mandate that the Secretary give "due consideration" to the applicable Wage Board rates in making the wage and fringe determinations is ambiguous at best.

Does due consideration mean that the Wage Board rate must prevail if it is higher than the applicable locality or collective bargaining agreement rate? If not, what does it mean?

Section 5 of the bill adds a new section 10 to the act, stating congressional intent that wage and fringe determinations be made with respect to all contracts subject to the act as soon as it is administratively feasible to do so, but in any event not later than the dates specified therein for contracts in which certain numbers of workers are to be employed.

By the end of fiscal year 1978, determinations would have to be made for every contract.

To achieve this mandate and its deadlines would require substantial raises in funding levels for the program and we are convinced that such an allocation of admittedly scarce resources would be wasteful of taxpayers' money, unwise as a matter of public policy and sound administration, and at best only a mixed blessing to service workers in terms of the overall protection they would receive under the act.

First, we would point out that such a requirement is unduly rigid. This is because the administrator of a law must be allowed certain flexibility in determining the most efficient allocation of resources, commensurate with the goals and purposes of the legislation.

For example, the National Labor Relations Board has established coverage cutoffs excluding marginal situations, even though it has jurisdiction under the Taft-Hartley Act to include those situations.

The Welfare and Pension Plans Disclosure Act covers all plans having more than 25 participants, but by regulation, annual reports are required only from plans having 100 or more participants.

Second, notices of contracts are now being received at the rate of about 21,000 annually. All of these contracts would require determinations if this amendment were enacted, but in some cases, the value of such determinations would be extremely limited.

Some contracts are awarded for emergency short-term jobs in localities where wage data are not available for the classes of employees involved. There is no good reason to spend taxpayer dollars on wage determinations in these cases.

Section 3(a) of the bill is objectionable because it reduces flexibility to grant limitations, variations, tolerances, and exemptions where they are in accordance with the protective purpose of the act, the public interest and effective Federal procurement.

By express provision, it would forbid any exemption from the wage determination requirements of section 5 of the bill. Remaining discretion with respect to other sections of the Act is left in a dubious state by the requirement that any limitation, variation, tolerance, or exemption be granted only in "special circumstances."

The rule that a successor contractor must pay his employees not less than the wages and fringes which they would have earned had they been employed under the predecessor contract, as embodied in section 3(b) of the bill, could well lead to excessive rates, possibly high above those actually prevailing in the locality, at the expense of the government and, ultimately, of the taxpayer.

This further undercuts the "prevailing rate in the locality" concept which, as I explained earlier, is the central concept in the act.

The proposed change thus lacks essential safeguards to prevent the possibility of an outgoing contractor raising his wages to any point he selects during the end period of his contract, in effect forcing the successor to pay those rates.

Since the Government must foot the bill, competitive forces, which normally would operate to assure more reasonable wage levels, will be lacking.

The Supreme Court recently had occasion to consider the serious problems involved in requiring a successor contractor to observe the terms of a collective bargaining agreement entered into by a predecessor contractor.

In *NLRB* v. *Burns*, decided May 15, 1972, the Court found such a requirement inconsistent with the national labor policy as expressed in the National Labor Relations Act.

Even where the successor contractor has a duty to bargain with the union representing the predecessor's employee, the Court declared that "to compel agreement when the parties are themselves unable to agree would violate the fundamental premise on which the act was based—private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract."

Further, for reasons detailed at length in the Court's opinion, the Court concluded that "holding either the union or the new employer bound to the substantive terms of an old collective bargaining contract may result in serious inequities" and that a duty of a successor contractor to assume its predecessor's obligations under the old contract does not and should not ensue "from the mere fact that an employer is doing the same work in the same place with the same employees as his predecessor."

Also, to the extent that this provision would allow the Secretary to give effect to prospective wage increases provided in the successor's contract, it is objectionable because there are no safeguards to limit

such increases so that they are not, at the time they become effective, far above the prevailing rates in the locality.

Section 3(b) also allows the Secretary to authorize agencies to enter into service contracts for up to 5 years' duration, as long as wages and fringes are adjusted no less often than every 2 years.

The only limitations on this authority are those which might be placed in annual appropriations acts. It is unclear how this provision would affect the existing authority of certain agencies to enter into multiyear service contracts without authorization from the Secretary of Labor.

It is our understanding, for example, that the Postal Service currently entered into 4-year contracts for mailhauling. Under this amendment, must each such service contract be submitted to, and approved by, the Secretary?

Section 4 of the bill would, in effect, eliminate the Secretary's ability to decide whether or not to list for debarment a contractor found by a hearing examiner to have violated the act.

Within 30 days of such a finding, the contractor's name would have to be forwarded to the Comptroller General for debarment. Only under "unusual circumstances" could such a contractor escape the mandatory, rigid penalty of 3 years of debarment.

The value of flexibility to provide a measured response to violations of the act cannot be overstressed.

This amendment would severely limit the possibility of granting relief in return for binding assurances of future compliance. For example, under present law, violations can be treated commensurately with their seriousness. Under the proposed bill, this differentiation would be possible only under a test of "unusual circumstances," not a test of seriousness. This provision is unduly rigid and harsh by any reasonable standard.

The 30-day period specified in section 4 is simply too short a time for a contractor to pursue his administrative remedies of filing exceptions to the hearing examiner's decision and appealing for relief to the Secretary.

Indeed, in the absence of "unusual circumstances," it appears that the bill would not allow for such remedies or appeal. This raises questions of fundamental fairness.

I hope that I have managed to convey to the subcommittee the true nature of the problems we see in this bill. As it stands now, it is at best confusing and at worst completely unworkable. I would point out that, subsequent to my testimony before the Special Subcommittee on Labor in the House, the bill being considered by the subcommittee was changed in certain respects.

These changes appear to have been intended to meet some of the objections this Department had voiced. But as I hope I have made clear, the bill now before you continues to raise many of the same problems which concerned us when I testified in the House.

Insofar as we can ascertain this bill's intent and possible application, we believe that it is far too broad and indiscriminate in both approach and ramifications, especially when considered by the House subcommittee in its oversight hearings. For these reasons, we must oppose the bill and strongly urge that this subcommittee carefully consider our objections.

As you know, the Commission on Government Procurement is investigating contracting procedures under the act. The Commission's report is due in December 1972, and we believe that it would be appropriate to consider what the Commission has to say on this subject in formulating amendments to the act.

In the meantime, we will be happy to work with the subcommittee in resolving specific problems without destroying the overall workability and effectiveness of the act.

I will now be pleased to answer any questions you may have.

Thank you.

The CHAIRMAN. I appreciate your last statement where you say "resolving specific problems without destroying the overall workability and effectiveness of the act."

Here are a couple of situations. I will state them as hypothetical, though they are pretty close to actual situations.

An employer under a 1-year service contract ending June 30, 1972, was paying $1.75 an hour. In March of this year he agreed, in collective bargaining, to increase his workers' wages to $1.82 beginning July 1, this year.

Then in April, bids were solicited on a new service contract to begin on July 1, this year. What can we do to insure that the workers get that 7 cents an hour increase?

Mr. ALBERT. I think I can address myself to that.

I think you will note from prior testimony from the Department, I think this involves the question of taking into account future increases in making wage determinations.

I think this is one area in which the Department has indicated that it would be agreeable—it used to be the position of the Department that future increases could be taken into account.

The Comptroller General said that the statute, when it said wage determinations had to be based on wages being paid, could not take future increases into account.

The Comptroller General being the watchdog of the purse strings of the Government, we deferred to the Comptroller General's opinion. Remember, along those lines, I think it would be acceptable to the Department, providing that that increase per se does not become the wage that it has to be paid.

It is taken into account in determining what the prevailing wage is in the locality. That still adheres to the concept of the bill of existing law.

The CHAIRMAN. I think I understand you. This presumes or assumes there will be a Labor Department wage determination; is that right?

Mr. ALBERT. That is right.

The CHAIRMAN. What happened at Cape Kennedy? Was there a determination or was there not? I got a confusing story about the situation there.

Mr. ALBERT. There was ultimately a wage determination.

The CHAIRMAN. Ultimately. What does that mean?

Mr. ALBERT. That goes back to 1969, the determination of the Department of Labor that in view of the circumstances which existed at the cape, mainly that wage rates were largely governed by collective bargaining rates in the area, that a wage determination would have very little practical effect in utility, and no wage determination was made.

Early this year—I think at the request of Senator Gurney—he submitted certain data to the Department that suggested that that was no longer the situation, and the Department, pursuant to that request, examined the circumstances and found that it was no longer the circumstances and did make a new wage determination.

Mr. Landis can probably tell you better than I, what the actual wage rates were that were found. We did make a determination ultimately.

The CHAIRMAN. Ultimately, and it was after a congressional determination that conditions indicated there should be a determination. But I would think from where you gentlemen sit, you would rather not have congressional determinations on a case-by-case basis, and have a law that is clear authority.

Mr. GRUNEWALD. Based on added information that the Senator gave us, that convinced us——

The CHAIRMAN. Would you not rather have a law that is clear?

Mr. GRUNEWALD. The wage determination was limited to Brevard County, not a series of counties, as Senator Gurney had indicated.

Warren, would you like to add anything to this?

Mr. LANDIS. No, sir. I think that is about all.

The CHAIRMAN. Here is another situation.

A man in a skilled job has worked with a government installation for several years and under a succession of service contracts.

His hourly rate is now at $5.45. A new contractor bids and is awarded the contract and offers this man $3.45, despite an existing collective bargaining agreement which provides for $5.45 an hour.

This kind of action is cutthroat wage cutting and an undermining of what should be, in my judgment, despite an honest, arm's-length agreement arrived at in collective bargaining. Now, what can we do to bar this kind of action?

Mr. LANDIS. Well, of course, our present approach, Mr. Chairman, is to determine the prevailing wage in the localities, so that one more piece of information would be needed in that example: What is the prevailing wage in the locality as determined by the Secretary? Is it $4.50? Is it $5, which of course is just the minimum that the contractors pay?

The CHAIRMAN. This case is one where a determination was not made by the Department. What you are saying is basically that agreements that have been arrived at following collective bargaining can be undercut by a successor contractor?

Mr. GRUNEWALD. It is possible that the rates could be lowered; yes.

The CHAIRMAN. The way I read our bill here before us, this does not freeze the situation down the road if the Secretary finds that it should not be frozen 2 or 3 years down the road under a contract.

Mr. GRUNEWALD. Could I get a clarification of "freeze," sir?

The CHAIRMAN. Let's read the section. Here it is.

Section 2(a)1 of the Service Contract Act of 1965, as amended, by striking out all after "locality" and inserting in lieu thereof, the following:

> Where a collective bargaining agreement covers any such service employees in accordance with the rates for such employees provided for in such agreement, including, if the Secretary elects, prospective increases provided for in such agreement as a result of arms' length negotiations.

Mr. ALBERT. Well, as I would interpret that language, Mr. Chairman, that would authorize the Secretary to do what the Comptroller General has now said he cannot do. He could take future increases into account, but it seems to go further. Rather than permitting to take that into account in determining what is the prevailing rate, it would authorize him to make that the wage which has to be paid, irrespective of the fact that it may represent only a small proportion of the workers in the community, in the locality.

That is the departure from prevailing wage in the locality concept, which this amendment introduces.

The CHAIRMAN. I read it that this gives the Secretary the latitude to keep from becoming frozen into a bad deal. You suggest that an outgoing contractor can arbitrarily raise, knowing he is going out, saying here, Government, I am going to stick you. The Government does not have to be stuck by this kind of act.

Mr. GRUNEWALD. The way this bill is written, the way that we interpret that is exactly what could happen.

The CHAIRMAN. That is not what we intended. The congressional intent does not say that the Government is going to get stuck by contractors who are going out and raising wages arbitrarily on their own unilaterally, not arm's length, which is what you suggest could happen, and the Government has to follow that.

Mr. GRUNEWALD. Is it not true, as we understand the bill, a new contractor would have to presume the same rates and benefits as the predecessor contractor, which does expose that possibility.

The CHAIRMAN. But the Secretary will have flexibility.

Thank you very much.

Our next witness is Mr. James C. McGahey, president, International Union of the United Plant Guard Workers of America, Detroit, Mich.; Jack Curran, legislative director, Laborers International Union of North America; Frances O'Connell, international executive council member, director of the legislative department; Frank Waldner, airline coordinator, International Association of Machinists.

It seems that you have more people than I have named.

STATEMENT OF JAMES C. McGAHEY, PRESIDENT, INTERNATIONAL UNION OF THE UNITED PLANT GUARD WORKERS OF AMERICA, DETROIT, MICH., ACCOMPANIED BY JACK CURRAN, LEGISLATIVE DIRECTOR, LABORERS INTERNATIONAL UNION OF NORTH AMERICA; FRANCIS O'CONNELL, INTERNATIONAL EXECUTIVE COUNCIL MEMBER, DIRECTOR OF THE LEGISLATIVE DEPARTMENT, TRANSPORT WORKERS UNION OF AMERICA, AFL–CIO; FRANK WALDNER, AIRLINE COORDINATOR, INTERNATIONAL ASSOCIATION OF MACHINISTS

Mr. CURRAN. These are the four members representing four individual international unions.

The CHAIRMAN. I was wrong. I did introduce only four. There were nine of you in the testimony on the House side.

Mr. CURRAN. Yes. We have cut it down to a much smaller group in order to expedite the hearings. We are resting on the hearings that were held before this Special Subcommittee on Labor on the House side; and so we have gotten together all of those who testified on the House side and decided we would keep the witness list as low as possible.

We will have four members, each representing their own individual national unions to present orally a brief statement, and also to submit statements, which we have done already.

The CHAIRMAN. We appreciate that very much.

Mr. MCGAHEY. Senator, I have also submitted a statement here. I have been interested in the Service Act since 1962, and it was all brought about by many of the problems that we had faced as otulined in my statement.

Since we testified before, we ran into some real serious problems, especially in the Sandia operation, AEC plant in Livermore, Calif., where some 45 people were completely terminated.

My figures that I get were on a so-called savings of $40,000 on the bid for this contract. These people had worked there 10 to 20 years, and had gone through a series of contractors and remained on their jobs.

But this time they were terminated.

Well, the $40,000 that was saved immediately had cost the Government approximately $35,000 to get these new people cleared to work there, plus qualifying and many physical examinations and many other things that had to be done.

Certainly there is really no savings here in this type of activity.

Now, another point I would like to dwell on—Senator Gurney spoke about it, and I believe the Solicitor spoke about it here—and that is Cape Kennedy. We have many guards at Cape Kennedy and also at Merit Island.

It was quite a fight to get a wage determination there, as we all know, and they finally made a wage determination which I believe was $3.72.

The guards at that time were drawing $4.06. Most of them had been there since 1956.

Now, the determination was made throughout the entire county and included watchmen. Now, there is a lot of difference between a guard, a security guard, a trained policeman on that Cape and at Patrick Air Force Base who carries arms. He is the policeman of the entire area against a watchman who might be out guarding some drive-in or some warehouse, or someplace in the county.

So I think the approach was all wrong when you consider classifications in this wage determination. The previous determination that had been made was for a few laborers at one job and it had already established a pattern of the determination being made in Patrick Air Force Base and Cape Kennedy itself, without going into the entire county as they did this time.

Now, certainly with this situation, the money that this is costing, and these changeovers, and the money that the Government is spending today to try to eliminate the unemployment problem, and the programs we have got for job training, to turn out a group of people where they say they are going to save $40,000, but are probably spending $60,000 or $75,000 or $100,000 more in making these changeovers, putting people out of work, putting them on welfare; because where are they going to get a job?

They move into these areas and put their kids in school, and certainly this is something that is being abused, and it has been for a long time.

I certainly would hope the Congress would pass this amendment to the act because I think it would be very helpful.

The CHAIRMAN. I appreciate that useful information.

(The prepared statement of Mr. McGahey follows:)

STATEMENT OF JAMES C. McGAHEY, PRESIDENT,
INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA (UPGWA)
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
SENATE LABOR AND PUBLIC WELFARE COMMITTEE

August 16, 1972

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM JAMES C. McGAHEY, PRESIDENT OF THE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA (UPGWA). WITH ME TODAY IS OUR GENERAL COUNSEL, GORDON A. GREGORY, OF THE LAW FIRM OF GREGORY, VAN LOPIK & HIGLE, DETROIT, MICHIGAN.

ON BEHALF OF THE UNION AND ITS MEMBERS, I WISH TO EXPRESS OUR APPRECIATION TO THE COMMITTEE FOR INVITING MY APPEARANCE AND ACCEPTING A WRITTEN STATEMENT OF VIEWS CONCERNING THE ADMINISTRATION AND ENFORCEMENT OF THE SERVICE CONTRACT ACT OF 1965.

ON JANUARY 27, 1964, I APPEARED BEFORE A HOUSE SUBCOMMITTEE TO OFFER TESTIMONY AND EVIDENCE IN SUPPORT OF THE SERVICE CONTRACT ACT. WITH PASSAGE OF THE ACT IN 1965, OUR UNION FELT THAT THE VICIOUS PRACTICES OF CERTAIN GOVERNMENT CONTRACTORS REGARDING THE USE OF WORKERS AS PAWNS IN COMPETITIVE BIDDING WOULD CEASE. WE FELT THAT SERVICE EMPLOYEES ON GOVERNMENT PROJECTS WOULD FINALLY ACHIEVE A MINIMUM OF PROTECTION WITH RESPECT TO WAGES AND FRINGE BENEFITS AND THEREBY ENCOURAGE INDUSTRIAL AND ECONOMIC STABILITY.

UNFORTUNATELY, OUR EXPECTATIONS AND THOSE OF CONGRESS, AS REFLECTED IN THE ACT, WERE NOT FULFILLED. THUS, IT WAS NECESSARY FOR ME

TO APPEAR BEFORE A HOUSE SUBCOMMITTEE ON APRIL 2, 1971 AND DOCUMENT NUMEROUS INSTANCES WHEREIN THE DEPARTMENT OF LABOR HAD REFUSED, FAILED AND/OR MISAPPLIED THE CLEAR PROVISIONS AND INTENT OF THE SERVICE CONTRACT ACT. I, AND MANY OTHERS, HELD TO THE FERVENT HOPE THAT THE DEPARTMENT OF LABOR WOULD HEED THE DISCLOSURES MADE BEFORE THE SUBCOMMITTEE.

AGAIN, ON OCTOBER 14, 1971, I APPEARED BEFORE A HOUSE SPECIAL SUBCOMMITTEE AND GAVE TESTIMONY CONCERNING THE DEPARTMENT OF LABOR'S REFUSAL TO MAKE A WAGE DETERMINATION AT CAPE KENNEDY. WITH YOUR PERMISSION, I WILL BRIEFLY OUTLINE THE CIRCUMSTANCES OF THAT STILL UNRESOLVED MATTER.

SINCE 1956, OUR UNION HAS REPRESENTED FROM 500 TO 200 GUARDS EMPLOYED BY PAN AMERICAN AT THE CAPE. DURING THIS PERIOD OF TIME THERE HAS BEEN NO WORK STOPPAGE OF GUARDS. WE AGREED TO NO-STRIKE CLAUSES AND ARBITRATION OF UNRESOLVED ISSUES, AND HAVE ENTERED INTO SUCCESSIVE BARGAINING AGREEMENTS THROUGH THE PROCESS OF FREE COLLECTIVE BARGAINING. OUR BARGAINING AGREEMENTS HAVE RAISED GUARDS ABOVE THE POVERTY LEVEL OF INCOME, BUT HAVE NOT CONTRIBUTED TO INFLATION OF THE ECONOMY. THESE AGREEMENTS HAVE PERMITTED GUARDS TO PURCHASE HOMES, RAISE FAMILIES, PARTICIPATE IN COMMUNITY AFFAIRS, AND GENERALLY TO LIVE WITH ECONOMIC DIGNITY.

ALSO DURING THIS PERIOD OF TIME, GUARDS HAVE SPECIALIZED SOLELY IN SECURITY FOR OUR NATIONS SPACE PROGRAMS. THEY HAVE FORSAKEN OTHER OPPORTUNITIES BECAUSE THEY HAVE GIVEN UP TO 18 YEARS OF THEIR LIVES IN SECURITY WORK AT THE CAPE. THEY HAVE BROUGHT A MEASURE OF EXPERIENCE, COMPETENCE, AND, MOST IMPORTANTLY, DEDICATION TO THEIR DUTIES WHICH HAS CONTRIBUTED TO THE TEAMWORK OF OUR SPACE PROGRAM.

WHEN IT WAS ANNOUNCED IN THE LATTER PART OF 1971 THAT THE AIR FORCE WOULD RECOMPETE FOR BIDS ON CERTAIN CONTRACTS AT CAPE KENNEDY, OUR UNION AND OTHERS LITERALLY BEGGED THE DEPARTMENT OF LABOR TO MAKE A WAGE DETERMINATION. INITIALLY THE DEPARTMENT WAS OBSTINATE IN ITS REFUSAL TO MAKE A DETERMINATION ON THE GROUNDS THAT "....LIMITED RESOURCES AVAILABLE FOR MAKING WAGE DETERMINATIONS..." MADE IT IMPOSSIBLE. MOREOVER, THE DEPARTMENT ASSERTED THAT A DETERMINATION "...MIGHT BE PREJUDICIAL TO THE PUBLIC INTEREST IN THE SUCCESS OF THE PRESIDENT'S ECONOMIC PROGRAM TO COMBAT INFLATION." FINALLY, AFTER NINE DAYS OF OVERSIGHT HEARINGS BY A HOUSE SPECIAL SUBCOMMITTEE ON LABOR, THE DEPARTMENT ISSUED A WAGE DETERMINATION ON JANUARY 3, 1972. THAT WAGE DETERMINATION WAS MADE WITHOUT PROPER INVESTIGATION OR HEARING. INTERESTED PARTIES WERE NOT AFFORDED AN ADEQUATE OPPORTUNITY TO PRESENT THEIR VIEWS, EITHER BEFORE OR AFTER THE DETERMINATION. MOST IMPORTANTLY, HOWEVER, THAT DETERMINATION WHOLLY IGNORED WAGE AND FRINGE BENEFITS ESTABLISHED BY FREE COLLECTIVE BARGAINING. IN SHORT, EMPLOYEES AT CAPE KENNEDY HAVE SUFFERED SIGNIFICANT REDUCTIONS IN ECONOMIC BENEFITS BECAUSE OF THE DEPARTMENT OF LABOR'S FAILURE TO ADMINISTER THE SERVICE CONTRACT ACT AS INTENDED BY CONGRESS. SINCE NO OTHER ALTERNATIVE WAS AVAILABLE, OUR UNION HAS APPEALED TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

THE DEPARTMENT'S REFUSAL TO ACT AT CAPE KENNEDY WAS CONTRARY TO LAW, COMMON SENSE AND THE PRESIDENT'S ECONOMIC POLICY. IT IS NOT IN THE INTEREST OF COMBATING INFLATION TO PERMIT BIDDING FOR GOVERN_ MENT CONTRACTS ON THE BASIS OF FLSA MINIMUM WAGES. EMPLOYEES WHO SUFFER WAGE REDUCTIONS HAVE LESS PURCHASING POWER. WHEN THEIR STANDARD OF LIVING IS LOWERED, HOMES ARE LOST TO FORECLOSURE, EDUCATION OF CHILDREN

SUFFERS, AND THE ENTIRE COMMUNITY EXPERIENCES ECONOMIC BLIGHT. WHILE IT IS TRUE THAT THE PRESIDENT HAS IMPOSED WAGE-PRICE CONTROLS, IT IS NOT TRUE THAT HE HAS SANCTIONED THE ROLL BACK OF WAGES AND BENEFITS TO POVERTY LEVELS. THE PRIOR ACTION OF THE DEPARTMENT HAS UNJUSTLY AFFECTED THE ECONOMIC STATUS OF CAPE KENNEDY SERVICE EMPLOYEES AND IMPAIRED THE PROCESS OF FREE COLLECTIVE BARGAINING AS SANCTIONED BY THE CONGRESS.

