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INDEFINITE GRADE RETENTION BENEFITS

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HEARING

BEFORE THE

THE
KANSAS ST

COMMITTEE ON

POWER AND CIVIL SERVICE

OF THE

COMMITTEE ON

OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H.R. 6335

A BILL TO AMEND TITLE 5, UNITED STATES CODE, TO
PROVIDE FOR GRADE RETENTION BENEFITS FOR CERTAIN
EMPLOYEES WHOSE POSITIONS ARE REDUCED IN GRADE,
AND FOR OTHER PURPOSES

NOVEMBER 29, 1973

Serial No. 93-36

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HEARING

BEFORE THE

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INDEFINITE GRADE RETENTION BENEFITS

THURSDAY, NOVEMBER 29, 1973

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met at 10:25 a.m., in room 210, Cannon House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order. The Subcommittee on Manpower and Civil Service is today considering H.R. 6335, a bill to amend title 5, United States Code, to provide for grade retention benefits for certain employees whose positions are reduced in grade.

The bill provides for indefinite grade and salary retention by employees who are affected by a reduction in grade after January 1, 1973, as long as they remain in the same agency, are not reassigned or promoted, and are in a position that has been classified at the higher grade at least 3 continuous years prior to the downgrade. The bill does not apply to demotions (1) that are for personal cause, (2) are at the request of the employee, or (3) are the result of a reduction in force.

The inequities experienced by employees faced with a demotion first came to light on a large scale a little over 3 years ago with the proposed classification alinement of National Guard technician positions. At that time, the National Guard Bureau was in the process of reclassifying thousands of technician positions. That reclassification action would have downgraded more than 8,000 positions.

Because of the tremendous impact of that action, the classification alinement was held in abeyance to ease the impact by restructuring jobs, reorganizing and allowing attrition to lighten the burden. Final reclassification action was taken by the National Guard on August 15 this year. Approximately 4,500 technicians were downgraded by that action.

This committee is very concerned over the downgrading actions that have occurred as the result of new Civil Service Commission standards and the effect the downgradings have on the employees involved. The recently published standards for machinists has affected thousands of employees. I think it is time we recognize that preserving an employee's pay on a downgrade is not sufficient protection for an employee who has achieved a particular job level in his career and then faces a regression because of an action over which he has no control.

It is my pleasure to welcome our witnesses here this morning. We have Mr. Frederick A. Kistler, Deputy Director of the Civil Service Commission's Bureau of Policies and Standards. He will be followed by Dr. Nate Wolkomir, president, National Federation of Federal Employees, Mr. Clyde Webber, the national president, American Federation of Government Employees, and Mr. John McCart, Operations Director, Government Employees Council.

The Chair will yield to the gentleman from Illinois, Mr. Derwinski.

Mr. DERWINSKI. Mr. Chairman, I appreciate your chairing this meeting this morning. I see, by the number of witnesses, the interest there is in the subject matter. Unfortunately, I have to leave shortly and will not be able to sit with you all morning. But I would ask unanimous consent to insert a statement into the record immediately after the statement of Mr. Webber. I have read his testimony, and there is a point there I wish to direct my remarks to. Since I will not be here, I would wish to do so for purposes of the record.

Mr. HENDERSON. Without objection, it is so ordered. As I suggested to the gentleman, I hope he will stay as long as he can to protect the interests of the minority as we might report this bill out.

Mr. DERWINSKI. Usually, you can vote it out anyway.

Mr. HENDERSON. It is my pleasure to welcome to the witness table Mr. Frederick A. Kistler, Deputy Director, Bureau of Policies and Standards, U.S. Civil Service Commission, Mr. Raymond C. Weissenborn, Chief, Pay Policy Division, Civil Service Commission, and Mr. Robert L. Davis, Bureau of Personnel Management Evaluation.

Mr. Kistler, you may proceed any way you want to.

**STATEMENT OF FREDERICK A. KISTLER, DEPUTY DIRECTOR,
BUREAU OF POLICIES AND STANDARDS, U.S. CIVIL SERVICE COM-
MISSION, ACCOMPANIED BY RAYMOND C. WEISSENBORN AND
ROBERT L. DAVIS**

Mr. KISTLER. Mr. Chairman and members of the committee, I am pleased to appear before your committee today to express the Commission's view on H.R. 6335. This bill would amend title 5, United States Code, to provide indefinite grade retention benefits for certain employees who are reduced in grade, in effect, making overgrading a permissible feature of the classification system.

On August 30 of this year, the Civil Service Commission transmitted its report on this bill to Chairman Dulski, so we are already on record as being strongly opposed to its passage. My purpose today is to reiterate our objections and underscore some of the reasons why we feel so strongly about this matter.

Congress has mandated a Federal job classification and salary structure providing equal pay for substantially equal work; grade and pay differences based on work distinctions, and pay rates which are comparable to private industry pay rates for the same levels of work.

H.R. 6335 would violate these principles by allowing employees to remain in higher grades indefinitely, even though a position has been found to be overgraded in terms of duties, responsibilities, and qualification requirements. The result would be that pay for such positions

would not be comparable with that for similar levels of work in the Federal or in the private sector.

When a position is found to have been misclassified, it means that all the personnel processes tied to the classification system, including pay, are out of kilter. An overgraded position is a mistake—pure and simple—and we have to correct it to maintain the integrity of the system.

And that is exactly what we do. We do it in such a way as to cause the least possible upheaval to the individual who occupies the position. The employee is placed promptly in the correct grade for the level of work he is doing.

But an employee entitled to salary retention gets, in effect, 2 years' prior notice of a prospective reduction in pay—2 years in which to locate and qualify himself for a position at the grade level in which he was mistakenly placed. Only if he cannot be advanced to such a position during the 2 years is pay reduced to an appropriate rate or the correct grade. And if he is actually reduced to a lower pay scale, the cash reduction is made as slight as possible by placing him in a higher step of the lower scale.