I SUBMIT THAT TWO OTHER CASES WILL ILLUSTRATE MY POINT THAT AMENDMENTS TO THE SERVICE CONTRACT ACT ARE URGENTLY NEEDED.

UNITED NUCLEAR CORPORATION AT NEW HAVEN, CONNECTICUT IS A PRIME CONTRACTOR TO THE ATOMIC ENERGY COMMISSION. FOR SEVERAL YEARS IT EMPLOYED ITS OWN SECURITY FORCE OF APPROXIMATELY FOURTEEN MEN. IN OCTOBER 1971, THE COMPANY'S GUARDS SELECTED OUR UNION AS THEIR BARGAINING REPRESENTATIVE AND ATTEMPTED TO ENGAGE IN COLLECTIVE BARGAINING. THE COMPANY'S RESPONSE TO THIS ACTIVITY WAS IMMEDIATE AND SUBSEQUENTLY VERY EFFECTUAL. IT ENTERED INTO NEGOTIATIONS WITH OUTSIDE GUARD AGENCIES TO PROVIDE SECURITY SERVICES. THESE SERVICES WERE TO BE PROVIDED AT A LESSER HOURLY RATE PER EMPLOYEE AND ON THE CONDITION THAT THE SUBCONTRACTOR WOULD NOT EMPLOY FORMER NUCLEAR GUARDS FOR THE PERFORMANCE OF DUTIES AT THE AEC FACILITY. DESPITE EFFORTS BY CONCERNED CONGRESSMEN AND CITIZENS, THE AEC REFUSED TO TAKE ANY ACTION IN THE MATTER. THE PROCESSES OF THE NATIONAL LABOR RELATIONS BOARD PROVED INEFFECTUAL TO COMBAT OR AMELIORATE THE COMPANY"S INTENTION TO PLACE ITS EMPLOYEES ON THE UNEMPLOYMENT AND WELFARE ROLLS. ACCORDINGLY, ON FEBRUARY 1, 1972, UNITED NUCLEAR DISCHARGED ITS GUARD EMPLOYEES AND REPLACED THEM WITH

PERSONS HIRED BY AN OUTSIDE AGENCY. THE HARM SUFFERED BY THE AFFECTED EMPLOYEES IS SELF-EVIDENT. BUT, WE THE TAXPAYERS ALSO SUFFERED IN SEVERAL RESPECTS. THE TRAINING, EXPERIENCE AND DEDICATION OF AN ESTABLISHED WORK FORCE NO LONGER BENEFITS A VITAL GOVERNMENT FACILITY. THE GOVERNMENT INCURRED ADDITIONAL EXPENSE FOR NEW SECURITY CLEARANCES. AND, MOST IMPORTANTLY, GOVERNMENT AT ALL LEVELS SUSTAINED AN UNNECESSARY BURDEN FOR UNEMPLOYMENT, WELFARE, AND JOB RE-TRAINING BENEFITS. WHILE IT IS TRUE THAT A COLLECTIVE BARGAINING AGREEMENT HAD NOT BEEN NEGOTIATED AT UNITED NUCLEAR, IT IS EVIDENT THAT GOVERNMENT CONTRACTING POLICIES AT ALL LEVELS WERE INADEQUATE TO COPE WITH THE URGENT PROBLEM OF JOB DISPLACEMENT.

ANOTHER EQUALLY APPALLING SITUATION AROSE AT THE SANDIA CORPORATION IN LIVERMORE, CALIFORNIA. THIS COMPANY IS ALSO A PRIME CONTRACTOR TO THE AEC AND AGAIN THAT AGENCY PLEADED INABILITY TO PREVENT A PATENT INJUSTICE. SINCE 1961 OUR UNION HAS REPRESENTED GUARD EMPLOYEES OF SUCCESSIVE CONTRACT GUARD AGENCIES AT SANDIA AND ENTERED INTO PERIODIC BARGAINING AGREEMENTS WHICH PRESERVED AND PROMOTED INDUSTRIAL STABILITY. IT SHOULD BE NOTED THAT THE SANDIA LABORATORY IS A GOVERNMENT-OWNED FACILITY WHICH IS MERELY OPERATED BY SANDIA.

ON APRIL 3, 1972, SANDIA INVITED COMPETITIVE BIDS AND AWARDED A FIXED-PRICE SUBCONTRACT TO BURNS INTERNATIONAL SECURITY SERVICES, TO PROVIDE GUARD SERVICES FOR A PERIOD OF EIGHTEEN MONTHS, BEGINNING JULY 1, 1972. WHILE AEC CONTENDS THAT THE BURNS SUBCONTRACT INCORPORATES THE REQUIREMENTS OF THE SERVICE CONTRACT ACT, THE ACTUAL MINIMUM WAGE RATE IS LOWER THAN BOTH THE BASE RATE SET FORTH IN OUR PRIOR BARGAINING AGREEMENT WITH ADVANCE INDUSTRIAL SECURITY AND THE BASE RATE WHICH AEC UNDERSTANDS BURNS INTENDS TO APPLY. TO DATE, BURNS HAS

82-582 O - 72 - 3

EMPLOYED ONLY ELEVEN OF THE FORTY-FIVE GUARDS PREVIOUSLY ASSIGNED TO SANDIA, AND HAS REFUSED TO RECOGNIZE AND BARGAIN WITH OUR UNION.

IN SHORT, BURNS WAS A SUCCESSFUL BIDDER AT AN IMPORTANT GOVERNMENT FACILITY BECAUSE CURRENT FEDERAL REGULATIONS PERMIT, AND INDEED SEEM TO ENCOURAGE, WAGE CUTTING, DISLOCATION OF EMPLOYEES, AND AVOIDANCE OF OBLIGATIONS IMPOSED BY THE NATIONAL LABOR RELATIONS ACT.

AEC'S ALLEGED "...OBJECTIVE OF OBTAINING FULL AND FREE COMPETITION AMONG POTENTIAL SUPPLIERS" CANNOT JUSTIFY THE WASTE AND MISERY WHICH TOOK PLACE AT SANDIA. DEDICATED AND COMPETENT EMPLOYEES HAVE SUFFERED A SEVERE, AND PERHAPS PERMANENT JOB DISLOCATION. NEEDLESS TO SAY, THEIR FAMILIES AND COMMUNITIES WILL ALSO ENDURE THE AFFECTS OF THIS UNNECESSARY AND GOVERNMENT SANCTIONED UNEMPLOYMENT. AND AGAIN, THE GENERAL PUBLIC WILL HAVE TO FINANCE SECURITY CLEARANCES, UNEMPLOYMENT, WELFARE AND RE-TRAINING BENEFITS.

THE AMENDMENTS TO THE SERVICE CONTRACT ACT SET FORTH IN HOUSE BILL 15376 ARE A BEGINNING TOWARDS CORRECTION OF THE ABUSES AND INEQUITIES WHICH I HAVE DESCRIBED. THEY ARE LONG OVERDUE AND DESERVE THE FAVORABLE CONSIDERATION OF THIS SUBCOMMITTEE.

NEW SECTION 10 OF THE ACT, WHILE APPLIED OVER A SIX YEAR PERIOD, SHOULD PREVENT A RECURRENCE OF THE CAPE KENNEDY SITUATION. UNDER THIS CLEAR CONGRESSIONAL MANDATE, IT IS HOPED THAT THE DEPARTMENT OF LABOR WILL MAKE AND ENFORCE WAGE DETERMINATIONS WITH MORE ALACRITY THAN IN THE PAST.

EQUALLY, THE ADDITION OF SUBSECTION (c) TO SECTION 4, WHICH RECOGNIZES THE ROLE OF FREELY NEGOTIATED BARGAINING AGREEMENTS IN ESTABLISHING COMPETITIVE AND PREVAILING WAGES, SHOULD COUNTERACT THE CUT THROAT BIDDING PRACTICES EXISTING IN CERTAIN SERVICE INDUSTRIES.

THIS AMENDMENT PROVIDES THE INCENTIVE FOR A CONTRACTOR TO MAINTAIN RATHER THAN DESTROY AN ESTABLISHED WORK FORCE.

AND FINALLY, THE CLEAR STATEMENT OF LEGISLATIVE INTENT IN AMENDED SECTION 4 (b) THAT EXEMPTIONS MUST BE "...IN ACCORD WITH THE REMEDIAL PURPOSE OF THIS ACT TO PROTECT PREVAILING LABOR STANDARDS", SHOULD SERVE TO GUDE ALL GOVERNMENT AGENCIES IN DEVELOPING POLICIES WHICH PROTECT THE LEGITIMATE INTERESTS OF WORKING MEN AND WOMEN. THE TIME HAS COME FOR THE FEDERAL GOVERNMENT TO DIVEST ITSELF OF ANY AND ALL PRACTICES WHICH TEND TO SUPPORT AND ENCOURAGE LOSS OF JOBS AND ECONOMIC DISCRIMINATION. I RESPECTFULLY URGE YOU TO ADOPT THE HOUSE AMENDMENTS TO THE SERVICE CONTRACT ACT.

THANK YOU FOR YOUR KIND ATTENTION.

The CHAIRMAN. Our next witness is Mr. O'Connell.

STATEMENT OF FRANCIS O'CONNELL, LEGISLATIVE DIRECTOR OF TRANSPORT WORKERS UNION OF AMERICA

Mr. O'CONNELL. My name is Francis O'Connell, legislative director of Transport Workers Union of America. I am here to testify this morning on S. 3827 and H. R. 15376, which has been passed by an overwhelming bipartisan majority in the House of Representatives earlier this month.

The official collective bargaining representative of the employees of Pan American World Airways which has had the U.S. Air Force service contract at Cape Kennedy for approximately 17 years.

We also represent the employees of Pan American in their NASA service contract at Jackass Flats, Nev., which is the NERVA engine test site.

Mr. Chairman, back in April and May of this past year, 1971, it came to our attention that the Air Force was going to put out for bid our service contract at Cape Kennedy; and having had the experience of what happened earlier to the TWA employees at Cape Kennedy who were working for NASA, the contract that was put out for bids which Boeing picked up and, knowing what the wage rates were that Boeing bid, the employees of Pan American World Airways at the Cape, voluntarily froze their wages at October 1969 rates in which to make themselves and the company competitive against what they knew were going to be throatcutting wages that Boeing was going to bid.

Boeing did bid on the Air Force contract, and Boeing was the low bidder. However, the severance pay that the Air Force would have to pay the employees of Pan American made the cost of the contract of Boeing higher than what it was to continue the work with the Pan American people.

We attempted to have the Labor Department, through the offices of Senator Gurney, Senator Chiles, and the other Florida Congressmen, have the Labor Department come up with a wage survey so that we could have an idea as to what the wage rates would be in the RFP that went out for bids.

The Labor Department and Mr. Hodgson wrote back a letter saying that the wage rates at Cape Kennedy were extravagant; it was a high unemployment area; they had made a wage determination in 1969, and that is what would stand.

Finally, we did get a wage survey after a lot of pressure put on the Labor Department, after the House committee had held hearings they came out with a new wage survey.

The janitors working for Pan American at Cape Kennedy at the time the wage determination was made was earning $3.76 an hour. The wage rates that the Labor Department had set in 1969 and was willing to let stand was $2.45 an hour.

The Civil Service janitor at Patrick Air Force Base, which is right in the same area as Cape Kennedy, the Civil Service janitor was making $3.57 an hour.

I should say that our top mechanics—the pay for mechanics is $5.23 an hour. In the new wage survey that came out, in January 1 of this year, the janitor's rate was increased to $2.81 an hour, from $2.45; and he was already making $3.76, which meant that the new contractor was bidding in at the $2.81 rate or .95 less per hour to perform the same work—well, the Labor Department said these wage

surveys are time consuming; they do not have the manpower to do these wage surveys. But yet the Department of Defense made a wage determination for its civil service employees. It made one in November 1970, to establish wage rate for janitor of $3.57.

The Labor Department made their wage survey in January 1972, and they came out with a wage rate of $2.81.

On March 2, 1972, the Department of Defense—I should say on February 4, 1972, the Department of Defense made a wage survey at Cape Kennedy, or Patrick Air Force Base and set the janitors wage at $3.68.

Then the Department of Defense made another survey in March 1972, less than a month later, and came out at $3.81 an hour, $1 per hour more than the Labor Department survey for the same janitorial classification.

Now, that is why we are here. We want wage rate determinations made on the basis of the wages that are fixed in our contracts. Our contracts are within pennies—at Cape Kennedy, we are within pennies an hour of what the Civil Service rates were at the Patrick Air Force base, and many of our people work on Patrick Air Force Base side by side with civil service employees.

Pan American was awarded the bid, based upon the new Labor Department wage survey. Prior to the survey our mechanic—the top mechanic at the Cape, his rate of pay was $5.23 an hour. He had 10 cents per hour longevity additional which brought him up to $5.33.

The Labor Department came out with their new wage rates, where the top pay will now be $5.01, and they do gown to as low as $3.89 per hour.

These new wage rates which we have now negotiated for Pan American employees at Cape Kennedy go into effect September 1, 1972.

As of this morning—and today is the last day that the employees have—the Pan American employees have with which to resign their job at Pan American rather than work at these new low rates—and as of this morning, 15 electricians have resigned; there are five plant operators who have resigned; three water and sewage mechanics; six carpenters; six air conditioning mechanics; six pad mechanics, and so on have all resigned effective September 1, 1972.

They can resign today and get up to 11 weeks severance pay at $5.23 an hour. They can take their severance pay, go out the door and go to work elsewhere. Our high-voltage linemen already have accepted other positions. They are now earning $5.33 an hour, plus their fringe benefits, and they are going out the gate September 1 to these other jobs at the rate of $7.30 an hour, under the construction trades contract.

So our "extravagent rates," I think, dispute the facts in this matter.

We are losing these highly technical skilled mechanics who have put in years and years at this trade. Electricians down there this morning have been offered jobs by Pan-Am to stay at $3.89. The minimum length of service required is 10 years, and he is now making $5.33 an hour, and he has been earning it for the past—well, since 1969. Prior to that it was a little bit lower.

The last contract was negotiated in 1969. He has years and years of experience. He is a highly skilled man, and he has been offered a job with Pan American to stay on the complex as electrician helper at $3.89 an hour, effective September 1.

I could say some very unkind words about the way our members are being treated by the Air Force, by the Labor Department. It is strictly the way people are being used, our members are being used to cut the expense of running Cape Kennedy, and the Labor Department has seen fit to come in at these low rates, yet the Air Force, right there at the same base is paying their men approximately the same rates of pay as our people are now drawing.

I would like to cite just one other example of what has happened to us in the janitorial group. Our janitors down there were receiving $3.76 an hour. The administration decided that they ought to put some of this work into the hands of minority enterprise groups; and so the Air Force carved out our janitorial complex of 116 men, and they turned it over to the Small Business Administration. Those men, 116 of them, were making $3.76 an hour.

The contract was not awarded by competitive bid to the new minority enterprise contractor.

It was the minority enterprise contractor that was selected by the Small Business Administration, and it just handed it over to them at $2.81 an hour, and 26 cents an hour in fringe benefits. They became as of July 1, new employees for a minority enterprise group, and 110 of the members of the 116 were members of the minority group.

So they took a wage cut of $1.01 an hour, plus $1.54 an hour in fringe benefits.

In these wage rates that our people are going to be paid effective September 1, you will also have to take into consideration that their life insurance is based upon their annual salary. So in addition to losing these wages, they are each losing about $5,000 in life insurance.

There is one point that the Solicitor made that I would like to correct him on, and that was that a contractor would be able to run their rates on up. That is simply not true.

When we negotiate a contract with the contractor, when we negotiate a contract with Pan-American, it is subject to approval of the Air Force. It does not go into effect until the Air Force puts its stamp of approval on it. You just cannot raise these wages up. You have got to get them through the agency with whom the contractor has the contract.

We would like to see this legislation passed. We think it is long overdue.

We thought we had it in the beginning. We are using these contractors, and the cutthroat contractors are nothing more than labor brokers; they are not providing a product. They are providing human beings to do a job. They are not providing any tools; they are not providing any machinery. These are not the spaceships or the missiles. They are strictly the men that do the maintenance and upkeep of the bases; and as I say, Pan-American as of September 1, is going to lose a great many highly qualified technical men, simply because the Labor Department came in with a top rate of $5.01 an hour, and a low of $3.89 an hour, and these men have been drawing $5.33 an hour for the last 3 years.

These people have put in 17, 18, 19 years of service in Cape Kennedy and they are gone, as of September 1, strictly because of this meager wage determination that the Labor Department has made.

Thank you, Mr. Chairman.

Senator TAFT. Could I ask one question?

You said the Air Force, and I take it the other Government agencies you are referring to, also have the authority to turn down a wage increase that has been agreed to between labor and management?

Mr. O'CONNELL. Yes, sir.

Senator TAFT. What authority is this? I am not aware of it, frankly.

Mr. O'CONNELL. All the contracts we negotiate have a clause in it, sir——

Senator TAFT. Part of the boilerplate in the contract itself?

Mr. O'Connell, is it in the armed services procurement regulations?

Mr. O'CONNELL. It may be. I am not certain. But when we negotiate a contract, it is subject to ratification of the membership and subject to ratification or approval by the contracting agency.

Senator TAFT. As to wage rates involved?

Mr. O'CONNELL. Yes, sir; and fringe benefits involved.

Senator TAFT. I can see how it might be from the point of view of some of the working conditions, and certain things of that sort, but I am not frankly familiar with any authority that the armed services or any other Government contracting agency has to approve or disapprove the wage rates of private contractors making service contracts.

Mr. O'CONNELL. A memorandum of understanding, that is in the contracts, reads as follows:

> It is hereby understood and agreed by and between Pan-American World Airways and Transport Workers Union, AFL–CIO, that the wage increases and cost items in the memorandum of agreement between parties dated April 18, 1969, with respect to mechanics and rental service employees at Aerospace Services Division shall be subject to the Air Force Contracting Officer as reasonable reimbursable expenses under the—under Pan-American's contract with the Air Force.

Senator TAFT. Is that cost-plus contract?

Mr. O'CONNELL. No; it was not. This was a negotiated contract.

Senator TAFT. Do you think it is a desirable thing to allow a government contractor to turn down a wage rate if that rate has been negotiated between labor and management?

Mr. O'CONNELL. Well, at least the contracting agency has some control over the wage rates.

Senator TAFT. Have they ever turned one down that you know of?

Mr. O'CONNELL. Not to my knowledge.

Senator TAFT. Would it not really be better and safer—you have got a problem here; and I recognize that there is a real problem; and I am putting aside the problem—would it not be better to try to tie it to some independent standard, if you could establish such an independent standard?

The kind of thing I am thinking of, to be more specific, to get some reaction on it, is if there is a problem—would it not be better to try to tie it to some kind of standard such as percentage of increase under Davis-Bacon or percent of increase under Walsh-Healey, or something like that?

I realize services are different. But would it not be better to have some kind of independent standards that would not put the kind of burden, it would seem to me, that your testimony would put upon the Government agency to decide whether or not a wage increase is reasonable or is not reasonable. We are having trouble with the Wage Board in that regard now.

I have heard a lot of complaints along these lines that the Wage Board is not acting fairly.

If the Wage Board with supposed knowledge of this field cannot act fairly, how can we expect the multiple range of Government agencies which have service contracts to be able to make this kind of judgment?

Mr. O'CONNELL. With this new contract that we have recently negotiated, we are not going to have any trouble with the Pay Board. The Labor Department cut us, we did not get an increase.

Also, when Pan American bids on a contract, it is for a certain dollar amount, and Pan American is required to provide so many employees to do that amount of work. Our contracts in the past have always been negotiated on a national basis. The rates are paid that I have been quoting from, are paid the same to the airline mechanic in San Francisco, Guam, San Juan, and New York; and Pan American has presented the contract, the new labor negotiated contract, to the Air Force and has been able to show this contract is based upon the rates of pay paid throughout the entire system.

Senator TAFT. That does in a sense exactly what I am saying, that there is an independent outside standard, which is good; but that does not apply to every contracting situation where you have got a Government service contract involved.

Mr. O'CONNELL. No; I figured out the janitor's pay cut, and his pay cut and his fringe benefits, Senator, and it is exactly a 75 percent cut that he has taken.

If our mechanics at Cape Kennedy were still covered by this contract, they would be making $6.63 an hour instead of $5.01 top today.

Senator TAFT. Thank you.

Mr. WALDNER. My name is Frank Waldner. I am airline coordinator for International Association of Machinists.

I appreciate the opportunity to appear before the committee this morning to testify in support of the present legislation pending, S. 3827, and H.R. 15376, dealing with the subject matter before us.

Sitting here this morning, Senator, I could not help but feel that I had been through this one other time, and that was of course last year, early last year when some 1,100 IAM members were confronted with the same situation at the Kennedy Space Center, during that time over 650 of those we represented were literally pushed out the door without a job. More than 200 had to move out to Trans World Airlines system, and either fill existing vacancies or displace other employees for the job. Only approximately 250 of the members we represented eventually wound up in jobs with the successful contractor; and that was the Boeing Co.

We are vitally concerned with this legislation, because of certainly the impact it had on our own members and on hearing the testimony before us here today and knowing full well the circumstances taking place with other Government facilities, relative to this same problem of the IAM, is certainly on record and will continue to be on record as pressing for effective legislation to prevent this type of activity on the part of the Federal Government and agencies in some areas, together with contractors who are able to go out and undercut existing labor agreements. And all for the same job services at a lesser rate of pay.

I took note of Mr. O'Connell's testimony relative to certain pay

cuts which his members are presently facing; and the similarity is startling.

We had existing bargaining contracts in force at Cape Kennedy Center where our TWA members performed the installation support services. It was known commonly as housekeeping services of the cape, and had been performing that work since March 1964.

These individuals were under collective bargaining agreement with Trans World Airlines. They were making top rate for lead mechanic, somewhere in the neighborhood of $5.79 at the time Boeing took over the installation services. That same job function dropped immediately and paid a rate of $5.20 at the top the day after Boeing took over.

We had mechanics' rates under a TWA agreement, covering a majority of the members at the Kennedy Space Center, whereby they were receiving $5.21 an hour. We find today following Boeing's takeover, these job categories paid $5.06 an hour down to $3.40 an hour, depending upon which category Boeing determined to put the employee into.

So I think it is safe to state that any one of us in a similar situation of what those employees were in would be frustrated and really be unable to protect themselves, and certainly would have every right to look to the U.S. Government for that protection.