This requirement to correct overgrading would be changed quite radically by enactment of H.R. 6335. The pay disparity would be perpetuated indefinitely. The failure to immediately correct the classification mistake would disrupt other important personnel management processes for as long as the employee remained in the position. The employee would not be working at the level officially ascribed to him, nor would he necessarily have, or use, the skills associated with that level of work. And when it came to any sort of merit competition, the employee would be competing with the wrong people.

H.R. 6335 would spread the practice of misclassification because improperly graded positions, even if identified as such, would tend to set a precedent for grading other positions. An overgrading which is clear to all concerned, but which is nevertheless continued indefinitely, could, in a very real sense, function much like the "bad apple in the barrel."

Over the years, the original basis for the differences in grades of identical positions could easily be forgotten. Other employees, doing the same level of work but who are properly classified at a lower grade, would justifiably seek to have their jobs upgraded accordingly.

In addition, H.R. 6335 would reduce the incentive for management to place the employee in a position warranting his grade level, as well as tending to eliminate responsible position classification for the future.

It seems clear, Mr. Chairman, that this bill seeks to deal with the pay treatment of employees who are downgraded. Doing so through grade retention brings with it the liabilities I have discussed. We are firmly convinced that the way to assure reasonable pay treatment for those people is by a system of pay retention, and we think our present system provides a fair and proper degree of protection to the downgraded employee, and is consistent with the Government's responsibility to taxpayers and to other employees as well.

Grade retention, on the other hand, is a totally different concept—one which violates the very principles which are the basis for much of our entire personnel management structure.

I hope, Mr. Chairman, that I have succeeded in making it clear why the Civil Service Commission is so strongly opposed to the provisions of H.R. 6335.

My colleagues and I will be glad to answer any questions that we can.

Mr. HENDERSON. Thank you very much, Mr. Kistler. I would be glad to yield to the gentleman from Illinois at the present time.

Mr. DERWINSKI. Mr. Kistler, I see by the schedule, that you are the only party appearing in opposition to the bill. The three gentlemen who will follow you all support the bill.

Quickly perusing over all four prepared statements, I do not find any specific figures. As I understand it, this practice has been in the law for sometime: the practice of classification and downgrading, and the charge has been made that recently this has been escalated.

I was wondering if you have any records that you could provide for the record of some pattern in past years of the numbers involved, and what is the current pattern. I see nothing in the testimonies before me by any one providing specific details of that kind.

Mr. KISTLER. We would be pleased to provide what information we can for the record. I do have with me some data that gives a partial handle on the dimensions of the problem. We can take a look at the number of employees—and this would be, at this point, only General Schedule employees—who currently receive a retained rate under the 2-year salary retention rules.

I have an exact figure as of March 31 of 1972. At that point in time, there were about 5,300 employees from among nearly 1.3 million General Schedule employees that were under 2-year salary retention.

I would point out, sir, that that includes both those people who have been downgraded as a result of classification error and those who have been downgraded as a result of reduction-in-force. It would, on the other hand, exclude people who did not have 2 years ingrade or otherwise did not meet retained rate eligibility requirements prior to the reduction.

Mr. DERWINSKI. Now, would it be possible for you to extract from your records, and put this in the record, an equivalent figure of March 31, 1967 or March 31, 1962 just so we get some idea as to what the pattern has been in this length of time?

Mr. KISTLER. I do not have information like that with me.

Mr. DERWINSKI. I realize that.

Mr. KISTLER. I would be very happy to draw from whatever trend information we have and furnish it to the committee; yes, sir.

Mr. DERWINSKI. That is all I have, Mr. Chairman.

[The information follows:]

U.S. CIVIL SERVICE COMMISSION,
BUREAU OF POLICIES AND STANDARDS,
Washington, D.C., December 21, 1973.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on Manpower and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On November 29, 1973, after I had testified before your subcommittee on H.R. 6335, Mr. Derwinski asked that I provide figures on the number of Federal employees on special rates over the past several years.

I find that figures on the total number of General Schedule retained rates are available back to 1964, but that a breakdown as to type is available only for 1972, which is the most recent tabulation. The total figures are as follows:

June 30, 1964	7,737
June 30, 1965	3,782
June 30, 1966	5,147
June 30, 1967	3,467
June 30, 1968	2,227
June 30, 1969	1,950
June 30, 1970	4,031
June 30, 1971	10,444
March 31, 1972	13,910

The 1972 figure is composed of the following:

Position downgraded; 2-year retention under 5 U.S.C. 5337—5,333
 Conversion to GS; permanent retention under 5 U.S.C. 5334—568
 Special Rate cancellation; permanent retention under 5 U.S.C. 5303—7,226
 Other—783

Actually, there is no such thing as an "other" category; agencies recorded employees here when they were unable to accurately ascertain the proper statutory basis for the special rate in time to meet the reporting deadline.

During 1971 an unusually large number of special rates were cancelled, resulting in the unprecedented 7000-plus number of retained rates in this category by 1972. Without them both the 1971 and 1972 totals would have been much closer to those of previous years.

It is, of course, only the first category of retained rates (those pursuant to Section 5337) which is germane to the consideration of H.R. 6335. I regret that we are unable to supply data on this category alone prior to 1972.

Sincerely yours,

FREDERICK A. KISTLER,
Deputy Director,
Bureau of Policies and Standards.

Mr. HENDERSON. Just following along the line that Mr. Derwinski asked you about and your response. As I understand it, in 1972 there were 5,300 downgrading actions where their rates were retained because of the present provision in the law on the 2-year salary retention.

Mr. KISTLER. We had 5,300 white-collar employees in a retained grade situation. They might have been downgraded the previous year or as long as 2 years previously.

Mr. HENDERSON. Do you know whether or not that is exclusive of reduction-in-force actions?

Mr. KISTLER. That would include people downgraded as a result of reduction in force. Yes, sir.

Mr. HENDERSON. Could you identify the number of that 5,300 that were as a result of the RIF actions? If you are going to compare that figure with what the bill would do, the bill is simply talking about those that were not affected by RIF. Could you do that or furnish this figure for us subsequently?

Mr. DAVIS. I am not sure—

Mr. KISTLER. My estimate would be, Mr. Chairman, if I understand, that the bulk of those people were downgraded as a result of RIF action. I don't have specific figures, but I believe the bulk of them are that.

Mr. HENDERSON. That was the impression I had. That would be very comforting to us, because I would point out that in the 1973 actions with regard to the National Guard technicians and the machinists, we will have some 10,000 employees who will be downgraded not as a result of RIF actions but through downgrading actions. Is that not true?

Mr. KISTLER. I would like to speak to that for a moment, if I may.

The figure I have given you is for persons under a 2-year salary retention system. But, there is more than one set of salary retention rules and, in fact, there is a different and much more generous set of salary retention rules that would apply to the machinists' situation and to the bulk of the National Guard technician actions.

I should note that, both for many of the National Guard technicians and for the machinists, we are dealing in the blue-collar area, where as my earlier figure was for white-collar employees.

More importantly, however, the salary retention system for the initial conversion into a new classification system, either white collar or blue collar, provides a form of indefinite salary retention. And both these actions are initial conversions, so the benefits differ from the usual 2-year rule that applies to actions within the ongoing system.

So the volume figures I am giving you, because they deal with 2-year salary and pay retention, are not really affected by the machinists or National Guard situations.

Mr. HENDERSON. I think that explanation is really helpful for the record. I suppose the point that I am really trying to make is that as we look at the past history of downgrading actions, our experience has been they were more of the singular type actions, or small group actions, rather than the broad type of action affecting some 8,000 National Guard technicians. That number impact was softened by the delay, but it did affect about 4,500 in the year 1973.

The Commission's reevaluation of the standards for machinists, again, affected a large number.

So the reason for this bill, the impetus for this bill really is for the kind of action that has come on recently, rather than what we previously had known over the years for which Congress had provided some pay retention in one way or another.

Mr. KISTLER. I think we need to note that, particularly in the machinists' situation, we are really not dealing with an issue of misclassification or the correction of classification error.

We are dealing with the first-time correction and only-time correction of a situation that is the result of a decision to eliminate separate, multiple job evaluation and ranking systems and replacing those systems with a single, nationwide system that is now embodied in law as, the Prevailing Rate Act. Two-year salary retention, designed as it is primarily to soften the impact of a RIF downgrading, isn't applicable here.

Nor are our concerns about misclassification or the effects of its correction. We are really talking about something other than a misclassification. It's really system conversion, and built into it is this different system of pay retention.

It provides indefinite salary retention, plus half of any future pay increases to which the employee would be entitled. And it is a system, to my knowledge, Mr. Chairman, that works in a very satisfactory fashion in terms of protecting the rights of these people and protecting their welfare.

It stands very much in contrast with the rules in effect for the ongoing system because it does not feature this sudden dropoff at the end of 2 years, as happens with the correction of classification error in the current system.

Mr. HENDERSON. Your response is very good and it also motivates me to move right on to the next question that I have with regards to your prepared statement. On page 2, you say:

But an employee entitled to salary retention gets, in effect, 2 years prior notice of a prospective reduction in pay—2 years in which to locate and qualify himself for a position at the grade level in which he was mistakenly placed.

Now, certainly, my understanding of that testimony—and it has been my understanding of the system as well—is that it clearly shows the burden is on the employee. He has 2 years to qualify for, and find, a job.

One of the objectives of my bill is to put a greater burden on the primary emphasis on management, where it would be management's responsibility to locate a job for him. This would be my answer to the cost of the bill. It is not my objective to pay a man for not doing work.

That leads me to this specific question. In view of the Commission's strong opposition to the bill and certainly the obvious inequities I see as a hardship to demoted employees, do you have any suggestions for the subcommittee on how the objectives of the bill can be achieved by some means other than that proposed by the legislation?

My proposal is that you say to the agency and management, "You have got to pay them anyway." They will find a way to get him a job and give him the responsibility and see that his performance is equal to the pay. Certainly, I would hope that would be the result, rather than simply, as the bill might be interpreted, to pay him for work he was not doing.

Mr. KISTLER. We certainly view, Mr. Chairman, the obligations of management to be high in this same area, too. We believe it is the well-established obligation of management to do everything possible to also qualify an employee for higher level work so that he can be promoted in line with career interests, moved along, and given an opportunity to regain his previous grade and pay level. Our merit promotion policy requires that special consideration for re-promotion be given to people downgraded through no fault of their own. We assist this to happen through exceptions to the competitive promotion rules.

In terms of the objectives of the bill, as you have stated them, certainly, as we have said, we believe that the pay treatment of employees needs careful consideration. It needs to be fair. It needs to recognize the special hardships that do exist for employees in this kind of situation.

Our concern, Mr. Chairman, is that in dealing with this pay problem, we need to recognize that there are a variety of alternative ways of doing so, and particularly ways that concentrate on the all-important pay aspects. And, if it were concluded that the way we are dealing with it now is not working or it has inequities built into it, then we would be pleased to participate in addressing those issues. But in doing so, in pursuing the objectives you stated, we prefer not to approach the matter in a way that would throw the rest of the classification system out of kilter.

The distinction between classification and pay is an important one, and is at the heart of our objections. We see classification as a central management tool. It is important for a variety of administrative

determinations. The classification decision is a kind of shorthand that describes what the work is and the skills it takes to do it, and that information is then cranked into the recruitment process and the applicant screening process; it is used in merit promotion, in RIF, in organizational structuring, and, certainly, in pay and a host of other processes.