We have presented to the previous hearings conducted before the Special Subcommittee on Labor in the House, back between March and April of last year, extensive testimony, given by your general vice president, together with various exhibits we had compiled for that particular hearing.

We would respectfully request that this committee take that testimony and exhibits introduced by IAM into consideration with respect to the pending legislation before you.

As I stated earlier, we are vitally concerned that we have legislation to protect the circumstance or those caught up in the circumstance in the future.

I had a recent opportunity to go to Kennedy Space Center, and I have also had the opportunity to meet some of those individuals who were affected by the Boeing takeover last year, and I can tell you sincerely that those individuals are even today suffering great consequences as a result of that cut.

So again, Senator, the IAM certainly urges you only that the Senate look seriously into this problem, recognizing the fact that it certainly has not gotten any better.

We have heard testimony to the effect that even today this same type of situation is taking place, and we suspect that there will be no end in sight to the problem unless Congress is willing to take effective measures.

Thank you very much.

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

Mr. O'CONNELL. May I make a couple of comments?

In the Boeing-TWA contract or award, Boeing was not the low bidder; yet, the Government is supposed to be out seeking the low bidder. Pan American was the low bidder in that case, but NASA turned that contract over to Boeing because the employees of TWA were represented by IAM. They did not award it to Pan American,

because they gave the reason that there would be labor strife, and so the low bidder did not get that contract in that particular case.

As a result of Boeing winning that award, or being awarded that contract in these last moonshots, since Boeing is taking over for NASA, NASA has had to come over from Pan-American and take our skilled people who were making $5.33 an hour, come over and back up moonshots for the Boeing people.

In some instances they even removed Boeing people from the complex and put Pan-American people into their place to make sure that that these guys got off to the moon.

The CHAIRMAN. Mr. Curran.

Mr. CURRAN. My name is Jack Curran. I am legislative director of the Laborers International Union of North America, AFL–CIO.

I have a prepared statement of our general president, Peter Fosco, which I would like to submit at this particular time for the record.

I would also ask the Chair if he would grant permission to those international unions that have submitted statements, that they be made a part of the official record, too.

The CHAIRMAN. Without objection, we will include them all in the record at this point.

(The statements referred to follow:)

STATEMENT OF PETER FOSCO, GENERAL PRESIDENT, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, BEFORE THE SENATE LABOR AND PUBLIC WELFARE COMMITTEE, IN SUPPORT OF H.R. 15376.

August 16, 1972

Mr. Chairman and Members of the Committee:

I am pleased to be here today to lend support to a very important piece of legislation, H.R. 15376, amending the Service Contract Act of 1965. The reforms embodied in this Bill will, when passed, help rectify a situation in which perhaps as many as two million working Americans have been kept subject to a vicious "labor broker" system that has robbed them of economic security.

This legislation is needed because the Service Contract Act of 1965, which originally was passed to guarantee fair wages and benefits for the employees of private service contractors on Federal installations, has not done the job for which it was intended. The author of the Act itself, Representative James O'Hara, is one of the principle supporters of this amendment, which clarifies the Act's intent and gives the Secretary of Labor greater power to protect service contract employees. As you know, the bill received overwhelming bi-partisan support in the House both in floor debate and in the subsequent vote of 274 to 103 for passage. It should be noted that in hearings before the House Special Subcommittee on Labor, not a single service contractor appeared to speak in opposition to the measure. Furthermore, all representatives of Government agencies testifying before the Subcommittee admitted that clarification and reform of the Act were needed.

My Organization, as well as other international unions which represent service contract employees, can certainly attest to the need for reform. What we witnessed before 1965 in this field has not changed a great deal since passage of the Act, for the spirit of this legislation has been thwarted by maladministration and lack of enforcement. What we have seen and continue to see is the exploitation of the basically unskilled men and women who perform janitorial and other manual services for Government facilities. They are exploited by the itinerant contractors who do little more than boss them and handle the payroll, and by the Government, which allows them to work year after year without raises or improvements in benefits, and often with reductions in wages upon the succession of a new contractor.

The Service Contract Act was intended as a prevailing wage law similar to the Davis-Bacon and Walsh-Healey statutes, guaranteeing that Federal service contract workers would receive wages and fringe benefits at least comparable with those of employees in the locality who perform similar services. The Act directed the Secretary of Labor to predetermine the prevailing wages and fringe benefits and to include these predeterminations in the bidding specifications. The term "locality" was deliberately left undefined, to give the Secretary maximum latitude in determining the prevailing wage. Clearly the Service Contract Act was a remedial statute designed by Congress to be interpreted liberally for the benefit of the worker.

One immediate improvement brought about by this Act was that the wages of hundreds of thousands of these workers were raised to the minimum wage level, for the Act required application of the Federal Wage and Hour Law to Federal service contract employment. However, the primary requirements of the Act have been either ignored or undermined in case after case through the manner in which the law has been administered.

The House Committee that held hearings on this amendment has reported that in nearly two-thirds of the cases of contracts subject to the Act renewed since 1965, the Department of Labor has failed to make any wage and benefit predetermination at all. It found that the Department failed to take into account the existence of collective bargaining agreements in the determination process, thus making union-management relationships all but meaningless. It found that service contract employees have generally continued to lag ever further behind Federal wage board employees in wages and fringe benefits.

Our own experience in representing service contract employees corroborates this assessment completely. I would like to submit as an example the situation of the service contract employees at the Laredo, Texas, Air Force Base, represented by Laborers' Local Union No. 1057. These workers, who perform a variety of maintenance and janitorial functions for the Government, have been, in effect, subject to a wage freeze since 1968. The reason is that the Secretary of Labor has been content to support a ruling of the Comp-

troller General (at the request of the Air Force) that prospective wage increases in the workers' collective bargaining agreement could not be included in determinations for new bids. Now the Air Force admits to having a 95 percent annual turnover rate in service contracts, and it has certainly been at least that over the years at Laredo. What this means is that a two or three-year collective bargaining agreement means absolutely nothing. Since general practice is for a new contractor to take over each year and since he is not bound by the agreement negotiated by his predecessor, the workers never receive a wage increase. Their wages and fringe benefits are thus frozen in perpetuity.

The story of the Laredo workers both before the passage of the Act in 1965 and since, along with supporting data, is recorded in the testimony of Local 1057, David L. Jacobs, Business Manager, before the House Special Subcommittee on Labor on March 30, 1971. His statement describes in graphic detail the kind of scandalous treatment Federal service contract employees have been subjected to for many years.

These employees labor for the Federal Government just as surely as if they were employed directly on its payroll, yet they are allowed to remain something less than second-class citizens. The service contractors who employ them are simply labor brokers. In nearly every case, the contractor receives free of charge all of the equipment, supplies, and facilities he needs to fulfill the contract -- all he really does is contract to supply the labor.

And paradoxically, the labor he "supplies" is usually already there in the form of the work force of his predecessor. The employees, usually residents of area, are far more permanent than the contractor. With no financial stake in his "business" no concern for the long-term effect of his operation, the contractor's only and immediate concern is to keep the wage and benefit levels of his workers depressed so as to enhance his profit. Clearly, this is human exploitation of the worst kind.

Congress recognized its responsibility to protect these workers when it passed the Service Contract Act. It intended to establish a strong prevailing wage law to stabilize this industry, to remedy the abuses of the past, and bring these unfortunate, unskilled workers the protections, benefits and opportunities enjoyed by the great mass of working Americans. I submit that Congress did not envision what has come to pass. It did not intend for the Labor Department to freeze the wages and benefits of service contract employees, either by failing to make prevailing wage determinations in two-thirds of the cases where contracts have been let, or by failing to take negotiated contractual improvements into account.

We believe H.R. 15376 will bring about the reforms originally called for in the Service Contract Act of 1965. This Bill limits exemptions and variations from provisions of the legislation, and makes it clear that its foremost intent is protection of the workers. It provides that Service contracts must contain a

statement of the rates that would be paid Federal wage board employees doing comparable work. And in the case of collective bargaining agreements, it provides that the minimum wages and fringe benefits to be paid be in accordance with those called for in the agreement, and it allows the Secretary of Labor to include prospective wage and benefit increases in specifications for bidding on a service contract.

Mr. Chairman, the Federal Government has a responsibility to protect these workers who have been exploited for so long, and we believe this responsibility can only be fulfilled with the passage of H.R. 15376. On behalf of the 650,000 members of the Laborers' International Union, I urge this Committee's strong support for this important piece of legislation.

I wish to thank you Mr. Chairman and Members of the Committee for the opportunity to express our views on this important legislation.

STATEMENT OF HENRY T. WILSON
LEGISLATIVE DIRECTOR, FEDERAL-PUBLIC SERVICE DIVISION
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

ON BEHALF OF GENERAL PRESIDENT PETER FOSCO

TO THE SUBCOMMITTEE ON LABOR OF THE SENATE LABOR AND PUBLIC WELFARE COMMITTEE. A BILL TO PROVIDE NATIONAL LABOR RELATIONS ACT COVERAGE FOR EMPLOYEES OF NON-PROFIT HOSPITALS

August 16, 1972

Mr. Chairman and Members of the Subcommittee:

This statement is prepared by Henry T. Wilson, Legislative Director of the Federal-Public Service Division of the Laborers' International Union of North America, AFL-CIO, and is submitted on behalf of the General President, Peter Fosco.

We would like to thank the Chairman, Senator Williams and members of the Subcommittee for the opportunity to support here today HR 11357. Even though HR 11357, if passed into law, would make a slight change in the language now found in the Taft-Hartley provisions of the National Labor Relations Act, the implications of this amendment would be of lasting economic benefit to thousands of low-paid hospital employees. The House of Representatives by an overwhelming vote of 285 to 95 on August 7, passed HR 11357, which indicates strong support for this change in public policy.

With a membership of more than 600,000, the Laborers' International Union is one of the largest affiliates in the AFL-CIO. Included in our membership are thousands of hospital employees, some in federal activities such as Veterans Administration hospitals, some in the public sector at the state and local government levels, such as state and university hospitals, state mental institutions, and a number of non-profit hospitals, as well as proprietary hospitals.

The Laborers' International Union has traditionally represented the semi-skilled employees in the construction industry, and in the public sector employees who are considered "blue-collar"

82-582 O - 72 - 4

and/or hourly rated employees. In the hospital area we have organized and have exclusive rights, too, in many public, as well as non-profit hospitals for the semi-skilled and non-skilled employees. These classifications include employees in the food service categories; technicians in laboratories, nurses aides, orderlies and maintenance classifications.

Jurisdiction Disputes Resolved

In the absence of any Federal labor policy covering non-profit hospitals, and because there are only a few states which have adopted labor policies covering non-profit hospitals, the issues raised by competing organizations attempting to organize and represent employees cannot be properly resolved except through bitter organizing campaigns which sometimes result in unnecessarily interfering with or tying up the function of the hospital.

Placing non-profit hospitals under the provisions of the NLRA will provide:

(1) Recognized procedures for filing representation petitions.

(2) Methods of proper intervention between competing unions; and

(3) For elections to determine which, if any, union is the majority representative.

Following this, the union chosen by the workers may be certified by the Board as the collective bargaining representative. The established procedures of the NLRB are recognized by all unions and independent associations. The NLRB effectively resolves representational disputes; the question of jurisdiction is decided by a majority of those voting in a bargaining election.

In spite of the fact that employees of non-profit hospitals have been excluded from the provisions of the various state labor laws, these employees have been exposed to the pressures and tensions inherent in any labor-management relationship. For these workers

do not have a statutory or recognized protective right to organize and bargain collectively.

The declared policy of the National Labor Relations Act of 1935 (Wagner Act), as amended by the Taft-Hartley provisions of 1947, was to promote the full flow of interstate commerce. Under the law, interruptions caused by labor disputes over recognition and collective bargaining were substantially eliminated. These laws gave specific rights and guarantees enforced by the Labor Board and the Federal courts.

This Subcommittee is well aware of the fact that the Wagner Act did not exclude from the definition of "employer" non-profit hospitals. The Taft-Hartley amendments passed in 1947 excluded from the term "employer" any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual.

The National Labor Relations Board has in a number of cases, been confronted with the question of determining whether certain hospitals were, in fact, profit or proprietary-type hospitals.

The National Labor Relations Board has consistently refused to assume jurisdiction in what are clearly non-profit hospitals.

The Board recently has assumed jurisdiction over private universities and colleges, on the theory that the volume of business conducted is great emough to affect interstate commerce. Our union is currently involved in trying to get the Board to agree that once it has assumed jurisdiction over a private college, it has also assumed jurisdiction over a non-profit hospital which may be operated as a medical training center by the university.

State Laws Affecting Non-Profit Hospitals

Within the past few years five states have passed statutes providing for the right of non-profit hospital employees to organize and bargain. These include the states of New York, Massachusetts,

Minnesota, Wisconsin and Pennsylvania. Excluded from most of these laws are the general enforcement provisions in the Federal Labor-Management Relations Act. And, except for Pennsylvania, each of the states specifically prohibits the right to strike. Within the remaining 45 states there continues a decided force against the right of non-profit hospital employees to organize and bargain.

Limitation of Industrial Strife

It is apparent from reported news stories that there has been an increasing number of hospital strikes. Whether they are in the proprietary or non-profit field makes little difference.

Probably the most significant aspect of this part of the story is the fact that there have not been even more strikes than those that reached the public attention. Many organizing efforts failed merely because of a lack of machinery available to enforce recognition or to establish a collective bargaining relationship.

The reason for most strikes in this area is primarily to achieve some form of recognition from hospital management. In the absence of a labor-management policy imposed by law, most hospital managers have consistently operated on the theory that recognition of a union amounts to total surrender of their right to hire and fire, set policies, determine classifications and effectively discipline without cause. This holds true for administrators who are doctors or Catholic bishops or appointed Board Chairmen of a Methodist Congregation.

Within the past year our union was confronted with a hospital administrator who legally maintained that he could not recognize or deal with the union. He held to this line even after we sat across the Board room table from him. Rather than become embroiled over the question of our "legal" status, we turned our attention to the discussion and resolution of employee grievances.

During this time the hospital was confronted with a strike of nurses demanding increased pay. And, following this, we were advised by the appropriate officials that if pay adjustments were going to be granted to the low wage blue-collar workers whom we represented, they too would have to strike in order to force the hospital, through increased public pressure, to grant pay adjustments.

You must realize that the issue of recognition which plagued the employers and the labor movement in the private sector prior to the passage of the Wagner Act is the same issue which currently plagues the employer of a non-profit hospital. The present situation can properly be resolved by the inclusion of amendments proposed by HR 11357.

Along with recognition, of course, come the other benefits of collective bargaining leading to a signed written agreement, covering terms and conditions of employment. The Federal Labor-Management Relations Act provides the machinery for the resolution of unfair practice complaints and these decisions are backed up by the courts. It is this feature of the Federal labor law which has made national labor policies effective.

Labor Cost and Hospital Operations

The various committees of Congress, especially those concerned with bills for a national health plan, have given considerable publicity to the rising costs of hospital care. There is no doubt that the cost of hospital care is rising at an alarming rate. And yet, there has been no demonstration that these increased costs are due to the wages being paid to non-skilled workers. In fact, the reverse is true. Employees in these categories have, until very recently, been working at rates of pay substantially lower than the minimum provided by the Fair Labor Standards Act.

These employees have subsidized with their low economic levels, and their inability to make equitable demands, whatever low costs have existed in the hospital industry. While doctors have, without question, been receiving more than their fair share of the income frp, medical practice, nurses, too, through their own professional associations, have taken on the posture of collective bargaining. Nurses, like teachers, have found that organization, in the collective bargaining sense, has improved their professional economic position.

Today, because there is a shortage of doctors, as well as nurses, both are certain their demands will be met. This is increasingly true while the lower paid semi-skilled or non-skilled worker is left to scrape the barrel without any bargaining strength.

Fair Labor Standards Act

Prior to the 1966 amendments to the Fair Labor Standards Act, the law specifically excluded persons employed by a "Hospital or institution which is primarily engaged in the care of the sick, the aged, the mentally ill or defective, residing on the premises of such institution." The 1966 amendments to the Fair Labor Standards Act drew no distinction between public, private, or non-profit hospitals. The basic philosophy of the Act was to provide a base for the tens of millions of citizens who were denied the greater part of what in the 1930's were "the necessities of life." It is interesting to note that President Franklin D. Roosevelt in his message to Congress in support of the 25¢ an hour minimum wage law stated:

> "All but the hopeless reactionaries will agree that to conserve our primary resources of manpower, government must have some control over the maximum hours and minimum wages, the evils of child labor and the exploitation of unorganized labor."

The exclusion of employees of non-profit hospitals from the rights of the Federal Labor Act is a guarantee that they will be "unorganized Labor" as referred to by former President Roosevelt. Until the application of the minimum wages and overtime provisions of the Fair Labor Standards Act of 1966 most hospital workers were exploited beyond imagination. Under the 1966 amendments these workers came in as newly covered employees on February 1, 1967 at the $1.00 an hour minimum wage. The minimum was increased over a four-year period to the present minimum of $1.60 an hour, effective February 1, 1971.

There is no question that organized, non-profit hospitals have some wage levels substantially above those provided for under the Fair Labor Standards Act. Yet these remain in the minority and will do so until the provisions of HR 11357 can be brought to bear. If passed, these amendments will grant all employees of non-profit hospitals a fair share of the good life and a voice in improving their working conditions.

Philadelphia St. Lukes and Childrens Medical Center

Our case files are jammed with documents involving the efforts of the Laborer's Union to organize and represent employees in non-profit hospitals. To illustrate a typical file, I would like to recite the facts involving our efforts to organize the blue-collar workers at the St. Lukes and Childrens Medical center in Philadelphia.

Prior to the passage of the Pennsylvania State law providing for the coverage of non-profit hospitals, our union had, at the request of the employees of the Medical Center, signed substantially more than a majority of a 300-employee unit. This unit included kitchen personnel, nurses aides, janitors, laundry attendants, housekeepers and maintenance personnel. These employees were fed up with their miserly wages (new employees were hired at $1.40 an hour), total lack of fringe benefits and the hospital

management's arrogant treatment.

Following the signing of representation cards, a letter was forwarded to the hospital administrator requesting recognition of the union. No reply was received. Telephone calls were not answered. And, when it became evident that management had no intention of even discussing the matter, the employees demonstrated their determination by walking off the job.

Because of hospital management's anti-employee attitudes, the workers were determined to demonstrate their sincere desire to be represented through the union. In an effort to establish a dialogue with the hospital management, the union sought, without success, the services of the Pennsylvania State Mediation Board and other outside parties who might be successful in at least getting the parties to a joint meeting. The union exerted further pressure when it filed charges against the hospital for violations of the Fair Labor Standards Act. In retaliation, the hospital discharged one of the workers without cause. When this employee attempted to have his case heard through the hospital's own grievance procedure, it was denied him. (This situation would have come under the unfair labor practice provisions in the Taft-Hartley Act.

Because the employees represented in the strike were forced to choose between welfare checks or a return to their jobs, many submitted to return to work under furess.

By the time the Pennsylvania law providing for collective bargaining rights of public employees as well as non-profit hospitals wnet into effect in October, 1970, the strike had been broken and the employees had either left the hospital or returned on their knees. All efforts to petition under the new law proved fruitless because of the long delays from the time the employees desired recognition until this became possible under the new law.

If HR 11357had been law at the time the Laborers' International Union petitioned for recognition, the employees of St. Lukes Childrens Medical Center would have enjoyed the benefits of collective bargaining and the employer would have been required to recognize and deal with the union selected by a majority of the employees. Since the law was not in effect, these employees continue to be harassed by this non-profit hospital employer.

Only the Congress can bring protection to these thousands of employees through passage of HR 11357. This is a basic protection which they both deserve and need.

The Laborers' International Union appreciates this opportunity to present its views on this matter in support of a bill which will directly affect the lives and economic well-being of thousands of hospital workers.

STATEMENT OF THE
COMMUNICATIONS WORKERS OF AMERICA
WASHINGTON, D.C. 20006
AUGUST 16, 1972

H.R. 11357

The Communications Workers of America supports without qualification the enactment of H.R. 11357, which would allow employees of nonprofit hospitals to come under the protection of the National Labor Relations Act. The time is long past to repeal the statutory exemption given to nonprofit hospitals in the Taft-Hartley legislation of 1947.

Twenty-five years ago, when Congress excluded employees and employers in the nonprofit hospital industry from the National Labor Relations Act, it did so for two major reasons, which no longer hold true today. The first reason was that it was believed that the health industry did not constitute interstate commerce. The second reason was that it was then thought that nonprofit hospitals were "charitable" in nature.

The interstate commerce argument was based on the small size of the hospital industry as a whole. In 1947, that industry was a comparatively minor operation on a national level, employing only 350,000 persons. Today, in contrast, there are more than 7,000 hospitals in the United States with nearly 3 million workers, almost 10 times the 350,000 in 1947. Employment in this industry exceeds the total number of workers in aircraft, textile products, printing and publishing, chemicals and allied products, department stores, banking, hotels and other important areas of service and production.

Moreover, today, America's hospitals have combined assets of more than $36 billion. They spend more than $25 billion in providing services to their patients and have a yearly payroll of over $15 billion. In addition, the annual U.S. health bill is now $75 billion.

The extensive growth and proliferation experienced by the entire hospital industry during the last quarter-century has made a significant impact on the

nonprofit sector of the industry. Nonprofit hospitals now make up 48 percent of all hospitals and handle fully 66 percent of all admissions. They employ almost 1,400,000 workers.

Because of the growth and development of the hospital industry and the concomitant acceleration in the nonprofit hospital group, courts and agencies have recently ruled that operation of hospitals constitutes interstate commerce and this industry is thus subject to regulation by Congress. One example of this is that in 1966 the Supreme Court, in Maryland vs. Wirtz, upheld the power of Congress to bring hospital employees under the 1966 Amendments to the Fair Labor Standards Act. In addition, Congress itself has recognized the interstate commerce feature of nonprofit hospitals by including them under the Equal Employment Opportunity Act.

The second reason why nonprofit hospitals were not brought under the authority of the National Labor Relations Board 25 years ago--that they are "charitable institutions"--no longer holds true today.

This point, that the very notion of "nonprofit" hospitals is an anachronism, has been reinforced by many experts in the health industry in recent years. In fact, it was made by numerous hospital administrators who testified on this legislation when it was considered in the House.

Reverend John Simmons, who is in charge of the Pacoima Memorial Lutheran Hospital in the suburbs of Los Angeles, put the matter in proper perspective when he said:

> "There is just no way to operate a hospital on charitable contributions. I could keep open maybe one day in a year, maybe, you know, if I was lucky."

The day of the charitable hospital operating solely on donations from wealthy patrons for the benefit of the poor, like the horse-drawn buggy as the principal means of transportation, is over in America.

The passage of H.R. 11357 would give Congressional recognition not only to the fact that nonprofit hospitals do constitute interstate commerce, as the Supreme Court decided in the case mentioned earlier, but also to the equally well-established fact that nonprofit hospitals are no longer "charitable institutions."