The classification picture, the categorization of what people are doing, which is, after all, what classification really is, ought to be accurate. And then, once we have people in jobs accurately characterized and categorized according to their duties and skills, then we can deal with them fairly. If we know of difficulties in the systems, like pay, tied to the classification determination, we ought to deal with those, and the Commission would certainly be willing to do so whenever we have problems or inequities.

MR. HENDERSON. I thank you for your response. I think it would not be inappropriate to let the record show that with the timing of the hearing this morning and with the situation of Congress adjourning very shortly and coming back early next year, it might afford the Commission an opportunity to be more specific in its recommendations for either administrative action or recommended amendments to the bill to accomplish those objectives.

I would close my questions to you this morning by asking the Civil Service Commission to provide to the committee when we return an alternative approach that would meet the objectives of this bill of providing greater protection than is now available to employees being downgraded. I anticipate we will be considering the legislation early in the next session of Congress.

I thank you gentlemen very much for your appearance this morning and for your statements, and if you have further information that you would like to supply for the record, we will be glad to receive it from you.

Thank you.

MR. KISTLER. Thank you, sir.

MR. HENDERSON. Our next witness this morning is Dr. Wolkomir, president of the National Federation of Federal Employees. Dr. Wolkomir, you and your associates are always welcome before the subcommittee, and I am sure you will want to introduce those who accompany you for the record this morning. I would like to extend my usual welcome to you and express my high regard for you as a real leader in the area of Federal employee organizations and throughout the Federal Government.

With regard to the legislation before us, I would be very pleased for the record to show that you were, personally, the first to bring the very serious situation that I see in this legislation to my attention, and your presentation was a very forceful one. I am delighted you could be the leadoff witness of the employee organizations this morning in view of your longtime interest in this problem.

It is my pleasure to welcome you. You might proceed any way you like.

DR. WOLKOMIR. Thank you very much for those most kind remarks, Mr. Chairman. For the record, to my left is our general counsel, Mr. Irving I. Geller, and my legislative counsel, Mr. Michael Forsey.

**STATEMENT OF DR. NATHAN T. WOLKOMIR, PRESIDENT, NATIONAL
FEDERATION OF FEDERAL EMPLOYEES; ACCOMPANIED BY
IRVING I. GELLER AND MICHAEL FORSCY**

Dr. WOLKOMIR. My name is Nathan T. Wolkomir, president of the National Federation of Federal Employees. I appear before you today to speak in support of H.R. 6335, a bill introduced by the chairman of this subcommittee which we believe will put an end to one of the most pernicious practices we have encountered during the half century we have represented employees in the Federal service; that is, the classification downgrade.

My fellow Federal employees have been subjected to this procedure for many years. The use of the practice has escalated recently. We believe that this escalation was initiated at the behest of the Office of Management and Budget with the concurrence of the Civil Service Commission and is another cynical effort to project the image of the Government as an efficiency expert. Professional naggers at times identify themselves as efficiency experts.

The classification downgrade is not necessarily an exercise in efficient managerial practice but something else entirely. At best, it is an attempt to cover up administrative inefficiency; at worst, it is cost cutting at its intellectual nadir, requiring no real cost benefit or systems analysis but merely an exercise of naked power at the expense of employees who lack either political influence or legal remedy. It represents at least a moral and possibly a legal breach of the work contract.

How does this practice work? Typically, an employee is advised that his job description has been reviewed and that the job classification he was originally assigned was inaccurate, or the employee may receive a notification indicating that there has been a change in the job standard issued by the Civil Service Commission and that, as a consequence of such new standards, the employees grade has been reduced.

The Commission justifies this action on the seemingly reasonable grounds that to do otherwise would, in effect, destroy the merit principle.

Thus, in a letter to Chairman Dulski on August 30, 1973, the Commission states that H.R. 6335 would permit an employee to occupy a position at a higher grade even though an agency or the Commission had determined that the duties, responsibilities and qualification requirements properly fall in a lower grade.

Leaving aside for a moment the length of time a downgraded employee may have worked in and relied on his job classification, let us plainly put the lie to the Commission's statement.

We previously alluded to our belief that escalating downgrading actions were part of the cynical effort by OMB to save a few dollars. We can reach no other conclusion, for contrary to the Commission's representation that downgradings are applied to employees individually, it is, in fact, applied to hundreds or even thousands of employees at once.

An example of this, and the prime mover behind the introduction of this legislation, is the recent downgrading of several thousand

National Guard technicians in one fell swoop because of an alleged need to conform to classification standards developed by the Commission.

Now if the Commission is truly concerned with correcting improper individual classifications where one employee is graded too high for the duties he is performing in relation to those performed by other employees, that single employee can be downgraded; in some cases, justifiably.

However, the classification downgrading of thousands of employees cannot be so readily justified because, here, no showing can possibly be made that the downgrading relates to a specific position.

Typically, the classifier looks at the duties of the position, looks next at the classification standard and devines from some unknown source information which indicates the position should be downgraded.

Anyone who has handled a classification appeal or even glanced at the CSC classification standards knows very well that they invite administrative anarchy. Theoretically, laws and regulations are intended to spell out the standards by which performance is governed so that the regulated can understand his rights and the regulator will know his limitations.

But vague regulation is regulation in form only. We challenge the Commission to publish each and every classification appeal decision. If they do, and if this committee would read a dozen of them at random, you would quickly realize that there are in fact no standards at all but merely distinctions made of gossamer which are so malleable that any conclusion drawn from them is supportable but, moreover, essentially unreviewable.

One of the standards of review of the administrative actions under the Administrative Procedure Act is the "abuse of discretion." But where there are no discernible standards, the classifier has near total discretion and proof of abuse becomes next to impossible.

Let me give you an illustration.

In June, the Federal Aviation Administration announced that the top grade for air traffic controllers at the Oakland, Calif., Traffic Control Center had been reduced from GS-13 to GS-12. It based its decision on the fact that the Oakland Airport's volume has fallen below the level that the FAA considers necessary to justify GS-13 air traffic controllers.

In granting a preliminary injunction in a suit challenging the legality of the downgrading, Judge Aubrey Johnson noted that:

* * * the FAA's volume standard * * * is based upon total volume of the installation rather than volume per controller.

Judge Johnson construed this as a violation of the basic Job Classification Act, which requires volume per employee—plus other factors—to be taken into account in setting employee grades.

In conclusion, the judge stated:

* * * to allow this downgrading to go into effect would have irreparable repercussions in the personnel management system not only in Oakland but throughout the air traffic control system.

Judge Johnson clearly sees here the true implications of the classification downgrade. A specific downgrading action has waves which can potentially affect every other like situated employee in the

Federal service. Thus, the successful downgrading of a particular position can later become the precedent used to justify downgrading similarly situated employees in every department and branch of the Government.

A measure of the potential magnitude of this reverse bootstrapping procedure is illustrated by the Department of Army civilian personnel program for fiscal year 1974. As the committee is well aware, the Department of Army constitutes the largest employer of civil service employees in the Federal Government and, as a consequence, its statistics concerning the classification of positions and the potential for the downgrading of same reflects the dangers to which employees are subjected.

Permit me to refer to the Department of Army Civilian Personnel Circular No. 1 dated February 7, 1973, specifically paragraph 3c. This paragraph describes the goals set by the Department of Army for job descriptions evaluation accuracy.

Naturally, it sets up standards as one that is "as real" as possible to 100 percent, with a rate of less than 95 percent considered below the acceptable level. Stating the goal in more specific and startling terms, the Department of Army considers a rate of 95 percent accuracy in job description evaluations as acceptable.

Putting it another way, 1 out of 20 employees in the Department of Army faces the prospect of an inaccurate job evaluation. This can lead to the disastrous result of a job downgrade.

We respectfully request that the Department of Army CPC 1, dated February 7, 1973, be entered as a matter of record.

[The Department of the Army Circular No. 1 was retained in the subcommittee files.]

Dr. WOLKOMIR. Let us now move from the larger problem to the more particular, that of the individual employee who is apparently improperly classified. If the Commission is primarily concerned with upholding the merit system, a major factor being equal pay for equal work, a more humane approach would be, in at least some instances, to add duties to an employee's job description rather than reducing his grade.

We know of no such case and this, of course, reinforces our belief that downgrades are designed to save money, not promote the merit system. In fact, OMB has directed increase in duty responsibilities at lower grades. And I refer to the OMB circular known as Bulletin No. 72-4 dated August 5, 1971, where the agencies are so directed.

The Commission's omnipotence on the question of which employees are receiving more compensation than their duties deserve magnifies employee frustration. The employee is never safe in the knowledge that his job classification will remain the same regardless of how long he holds his job.

On the other hand, an employee, because he never knows when his position is in danger of being downgraded, may pass up opportunities for other positions, feeling that his job and the grade attached to it are appropriate. We submit that this is a reasonable assumption for an employee to make.

For example, our office learned recently that a newly promulgated CSC standard for machinists will result in the downgrading of approximately 79 employees at the Letterkenny Supply Depot. These 79

employees have occupied this position at a grade of WG-12 or WG-11 for periods ranging between 1 and 11 years. They now face the prospect of a one or two grade reduction not because they are performing fewer duties, not because of incompetence, but because somebody in Washington made an "error" or changed his mind. One can imagine the outrage and frustration expressed by these employees.

To remedy this, we have incorporated in the legislation before us today, a doctrine taken from the law of equity; that is, the doctrine of equitable estoppel. It holds that a party making representations to a second party, which are relied on by that second party, cannot later deny making those representations.

Thus, an employee who accepts a position relying upon the classification given to that position should not, in equity, have that status altered at some point in the future. H.R. 6335 establishes a statutory period of 3 years during which the Commission or an agency may discover a classification error. Any attempt to downgrade the position after an incumbent has held a position for 3 years must not take effect until the incumbent vacates the position.

The Commission contends that the enactment of H.R. 6335 will spread misclassification and reduce management incentive to correct overgrading. This misses the point.

The issue is not overgrading, but misclassification.

The 3-year limit in the bill will be an incentive to end misclassifications, will promote greater efficiency in the initial classification determination, and will give the innocent employee a new sense of security.

Lack of security with regard to job classifications has fostered bitterness and frustration in the ranks of Federal employees. Enactment of the legislation will substantially dissipate these feelings and will restore in employees a measure of respect for the integrity of the classification and merit systems, which is really the cornerstone of a productive, efficient Federal workforce.

Mr. Chairman, we respectfully urge your careful consideration of the views here set forth, and I express appreciation in behalf of the NFFE for the opportunity to present them. I shall be glad to answer any questions which members of the committee may have in their minds with respect to our views and our proposals.

Thank you, Mr. Chairman.

Mr. HENDERSON. We welcome that, and, certainly, your statement was very clear and concise, very helpful.

In view of the earlier remarks I made, I would ask you if the legislation has been introduced in the other body.

Mr. FORSCEY. It has not.

Dr. WOLKOMIR. It has not.

Mr. HENDERSON. My understanding was it had not, and I mentioned that because I had indicated I did not anticipate action in the late part of this session. But, hopefully, with the introduction in the other body, there might be serious consideration by both parts of the Congress.

Your statement pretty well answers the objections of the Commission, as I see them, and explains my objectives in introducing the legislation.

It seems to me that one objective is that there be a greater inducement to management to properly classify employees. They have 3

years to review classifications and, certainly if we understand it, they do review the classification of positions more often than that. If they do their job right, this bill won't cost anything.