Besides these constitutional and legal arguments, there are two other compelling reasons, based on efficiency and equity, for the enactment of this legislation. H.R. 11357 would promote efficiency by stabilizing the hospital industry labor force, and it would promote equity by extending the right of collective bargaining to workers employed in the nonprofit element of the industry.

Stabilization of the labor force in America's hospitals has become a problem because hospital workers labor long hours with inadequate remuneration. In 1970, the average annual salary for all hospital employees, including doctors, administrators, nurses and other aides, was $5,290. The poor pay in the hospitals is the main reason why one-third of the registered nurses have left the profession in recent years.

The evidence that unionization of employees greatly reduces the turnover is overwhelming. At the famous Johns Hopkins Hospital in Baltimore, the turnover rate among the so-called "nonprofessional" staff was 700 percent per year. With union recognition and a union contract, the turnover rate at the hospital is now only 10 percent.

At the Mount Sinai Hospital in New York, there was a 1500 percent turnover before unionization and 24 percent after unionization. At the Pacoima Hospital in California, mentioned earlier, the average turnover was 200 percent. Today, with union contracts and benefits, it is, in Reverend Simmons' words, "way under 100."

Because nonprofit hospitals are not under the National Labor Relations Board's jurisdiction, many of them experience "recognition strikes" on the part of employees seeking to attain status for their unions. Employers in nonprofit hospitals under current law are not required to bargain with organizations representing the hospital employees. When employers refuse to do so, employees are forced to strike--not for better wages--but to obtain recognition.

The plain fact is that current law denies nonprofit hospital employees access to the National Labor Relations Board's election procedures. H.R. 11357 would accord to these employees the right to the Board's election process, which they fully deserve, and at the same time would probably eliminate the "recognition strike" and almost wipe out the employee turnover in this industry.

We are particularly concerned about 200 employees at the Methodist Hospital in Pikesville, Kentucky, who have declared they want Communications Workers of America representation and are in the tenth week of a "recognition strike." It began after the hospital board fired several hospital workers for union activity. These nonprofessional hospital employees are entitled to decent wages and working conditions.

From the standpoint of pure equity, it is unfair that any employees doing the same work in nonprofit hospitals as is done by their co-workers in federal hospitals, municipal and state hospitals, and private hospitals should be paid less because they do not enjoy the rights of self-organization and collective bargaining. It is inequitable and discriminatory to exclude nurses, orderlies and other employees of nonprofit hospitals from coverage under the National Labor Relations Act when they would be entitled to this coverage if they were employed anywhere but in a nonprofit hospital.

Representative John Ashbrook (R-Ohio) confronted this problem squarely and with perfect logic when he stated during House floor debate on H.R. 11357:

> "It is difficult to find rationality and pragmatism in a labor policy which permits an employer to refuse to deal with employees on collective bargaining terms chosen by the employees. The consequence of such a refusal, in the form of recognition strikes and open strife, is then inflicted upon the public."

Congress now has an important opportunity to correct the inequity of excluding nonprofit hospitals from National Labor Relations Board coverage. The unfolding of events in the hospital industry during the last quarter-century has clearly shown that nonprofit hospitals both engage in interstate commerce and are no longer charitable institutions. A hospital is a business enterprise, whether its character is proprietary or nonprofit in terms of its organization. If all hospitals serve the general public's health needs, they should be governed by an even-handed public policy.

We urge Congress to correct the anachronism under which employees of nonprofit hospitals are excluded from the jurisdiction of the National Labor Relations Board. Congress can render these economically deprived employees a long-overdue justice by passing H.R. 11357.

STATEMENT

OF

CHARLES PILLARD, PRESIDENT OF THE INTERNATIONAL

BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

BEFORE THE SUBCOMMITTEE ON LABOR

OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

August 18, 1972

in support of

S. 3827

Mr. Chairman and Members of the Committee:

This statement is submitted on behalf of the International Brotherhood of Electrical Workers, an association of more than 900,000 members, in regard to S. 3827, amending the Service Contract Act of 1965.

The Service Contract Act was enacted in 1965 to provide wage and safety protections for employees working under Government service contracts. It made the Department of Labor responsible for assuring that service employees are paid at least the wages and fringe benefits prevailing for the same work in that locality. Unfortunately the expectations of Congress, and the employees whom it was intended to protect, have been frustrated by the misfeasance and nonfeasance of the Department of Labor in administering the Act and the failure, sometimes deliberate, of Governmental contracting agencies to recognize the remedial purposes of the Act. Quite frankly, it is our view that, if it were not for the failure of the Labor Department and the contracting agencies to properly interpret and administer the provisions of the Service Contract Act, this amendment would be completely unnecessary. However, as was noted by Congressman O'Hara in the debate on H.R. 18376, the House bill incorporating this amendment, the Department of Labor, the contracting agencies, and the General Accounting Office have all tried, with some success, to render the Act nugatory. (Congressional Record, August 7, 1972, H. 7261.) I think that some of the excerpts of the

statement by Congressman O'Hara, who co-authored the Service Contract Act, are appropriate as to how the intent of Congress has been frustrated by these various agencies.

> "We found the Department [of Labor] refusing, at the behest of other Federal agencies, to make prevailing wage determinations when such refusal had the clear effect of depressing those wages . . . .
>
> "We found, in short, a serious lack of enforcement of, and lack of commitment to, the Service Contract Act of 1965. We found this throughout the agencies involved, including, if I must say so, the General Accounting Office, which is supposed to be the agency primarily charged with the enforcement of the will of the Congress . . . .
>
> Many of the amendments made by H.R. 15376 are clarifying amendments. They clarify the original intent of the Congress and reiterate, for the attention of the executive branch agencies and the GAO, that our intention is to prevent the use of Government procurement power to depress wages and exploit service employees - who have it tough enough, Mr. Speaker, even when the Act is working as it is supposed to work." Congressional Record, August 7, 1972, H. 7262.

The IBEW is only too familiar with the failure of the governmental agencies to comply with the Service Contract Act. In the House debate on this amendment Representative Ashbrook referred to the Labor Department's failure to issue wage determinations for service contracts at Cape Kennedy and Patrick Air Force Base. The hardship for service employees which can result from the failure to make wage determinations is aptly demonstrated by a service contract at the Pacific Missile Range. Because this particular situation illustrates the improper administration of the Service Contract Act, I will state in some detail the circumstances surrounding the award

of a service contract at that base.

Kentron Hawaii, Limited, had service contracts with the Navy Department at the Pacific Missile Range for a period of ten years prior to 1971. In July 1970, in contemplation of the termination of its existing service contract and the necessity of a new procurement in mid-1971, Kentron asked the Navy to seek a prevailing wage determination by the Department of Labor, fixing the minimum wage that Range employees could be paid in accordance with the Service Contract Act. Although the Navy did submit the request, it failed to provide the Labor Department with information on the wages and fringe benefits being paid, as required by the form and by applicable regulations. The Department of Labor refused the request for a wage determination, apparently on the basis of limited personnel and resources. The failure of these two agencies to perform their legal obligations set off a disruptive chain of events. Because there was no binding wage determination, Kentron was outbid on the contract by a company which based its projected costs on wage rates well below those which Kentron was paying and which were prevailing in the area. The new contractor refused to recognize or meet with the IBEW local, which had previously been certified as the bargaining agent for the employees. As a result the IBEW filed unfair labor practices against the contractor with the National Labor Relations Board. Also, because the new contractor was attempting to drastically reduce the wages of the employees, and because of their other unfair labor practices, a

lengthy strike ensued at the Missile Range.

Both Kentron and the IBEW filed protests with the General Accounting Office regarding the award of the contract and when GAO also failed to properly interpret the provisions of the Service Contract Act, both the IBEW and Kentron instituted suit in United States District Court. Incidentally the District Court in its decision held that the Comptroller General was in error in stating that the Secretary of Labor has unlimited discretion to decline to make a wage determination. The Court emphasized the statute's qualifying words "in the public interest or to avoid serious impairment of the conduct of Government business." The District Court also held that the Navy Department had unlawfully failed to supply the available wage data required by the pertinent regulations.

In the Kentron situation the exact evil which the Service Contract Act was intended to remedy occurred because the Labor Department refused to make a wage determination and because the contracting agency failed to comply with its responsibility of providing the available wage data. The Act was intended to safeguard the wage structure of employees working under Government service contracts by guaranteeing that they would be paid at least the wages and fringe benefits prevailing for the same work in their locality. It was to prevent exploitation of service employees by contractors who underbid their opposition by manipulating the wage scale. In fact, the regulations promulgated by the Department of Labor to enforce the

Service Contract Act state that the Secretary's discretion in issuing wage determinations would be exercised with "due regard to the remedial purpose of the statute to protect prevailing labor standards and to avoid the undercutting of such standards which could result from the award of Government work to contractors who will not observe such standards, and whose saving in labor cost therefrom enables them to offer a lower price to the Government than can be offered by the fair employers who maintain the prevailing standards." 29 C.F.R. Sec. 4.123(b). Yet the Department refused to issue a wage determination for the Pacific Missile Range contract and the successful bidder was awarded the contract by undercutting the prevailing wage structure.

The above situation is not an isolated example of the Labor Department's dereliction in administering the Service Contract Act. During the House debate on the amendment various Congressmen recounted the Department's failure to properly administer the Act. (See Congressional Record, August 7, 1972, H. 7257-H. 7263.) Moreover, the District Court in the Kentron case noted that the Department of Labor provides wage determinations for less than half of the proposed contracts subject to the Service Contract Act. Congressman Thompson indicated that the Department had failed to make determinations in almost two-thirds of the contracts subject to the Act. Whatever the mathematical figure, the record clearly discloses a failure by the Department of Labor to properly administer the provisions of the

Service Contract Act in accordance with the intentions of Congress.

In sum, there have been serious problems with the present administration of the Service Contract Act which warrant attention by this Congress:

(1) The Labor Department has unjustifiably expanded the section of the Act giving the Secretary of Labor authority to allow reasonable exemptions from the provisions of the Act "as he may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government."

(2) The Department has stretched this authority to the extent that it fails to make wage and fringe benefit determinations for a substantial majority of the contracts subject to the Act.

(3) Moreover, Government contracting agencies have circumvented the Act by deliberately failing to provide the required wage data.

(4) This misfeasance and nonfeasance by the Labor Department and contracting agencies has undermined the purpose of the Act, which was to protect the wage and fringe benefit levels of service employees. In many instances where the Labor Department has failed to make a wage determination and there is a change of contractors, employees have had their salaries reduced by as much as 50 percent and have seen their fringe benefits disappear. Prospective wage increases contained in collective bargaining agreements negotiated in good faith as a result of arms-length bargaining likewise disappear. This in turn leads to employee resentment, unstable labor-management relations, and often

lengthy work stoppages.

Of course, the 1965 Service Contract Act was meant to prevent all this and I believe that the language passed by Congress was sufficient to accomplish its objectives, if only the Labor Department and the contracting agencies had given the legislation its reasonable and proper interpretation. Because they have not done so, Congress should enact these amendments. In the light of past experience it is particularly important to limit the Secretary's discretion to grant exemptions, to protect prospective wage increases contained in collective bargaining agreements, and to require by July 1, 1977, that the Secretary must issue determinations as to all service contracts.

For these reasons, the International Brotherhood of Electrical Workers urges the Senate to enact this legislation.

Mr. CURRAN. Earlier I referred to the hearings which were held before the Special Subcommittee on Labor of the House Education and Labor Committee.

I attended most of those committee hearings, and throughout those committee hearings, I was delighted that the atmosphere was such that all those who testified were almost in agreement that something had to be done to clarify the 1965 Service Contracts Act.

There was not a single person who testified that disagreed that something was wrong and that remedies were necessary.

We had, before those hearings, a number of international union representatives who testified.

Each one of those who testified cited the example of their union and their relationship with the contractors and the role of the Federal Government in trying to administer the act.

From my own international union, we cited and we had as a witness our business manager from Lorado, Tex., David Jacobs, and he gave a terrific background to what has taken place in this industry.

The members of his union, the members of our union, at first were employees of the Federal Government at Lorado Air Force Base, and then the Federal Government decided what they ought to do is to eliminate all these jobs and take them out of the protection of the civil service and subcontract this work to private contractors.

So these workers who were enjoying the Federal Government wages and fringe benefits, pensions, et cetera, at that time were suddenly out of a job, and a contractor came in and he offered them a job.

So we had workers making $2.50 an hour, and now offered jobs for $1.15 an hour. We had workers offered jobs at 55 cents an hour—kitchen help; laborers, 70 cents an hour. That was in 1961.

So what our workers did after the contract had changed hands once or twice, and there was a continual depression of wages, they joined the Laborers International Union.

So we represented these workers, and we petitioned for an increase in wage benefits and some protection. The contractor said he could not do this because he was limited to the budget that he had prepared to meet what he felt would be an acceptable contract.

So what he did was offer our people less wages, and we struck. Everybody in the community was up in arms about this kind of action. The Air Force came to the rescue while our people were out on strike; so they brought in their own people, and they manned the laundries and they manned the kitchens, and they manned the gardening equipment. So those were the conditions that existed.

We came to the Congress in 1965 and we said, "We need some relief." This is a glaring example of how workers are being exploited. These are workers, working for the Federal Government, who are being crushed by the law, or being crushed by unscrupulous contractors, and we demanded relief. And in 1965, we got relief.

The O'Hara-McNamara Act was passed and the intent of that act to insure a fair wage and fair benefits for workers in the service contract industry.

Our workers were delighted. Some of them got an increase of as much as 50 cents an hour, because under the O'Hara-McNamara Act, they had to take into consideration a minimum wage for the area rate.

Needless to say, the minimum wage is what brought these workers up to a better standard of living than they had before.

In 1965, 1966, 1967, around 1968, it started to deteriorate. In 1969, we felt the first blow. In 1970, our workers in Lorado Air Force Base did not get a wage increase for 2 years, and if my memory serves me correctly, for almost 3 years.

The reason why they did not get a wage increase was because the Labor Department felt they did not have to predetermine their wages down there, or if they did, they did not recognize the existing wage that was being paid under the contract. They did not recognize a future wage increase.

So this is our example. This is our horror story, and throughout those hearings, you will find the other international union saying the same thing. Indeed, one contractor had the courage to appear before that committee and say:

> We do have chiselers in this industry. We do have unscrupulous contractors, and we do not like it. I want to see every worker get a fair wage. I want to see workers comfortable when they retire so they have a pension. I want to provide for these things; but I cannot do it if I have a chiseling contractor coming in here and underbidding me every year.

Nobody refuted that statement.

I would hope that all the legitimate contractors would do the same thing, just as we did the chiselers out of the garment industry and every other industry by providing for a fair minimum wage through legislation.

The only people who benefit by not having a floor under wages are the chiselers, those who want to come in and exploit the working men and women.

So we were gratified to see these hearings move in the direction that they did move. We were glad to see that the Comptroller General said, "I didn't really issue an order to the Labor Department and say they couldn't predetermine wages under the existing methods of which they were predetermined."

The Labor Department came in and said, "Well, that is what they told us. If they did not tell us that, we would never have changed the policy of the methods of the way we predetermined wages."

We were led to believe that, by gosh, this is the time where everybody who is concerned about these poor workers wants to do something about it.

I was amazed this morning that the Labor Department was coming in and opposing, you know, these clarifying amendments.

I do not see how we prevent the workers in all industries from getting a wage increase, as the cost of living goes up, and as profits go up.

We see the Federal employees get wage increases every year, every 2 years, increases in pensions; and we say to those people who are at the bottom of the economic ladder that you do not go anywhere. You are frozen, because if we give you a wage increase, you are going to be the cause of inflation, and we cannot permit that in this country. So you are getting $1.65 an hour, and that is where you stay. You are getting $2.20 and that is what we are going to do.

I do not see how we can allow a condition like that to continue.

Mr. Chairman, the time is now. It is not tomorrow. It is now. It is long overdue.

I bleed with these people who have been subjected to this kind of practice of not only freezing the wages, but then taking away from them a hard and won game.

You know when we strike in this industry, we are at the mercy of the installation. They can bring in their own people and man the jobs that our people are doing. In many cases, some of these service people moonlight in these jobs because they have got the time to do it. And so we are not the ordinary group.

You know, we cannot strike with the protection of our economic strength, withholding our labor from a company that would feel the effects of it; we are dealing with the Federal Government which has ways and means of beating us over the head and beating us out of business.

This has been cited by the representatives, my colleagues at the table here, and it has been cited by my colleagues over on the House side; and I want tc thank the chairman at this time, the members of the committee, for letting us come here this morning to give you our case.

The CHAIRMAN. We appreciate your forceful statement.

You are including statements from other unions not represented here for the record.

Is the International Brotherhood of Painters and Allied Trades one of the statments that you are including; do you know?

Mr. CURRAN. No. I had spoken to Mr. Sweeney of the Teamsters; and I understand he wants to submit a statement.

Mr. Simpkins of the National Maritime Union might want to submit a statement, and the International Brotherhood of Electrical Workers might want to submit a statement, and maybe some others.

Those are the ones in particular.

The CHAIRMAN. Some specifics have reached me of this undercutting and chiseling, contractor chiseling in painting contracts. I was wondering whether they were included.

Mr. MCGAHEY. I have a couple of things I want to add to this.

I think Mr. Curran was very kind when he called some of these people chiselers. I would really call them merchants of misery. We have cases where contractors went out and bid on these jobs, and undercut wage scales in different areas, and some of the contractors are not even in the guard business who are doing this.

One individual that I know of is chairman or president of about five companies. They are not considered guards.

I do not know what the companies are, and he is probably using this as a tax dodge to have this company, and to take these contracts at low rates.

Another individual was running a uniform store, so he went out and bid for Government contracts so he could sell people uniforms. There is every kind of person in this area; and unless we have this help from Congress here, this thing is going to continue and we are going to take a 62-cent-an-hour cut at the Cape here over wage determinations made down there on the rates.

It is cutthroat business. We certainly need this help.

Senator TAFT. With regard to that uniform contract, is that not covered by Walsh-Healey?

Mr. MCGAHEY. The uniform contractor set up his own guard service.

Senator TAFT. Guard service?

Mr. MCGAHEY. On the side.

He, of course, sold his uniforms to the guards and was making money both ways.

Senator TAFT. Selling to the individuals.

Mr. Curran, do you agree that the Government departments have the authority to turn down negotiated wage increases between labor and management, private service contract?

Mr. CURRAN. I am not aware that they do. And if they do, I do not think they should.

Senator TAFT. You seem to be in disagreement with the other witness in this regard.

Mr. CURRAN. That is my feeling.

Senator TAFT. I agree with you. I think if a standard is to be set, it ought to be set by some independent body. I am trying to get a suggestion from you gentlemen as to how best—and you would know better than we would—those independent standards can be set. There is a real problem here. I do not think there is any question about it.

I do not think that we ought to allow the continuation of the existing conditions that have been described. But how are we going to get and effectively determine and fairly determine minimum standards? Who is the one to do it? Why is the Labor Department not able to do it today, really? Apparently they have not done it. That is what you are telling us.

Mr. CURRAN. That is right. I ask the same question: Why are they not doing it today? Why are they not able to predetermine wages that are fair and equitable? Why can they not use the means that we suggest over here? Why can they not take the rates being paid wage board employees, the rates under existing contract, the rates in the area, and come up with a fair rate?

When we talk about rates, we talk about the price of fringe benefits, too, and you put them all in one package, and you say we are going to put the money here in fringe benefits; we are going to put the money here in wage increases. That can be done.

But, lord, if they can find ways of depressing wages, they can certainly find ways of uplifting wages, and meeting the conditions of the times. I do not think that is insurmountable.

Senator TAFT. How many employees have you talked about roughly in the area that you gentlemen are concerned with?

Mr. CURRAN. I think there was a figure of a total number of employees in the industry, about 2 million. Now, how many are represented by the labor unions, I cannot give you a total figure; but it seems to me there are 2 million workers in the service contract industry. That figure was mentioned before.

Senator TAFT. Does that include State as well as Federal?

Mr. CURRAN. No; I think just under Federal contract.

Senator TAFT. Are you gentlemen concerned about State situations? Are you advocating it be applied to State contracts?

Mr. CURRAN. No, sir.

Senator TAFT. You are leaving this out of the situation?

Mr. CURRAN. We are talking about those service contracts with the Federal Government.

Senator TAFT. Thank you very much.

Mr. O'CONNELL. I did not agree that contracting agencies should have the authority. I said it does have the authority.

The CHAIRMAN. Thank you very much.

Our next witness is Robert E. Lee, president, National Aerospace Services Association; accompanied by Ramsay Potts, legal counsel; C. R. McGehee, general manager, Field Operations Support Division, Boeing Co.; Dan R. Bannister, vice president of operations, Dynalectron Corp.

Mr. Lee.

STATEMENT OF ROBERT E. LEE, PRESIDENT, NATIONAL AEROSPACE SERVICES ASSOCIATION; ACCOMPANIED BY RAMSAY POTTS, LEGAL COUNSEL; C. R. McGEHEE, GENERAL MANAGER, FIELD OPERATIONS AND SUPPORT DIVISION, BOEING CO.; AND DAN R. BANNISTER, VICE PRESIDENT OF OPERATIONS, DYNALECTRON CORP.

Mr. LEE. Good morning, Mr. Chairman.

I am Robert E. Lee, president of the National Aerospace Services Association.

I have with me, besides our counsel, Mr. Ramsay Potts, I have Mr. C. R. McGehee, general manager, Field Operations and Support Division, The Boeing Co.

I also have with me Mr. Dan R. Bannister, vice president of Operations, Dynalectron Corp.

Both of these companies are members of our association.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear here to testify on behalf of the member companies of the National Aerospace Services Association.

We are a national trade association representing companies engaged in various contract service activities. A list of our member companies is attached as attachment 1.

(The information referred to follows:)

NATIONAL AEROSPACE SERVICES ASSOCIATION
1725 De Sales Street, N.W. (#400)
Washington, D.C. 20036

CORPORATE MEMBERSHIP

AERO CORP.	Lake City, Fla.
AERO ENGINEERING & MANUFACTURING CO.	Glendale, Calif.
AERODEX, INC.	Miami, Fla.
AUTOMATION INDUSTRIES, INC.	Long Beach, Calif.
AVCO LYCOMING DIVISION	Stratford, Conn.
AVIA, INC.	Dallas, Tex.
BELL HELICOPTER CO., O&M CENTER	Amarillo, Tex.
THE BOEING CO., FIELD OPERATIONS & SUPPORT DIV.	Seattle, Wash.
CHROMALLOY AMERICAN CORP.	San Antonio, Tex.
CURTISS-WRIGHT CORP.	Wood-Ridge, N.J.
DALLAS AIRMOTIVE, INC.	Dallas, Tex.
DYNALECTRON CORP.	Washington, D.C.
E-SYSTEMS, INC.	Greenville, Tex.
FAIRCHILD INDUSTRIES, INC.	St. Augustine, Fla.
GARY AIRCRAFT CORP.	San Antonio, Tex.
HAYES INTERNATIONAL CORP.	Birmingham, Ala.
HUGHES AIRCRAFT CO., FIELD SERVICE & SUPPORT DIV.	Los Angeles, Calif.
LEAR SIEGLER, INC.	Oklahoma City, Okla.
LOCKHEED AIRCRAFT SERVICE CO.	Ontario, Calif.
NORTHROP WORLDWIDE AIRCRAFT SERVICE, INC.	Lawton, Okla.
QUALITRON AERO, INC.	Fort Worth, Tex.
S.M.S. INSTRUMENTS, INC.	Deer Park, N.Y.
SOUTHERN AIRWAYS OF TEXAS, INC.	Fort Wolters, Tex.
SOUTHWEST AIRMOTIVE CO.	Dallas, Tex.
SPARTAN AVIATION, INC.	Tulsa, Okla.
UNITED AIRCRAFT CORP.	Windsor Locks, Conn.