I think the points you made about the Army's 95 percent of accuracy clearly illustrates there is a great need for this type of legislation for the protection of the employee.

Dr. WOLKOMIR. There is one aspect of this, Mr. Chairman, that needs clarification. That is the fact that in classification, we are talking about an employee in a particular position who may be downgraded.

What they are doing is downgrading the position in many cases; in other words, they are saying, "We are forming this particular engineering job. It is a GS-12 job." They are saying, "We made an administrative error a year ago, 15 years ago, 20 years ago, and this job is administratively classified incorrectly. It is not a GS-12 job. It is a GS-9 job."

And they completely downgrade the whole position; not just the individual, saying, "You are not qualified for the job," even though he may have proved it, but there is a great distinction between this sort of action than just saying to an individual, "You are not qualified for the job you are holding."

Mr. HENDERSON. I certainly agree with you. There is one other matter that I have of concern with regard to classification.

I can better express it by a specific instance in my own district where I found that reclassification and downgrading of the position of crane operator took place. I asked the Civil Service Commission whether or not that action was looked at with regards to other similar type work, such as bulldozer operators.

They admitted to me that they had not. They simply looked at the responsibilities, the duties, the skill of the crane operator.

I did not quite understand how this was done. It was certainly clear understanding from the practice of industry in that area that there is a relationship between a bulldozer operator, a motor grader operator, a crane or a dragline operator as they worked on construction projects or used those machines. And, certainly, pay in the industry is related to that type of machine; the skill of the operator, the kind of work the operator is doing with that particular machine.

I was rather surprised that the Commission answered that they simply, by adopting their standards, looked at the one position or the crane operator in this case.

I do not think my inquiry and my pressing them on that has resulted in any change in the position. But I can certainly testify, in my own experience, that I think classification has to be looked at in relationship to other types of jobs, and you have to look at what industry is doing in this country or how their pay scales, or so-called job classifications, are established.

Dr. WOLKOMIR. One of our greatest difficulties in costing is trying to correlate our equal pay, equal work for the Federal sector. Frankly, there is not anybody who knows how the Civil Service Commission develops a standard. And by this, I mean on what basis is a classification standard developed for a particular—I won't say job—it is developed more in the concept of a career field with related jobs that may fall into this overall standard category.

But then we relate a particular position description to the standard and the personnel man who is an expert on writing position descriptions can write into that position description just about anything in order to upgrade a particular job to conform to this big, broad standard of criteria that is set up, and this is done very often.

If a particular management individual would like to have an individual graded up, all he has to do is rewrite that position description so it conforms to the requirements of this big, broad standard of criteria.

Now, at the same time, we have just the opposite here. When the application of a position description is placed to a standard, a career field standard, they can, by a simple interpretation of the application of a position description to a standard, say, "This is wrong. We made a mistake and we will downgrade it." And it is sort of the direction they are going.

Mr. HENDERSON. I think that, as you compare the downgrading of National Guard technicians with the downgrading of Army and Air Force machinists, which is the next big thing we look at, we know that the jobs of the machinists have been well defined both in Government and in the private sector. It was rather alarming and strange to me that these two very different type jobs were those on which we would build our case for the legislation.

Dr. WOLKOMIR. I believe that this really emphasizes one of the key problems we have of classification. As you recall, Mr. Chairman, we played an integral part in this National Guard testimony; in fact, we asked for the 2-year moratorium before they applied standards.

But the problem, at that time, was the fact that they were trying to marry a series of position descriptions that were purely true to the National Guard problems, to make them conform to standards that the Civil Service Commission had developed for the Civil Service Commission of Federal employees, generally. And they were going to take this group of 8,000 people and just move them, bodily, into a building that they did not fit into. That was the problem there. Because these technicians do, as you so aptly stated, and have, responsibilities that are way beyond the average norm type of an operation in the Federal sector.

And the Commission was trying to exercise the conformity of these positions into their standards, and you just don't marry people who are not compatible.

And this is what they were trying to do.

Mr. HENDERSON. Let me ask you this, regarding the machinists; would it be fair to say the effect of the classification action on machinists was somewhat motivated by saying that Government machinists are not worth as much as industrial machinists?

Mr. GELLER. No; they are worth as much. Machinist is one job in the private sector as well as in the Government sector. That is the cornerstone of the American skill. You have the capacity to produce in a skilled fashion, and I think when you start to hold down people who occupy positions like that—and, incidentally, that occurred at Letterkenny Supply Depot, which was one of the key supply depots in the recent outbreak in the Mideast—so that employees who play a special role in, you know, the American cornerstone should not be frustrated. And, putting aside motives, whether it is OMB, I think

what comes across very clearly, Congressman, and you alluded to it; is that this art, if you want to call it, of classification is imprecise, is arbitrary, sometimes illogical. And if we accept that notion, rather than the Commission's idea that they "characterized and categorized" and so forth, it is an imprecise science.

And taking it for what it is, there must be built in grandfather provisions for those people who have accepted an offer at certain grades and, suddenly, find after 10 years of productive work that a new system has been introduced that tends it to be one or two grades less. This is a shattering experience and quite unfair.

Dr. WOLKOMIR. If I may add, Mr. Chairman, to your statement about the comparability between the machinists in the Federal sector and the private sector, having run the machinists school for the Air Force, training our airmen and civilians for a good many years, the machinists in the Federal sector do a multitude of machinist jobs.

In the private sector, the machinist could be nothing but a grinder. All he does is grinding. Another one can run a lathe, and there are different types and sizes of lathes. Another one can be doing nothing but swedging, which is cutting down tools. These are machinist-type positions in the private sector, and their pay, I may say, is high in the private sector.