Mr. LEE. I want to make it clear that our industry as a whole does support the basic intent of the Service Contract Act—to provide wage and fringe benefit protection for the so-called blue-collar worker comparable to the prevailing rate for similar work in the same locality. Typical occupations meant to be covered are: guards, watchmen, janitors, laundry workers, food handlers, and skilled and unskilled manual laborers.

We acknowledge that the law has not been working as intended; however, we strongly oppose this bill, as presently written, as any cure for the problems that still exist for the service contract "blue collar" worker.

Our industry does not support this bill as presently written, and I would like to set the record straight regarding a statement in the Congressional Record on August 7, 1972 by Congressman Thompson that the Boeing Co. and the Northrop Corp. supported the bill.

The Congressman is mistaken; Boeing and Northrop oppose the bill.

I submit as attachment 2 a letter from Boeing denying this statement and stating that the Boeing Co. opposes the bill.

I also submit as attachment 3 a letter from the Dynalectron Corp. expressing its firm opposition to the bill.

(The information referred to follows:)

ATTACHMENT #2

THE BOEING COMPANY

WASHINGTON, D. C. 20024

ROBERT E. BATEMAN
VICE PRESIDENT-
WASHINGTON OPERATIONS

955 L'ENFANT PLAZA NORTH, S. W.

August 14, 1972

Dear Bob:

It has come to my attention that on August 6, 1972, Representative Thompson of New Jersey stated that The Boeing Company supported H.R. 15376, amending the Service Contract Act of 1965. The statement was made during a discussion on the House Floor immediately preceding passage of the bill under a suspension of the rules.

I would like to state unequivocally, that Representative Thompson is under a mistaken impression. The Boeing Company opposes the bill. It is likely to eliminate competition, raise the cost of government, and cause considerable administrative confusion in the procurement process.

While we stand wholeheartedly behind the bill's overall objective, which is to stop certain abuses suffered by service contract workers, we do not think that this bill is the appropriate mechanism to accomplish it.

Sincerely,

Bob

R. E. Bateman

Mr. Robert E. Lee, President
National Aerospace Services Association
1725 DeSales Street, N.W., #400
Washington, D. C. 20036

Attachment #3

DYNALECTRON CORPORATION
2233 WISCONSIN AVENUE, N. W.
WASHINGTON, D. C. 20007

DAN R. BANNISTER
VICE PRESIDENT - OPERATIONS

FEDERAL 8-4600

43,358

14 August 1972

Mr. Robert E. Lee
National AeroSpace Services Association
1725 DeSales Street, N. W., #400
Washington, D. C. 20036

Dear Mr. Lee:

Subject: Amendment to the Service Contract Act of 1965, House of Representatives Bill Number 15376

Dynalectron hereby expresses its firm opposition to the proposed amendment to the Service Contract Act of 1965 covered by HR 15376.

We were astonished to learn that even with the testimony provided by the Wage and Hour Division of the Department of Labor concerning the adverse impact of this amendment would have not only on the economic policies of the country but on the entire competitive aspect of Government procurement that the House of Representatives would pass such legislation.

It is inconceivable that the United States Government would inject itself into private business to the extent proposed in this amendment. During a recent hearing, Representative Thompson (Democrat, New Jersey) and Representative O'Hara (Democrat, Michigan) both verbally stated that they were not suggesting that the Service Contract Act eliminate all competition and went so far as to express an opinion that wage variations could run as much as 25 percent before they would become concerned.

The implications of this amendment are, in our opinion, adverse to the Government, the labor movement, and to industry. There appears to be no bonafide reason to have such an amendment, particularly in light of the fact that the Department of Labor has now agreed to establish a wage determination in every geographic area of the country within the next several years. This course of action is far less detrimental to us all than the requirements imposed by the Service Contract Act amendment now being proposed.

As a member of NASSA, we strongly urge the Association to join others in Government and industry in opposing this legislation.

Very truly yours,

Dan Bannister

Mr. LEE. As I have said, the National Aerospace Services Association does not support this bill in its present form. Our basic objections are as follows:

The bill legislates the so-called "successorship doctrine" which provides in essence that a successor contractor will be obligated to pay salaries or wages, including fringe benefits, no lower than the previous contractor paid.

This is so even if the successor contractor employs his own work force and does not retain any of the predecessor contractor employees.

In conjunction with this it also introduces a major new concept into our national labor policy that our labor laws should now be rewritten to provide for compulsory imposition of the terms of collective bargaining agreements on employees and employers who were not parties to the agreement.

Specifically, the act provides that the minimum wages to be paid to various classes of service contract employees in the performance of the contract where a collective bargaining agreement covers any such service employees, in accordance with the rates for such employees provided in such agreement, including, if the Secretary so elects, prospective wage increases provided for in such agreement as a result of arms length negotiations.

In no case shall the wages be lower than specified in subsection (b) which states that "no contractor or subcontractor under a contract which succeeds a contract subject to this act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits and, if the Secretary so elects, any prospective increases in wage and fringe benefits provided for in a collective bargaining agreement as a result of arms length negotiations * * *

This is completely inconsistent with the recent Supreme Court decision in the NLRB against Burns case, wherein the Supreme Court unanimously ruled that a successor contractor is not bound by the collective bargaining agreement of the previous contractor.

The Court found such a requirement inconsistent with the national labor policy as expressed in the National Labor Relations Act. Further, the Court concluded, for reasons detailed at length in the opinion, that "holding either the union or the new employer bound to the substantive terms of the old collective bargaining contract may result in serious inequities" and that a duty of a successor contractor to assume its predecessor's obligations under the old contract does not and should not ensue "from the mere fact that an employer is doing the same work in the same place with the same employees as his predecessor."

We submit that this bill clearly establishes a privileged class of employees whose wages could never fluctuate with job requirements or economic conditions and places this group of employees in a much more favorable position than their counterparts in the same locality.

As a result, we can see a proliferation of "sweetheart agreements" wherein the competitive forces are not present to encourage management to negotiate the best possible terms since increases in costs are merely transmitted to the Government.

As the Assistant Secretary of Labor, R. J. Grunewald, testified before the House Special Labor Committee, "the requirement of good faith bargaining is not an effective safeguard to prevent sweetheart

arrangements" * * * particularly when the incumbent contractor negotiates with the union after knowing he has lost his contract.

Since the procuring agency has no part in the wage-setting procedure, the agencies have no defense against such tactics except to drop the contract with the successor and perform the mission in-house, as was the case at Fort Rucker, Ala., when the successor contractor ended up with a strike on his hands, and the Army, to ensure its mission, had to move in and take over the function.

The service contract industry is a highly competitive industry and since wages and fringe benefits are the basic elements of cost, this bill will stifle cost competition and could well result over a period of time in doing away with competition.

The flexibility that a prospective bidder has to lower cost and increase efficiency disappears with the perpetuation of a fixed labor scale keyed to collective bargaining agreements negotiated in an atmosphere where the incumbent contractor has no incentive to bargain hard with the union.

Parenthetically, Mr. Chairman, it was this competitive force that brought the Air Force a saving somewhere in the neighborhood of $40 million on the Pan-Am, contract referred to by one of the earlier witnesses.

We are, therefore, convinced, for the reasons cited herein that this bill will, at a time when all government is trying to economize, result in ever-increasing labor costs in service contracts. To discourage hard bargaining between labor and management, and to lessen the forces of competition in the marketplace can only further feed the fires of inflation.

Mr. Chairman, the proponents of the bill have used the Boeing-TWA competition at Cape Kennedy as a prime example of the need for this legislation. But in their analysis they have misinterpreted and misconstrued what actually happened.

The record shows that 1,100 of the previous contractor's employees were extended offers from Boeing. Of these, 711 were hired; 309 at the identical salary they were previously paid; four individuals accepted offers at a decreased rate greater than 35 percent; four at an increased rate of pay.

The balance received offers from zero to 35 percent less than previous pay. The average pay reduction was 17 percent and not 50 percent, as some have purported. The next logical question is why was there any reduction in pay? The fact is that the contract was priced on the job to be done, not on an individual's current salary.

As it actually came out, many of the large wage reductions were the result of a classification of employees designed to the transportation industry rather than the aerospace industry.

A typical example was the "engineer" and "service engineer" classification used by TWA.

Over 50 of their people employed in this category were neither qualified engineers nor performing any engineering job. Boeing's basic policy is to qualify as an engineer a person must have graduated from college with a degree in engineering or science. These employees were offered lower classification jobs commensurate with the actual work to be performed. I offer this to clear the record and to indicate the complicated nature of this business.

Since the Labor Department has so adequately covered the enormous administrative problems that will be created, I am not going to dwell in depth on this very confusing aspect of the bill.

Industry, however, under the terms of this bill can anticipate with certainty extended contractual delays and sizable increases in cost. This will inevitably lead to more persuasive efforts on the part of the requiring agencies to do more and more of their programs inhouse with Government personnel and further increase the number of workers on the Government payroll at the expense of the private sector.

With regard to the "unworkable, confusing, and enormous administrative problems" that the Labor Department claims will result from passage of this bill in its present form, we agree, it can only worsen the already unsatisfactory administration that has precluded any chance for the act to really prove its merit.

In this regard, we believe that it is important to point out another area where overadministration is causing industry much concern and many problems.

The Labor Department is now and has been applying the act to highly skilled technicians. This is inconsistent with the act and unnecessary for the protection of labor standards.

Parenthetically, again in the discussions this morning, many of the employees that we have heard discussed as examples of the problems in this industry were types of employees that were not covered by the Service Contract Act.

In summary, Mr. Chairman, this legislation is unhealthy for Government and for industry.

The National Aerospace Services Association does not support it because: it legislates the so-called successorship doctrine; it provides for compulsory imposition of the wage and fringe benefit portion of collective bargaining agreements on employees and employers who were not parties to these agreements; by its very nature it will stifle the competitive forces that are such a basic part of our free enterprise system and the very heart of our Government procurement system; it goes well beyond the intent of the Service Contract Act and establishes this category of workers in a preferred position well above their counterparts in their locality; and it will further feed the fires of inflation through ever-increasing prices in service contracts.

We oppose it because it really complicates the already unmanageable administrative burden on the Secretary of Labor to the point that administrative delays could well complicate the procurement process to the point where the requiring agencies must seriously consider taking the work inhouse in order to meet mission essential objectives.

We believe that the Service Contract Act properly administered as it is presently structured can meet the Congress' intent to protect the so-called "blue collar" worker. We therefore recommend that this bill in its present form not be reported out of committee.

Mr. Chairman, we have a statement here by the Boeing Co. that we can submit for the record.

The CHAIRMAN. The statement will be included for the record.

(The statement referred to follows:)

Statement of
CHARLES R. MCGEHEE
GENERAL MANAGER, FIELD OPERATIONS
AND SUPPORT DIVISION OF THE BOEING COMPANY
Before the
SPECIAL SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND WELFARE
on the
SERVICE CONTRACT ACT

August 16, 1972

Mr. Chairman and Members of the Subcommittee:

On behalf of The Boeing Company, I thank you for this opportunity to offer this statement on the proposed amendments to the Service Contract Act. My comments will be limited to the proposed changes in the Act as contained in H.R. 15376.

It is my understanding that the contract bidding at the Kennedy Space Center in Florida has played a major role in the considered deliberations on this issue before the House Subcommittee[1] and the Special House Subcommittee on Labor[2]. Since The Boeing Company was one of the principals in that controversy, I would be remiss if I did not address myself to the Cape situation.

The maintenance contract for the Kennedy Space Center had been held by Trans-World Airlines (TWA) from March, 1964, until it was put up for competition in June, 1970. TWA had a collective bargaining agreement with the International Association of Machinists and Aerospace Workers (IAMAW) covering over 1000 maintenance employees. Generally those employees fall into maintenance-type classifications, e.g. carpenter,

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1. Congressional Record, August 7, 1972, page H7258

2. Report on Hearings before the Special Subcommittee on Labor of the Committee on Education and Labor, March 30, April 1, 2, 6; and May 5, 1972, pp 197-280.

electrician & plumber. Their primary responsibility was providing housekeeping functions, that is, facility maintenance, to the National Aeronautics and Space Administration at the Center. The wage rates and fringe benefits paid by TWA under the TWA-IAMAW collective bargaining agreement were those paid nationwide to TWA employees engaged in airline, as opposed to facility, maintenance. Characteristically, wages and fringe benefits for airline maintenance employees are above those for other production and maintenance and facility maintenance employees.

Boeing Company employees are also represented nationwide by the International Association of Machinists. At the Cape, prior to bidding on the service contract, there were several hundred Boeing-IAM represented employees working directly on the Saturn I-C booster, the first stage booster on all Apollo missions, and associated support equipment. Those employees were, and are compensated pursuant to the wage and fringe benefit provisions of the Boeing-IAM collective bargaining agreement. Likewise, Boeing employees who build the Boeing 727, 747 and other Boeing aircraft, together with the employees who actually construct the Saturn I-C booster, and the Lunar Rover, the interstages of the Minuteman Missile and much of the ground support equipment for that system are all paid the wages and fringe benefits provided in the Boeing-IAM collective bargaining agreement. In the opinion of The Boeing Company, the type of work described above is far more sophisticated than facility maintenance. Yet when The Boeing Company bid on the facility maintenance contract at the Cape, it proposed the Boeing-IAM negotiated wage rates and fringe benefits -- rates and fringes which were admittedly lower than the TWA-IAM rates. It was this proposal that led to charges of "wage busting" and "starvation wages."

I will now turn my attention to the proposed amendments. The Boeing Company

is of the opinion that they contain numerous shortcomings and pitfalls. I will address specific attention to the following problem areas: (1) The imposition of the economic terms of the incumbent's collective bargaining agreement on succeeding employers will seriously impair if not eliminate service contract bidding. (2) Service contract employees and the unions which represent those employees are protected under the terms of the current Service Contract Act provided the Department of Labor is adequately funded and staffed to carry out the intent of the act. (3) Requirements for payment of accrued benefits and, in many cases, current benefits are unworkable.

1. THE IMPOSITION OF THE ECONOMIC TERMS OF THE INCUMBENT'S COLLECTIVE BARGAINING AGREEMENT ON SUCCEEDING EMPLOYERS WILL SERIOUSLY IMPAIR IF NOT ELIMINATE SERVICE CONTRACT BIDDING.

The proposed amendment provides that the prevailing rate which a succeeding contractor shall be required to pay is the rate provided in the collective bargaining agreement between the incumbent contractor and the union and, if the Secretary so elects, prospective wage increases provided in that contract. To understand the impact of this language, one must consider the dynamics of collective bargaining. The parties to collective bargaining, while both may share a common goal of betterment of the working man, are necessarily adversaries across the bargaining table. If they were not, there would be no "negotiation" or "bargaining", for the very terms import competitive positions.

"Cost plus" contracts are in themselves impediments to the collective bargaining process because the contractor and the union are both well aware that the customer - the government agency - will pick up the cost of any negotiated increases in wages or fringe benefits. Other than incentive fee arrangements, there remains but one deterrent that encourages a contractor to maintain any semblance of control over wage rates - the constant specter of recompetition where a competitor will

underbid the incumbent.[3] To now remove this impediment to runaway wage rates by requiring bidders to bid, at a minimum, the wage rates and fringe benefits of the incumbent releases the incumbent contractor from any business reason to oppose union economic demands. The result will be a continued feeding of inflationary fires.[4]

"Fixed cost" contracts contain the same pitfalls in that the proposed legislation permits the Secretary of Labor to include prospective wage increases provided in such agreements in any wage determination. The requirement of "good faith" or "arm's length" negotiation provides no protection in that both of the parties to the negotiation - the only ones available to supply evidence on good faith negotiations-

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3. An example of a contractor's negotiating posture when he knows that any negotiated wage increase will not mitigate against him in recompetition is found, by analogy, at Ft. Rucker, Alabama in July, 1970. After the incumbent contractor was notified that he had lost a government service contract, but before termination of his current service contract, the collective bargaining agreement between the incumbent and the union expired. The incumbent, freed from any business and economic reasons to negotiate a reasonable collective bargaining agreement, agreed to what, in the opinion of the succeeding contractor, were unreasonable rates which the succeeding contractor refused to pay. A strike ensued and the Army had to take over the work. The reason - there was no incentive for the incumbent to retain control over wage and fringe benefit rates. The Boeing Company submits that the removal of fear of serious competition upon recompetition - a result which naturally flows from the proposed amendment - will lead to rapid escalation of wage rates.

4. Approximately 90% of the cost of most service contracts is composed of wage and fringe benefit items. Thus, elimination of this segment from the competitive area by requiring all bidders to pay rates negotiated by the incumbent contractor removes the final impetus to a contractor to maintain competitive rates. To dispel one final misconception, I can speak for The Boeing Company to the proposition that service contractors do not make great profits at the expense of contractor employees. Specifically, at the Cape, Boeing bid no overhead and no guaranteed fee. The fee paid to Boeing is a performance incentive fee, the amount to be determined by the contracting agency - NASA. To date, the fee has been less than 4% of the contract cost - a figure common in the industry.

will be in the same corner.[5]

While I am naturally aware of the prerogative of Congress to adopt legislation which in effect overturns decisions of Supreme Court as to prospective application, consideration should be given to the cogent reasoning of the United States Supreme Court in National Labor Relations Board v Burn's International Security Services, Inc., decided on May 15, 1972. In refusing to require the succeeding contractor to adopt the collective bargaining agreement of the predecessor[6] the Court noted that Congress had consistently declined to interfere with the free collective bargaining process. Specifically, the Court referred to statements of the Senate Committee on Education and Labor (1935):

> "The Committee wished to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit government supervision of terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory. (40 U.S. Law Week 4502)

The Court further held:

> We also agree with the Court of Appeals that holding either the union or the new employer bound to the substantive terms of an old collective bargaining contract may result in serious inequities....

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5. Reliance upon the workability of "good faith negotiation" requirements of the National Labor Relations Act would be misplaced. Under the National Labor Relations Act, it is always one of the negotiating parties that accuses the other and supplies evidence of negotiation carried on in less than "good faith". However, even in an adversary collective bargaining atmosphere, proof of bad faith bargaining is difficult in that the complaining party must necessarily rely upon objective manifestations to prove subjective "bad faith" bargaining. The Boeing company suggests that any attempt to question "good faith bargaining" or "arm's length negotiation" in a nonadversary posture as anticipated by the proposed amendments would be a futile effort.

6. Although the proposed amendments would not require adoption of the collective bargaining agreement in toto, the heart of the agreement, i.e., wages and fringe benefits, would be imposed upon the succeeding employer.

> The Congressional policy manifest in the (National Labor Relations) Act is to enable the parties to negotiate for any protection either deems appropriate, but to allow the balance of bargaining advantage to be set by economic power realities. Strife is bound to occur if concessions which must be honored do not correspond to the relative economic strength of the parties. (40 U.S. Law Week at 4504)

That the imposition of the collective bargaining agreement of the predecessor on the succeeding contractor might encourage less than arm's length negotiation was recongized by the National Labor Relations Board, the agency of recognized expertise in the labor-management field, in Emerald Maintenance, Inc., 188 NLRB No. 139 (1971). The Supreme Court in specifically relying upon the Board's expertise; stated:

> "The Board held that the employer had a duty to recognize and bargain with the union (in Emerald Maintenance) but could not agree with the trial examiner that the employer was bound by the provisions of the collective bargaining contract.... The Board noted, 'This case suggests the hazards of enforcing the contracts of one employer against a successor where annual rebidding normally produces annual changes in contractual identity. These circumstances might encourage less arm's length collective bargaining whenever the employer had reason to expect that it would not be awarded the next succeeding annual service contract.'" (40 U.S. Law Week at 4505)

The Boeing Company suggests that total security as a service contractor, in that the incumbent service contractor will set the wage rates and fringe benefits which will control the bids of all competitors, will likewise lead to less than arm's length collective bargaining.

A further shortcoming in the proposed amendments is that it possibly restricts the right of a bidder to realign the work or propose new methods of accomplishing the service required. Specific reference is made to the proposed amendment Section 2(a)(1) of the Act, which requires bidders to pay rates and fringes set in the collective bargaining agreement, and to Section 4 of the Act which will require bidding contractors, where substantially the same services are to be furnished, not to pay service employees less in wages and fringe benefits than he would have been entitled to receive but for the change in contractors. If the same ultimate service is to be

rendered, it would appear that prospective bidders may be prohibited from proposing new or improved methods of performing the task because they are locked in by the wages paid by the incumbent contractor. Does Congress, by enacting the proposed amendments, truly intend to eliminate the possiblity of introducing new work alignments or procedures by requiring maintenance of existing wage rates simply because substantially the same service (goal) will be performed?

2. SERVICE CONTRACT EMPLOYEES AND THE UNIONS WHICH REPRESENT THOSE EMPLOYEES ARE PROTECTED UNDER THE TERMS OF THE CURRENT SERVICE CONTRACT ACT PROVIDED THE DEPARTMENT OF LABOR IS ADEQUATELY FUNDED AND STAFFED TO CARRY OUT THE INTENT OF THE ACT.

The argument is made that service contract workers, together with the unions representing those workers, need further protection that would be provided by requiring bidders to pay either the rates set forth in the collective bargaining agreement or, presumably in the absence of such collective bargaining agreements, not to pay less in wages and fringe benefits than were paid by the predecessor contractor. Such an argument is fallacious for two reasons.

First, on most if not all service contracts that are competitively bid, bidders are required to explain the impact of their proposal on the local community and the local labor market. Failure to adequately consider this problem can and has resulted in elimination from consideration for contract award.[7]

The second reason is that unions are in a position to protect both themselves and the individuals they represent. Witness the recent bidding at the Air Force Eastern Test Range at Cape Kennedy. The prior contract between the Air Force and Pan American was a 78 million dollar annual contract. Through recompetition, Air Force will receive the same basic services for approximately 35 million dollars annually - a net savings of over 40 million dollars to the taxpayers. Pan American

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7. As a specific example, Pan American World Airways was eliminated from consideration at the Kennedy Space Center for the reason that they failed to minimize the impact of their proposal upon the incumbent work force and the incumbent unions. See Hearings Before the Special Subcommittee, ibid, p. 248.

and the unions representing its employees entered into collective bargaining agreements reducing the rates paid to Pan American employees. What rates were agreed upon? For the most part, Pan American and the unions reached agreement to pay the rates set in a recently conducted wage determination in Brevard County. Those were not "poverty" or "starvation" rates. In fact, recent figures from the Sales Management Magazine, Florida State Chamber of Commerce, show that Brevard County residents have the highest "effective buying income" in the State of Florida - $11,684 per household - more that $1,000 ahead of its nearest competitor county. It must be recognized that, had the proposed legislation been in effect at the time of the Eastern Test Range recompetition, there would have been no wage reduction agreement between Pan American and its principal unions, thus preventing realignment of wages to be consistent with local prevailing rates as determined by the Department of Labor.

3. REQUIREMENT FOR THE PAYMENT OF ACCRUED BENEFITS AND, IN MANY CASES, CURRENT BENEFITS ARE UNWORKABLE.

The last specific problem to be addressed is that portion of the proposed amendments requiring bidders to pay "accrued wages and fringe benefits." In the broad category of accrued benefits fall pensions, profit sharing, stock options, etc. Given a literal reading, would this legislation not require, for example, The Boeing Company as a successful bidder, to contribute to the profit sharing plan of the predecessor or grant stock options in the predecessor corporation? Or what about pension plans. How could a successful bidder make an employee whole for his pension loss, recognizing that pensions are not portable.

Consider present benefits. One of the benefits granted by TWA at the Kennedy Space Center and Pan American on the Eastern Test Range was free airline travel. Is The Boeing Company or any other bidder - for example Dynalectron - required to furnish free world-wide travel simply because that was a fringe benefit provided by the predecessor?

While The Boeing Company is hopeful and indeed confident it is not the intent of this Committee nor of the House of Representatives to place burdens of this type upon succeeding contractors, the clear language of the proposed amendments is to the contrary.

The Boeing Company therefore respectfully suggests that further consideration be given to the proposed amendments. If indeed amendments are necessary,[8] then consideration should be given to the drafting of an amendment which not only gives the added measure of protection to the service contract employee but also promotes the concept and practice of competitive bidding on service contracts, free from the imposition of impossible conditions and requirements upon succeeding employers.

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8. The Boeing Company agrees with the Department of Labor that no further amendments are necessary. Rather, adequate funding and the resulting enforcement of the current law would provide sufficient protection to service employees.

The CHAIRMAN. I am a little unclear on the exact meaning of the last paragraph where you say "We believe that the Service Contract Act properly administered as it is presently structured can meet the Congress' intent to protect the so-called 'blue collar' worker."

It seems to me that you do not disagree with the law as it is structured, as you say; but if it were, you suggest that the administration does not meet the congressional intent of protecting the so-called blue collar worker?

Mr. LEE. No. I believe what I am saying there, sir, is I agree with the fact that the Labor Department has had trouble administering the act. They have not been able to apply the resources necessary to do the job required by law.

The CHAIRMAN. I see.

The failure here is not in the language of the law, it is in the capability of proper administration because of the personnel factor?

Mr. LEE. I want to make that perfectly clear. We think the language in the law as it now exists is adequate, very adequate, for the purpose intended.

The CHAIRMAN. What we are trying to do, I guess, is restructure the law to take care of those administrative inadequacies that now exist.

Mr. LEE. And in doing so you are including some other problems.

The CHAIRMAN. We are moving, I suppose, into those areas, into technical areas as well as blue collar workers——

Mr. LEE. I do not think—I have not seen anything in the proposed bill that changes the definition of the types of employees to be included.

But I think when you get into that portion dealing with the legislating of bargaining agreements on employees and employers that have had no part in the negotiations of these agreements, it is not even consistent with the basic Constitution of our country.

The CHAIRMAN. I appreciate your agreement that there have been harsh results for the blue collar workers.

Mr. LEE. Yes, sir.

The CHAIRMAN. We have a record from the House committee, who had many more days of hearings than we did, that has a more complete record of the harshness that has come.

Senator Taft.

Senator TAFT. Thank you, Mr. Chairman.

Are you in agreement with the basic concept of the act as it presently exists?

Mr. LEE. Yes, sir.

Senator TAFT. Can you suggest any ways in which we might lighten the administrative burden we are talking about, and I am referring to trying to bring in some other standards from some other source.

Mr. LEE. I do not have any firm suggestions, Senator Taft.

Senator TAFT. What about the Wage Board employees, using that as a factor, that Mr. Curran suggested as one of the factors in trying to make these determinations?

Mr. LEE. I think using a fair representation of standards of Civil Service people, the prevailing rates, bargaining agreements for these types of employees, a combination of factors probably could be used.

We would like to apply a little thought to this, and maybe submit something to you along these lines.

(The information subsequently supplied follows:)

NATIONAL AEROSPACE SERVICES ASSOCIATION
1725 DE SALES STREET, N.W. #400 WASHINGTON, D.C. 20036
(202) 393-0211

Office of the President

5 September 1972

The Honorable Robert A. Taft, Jr.
United States Senate
New Senate Office Building
Suite 3331
Washington, D.C. 20510

Dear Senator Taft:

On behalf of the members of the National AeroSpace Services Association, I would like to express our appreciation for the opportunity to testify before the Senate Subcommittee on Labor to express our views in opposition to the proposed amendments to the Service Contract Act of 1965.

During my testimony you asked if we had any recommendations on how the proposed Bills could be improved. In this regard, we submit the following for your consideration:

1) The National AeroSpace Services Association and the Electronic Industries Association, representing a very large segment of the Contract Service Industry, believe that the Service Contract Act as it is presently written does meet the Congress' intent to protect the service worker. We concur that it has not been working. The Labor Department has not been able to administer the law effectively, and some minor changes may be in order to ensure proper enforcement. The Commission on Government Procurement and the General Accounting Office, the latter at the request of the House Special Committee on Labor, are conducting studies that could make significant contributions toward resolving current problems. It would seem sensible to await the results of these studies before enacting legislation that will at its best only add to the present unmanageable workload.

2) We are of the opinion that much of the confusion and most of the workload problems associated with administering the Act could be reduced, if not eliminated, by more specifically defining "service worker" and "service contract." Current definitions are too broad. For example: (a.) The Congress' intent was to provide protection to blue-collar workers and the like. However, the reference to "skilled mechanical craft or other skilled manual labor" has caused confusion and has resulted in additional workload to the extent that determinations are being made in certain categories of engineers, electronic technicians, technical artists, pilots, and even priests. This is clearly

beyond the intent of the Act. (b.) With regard to more clearly defining a service contract, the Navy has recently received a determination that contracts calling for overhaul and repair, where the end item is sent to a contractor facility and reconditioned and/or modified to government specifications and drawings, are service contracts. How the Labor Department will make determinations before they know the "who" or "where" remains to be seen. For sure, it does further complicate the already insurmountable administrative burden. We are of the firm opinion that the Act was intended to cover those service workers involved in contracts being performed in or on government property or, at the most, in the locality immediately associated with the requiring agency.

3) Administrative burden could be further reduced by requiring area wage determinations rather than by contract. This would be much more consistent with other requirements on the Labor Department for wage determinations, and it does meet the intent of the Act to provide service workers at least the prevailing wage rate in their locality. Consideration should also be given to forego the requirement for a wage determination if existing labor agreements are higher than the prevailing wage rate for that locality.

4) The problems associated with the carry-over of fringe benefits and/or pension plans is much too complicated to legislate into existence without much more thorough study. It is not unfeasible that "portable pension" plans for service workers could be established. However, the basic machinery should be explored, specifically with regard to the government's involvement in honoring accrued benefits and making appropriate adjustments in contract price.

5) The most objectionable part of the current Bills, to government and to industry, is the legislation of the so-called successorship doctrine. Much has been said in the Congressional Record with respect to what this will do to reduce if not eliminate competition in this type of procurement. We concur. More important, we believe, is the inconsistency of the successorship doctrine with the prevailing rate philosophy which is the basis for the Act -- and to use Labor contracts as a basis for wage rates is in effect using government authority to enforce such labor agreements. The Congress has consistently declined to interfere with the free collective bargaining process. We strongly recommend that the entire portion of each Bill (H.R. 15376 and S. 3827) regarding the imposition of the economic terms of the encumbent's collective bargaining agreement on the successor employer and employees be eliminated.

The National AeroSpace Services Association appreciates the opportunity to further develop our views and comment on the legislation as proposed in H.R. 15376 and S. 3827. We urge your support in opposing this legislation as drafted. We suggest that it be tabled until the Commission on Government Procurement and the GAO studies are completed and new legislation considering their recommendations, as well as those already expressed by government and industry, be drafted.

Sincerely,

Robert E. Lee

Robert E. Lee

cc: Senate Subcommittee
on Labor

Senator TAFT. You are familiar with the operation of Davis-Bacon and Walsh-Healey?

Mr. LEE. Yes, sir.

Senator TAFT. Do they have the same problems with the administration of those acts as you do here?

Mr. POTTS. Senator Taft, a number of proponents of this legislation have compared the thrust of this bill with Walsh-Healey and Davis-Bacon Acts.

Davis-Bacon and Walsh-Healey, for instance, do not contain a successorship doctrine. This would be a precedent that would be established in this law, which it seems to me violates all kinds of due process considerations. You do not impose an agreement on people that were not party to the agreement just because they happen to win a contract.

Under Walsh-Healey, for instance, the Secretary has the authority and the responsibility and the power to set minimum wages that are the prevailing minimum rate in the locality and court decisions have held that in certain instances he can decide the "locality" is the entire United States. That is a very important distinction; under Walsh-Healey he has the authority to set minimum wages at a prevailing minimum; whereas, in this act, he may set a rate that is the prevailing average rate in the community, and not the prevailing minimum.

So the Secretary has to decide what is the average, rather than what is the minimum. It is much easier to decide what the minimum is and say from then on we will let competition govern. That is the preferable way to do it.

Senator TAFT. As a practical matter, under Davis-Bacon, since the minimum is determined, for all practical purposes, the bargained rate, is it not——

Mr. POTTS. Davis-Bacon is a little bit different. Under Davis-Bacon he does set the prevailing rate, rather than setting the minimum rate—Davis-Bacon is different. There have been many more problems under Davis-Bacon in this area than there have been under Walsh-Healey.

Walsh-Healey seems to have worked fairly well from an administrative standpoint.

Senator TAFT. Davis-Bacon does not seem to have been cursed with the problems described here. It has not resulted in large-scale undercutting and fear of administration as far as I know.

Mr. POTTS. It does seem that the administration of Davis-Bacon has been perhaps more efficient than administration of the Service Contract Act. I do not know exactly why that is.

Senator TAFT. Counsel suggests that it might be well to put in the record that perhaps the reason for that distinction may be that it is on a project by project, contract by contract basis, rather than prevailing relationship over a period.

Mr. POTTS. I think that is probably a good answer to that question.

Senator TAFT. Which may mean we may try to find some more adequate standard to refer to and try to make this act more workable.

Mr. POTTS. I think the Committee should hesitate a long time, though, before it establishes a precedent in the law that a successor contractor is bound by a collective bargaining agreement entered into by other parties and not by himself.

That is a rather startling precedent.

Senator TAFT. Thank you.

Mr. POTTS. I think it probably will be challenged in the courts inevitably if it is put into the law.

The CHAIRMAN. I missed the point there, Mr. Potts. Are you suggesting there will be a judicial impact here out of this legislation? We are going to have to have a finding——

Mr. POTTS. I just said it was a startling precedent to put in an act here, a provision that an employer that wins or is awarded a contract, is to be bound by the terms of a collective bargaining agreement, which he did not enter into and had no part in negotiating.

Senator TAFT. I think Mr. Grunewald referred to the Burns case, which I have here, and have been looking at it. It is on a different issue. I am not sure it is directly to the point, but I think there is a question here of——

The CHAIRMAN. I think by the time we get to the floor, we have got wise counsel here on either side, and we will have this one understood.

Thank you very much, gentlemen.

The hearing is adjourned.

(Whereupon the hearing was adjourned subject to the call of the Chair.)

SERVICE CONTRACT ACT AMENDMENTS, 1972

WEDNESDAY, SEPTEMBER 6, 1972

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

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Randolph, Mondale, Javits, Taft, and Stafford.

Committee staff members present: Gerald M. Feder, counsel; Donald E. Elisburg, associate counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. We will resume our continuing hearings on S. 3827 and H.R. 15376. I believe this will be the concluding session.

We have as our first witness Deputy Under Secretary for Procurement, Richard Keegan, Department of the Air Force. Mr. Keegan, I appreciate your being with us.

STATEMENT OF RICHARD KEEGAN, DEPUTY UNDER SECRETARY FOR PROCUREMENT, DEPARTMENT OF THE AIR FORCE; ACCOMPANIED BY JAMES MICKLISH, INDUSTRIAL LABOR RELATIONS ADVISER, AND BERT Z. GOODWIN, ASSISTANT GENERAL COUNSEL

Mr. KEEGAN. Thank you, sir.

Mr. Chairman and members of the subcommittee, I am Richard J. Keegan, the Air Force Deputy Assistant Secretary for Procurement. I have with me today Mr. James Micklish, industrial labor relations adviser and Mr. Bert Z. Goodwin, Assistant General Counsel.

I am here today on behalf of the Department of Defense, in response to your invitation to Secretary Laird. We are most grateful for this opportunity to present our views on the pending amendments to the McNamara-O'Hara Service Contract Act of 1965 set forth in S. 3827 and the identical H.R. 15376, which passed the House on August 7, 1972.

Contracts subject to the Service Contract Act of 1965 are of significant importance to the Department of Defense. Available information indicates that more than $1 billion per year of our contracts are subject to the provisions of the Service Contract Act. The impact of the amendments now before this subcommittee would be, of course, to drive this figure up even higher, although there appears to be no way to estimate what the increase would be.

From our standpoint, as a major contracting agency, the Service Contract Act of 1965 is a fair and equitable approach to protecting service employees under Government contract from excessive pressures. We fully support the Service Contract Act of 1965 as it is

presently constituted. It fixes, by reference to an independent standard, a floor below which wages and fringe benefits for service employees are not allowed to fall. This is an approach consistent with the other major examples of fair wage legislation. The exact formula—"prevailing rates for such employees in the locality"—puts the Government in precisely the same position as other users of contract services.

Wage rates established pursuant to such a formula are neither higher nor lower than the compensation for comparable employment in the surrounding community. By limiting the extent to which the Government can exert its bargaining power, Government contractor service employees are assured of equal treatment with their counterparts in the private sector.

In order to assure compliance with the objectives of the Service Contract Act, numerous provisions have been included in our procurement regulations. For example, pursuant to Labor Department guidance, we require contracting officers prior to soliciting offers in procurements subject to the act to seek Department of Labor wage rate determinations for service employees, and to provide that department with all available information to assist it in making such determinations. When such determinations have been made, contracting officers must include them in solicitations and resulting contracts. Furthermore, contracting officers must assist the Department of Labor in enforcing the act against contractors who have violated its provisions. We believe we have made a good faith effort to carry out our responsibilities under the act and the implementing regulations.

We recognize that problems have arisen in the administration of the act. However, without attempting to minimize these problems or the subcommittee's legitimate concern for government contractor service employees, we believe that the proposed legislation would have far more serious and disruptive consequences. The combined impact of the amendments would be to legislate into existence a unique upward and continuing escalation of compensation levels, essentially unchecked by normal economic forces, for one group and one group only of employees.

The present system of an independent standard would be replaced by a system centered on collective bargaining agreements, the wages and fringe benefits of which would literally be given the force and effect of law, binding alike on the government as well as on successor contractors.

The Department of Labor, the agency with primary responsibility for the administration of the act, has gone on record as strongly opposed to the amendments. We believe that Assistant Secretary Grunewald has forcefully presented the numerous administrative and interpretive ambiguities contained in the amendments and the Department of Defense shares the concerns expressed by the Secretary.

We would point out that the delays and additional expenses discussed by Assistant Secretary Grunewald will have a direct impact on our performance of our duties in administering the defense contracts of the United States.

As viewed by the Department of Defense, the factors weighing most heavily against the amendments are the following:

(1) Section 3(a) of the amendments declares it to be "the remedial purpose of this act to protect prevailing labor standards." However,

the effect of the amendments will be that government contractors may be by law locked into a position of paying wages for a single category of workers that may be substantially above prevailing local standards, with no recourse to market forces to bring such wages back into line with a fair and independent standard. Of course, these additional costs ultimately will be borne by government contracting agencies.

Sections 1 (a) and (b) of the amendments would substitute a two-part standard for the existing single, independent standard governing Department of Labor wage determinations applicable to service employees. However, it is clear upon reflection that the second part of the test—the existence of a collective bargaining agreement—will rapidly tend to become the only relevant standard. Under this test—which is confusing—where apparently any collective bargaining agreement covers any potential service employees, under government contracts minimum wages are to be established by some, all, the most advantageous, the least advantageous, or whatever, such collective bargaining agreement or agreements. In addition, the Secretary of Labor would have discretion to include prospective wage increases provided for in such agreements "as a result of arms-length negotiations."

As we read the amendments, inplace service contractors who have not secured renewal of their service contracts will no longer have an economic incentive to bargain in the true sense of the word in regard to wage increases. Any wage or fringe benefit increase granted will ordinarily thereafter be binding on their successors, so that the threat of competition based on independent standards is largely removed.

The Department of Defense, which foots the bill, would be locked into a one-way ratchet situation of constantly rising service contract costs, with no resort to independent standards to correct any imbalance. There would be nothing to prevent service employee wages from escalating far beyond the wages of comparable employees in the locality. No other category of government contractor employees would enjoy such a windfall.

The mechanisms built into the amendments in an evident effort to alleviate these problems are in our opinion inadequate. For example, we question the effectiveness of the "arms-length negotiations" restriction as applied to prospective wage increases. Give the incidence of lame-duck incumbents in the service contract area, we know of no way to enforce such a restriction.

In addition, the arms-length negotiation test adopted in the amendments does not cover the case where an incoming contractor must pay the wage and fringe benefit levels agreed to by the predecessor contractor where no prospective wage increases have been granted. Thus, a lame-duck incumbent might agree to raise wages and fringe benefits solely in the hope of forcing default upon his successor—that is, without engaging in real bargaining over the agreed-upon wages and benefits.

Under the amendments, the successor contractor has no recourse to challenge those rates.

If he refuses to pay the wages and benefits agreed to by his predecessor's employees and refuses to pay the wages and benefits agreed to by the lame-duck incumbent, he risks placing himself in violation

of the Service Contract Act. There is no before-the-fact test of the arms-length nature of this pre-existing wage and benefit agreement.

In an extreme case, the amendments imply that an incoming service contractor would be required to abide by the pre-established wage and fringe benefit packages, even though he was not a party to the negotiations and intends to bring in many of his own personnel with whom he has a different collective bargaining agreement. This result makes no sense for the incumbent service employees about to be displaced who negotiated the controlling agreement, the incoming contractor, together with his own personnel, or the Government.

In sum, the amendments threaten to work a substantial distortion of the market forces normally operating on service employee conpensation levels, to the point that the Department of Defense will be faced with increased costs resulting from an upward spiral of wages applicable to only one category of workers. This is in sharp contrast to the independent standard which was the intent of the original Service Contract Act.

(2) The near-term escalatory effects will be ameliorated by existing economic controls. In the long run, however, increases in labor costs, which are the predominant component of most service contracts will, in all probability, result from enactment of these amendments. As prices rise to artificially high levels, freed of the restraints of market mechanisms, alternative methods of satisfying our requirements will have to be considered. What may well occur, in time, is a fundamental shift in the direction of greater reliance on inhouse resources, required by the methodology we use in making these decisions, which is basically cost-oriented. In that event the predictable tendency will be to displace contract services and cause reductions in the very workers the amendments are designed to protect. Contract employees, instead of being protected, may in the end lose jobs, while the Government turns to less flexible means of meeting service requirements.

(3) Section 3.(b) of the amendments provides that service contracts may be awarded for up to 5 years subject to annual appropriation acts and if authorized by the Secretary of Labor. This section seems to conflict with present statutory restrictions on DOD procedure. After considering Air Force proposed legislation authorizing service contracts for longer than 1 year, the Congress determined that such authority should be limited to service contracts being procured outside the continental United States, Public Law 90–378, 82 Stat. 289, 10 U.S.C. sec. 2306(g).

Thus, all DOD service contracts in the continental United States must today by law be awarded for a period not to exceed 1 year. Under the proposed section, the annual appropriation act provisions would require adjustment before this authority would be available. Moreover, the proposed section is objectionable to the Department of Defense as a contracting agency since it provides that we could procure "for any term of years not exceeding 5" only "if authorized by the Secretary of Labor." This seems to strip contracting agencies of the authority to direct their own procurements.

In summary, from the standpoint of Department of Defense procurement managers it is anticipated that the net effect of the proposed legislation would be to:

(a) Introduce a new concept of giving wage and fringe benefit provisions of collective bargaining agreements the full force and

effect of law through mandatory imposition of those terms of such agreements on successor employers and employees who may not have been parties to the agreements.

(b) Confer upon a relatively small percentage of the work force a substantial economic advantage over the majority of the same work force.

(c) Disrupt and delay Government procurement by virtue of the intricacies and imponderables involved in determining which wage scales shall apply in each case.

(d) Constantly increase the cost of contract services to the Government with consequent fanning of inflation to the detriment of all concerned—the service workers who would enjoy the higher wage rates, the majority of workers who would not, employers, and society at large.

(3) Raise the cost of contract services to such an extent as to possibly portend a fundamental shift from contract service to inhouse performance with all the disadvantages attendant upon such a change—shrinkage of industry contract service capability and loss of flexibility on the part of the Government in dealing efficiently and effectively with fluctuations in requirements.

For the reasons cited, the Department of Defense respectfully must oppose enactment of the proposed legislation.

That concludes my formal statement. We shall be pleased to try to answer any questions you might have.

The CHAIRMAN. Thank you, Secretary Keegan.

It seems that one of your major concerns is the problem the Department would face if there were lame-duck contractors or a change of the contract after the contractor knows he is not going to be the continuing contractor.

Is this not one of your basic concerns?

Mr. KEEGAN. Yes, Mr. Chairman, that is one of our concerns. We think in that circumstance certainly the incentive on his part to negotiate hard in good faith would simply not be present.

The CHAIRMAN. Are your contracts for the most part annual contracts?

Mr. KEEGAN. For the most part they are in terms of the numbers; yes, sir. With some of the larger contracts we have attempted, and we do follow, a policy of negotiating for options that could be exercised on the part of the Government, so that we have a policy of trying to extend for essentially 3 years, but since we are limited by lay to contract on a firm basis for 1 year, we do this by means of including options that can be exercised in the event appropriations are available.

The CHAIRMAN. Let us see if we can hypothesize. What would be the situation if the annual contract, where the contractor having lost the renewal might jack up the wages and benefits?

Take a calendar year, a January to January contract. When would you be getting the contract for the following year?

Mr. KEEGAN. Our normal practice is to go on a fiscal year.

The CHAIRMAN. Then let us take July to July.

Mr. KEEGAN. We would ordinarily, in event it were a strictly 1-year contract about 4 to 5 months before the contract would come to a natural expiration be getting into a position to contact competition.

So it would be let us say 5 months away from the end of the fiscal year, or just after the beginning of the new calendar year. That would be one way we would do it.

The CHAIRMAN. Then when would you award the contract?

Mr. KEEGAN. He would know approximately 2 months before the natural expiration, because we normally plan to inform him so he would have time to assemble his work force and be prepared to take up performance of the contract at the beginning of the new fiscal year.

The CHAIRMAN. Your worry is that somewhere along in April or May the contractor who did not get the renewal for the next year might jack up the benefits.