How do you reconcile this, therefore, in comparing the machinists in the Federal sector, who do all these things? He could set up a die-and-cutting apparatus in a lathe, and that is all he does in the private sector. But in the Federal sector, he not only sets it up, but he runs the lathe. And in the private sector you have die setters who do nothing but set up the dies and the various machines. And they may make their alterations and adjustments to them, and the man who operates the lathe is the lathe operator.

In the Government, we have the related-duty concept, where machinists do all these things. Not in all cases, but in many cases. How can we reconcile, like Mr. Geller brought out, this sort of marriage between the private-sector type of machinist and the public sector? So we use a benchmark concept in terms of service. Then we interpolate from one to the related jobs, not surveying every job, which is understandable, considering the amount of jobs.

So it is really a mess in trying to clarify classification.

Mr. HENDERSON. Your comments, Dr. Wolkomir, have reminded me again of the specific problem I mentioned earlier with the crane operator.

A crane operator told me something to the effect that 90 percent of his work with the crane in the Federal installation was very routine work, normal to crane operators. But his skill was such that when they had to set steel or set a transformer among high-voltage lines, or even the kind of work that might require a crane to move a human being around, he was the one operator on that base who was called upon to perform this very highly skilled work. This was brought to my attention because there had been a downgrade in his position.

Now, he was not contending that the 10 or 5 percent of the time he was used on this work warranted the pay as that kind of a skilled crane operator. He admitted that he didn't work a sufficient amount of time. But when the downgrading action came, he certainly presented that argument to me. I might conclude the story to say that upon appeal of

the downgrade action, it had been downgraded from WG-11 to WG-9, the Commission ordered that it be put at WG-10 level. I am still not sure what the proper grade of that position should be.

I think it points out that the employee in the private sector and industrial sector is probably working a great deal more of his time at very highly skilled work, and getting a higher salary. Of course, offsetting that, on the side of the Federal employee; obviously he has security in his job, stability in his job, and so on, that he might not have if he had been on the industry side.

But I certainly feel that in the area that we are working in, it would be my objective for us to try to place a greater responsibility on management and on the Commission.

Finally, Dr. Wolkomir, you might want to comment on one aspect of this that I think you know I have talked about before. The classifier in the Federal sector is an employee of the agency, and from time to time I have raised the question of whether or not we would have a better system if the classifier in the agency were an employee of the Commission, and if more direct responsibility for proper classification of the position was a Civil Service Commission function carried out by the Commission employee.

Would you like to comment on it?

Mr. GELLER. Certainly we would have no objection to that, but when you examine it, whether it would have met the problem of the Guard technicians and the machinists, it might have speeded up the process of downgrading. And I think classifiers have been an abused lot. It is not a happy position to be in.

However, it is an unscientific matter, and anybody who attempts to pose the proposition that they are sure of it, they are sure of the grade, is not speaking the truth. So it would be helpful, perhaps it would have greater uniformity, if the Commission people were assigned on a centralized basis.

But it doesn't really go to the heart of the question.

Mr. HENDERSON. It doesn't necessarily resolve all of the problem.

Mr. GELLER. That's right.

Dr. WOLKOMIR. There is another aspect. Let's assume we are working for the Civil Service Commission. The influences of the Office of Management and Budget on the Civil Service Commission's determinations is something you have got to consider, too. Now, who are they really going to follow in terms of policy making matters? And this is something that certainly I would have some trepidation about it under the present environment.

Mr. HENDERSON. I certainly thank you gentlemen very much for your appearance this morning. It has been very helpful, and I am looking forward to working with you in every effort to resolve the problem presented by the legislation and your testimony.

Dr. WOLKOMIR. Thank you very much.

Mr. HENDERSON. Our next witness is Mr. Carl Sadler, legislative director of the American Federation of Government Employees, who is appearing on behalf of Mr. Clyde Webber, national president of that organization and is accompanied by Mr. Stephen Koczak, research director.

It is my pleasure to have both of you gentlemen before us this morning. I send to your national president, Mr. Webber, our best wishes.

STATEMENT OF STEPHEN KOCZAK, RESEARCH DIRECTOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY CARL SADLER, LEGISLATIVE DIRECTOR

Mr. SADLER. Thank you very much. It is always a pleasure to be here before you. I have with me Mr. Stephen Koczak, who will testify, with your permission this morning, in behalf of Mr. Webber, who was called out of town and is unable to be here himself. With your permission, Mr. Chairman, I will ask Mr. Koczak to give our statement.

Mr. HENDERSON. All right, Mr. Koczak.

Mr. KOCZAK. Mr. Chairman, the American Federation of Government Employees, AFL-CIO, representing over 650,000 Federal employees in exclusive recognition units, appreciates the opportunity to submit its views to your subcommittee in connection with H.R. 6335, which provides for grade retention benefits for certain employees whose positions are reduced in grade by reclassification actions not resulting from or related to reductions in force.

Proper assignment to grade for Federal employees has always been a matter of importance to our union. We have appeared time and again on matters of classification. We have urged necessary, overdue reforms in the classification process, to prevent abuses by Federal departments and agencies.

I will briefly describe what we feel to be some of the major problems that have arisen in the past.

Chapter 53, subchapter III, section 5337(a)(4) of the United States Code limits pay saving to, "an employee who 'is' for 2 continuous years immediately before the reduction in grade: (A) in the same agency, and (B) in a grade or grades higher than the grade to which demoted."

It is easy to understand how serious problems can arise in certain circumstances from the requirement of 2 continuous years of service. As an example, if employees are recruited to leave other employment to accept appointments at the level of GS-9 on January 1, 1972, and on March 1, 1973, their positions are downgraded by reclassification to GS-7, they are now left only with the choices of accepting the lower position and lower pay, or quitting.

This situation could arise even when they left previous Federal service in the belief that the jobs they were receiving were properly classified. The serious impact on employees resulting from this type of situation results in demoralization and in diminishing dedication and efficiency. This harms the Government as much as it harms the employees.