Mr. KEEGAN. That is one critical case; yes, sir.

I would say that as a more general concern I feel that any time a contractor is placed in a position where he can negotiate a collective bargaining agreement which guarantees wage and fringe increases to his employees, he is put in a better position as the incumbent than he would be under the present law.

One reason I say that, sir, is that in determining who wins the new contract we have to consider what the cost of replacement of that contract will be. In the event the incumbent is not to be the new contractor, we have to take into consideration what the severance pay would be, what the normal phaseout costs would be, because in the event employees are not to be retained with that contractor. They are normally entitled under their fringe benefits package to a severance pay payment which with a large number of employees can become a substantial amount of money.

To clarify the position, we are very concerned about the lameduck situation—you put your finger on it—we are indeed.

In perhaps a less obvious way we are also concerned about a contractor who intends to stay with that contract, because the more he can build up that fringe benefit package, the more those phaseout costs will be in the event anybody ever is intending to replace him.

So there is a general tendency we think not restricted to lameduck contractors to have a less than normal economic motive in bargaining for wage and fringe benefit packages.

The CHAIRMAN. It is suggested that you are describing in the latter case not the lameduck.

Mr. KEEGAN. But the more general.

The CHAIRMAN. You are describing the severance and fringe possibilities; you believe that this is more comparable to the cost-plus situation? Is that what you are suggesting?

Mr. KEEGAN. Certainly it is true where we have cost-plus contracts; yes. Many of our contracts are on a cost-plus basis.

Mr. MITTELMAN. What you just said about the increased phaseout costs would not really occur in the case of a fixed-cost contract?

Mr. KEEGAN. Not ordinarily; no.

Mr. MITTELMAN. What percentage of your service contracts are cost-plus contracts?

Mr. KEEGAN. I do not have that number. I can furnish it for the record.

I would say that in terms of numbers of contracts, most of our contracts are fixed-price contracts. In terms of the dollar amounts involved, a great number of our larger dollar contracts are awarded on a cost-converted basis.

Mr. MITTELMAN. When you have a cost-plus contract, do you retain a right to renegotiate wages negotiated under those contracts?

Mr. KEEGAN. When we have a cost-plus contract, the contracting officer is responsible to make sure that only allowables are paid to the contractor. To be allowable the cost must be both reasonable and allocable under the act.

The allocability aspect of this thing is fairly easy for accountants to figure out, but when one talks about reasonableness of a cost, we get into a judgmental area.

The general rule is that costs would be incurred by a reasonably prudent businessman, that is a reasonable cost.

So, to answer your question, we do not normally by special contract provision, retain that right, but it is inherent in the cost-plus contract.

Mr. MITTELMAN. One of the previous union witnesses we heard earlier testified that his contracts were subject to approval by the Air Force. It seems to me from what you just testified that the Air Force does have some right to pass on the validity of the wage or fringe benefit increases that are out of line with standards generally prevailing in the community under a cost plus anyway.

Mr. KEEGAN. The contracting officer does have the right to disallow unreasonable costs. The problem comes down, sir, to be unreasonable, where, for example, a collective bargaining agreement would exist, it would have to be an extraordinarily different kind of a compensation arrangement.

I am aware in my own experience of few cases where fringe benefits were disallowed as unreasonable, where a contractor would declare say a holiday for the plant and give everybody a day off, and then charge that back against the Government contract.

In that kind of extraordinary case the contracting officer would be obligated to disallow that cost.

A contractor then would have a right to go to the Armed Services Board of Contract Appeals, but in the normal wage agreement I am not aware of any case where the contracting officer has successfully challenged the cost as unreasonable if it were embodied in the collective bargaining agreement.

Mr. MITTELMAN. Under the present standard where you do not have any successorship there is a lot of incentive on the part of the contractor not to raise wage and fringe benefit costs, whereas, as you pointed out, some of that incentive would be removed if this act were passed.

But the very passage of this act might very well cause the Air Force to change its way of scrutinizing its procedures for approving these wage and fringe benefit increases, may it not?

Mr. KEEGAN. I would say, sir, if these amendments become law, it would be very difficult for a contracting officer to disallow a wage that was paid in a collective bargaining agreement, where the act makes it incumbent upon both the Government and the successor contractor to recognize the law.

I do not believe that the contracting officer would have very sound footing to disallow that as an unreasonable cost.

The CHAIRMAN. Senator Taft.

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

Mr. Keegan, are you familiar with the Kennedy Space Center matter of 1970?

Mr. KEEGAN. ETR, Patrick Air Force Base?
Senator TAFT. No; the Kennedy Space Center.
Mr. KEEGAN. The NASA contract?
Senator TAFT. Yes.
Mr. KEEGAN. Not as well as I might be.
Senator TAFT. I will wait for a later witness.
Mr. KEEGAN. I think the NASA witness may be better able to answer your question.
Senator TAFT. Do you feel that the present operating procedures are adequate?
You testified basically that you do, but are you unaware of any problems in getting certifications under the present standards?
Mr. KEEGAN. My knowledge of the situation, sir, is that there has been some very hard cases, and I think that we could probably as a government work harder in administering the present Service Contracts Act, particularly in making more wage determinations. I think that would improve materially satisfaction in the community at large if we made wage determinations more promptly and in a way that people would recognize as a fair independent standard.
Senator TAFT. Do you think these ought to be related to the Wage Board rates for Federal employees?
Mr. KEEGAN. I see them as two different systems of compensation, sir. There is, I am sure, a relationship, but the difficulty it seems to me in trying to equate too closely is that it requires a comparison of classifications that I feel incompetent to make.
For example, it is easy in my mind to say that a person doing the same kind of work ought to be paid pretty much the same salary. However the difficulty it seems to me is ascertaining whether the work being performed by the Wage Board employee under the Government's Civil Service Wage Board pay scale is in fact comparable, particularly in the way these classifications get shredded out to a comparable service employee.
That is the difficulty, to in fact ascertain that these are the same jobs, that do require the same kinds of skill and effort.
It seems to be that I just do not know enough about the Wage Board situation to say if that is feasible or not.
Senator TAFT. Of course if you adopted the Wage Board rates themselves you could establish comparability. It would mean basically there would be no economic advantage to the Air Force in placing service contracts, would it not?
Mr. KEEGAN. It could work out that way if there were the same numbers of people doing the same kinds of jobs getting the same pay. There would be no economic differential there, it would seem to me.
Senator TAFT. So the danger that you have already portrayed that you see in this bill would exist to some extent if you went to the straight Wage Board determination?
Mr. KEEGAN. It could occur, yes.
Senator TAFT. How many employees are involved in the private service contracts of the Air Force today?
Mr. KEEGAN. I do not know, sir.
Senator TAFT. You gave a figure of $1 billion.
Mr. KEEGAN. I gave you the gross figure of slightly over $1 billion Whether we have a tally of the number of people employed or not I do not know.

Senator TAFT. If that is available I would ask that it be submitted.

Mr. KEEGAN. I would be happy to do that, sir.

(The information referred to was not available when this publication went to press.)

Senator TAFT. Let me ask just one other question. You may have to go back and do some figuring on this.

Could you give us an estimate of the relationship of wages in the service contracts total the Air Force has to the total cost of those service contracts?

You have a billion dollar service contract figure, but that does not necessarily relate to the wage factor. There is some material, et cetera.

Mr. KEEGAN. I see. We would certainly try to do that, sir. I do not have it with me. If it is available, I will furnish it.

(The information referred to was not available when this publication went to press.

Senator TAFT. Thank you, Mr. Chairman. Those are all the questions I have.

The CHAIRMAN. I think this is an accurate statement. Where workers are organized we have developed pretty much of a general pattern of a 3-year contract, have we not, throughout the country? I am not talking about service contracts; I am talking about labor contracts.

Mr. KEEGAN. Yes. My expert says, yes, we have.

The CHAIRMAN. What we have here in the service contract is an annual wage reopener. That is what it amounts to, does it not?

Mr. KEEGAN. Yes, sir.

The CHAIRMAN. One of the feelings I have is that we get a new stability here if we have longer periods of contracts without reopeners. That is one of the purposes of this legislation, to get away from those annual reopeners.

Your concerns I can appreciate, certainly the lame-duck concern, and the possibility of increased fringes and severance pay and all that.

It seems to me that the language we have, "arms-length negotiations" deals with this. I thought it met it. You think it does not meet the lame-duck situation. Perhaps there are some ways in which it can be tightened up.

You come here with your position, Mr. Keegan, and sometimes you people from the administration come in here with a hard fixed position that if you do not get your way the roof will come in. You know we had this on the emergency disputes just 3 months ago.

The Secretary of Labor said if he did not have that emergency legislation dealing with strikes in transportation, there could be a national collapse. Well, you know the whole proposition collapsed. We found out just 2 months ago that was not so. The tragedy was not that stark.

The administration says it changed its mind. Maybe we can adjust a couple of things here.

Senator TAFT. Mr. Chairman, let me ask one other question, if I may.

The CHAIRMAN. Certainly.

Senator TAFT. What concerns me here also is the fact that some of these contractors are fairly large national companies, are they not?

Mr. KEEGAN. Yes, sir; some of them are large companies.

Senator TAFT. Some of them have existing labor contracts?

Mr. KEEGAN. They do.

Senator TAFT. These contracts provide for certain pay and also for certain types of fringe benefits.

Mr. KEEGAN. That is correct.

Senator TAFT. Do you see a problem in getting such a contractor to come in and bid in competition where in effect he is going to have to rewrite his contract under the provisions of the proposed bill to different amounts—maybe higher or maybe lower—with regard to the overall package, maybe higher or lower between wages and fringe benefits?

Do you see any difficulty in that being involved, in discouraging contractors from coming in?

Mr. KEEGAN. Yes, sir. It could have that effect, I think, depending on how lucrative the particular contractor assessed the contract opportunity.

I think as I read the amendments a new contractor succeeding to an existing service contract would be faced with an absolute floor in terms of wage and fringe benefits of the predecessor contract.

Senator TAFT. On each item?

Mr. KEEGAN. On each element, yes. To that extent I think he would have to evaluate the difficulty and perhaps monetary impact of renegotiating, or at least accepting and changing the relationship between himself and his many employees by virtue of this law. If he received the contract, he would have to at least meet the previous contractor's standards.

Senator TAFT. And the discouragement on each of the standards?

Mr. KEEGAN. Yes.

Senator TAFT. You have already testified, I think, as to the overall possible adverse effect on the DOD budget insofar as its possible connection with discouraging contracting out of service work, but would not it also be true discouragement of major contractors from bidding could occur from the situation which would also tend to go in the same direction?

Mr. KEEGAN. It might, sir. Certainly, if we cannot get an adequately competitive base, then we cannot take advantage of the usual benefits we get from competition, which is to get more reasonable prices for the services we need. It could have that effect.

The CHAIRMAN. We are going to recess for 7 to 10 minutes. I have nothing further, Mr. Keegan. We have to vote. (Recess.)

AFTER RECESS

The CHAIRMAN. We will resume our hearings on S. 3827. I am not sure who is to be first.

STATEMENT OF RICHARD McCURDY, ASSOCIATE ADMINISTRATOR FOR ORGANIZATION AND MANAGEMENT, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; ACCOMPANIED BY GEORGE J. VECCHIETTI, DIRECTOR OF PROCUREMENT AND JOHN WHITNEY, ASSISTANT GENERAL COUNSEL FOR PROCUREMENT MATTERS

Mr. McCURDY. I will lead, thank you, Mr. Chairman.

I am Richard McCurdy, Associate Administrator for Organization and Management at NASA, and I have two colleagues with me,

Mr. George Vecchietti, Director of Procurement and Mr. John Whitney, Assistant General Counsel for Procurement Matters. We are pleased and honored to appear before the committee here.

We will propose that Mr. Vecchietti first make a short statement, and then the three of us will be available for your questions.

The CHAIRMAN. Thank you. Mr. Vecchietti.

Mr. VECCHIETTI. Mr. Chairman; members of the subcommittee: I appreciate this opportunity to discuss with you NASA's views on S. 3827, a bill which would revise the method of determining wage rates and fringe benefits under the Service Contract Act of 1965, and make certain additional changes in the act. We have followed with interest the oversight hearings conducted by the Special Subcommittee on Labor of the House Committee on Education and Labor. These hearings preceded the passage of H.R. 15376 by the House on August 7, 1972, which is identical to the bill now before this subcommittee.

NASA is one of the agencies which procures a substantial amount of services work from private industry. Thus, substantive changes to the act, such as those proposed in S. 3827, will affect NASA support-services contracting.

I believe it would be helpful to the subcommittee to have a brief description of the nature and extent of NASA support-services contracting. In keeping with the general Government policy of relying on the private sector to supply its needs, NASA has since its inception relied extensively on industry to provide support services at or near our installations by contract. Attachments to this statement illustrate the nature and extent of this support-services contracting. I will touch on each one briefly.

Attachment 1 lists the number of contracts, manpower, and costs of NASA support-services contracts by installation for fiscal year 1972. It shows that there will be in effect an estimated 162 support-services contracts of $100,000 or more, requiring 24,000 man-years of contractor effort, estimated to cost $416 million.

Attachment 2 provides a further breakdown of these contracts by type of service and type of skill. Most of the clerical and blue-collar skills, as well as many of the technicians and administrative classifications, are of such a nature as to be covered by the act.

Attachment 3 breaks down the manpower by installation and type of skill.

Attachment 4 provides, by way of illustration, further details on two types of services: Data processing and facilities maintenance.

We have similar charts for each type of service, which we can make available to the subcommittee if wanted.

Turning now to the bill itself, NASA is in agreement with the views of Assistant Secretary of Labor Grunewald, in his testimony before this subcommittee on August 16, 1972, though we naturally view the bill from a different perspective—that of an agency which makes significant use of support-services contracts in carrying out its mission.

As a responsible agency with a significant national program to manage, it is essential that we perform our mission effectively at a reasonable cost to the taxpayer. So that this statement of basic NASA policy is not misunderstood, I emphasize that we support reasonable wages for our contractor employees. The objective of the Service Contract Act of 1965, as we understand it, is to prevent the Govern-

ment from promoting the undercutting of pay scales established by private industry and labor in the localities where the Government operates.

We believe this objective is consistent with our responsibility to perform our mission effectively at a reasonable cost. However, in our view, some of the provisions of the bill might require NASA to bear the cost of wages and fringe benefits that would not be reasonable in relation to the prevailing pay scales in the localities where the work is to be performed. Our remarks today will attempt to highlight some of the problems we envision were the bill to be enacted into law.

The bill would make a radical departure in the method of setting minimum wage and benefit rates, transforming the act in applicable cases from a prevailing wage law to an entirely new concept. Where a collective bargaining agreement triggers its operation, the bill presumably would establish that single agreement as the minimum standard. This would remove the incentive for hard bargaining in many cases and would encourage collusion in the worst cases.

In a second radical departure, the bill would enact for Government contracts a form of successor doctrine which the Supreme Court has recently held not to be sound law for service contracts generally. Thus, the bill would bind an incoming contractor and employee organization to particular economic contract terms negotiated by other parties. This again involves the vice of delegating to a particular employer and a particular employee organization the determination of what pay scale any prospective employer and set of employees must live with.

These amendments would leave a contractor with little incentive to bargain for wage and fringe terms which are either competitive, reasonable or comparable to those being paid within the local area on non-Government work. He would know that whatever he negotiates will be what a potential successor contractor must use in its bid or proposal to the Government. Under these circumstances, arms-length bargaining will become a thing of the past on work subject to the Service Contract Act.

In this way, the Service Contract Act would escalate wage settlements in the private sector which would be an additional factor in the country's economic inflationary spiral. Under a cost contract, the Government would usually have no alternative to paying whatever rates its contractor agreed to.

Under a fixed price service contract, the incumbent contractor's motivation will be to bargain for the best rates possible for the contract term or at least until close to the end of the term and, in exchange, to concede to almost any demand for higher rates thereafter. These higher rates would bind the successor and have to be borne by the Government.

The third major departure in the bill is the provision for fixing prospective minimum rates and benefits. This would encourage an incumbent contractor and incumbent union to agree on increases to take effect at the end of the contractor's performance term. We think the present rule, that prevailing rates are rates actually being paid, is preferable.

For many years, minimum wages and fringe benefits for Government-construction contracts have been required by the Davis-Bacon Act to be determined by the Department of Labor through local area

surveys which are the prevailing rates and fringe benefits being paid in the locality. We feel that support services contract rate determinations, based on the actual prevailing rates in the locality, is consistent with the Davis-Bacon approach and is more equitable to all concerned than the methods proposed in the bill. NASA believes that service type employees should receive wage and fringe benefits that are reasonable and comparable to those being paid on non-Government projects.

Section 3(b) of the bill would further amend section 4 of the act to provide that "Subject to limitations in annual appropriation acts but notwithstanding any other provision of law, contracts to which this act applies may, if authorized by the Secretary, be for any term of years not exceeding 5, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 2 of this act no less often than once every 2 years during the term of the contract, covering the various classes of service employees."

As noted by Assistant Secretary Grunewald, it is unclear how this provision would affect the existing authority of certain agencies to enter into multiyear support services contracts without authorization from the Secretary of Labor. If it is the intent to limit the authority of procuring agencies in this matter, the Secretary of Labor would be required by law to review and approve actions which are integral to the procuring agencies' internal management. We do not believe that this result would be desirable.

As to increased administrative complexities and uncertainties, I believe Secretary Grunewald's testimony adequately covers this aspect.

These remarks, I believe, show NASA's concern and its reasons for opposing enactment of this bill. We will be happy to answer any questions from members of the subcommittee, to furnish any information that would be helpful for your deliberations in this important area.

Mr. Chairman, I would add only one thing not in the prepared statement. As may have come to your attention, the Commission on Government Procurement, established by the Congress, which is studying the overall Government procurement, has as one of its major topics, and one on which it will be reporting, the total area of support service contracting.

It may be of interest to the committee to be familiar with what their findings are.

The CHAIRMAN. Thank you, Mr. Vecchietti.

Mr. McCurdy.

Mr. MCCURDY. Mr. Chairman, that is our formal statement, and we are available for the committee's questions.

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

A lot of attention has been given to the situation at Cape Kennedy. Senator Gurney has been most concerned about the experience there. Who had the contract, and who got the contract?

Mr. MCCURDY. We, of course, are very familiar with the Cape Kennedy case. Would it be good for me to give you a brief outline of the situation?

The CHAIRMAN. Yes, I think it would.

Mr. MCCURDY. To answer your question, the contract that was existing prior to the competition was in the hands of Trans World

Airlines, and it was under a nationwide labor union contract of air transportation type.

It was under the Railroad Labor Act actually, so it was a piece of a nationwide contract which happened to exist in Cape Kennedy for this aerospace operation largely by accident.

Up to 1968, in my recollection—I think that is accurate; you can correct me if I am wrong—the results of the nationwide bargaining of TWA yielded wages in Cape Kennedy that were comparable with those being paid by the aerospace companies that were operating in that area.

Commencing in 1968, there were several nationwide escalations of wages on the part of TWA which had their roots not in the aerospace business but in the airlines transportation business.

Now, it is not germane to this, whether those were proper or not in relation to the transportation business, but they did have the effect of raising the TWA wages at the Cape substantially over the prevailing wages at the Cape. That happened simply because it was a nationwide contract.

When the recompetition came along—and I might interject here this is what recompetition is for, to redress a happening of this kind—Boeing came in and bid the same wages that they had been paying at the Cape under their contract—perfectly good aerospace wages—and they won the contract. TWA chose to bid on the basis of its nationwide contract which by that time, as I have said, had been escalated up out of the range of reasonable wages at Cape Kennedy. That is all that happened at the Cape.

Now, this has been widely put forth as an example of wage cutting. I submit it is nothing of the kind.

The CHAIRMAN. The effect of course is that wages were reduced substantially for the workers who had been under the TWA contract and who became the employees of Boeing.

Mr. MCCURDY. Reduced, if you wish, sir, but remember just prior to that they had been raised up a lot, because of this nationwide contract which really had no relation to labor conditions at the cape. You may say, if you wish, they were reduced—and indeed they were reduced. I would say but don't forget they were raised just prior.

The CHAIRMAN. Senator Taft.

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

Mr. McCurdy, I have received a letter from the legislative affairs officer at NASA which gives a summary report of the labor aspects in the competition for the Kennedy Space Center contract. Are you familiar with that document?

Mr. MCCURDY. Yes.

Senator TAFT. You have reviewed it?

Mr. MCCURDY. Yes. It is an attempt to give a summary of the happenings at the cape, and I believe that it will reinforce what I have said.

Senator TAFT. Mr. Chairman, I ask that the letter and that material be put in the record at this point.

The CHAIRMAN. It will be included.

(The documents referred to were not available when this publication went to press.)

Senator TAFT. Mr. McCurdy, you are familiar with the rationale behind the proposed change relating to the problem which we have considerable testimony concerning in prior hearings. Do you believe

the present mechanisms are adequate to prevent wage cutting that could occur, exploitation that could occur, under the present law? What are the problems that exist?

Mr. McCurdy. I am not aware of really serious problems that exist under the present law. There are many problems, but I am not aware of serious ones.

I believe serious ones could occur under the proposed law. For instance, the proposed law would bring in the very high airline-type of wages at the cape that we have redressed by this recompetition.

Senator Taft. Have you had any other instances with NASA that you know of in which there has been a recontracting where a bidder came in on a service contract paying lower wages than the contractor previously paid?

Mr. McCrudy. I would like to divide these into two types of cases. Remember that in the main, NASA's service contracts are on a cost basis rather than a fixed-price basis for a number of reasons: The work is technical, we never know exactly how much there will be, and we want the proper quality of people.

When we have proposals that come in from people in a competition on a cost basis, they will propose what costs they are going to pay, but that does not mean that they are required to pay those costs. We have to pay what they actually incur, so we look at those cost proposals with a critical eye.

We decide whether that fellow is actually going to be able to do that or not. If he comes in with something which we consider to be below the prevailing wages in the area, we do not believe his costs in general because we know from experience that sooner or later he will come to pay the prevailing wage if he is going to get people of the quality that we need for our job.

So that is the basic redress in that case against what you would call wage cutting. The answer is simple, that under a cost type of contract you cannot get the type of people you want unless you pay the prevailing wage, because we are really asking for the work to be performed by the kind of people—largely technical people—that we want to have on the job.

In the case of the cape, that was different because these wages were covered by union contracts. We knew that if we took man A, we would have to pay according to his contract; and if we took man B, we would pay according to his; and, consequently, we did not have that uncertainty as to what the wages would be.

I have to make these two groups, to answer your question.

Senator Taft. Thank you very much.

You have mentioned the Commission on Government Procurement studies including service contracts. Do you have any information as to when the report is expected?

Mr. Vecchietti. It is due before the end of the year, Senator Taft. I do not know the exact date, but I know it is certainly before the end of this calendar year.

Senator Taft. Thank you, Mr. Chairman.

The Chairman. Senator Stafford?

Senator Stafford. No questions, Mr. Chairman.

The Chairman. Back to the Cape Kennedy situation and the change of contract, the chairman of the board of county government—that is in Brevard County, Fla.—testified in the House and

stated that the wages went below the comparable wages in comparable jobs in the community with the new contract.

He submitted a detailed table describing this. I thought you said it was otherwise, Mr. McCurdy.

Mr. McCURDY. Boeing installed a contract that they already had with something like 400 people working at the cape. They installed the same contract.

The CHAIRMAN. All of our other testimony indicated that the wages for the workers went down, and this testimony of Commissioner Evans said they were below comparable jobs in private industry. I thought you said that under the new contract, wages then became comparable to private industry in the community.

Commissioner Evans says that is not the case.

Mr. McCURDY. I can only tell you what I believe and pretty well know to be the case. Boeing installed the contract under which a large number of people were already working at the cape. Now, there have been individuals who may have ended up with less money than they were getting; indeed, people who were operating under the TWA contract had to come down to the Boeing rate, yes.

The CHAIRMAN. No, I am not disputing the TWA rate was reduced by Boeing. My only question to you was whether that Boeing rate went below comparable rates for comparable jobs in the community.

Mr. Evans, the chairman of the commission down there, said that they did.

Let me ask you this. How do you from NASA go about wage surveys in the area? Do you do it? Does the Labor Department do it? How do you do your wage surveys in the Department so that you can make judgments and conclusions on your comparability?

Mr. McCURDY. You mean in the normal case?

The CHAIRMAN. No, not the normal, at the cape.

Mr. McCURDY. We did not have to make a survey in this case because all of the proposers had actual union contracts.

The CHAIRMAN. Then I will have to take this statement of Mr. Evans and put it in the record. Let me just tell you what it will show. This is Eastern Test Range we are talking about.

Mr. McCURDY. No, it is Cape Kennedy. The Eastern Test Range is Air Force.

The CHAIRMAN. I see. Then we will deal with the Eastern Test Range.

Mr. VECCHIETTI. Mr. Chairman, there they did negotiate, as I understand, a special agreement which was considerably below the prevailing wage rate.

In our case, which was the earlier case, as Mr. McCurdy said, Boeing merely continued the rate that had been paid not only at the cape but nationwide.

I think the two cases do get a little confusing.

The CHAIRMAN. Thank you.

Mr. McCURDY. Senator Williams, we have been roundly held up as wage cutters all over the place, and we do not really believe that that is justified.

The CHAIRMAN. Senator Taft.

Senator TAFT. Thank you, Mr. Chairman.

Senator Williams just a minute ago asked what procedures or what standards you apply. Under the existing law, as I understand it, you have to look for the standards in the community.

Mr. McCURDY. Yes.

Senator TAFT. You looked at this other contract that you said you already had with 400 employees. That was one standard you looked at?

Mr. McCURDY. Yes.

Senator TAFT. How long had that been in effect?

Mr. McCURDY. That was a nationwide contract that Boeing has. It covers people in Seattle, the cape, wherever Boeing operates.

Senator TAFT. Do you know what the expiration date is?

Mr. McCURDY. I do not know. It is a longstanding contract which has been renewed regularly.

Senator TAFT. Do you know how recently the most recent wage increase had occurred under it?

Mr. McCURDY. I think Mr. Whitney may be the one to answer this.

Mr. WHITNEY. Senator, that agreement did expire during the first year of the contract award. Boeing and the union negotiated a renewal of it during that time that provided for increases, and it will be interesting to the committee, I think, that the Pay Board then cut back those increases to perhaps a 60 or 70 percent of the negotiated increase.

Senator TAFT. That is another question I wanted to ask. You are covered by the Pay Board, are you not?

Mr. WHITNEY. The private contractors are covered by the Pay Board.

Senator TAFT. Yes, that is what I was referring to.

If this legislation were enacted, would you still be covered by the Pay Board?

Mr. WHITNEY. As I understand the arrangements that the Labor Department has worked out with the Pay Board, the Pay Board defers to determinations that the Labor Department makes, so that we do have—you will recall during the period when——

Senator TAFT. You would not have that under the proposed bill?

Mr. WHITNEY. No, sir.

Senator TAFT. The question I asked related to the proposal that the rates be set by the prior contract.

Mr. WHITNEY. Under the proposed bill, I would assume the legislation would take precedence over the Pay Board.

Senator TAFT. Unless there were a prospective increase, you would already have approval by the Pay Board?

Mr. WHITNEY. You will recall during the time there was an absolute freeze on wages, Senator, we still had the prevailing wage laws, and during that time the Pay Board agreed if the Labor Department established prevailing rates, then the companies could bring themselves up to those rates without violating the freeze.

Senator TAFT. This is under the Davis-Bacon and Walsh-Healey?

Mr. WHITNEY. Or service contracts—all three.

So now when we have a Pay Board granting increases, it would seem to me the Pay Board would be in an untenable position if it tried to overrule an increase mandated by the Labor Department under this bill.

The CHAIRMAN. Thank you very much.

At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

(The material referred to follows:)

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

September 13, 1972

Honorable Harrison A. Williams, Jr.
United States Senate
Washington, D. C.

Dear Pete:

I strongly support S. 3827, a bill amending the Service Contract Act of 1965 to revise the method of computing wage rates for service employees.

The Act as it stands has allowed repeated detrimental effects on contractor employees in Alaska through the years. Moreover, an impending contractor change in Alaska makes it particularly important that S. 3827 be favorably reported out of committee as soon as possible.

With best regards,

Cordially,

TED STEVENS
United States Senator

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

XXXXXXXX

September 15, 1972

The Honorable Harrison A. Williams, Jr.
Chairman, Committee on Labor and Public Welfare
United States Senate

Dear Mr. Chairman:

Reference is made to your letter of August 10, 1972, requesting our comments on H.R. 15376. This bill would amend the Service Contract Act of 1965 to revise the method of making wage rate determinations under such Act, and to make various other revisions in the administration of the Act.

To the extent that the bill would require union wage rates to be paid on Federal service contracts under certain circumstances, irrespective of whether these rates prevail in the locality, and would allow prospective increases in wages and fringe benefits to be considered in determining such wage rates, the bill's provisions represent a radical departure from the basic concept of other Federal wage legislation, such as the Walsh-Healey Act and the Davis-Bacon Act. We believe such provisions, if enacted, would significantly increase Government costs under service contracts and would tend to diminish the competition which other Federal procurement laws are designed to encourage.

We believe that the bill needs to be clarified in certain respects, and that there are certain of the ramifications in the bill which may not be readily apparent. We therefore offer the following comments.

Section 1 of the bill requires that where a collective-bargaining agreement covers "such service employees," the minimum wage rates determined by the Secretary of Labor for incorporation into the proposed service contract be in accord with the rates provided in the collective bargaining agreement. This section also permits the Secretary to include in his determination prospective wage increases provided for in the collective bargaining agreement and requires that determinations of fringe benefits be handled in the same manner as wage rate determinations.

It is our understanding that the phrase "such service employees" as used in section 1 of the bill is intended to refer only to those employees who are, at the time the Secretary issues his wage rate determination, currently performing the same services which are to be performed under the follow-on contract. However, the phrase can also be construed to include any service employees of the same type who may be covered by a collective bargaining agreement in performing non-governmental work in the locality, and such a construction would appear to be justified since the phrase "such employees" in subsections 2(a)(1) and (2) of the act as presently constituted does include service employees working on non-governmental work. Under such a construction the phrase "such service employees" in the bill would require the Secretary to adopt any wage rate specified in a collective bargaining agreement covering service employees in the locality, irrespective of whether there was a predecessor contract on which such rate was being paid, or whether such rate was in fact the prevailing rate being paid in the locality. If such is not intended, we suggest that the words "service employees currently performing the work for which the contract is to be awarded" be substituted for the words "such service employees" in lines 3 and 12, page 5, of the bill.

Conversely, if the intent of section 1 of the bill is to require the same rates to be paid on all Federal service contracts as are being paid under a collective bargaining agreement in the locality for similar work, the section should be revised to clearly require this. In that event, however, we suggest that guidance should be provided in the bill as to how the Secretary is to select a rate when more than one collective bargaining rate is being paid in a locality.

Section 2 of the bill requires that there be added to the required contract provisions specified in section 2(a) of the Service Contract Act, a statement of the rates which would be paid to the various classes of service employees under section 5341 of title 5, U.S.C., if such section were applicable to them. This section also directs the Secretary to give due consideration to such rates of pay in determining minimum monetary wages and fringe benefits.

The purpose of listing Federal wage board rates in service contracts is not clear, but apparently these rates would have no binding effect on the contractor. We believe that having two sets of rates listed in the contracts (i.e., the wage board rates and the minimum rates determined by the Secretary under section 2(a)(1) of the act) could be confusing to contractors, and we therefore suggest consideration be given to its deletion. Additionally, we suggest that the bill be revised so as to indicate how the Secretary should consider wage board rates in determining minimum wages to be paid, especially in situations where he would be required to specify collective bargaining rates under section 1 of the bill.

The new subsection (c) which would be added to section 4 of the act by section 3(b) of the bill, deals with contracts under which substantially the same services are furnished and which succeed contracts subject to the Service Contract Act. Contractors and subcontractors under such contracts would be required to pay service employees at least the wages and fringe benefits (including accrued wages and fringe benefits) to which the service employees would have been entitled had they been employed under the predecessor contract. If the Secretary elects, the new contractor would also be required to pay any prospective wage and fringe benefits increases provided for in a collective bargaining agreement to which the service employees would have been entitled under the predecessor contract if such prospective increases were the result of arms-length negotiations.

We assume that the intent of this section, in specifying wage increases resulting from arms-length negotiations, was to preclude an incumbent contractor from raising his employees wages during the last days of his contract, in order to force his successor to pay these wages. If this is correct, we suggest that the bill should identify the parties, including the contracting agency, who could question whether the wage increases were the result of arms-length negotiations, and the appeal procedures available to such parties.

Additionally, we question whether there will be any incentive for true arms-length negotiations by an incumbent contractor, since all of his competitors on any follow-on contract will be required to adopt the incumbent's wage rates in computing their bid prices.

Subsection 3(b) of the bill also adds a new subsection (d) to section 4 of the act. This new subsection would permit service contracts to be for any term of years not exceeding 5, subject to annual appropriation acts, if each contract provided for future redeterminations of the minimum wages to be paid to service employees. These redeterminations would have to be made no less often than every two years.

It would seem to us to be unlikely that a contractor would enter a fixed price contract for a period longer than that covered by a firm determination of the minimum wages he will be required to pay, unless there was also some provision in the contract for the price to be changed in accordance with changes in the minimum wage determination. If such changes in contract prices are intended, we believe the bill should so indicate.

Sincerely yours,

R. F. Keller

Acting Comptroller General
of the United States

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS · WAREHOUSEMEN & HELPERS
OF AMERICA
25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

OFFICE OF
• FRANK E. FITZSIMMONS •
GENERAL PRESIDENT

August 16, 1972

~~The~~ ~~Honorable~~ H. A. Williams Jr.,
~~United~~ States ~~Senate~~
Washington, D. C.
~~20510~~

Dear Senator Williams:

The Labor Subcommittee of the Committee on Labor and Public Welfare is presently holding hearings on amendments to the Service Contract Act of 1965. The amendments contained in H.R. 15376 would strengthen the administration of the Service Contract Act and provide for wage and fringe benefit determination over a six-year period for all government contracts subject to the Act.

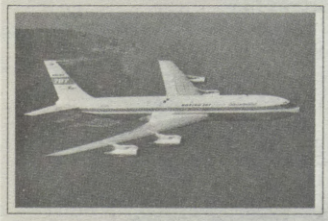
We feel these amendments are necessary and long overdue. Testimony in the House of Representatives revealed that a substantial disparity exists between wages and fringe benefits for federal Wage Board employees and their counterparts employed by service contractors. This discrimination is unfair and H. R. 15376 does a considerable amount in correcting these and other problems currently evidenced with the Service Contract Act.

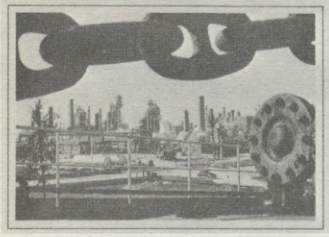
We urge your support of the bill and encourage whatever effort you may be able to extend in assuring its passage.

Sincerely,

Frank E. Fitzsimmons
General President

FEF:mn





Statement of the

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

on: S. 3827
To Amend the Service Contract Act of 1965

to: Subcommittee on Labor
Senate Committee on
Labor and Public Welfare

by: O. F. Wenzler

date: September 6, 1972

The Nation's largest business federation representing local and state chambers of commerce, trade and professional associations, and business firms.

STATEMENT
on
S. 3827
TO AMEND THE SERVICE CONTRACT ACT OF 1965
for submission to the
SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
O. F. Wenzler *
September 6, 1972

The Chamber of Commerce of the United States appreciates this opportunity to present our views in opposition to S. 3827, a bill to amend the Service Contract Act of 1965.

The National Chamber is the largest federation of business and professional organizations in the United States and is the principal spokesman for the American business community. Representing more than 3,500 trade and professional associations and state and local chambers of commerce, and a direct membership of more than 44,000 business firms, the National Chamber has an underlying membership of more than five million individuals and firms.

Passage of S. 3827 would establish an unwarranted and unhealthy series of precedents which could have exceedingly deleterious effects on many aspects of our economy. While the alleged rationale for this legislation is to increase worker protection, the proposal is unneeded, unworkable, and will establish for the first time, federal protection for union wage scales. The impact of this legislation will be felt not only in the service contracting industry, but also in federal construction, in all phases of government procurement, and in the corresponding areas of the private sector as well. The ultimate result will be increased government costs and additional burdens on the taxpayer.

Mandating Union Wage Rates

In theory, the Service Contract Act was designed to provide the same prevailing wage protection to the service worker employed on a government contract as is provided to construction workers by the Davis-Bacon Act and to industrial workers by the Walsh-Healey Act. In all three prevailing wage laws, the

* Labor Relations Manager, Chamber of Commerce of the United States

minimum rate to be paid by a government contractor, at present, is the rate determined by the Secretary of Labor to be the prevailing wage rate in the locality or industry in which the work is to be performed for the classes of workers to be employed in order to perform the contract. The aim of prevailing wage legislation is to protect local suppliers of goods and services from being undercut by contractors from outside the locality or industry paying lower wage rates. In determining the "local prevailing rate" the Secretary is empowered to consider all local wage factors.

However, passage of this legislation would add a new concept to the problem of making prevailing wage determinations. Where any of the employees to be employed on a service contract were covered by a collective bargaining agreement, the Secretary of Labor would be required to use the wage rates and fringe benefits specified in that agreement as the prevailing wage. The Secretary would also be empowered to include prospective wage and fringe benefit increases in his wage determination.

It must be remembered that the wage rate determined by the Secretary is only the minimum rate which must be paid on a contract, and any contractor is free to pay his employees more than that rate if he so chooses. The Federal Government would therefore be obligating itself, through a service contract, to pay a higher union wage rate, rather than to pay the local "going rate." The original intent of the Service Contract Act was to insure that government contractors paid at least the local going rate, not to insure unions that their wage scales would receive federal protection.

The language used to accomplish this change would alter the law so as to read, in pertinent part:

> Sec. 2(a) Every contract (and any bid specification therefore) entered into by the United States . . . to furnish services to the United States through the use of service employees . . . shall contain the following:
>
> (1) A provision specifying the minimum monetary wages to be paid . . . service employees in the performance of the contract . . . as determined by the Secretary . . . in accordance with prevailing rates for such employees in the locality, or, where a collective bargaining agreement covers any such employees, in accordance with the rates for such employees provided for in such agreement, including, if the Secretary so elects, prospective wage increases provided for in such agreement as a result of arms-length negotiations.

Similar language provides for use of union contract fringe benefits.

The effect of such language is clear. It would, for the first time, federally mandate union wage scales in at least one area of government procurement. No other similar law requires that union wage rates shall be automatically a "prevailing" wage rate.

The General Accounting Office (GAO) has been extremely critical of the Secretary of Labor's administration of the Davis-Bacon Act, finding that in all too many cases the Secretary has utilized a union wage scale as a prevailing wage rate to be paid on federal construction contracts when in fact the actual prevailing wage rate in the locality was demonstrably lower than the union wage rate. Sensitive to such criticism, the Secretary of Labor has indicated that administration of the Davis-Bacon prevailing wage determinations is being studied and that several such determinations recently have been reviewed and lowered where the local prevailing wage rate was, in fact, lower than the union wage scale initially used. Passage of S. 3827 would no doubt renew union pressures on the Secretary of Labor to adopt high union wage rates as the "prevailing wage rates."

There are, in fact, vast areas of industry which do not operate under union contracts and in which employees are paid adequate living, and indeed, generous wage rates. There is absolutely no need to grant union wages rates this preferred protection. To reiterate, the foreseeable result would be significantly higher costs to the Federal Government.

Successorship Doctrine

S. 3827 introduces an unusual concept of successorship into our national labor policy. Section 3(b) would require that a successor service contractor pay his employees the wage rates and fringe benefits which his predecessor paid to the same catagories of his employees if the predecessor's employees were covered by a collective bargaining agreement.

The Supreme Court in National Labor Relations Board v. Burns International Security Services, Inc., 80 LRRM 2225, decided May 15, 1972, recently held that a successor contractor is never obligated to assume the predecessor's labor agreement or to pay the wages and fringe benefits it requires. The successor may be required to negotiate with the union which represented the predecessor's

employees only if the successor hires as a majority of his work force, a majority of the individuals previously employed by the predecessor and represented by the union. Employees working for contractors subject to the Service Contract Act enjoy these benefits. Thus, existing policy clearly establishes a continuity of work force as the test of successorship.

Under present law, service employees who are represented by a union are adequately protected in the event that they become employees of a successor contractor. There appear to be no reasonable grounds on which to justify this unwarranted extension of union wage rates and fringe benefits. Predecessor contractors would be able to control the wage rates which would have to be paid under a service contract via negotiations with the union representing their employees. A successor would, therefore, have no initial control over the largest cost variable -- wage rates. There would be no consideration given to any locally determined wage rate. If the prevailing wage in the locality were in fact lower then the amount being paid by the predecessor under a union contract, the successor would be unable to pay that lower prevailing wage.

This proposal, if enacted, would clearly establish a precedent which unions would soon demand be carried into the private sector. The result would be not only higher contract costs to the government, but also higher contracting costs in the private sector.

Reduction of Competition

One of the most direct effects of passage of S. 3827 would be a substantial lessening of competition in the federal service contracting area. Nonunion contractors would be reluctant to bid on a job where they would succeed a union contractor knowing they would be obligated to pay union wages and fringe benefits regardless of whether or not they hired any of the predecessor's employees. Even unionized service contractors would have little or no incentive to bid on a contract knowing that there could be no adjustment of wage rates to reflect actual prevailing wage rates.

The loss of competition on service contracts could only add to the cost of such contracts to the federal government. In addition, many firms presently in the service contract industry would have no incentive to expand their operations and to engage in broader competition in the service field.

The federal government has a clearly established policy favoring utilization of private industry under service contracts to provide those services which can be so supplied. S. 3827 runs counter to this objective by thwarting competition for government service contracts.

Greatly Increased Administrative Difficulties

Section 5 of S. 3827 would require that the Secretary of Labor make prevailing wage determinations on a contract by contract basis, phased in over a period of years, so that by fiscal year 1978, the Secretary would be required to make prevailing wage determinations for each individual contract subject to the Act. Unless greater resources were available for administration of the Act, the result would be substantial delays in making prevailing wage determinations. This language would require that the Secretary make an individual wage determination for each contract regardless of how few individuals were employed under that contract. A far more reasonable alternative would be to require the Secretary to make area wage determinations for a locality or some other political or geographic subdivision and to apply that area determination to all service contracts in that area.

In addition, the amendments would require that determination of a prevailing wage rate for a bid specification for a service contract include the union wage rate as the prevailing wage rate where a union contract covered any of the employees who might be employed under the contract. Application of this provision is unclear where a union contractor and a nonunion contractor are competing for the same contract. The Secretary of Labor apparently would have to mandate that the prevailing wage rates for the purpose of this contract would be the wage rates the union contractor is paying under his collective bargaining agreement. This would mean that the nonunion contractor would lose any competitive edge he might have by reason of the fact that he would otherwise be required to pay only the local prevailing wage.

The administrative problems raised by these changes are significant enough to require substantially greater consideration and examination of the bill than it presently has been afforded.

Legislation Unneeded

Notwithstanding the foregoing, the National Chamber opposes this and all other prevailing wage laws as being unnecessary in view of the existence of the Fair Labor Standards Act. The FLSA establishes basic minimum wage protection for most workers. While the government should be a model employer and require that its contractors likewise observe good personnel practices, there is no reason for the Federal Government to pay a union wage rate higher than the "going rate."

Conclusion

The National Chamber strongly urges that S. 3827 not be reported. The foreseeable results, including the privileged status to be accorded union wage rates, the alteration of the successorship doctrine, and the lessening of competition in the service contract field, clearly indicate that this legislation would go far beyond the original purpose of the Service Contract Act and represent a radical departure from the prevailing wage concept.

AFL-CIO Maritime Committee
100 Indiana Ave., N.W.
Washington, D.C.

September 7, 1972

The Honorable Harrison A. Williams, Jr.
Chairman
Labor and Public Welfare Committee
United States Senate
Washington, D. C. 20510

Dear Senator Williams:

We commend you for your efforts in attempting to amend the Service Contract Act of 1965. If your efforts are successful, and we hope that they will be, thousands of Service Contract employees will enjoy the basic rights they are entitled to, but now denied, under the National Labor Relations Act.

It is important to know that the majority of these Service Contract employees are from various minority groups with very little, if any, technical skills. It is a fact that not many of these workers could qualify to work for the Government if the work was performed directly by the Federal Government.

The National Maritime Union's Industrial, Technical and Professional Employees Division represents food and janitorial service employees employed by service contractors at approximately 25 military installations located throughout the continental United States and Hawaii and Puerto Rico. In addition, the Union is conducting active organizing campaigns at other service contract installations which should substantially increase the size of its food and janitorial service membership in the near future.

Under its present policy the Department of Labor will not consider the wage and fringe benefit increases negotiated by NMU in February to take effect on July 1. The Department of Labor will only consider the rate in effect at the

time it issues its determination in late March or early April. Accordingly, if the Department of Labor relies on the Union collective bargaining agreement as the basis for making its wage determination, the result is an effective freeze on wage and fringe benefits. Since the Department of Labor will only consider the rates actually being paid at the time it makes its determination, in this case in March or April, it must perforce use the rates negotiated by the Union which took effect on the preceding July 1. Accordingly, the wage and fringe benefit rates issued by the Department of Labor in March which will govern a service contract commencing on July 1 will be the same rates in effect on the preceding July 1. In short, there will be no increase for the employees and, if this result is followed to its logical conclusion, there can never be a wage or fringe benefit increase for employees.

There are many other inequities that currently exist in the administration of the Service Contract Act that your legislation would correct. We, therefore, commend you for your efforts and request that you take all steps necessary to have this legislation enacted into law.

Respectfully,

Joseph Curran
Chairman

JC/TES:bab

The CHAIRMAN. That concludes our formal hearing on service contract legislation.

(Whereupon the committee adjourned subject to the call of the Chair.)

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