More typically unacceptable massive situations of importance have also occurred. The most recent notable example is that of the massive downgrading of the National Guard technicians.

Most of these technician classifications were originally established at proper levels during the emergencies arising out of the Vietnam war. About 1970, a program of massive downgradings was announced, affecting over 8,000 positions in the aircraft and automobile craftsmen series. After a great amount of controversy, still unsettled, there are still pending potential downgradings affecting about 3,000 technicians. Perhaps even 1,000 more.

Your committee can scarcely imagine the confusion, bordering almost on chaos, this situation has created. The bill, H.R. 6335, will

place an end to this confusion, resulting in great savings to the United States through the maintenance of an equitable system of saved pay. I believe it might be mentioned here that a great merit of the bill is the effective date, which is the beginning of this calendar year. And this would certainly end the confusion and the chaos and the inequity that exists in the National Guard technician area at the moment.

Abuses of classification by departments and agencies: classification is a function assigned to the Civil Service Commission, and to management in the Federal departments and agencies. It is incumbent on them to classify positions correctly.

Unfortunately many departments and agencies abuse this classification authority, sometimes to be able to raid other established departments and agencies for qualified employees to be assigned to crash programs or new missions. In carrying out this program of raiding by higher classifications, these departments often conceal from potential employees that the classifications might be reconsidered and downgraded in 2 or 3 years, after the crash program is over.

Many recruits leave other Federal jobs with good career prospects, giving full faith and credence that the jobs being offered to them are properly classified.

In such situations, it is clear that the newly recruited employees are being misled as to the actual terms of their employment and the nature of their jobs. It is therefore doubly unjust to these employees, who might have sought careers elsewhere in the Federal Government or in the private sector to find that they are now being penalized for a situation contrived by agency management. Their only safeguard is to have "saved pay" assured to them in the manner provided by H.R. 6335.

Such a measure would have a further salutary effect. Agency managers would know that if they resorted to improperly high classifications to engage in "raiding," they would have to comply also with the consequence of large numbers of employees with saved pay on their rolls. This would either deter them from "raiding" practices; or, on the other hand, after "raiding," it would induce them to job enrichment so that the newly recruited employees would be able to perform work at proper classification standards. In both these situations, the Federal Government would be the gainer; additional winners in equity would be the employees involved.

Inasmuch as H.R. 6335 and section 5337 of title V somewhat overlap, we would earnestly request your subcommittee to seek to have their best features conform. We would hope that in this attempt at conformance, your subcommittee would retain the 2-year provision in section 5337, instead of the 3-year provision appearing in the language on page 2, lines 13 to 17 of the print of the bill as introduced by Chairman Henderson on March 29, 1973.

Our organization endorses the provisions of H.R. 6335 and expresses its appreciation to Chairman Henderson for introducing this enlightened legislation, equally beneficial to the Federal Government as well as to individual employees. We earnestly request reconciliation of its provisions with section 5337 of title V, especially with a view to having the provisions of this bill apply to any "position that has been classified at the grade from which the position was reduced for a continuous period of at least 2 years immediately prior to the reduction of such position to a lower grade."

H.R. 6335 stipulates a 3-year period, whereas section 5337 of title V stipulates a 2-year period, which we could hope the subcommittee would endorse during the markup of this fine bill.

We pledge our fullest support to this subcommittee in seeking early passage of H.R. 6335.

Mr. HENDERSON. Thank you very much, both of you, for appearing this morning and certainly your recommendations will be given serious consideration as we consider the bill before us in the future. One thing I would like for the record to show, and I think that you may want to comment on this. Again, as one of the objectives of the legislation, and I think I could best use the machinists as a situation, as perhaps a demonstration. Assume for the moment that the action of classification of machinists in the Navy is taken to downgrade, and the action is a proper one. As you seek equity, you could easily make the case that if the machinists employed by the Army and the Air Force were classified at a lower grade, the Navy had made an error even though it continued over 3 years, by having the machinists in a higher grade. Upon review, the equity of the situation would be to bring down the Navy machinists to the proper level, rather than to upgrade the Army and Air Force.

It seems to me the true objective of the bill is to accomplish the objective of Government management of a proper classification system, without putting undue burden on the Navy machinists who have performed at that level.

And I guess the other thing this illustrates is that if there is any logic to using a 3-year time frame rather than 2, as you suggested the bill be amended, it was simply an attempt on our part, as we introduced the legislation, to emphasize again that we were trying to protect the very significant adverse action to the employees when those actions were taken for the benefit primarily of the Government. Certainly it would have an adverse effect on the employees. And while it would be our other objective that they get them to the proper grade level, I think again using the machinists, if you are assuming that the action was correct, it could be very difficult for large numbers to be assigned to greater duties to justify the pay.

Mr. KOCZAK. Mr. Chairman, I think that we understand this the same way as you. We think yours is a factual description. The bill would require management to take seriously the initial classification, and subsequent classifications. And the Commission's approach, it seems to me, if I may use an example from the current life, is that, if the automobile or bus driver goes through a red light, the passenger should be penalized, instead of the driver. To us, this seems to be a strange way of carrying on the Government's business. The great merit of this bill is it will make management more efficient, more responsible, and therefore save taxpayers' money; and it will also make the Government more efficient and give equity, simultaneously, to the employee.

I think this legislation achieves all these goals more imminently.

Mr. HENDERSON. Thank you very much for appearing, and your testimony this morning has been very helpful. It is always good to have you, the American Federation of Government Employees, before us.

Mr. KOCZAK. Thank you.

[The prepared statement submitted by Mr. Derwinski follows:]

STATEMENT OF HON. EDWARD J. DERWINSKI

On page 2 of the statement of Mr. Webber, the issue of the downgrading of the National Guard Technicians is raised. I am sure we do not want to leave the impression that the Civil Service Commission and the Department of Defense suddenly jumped in and started a wholesale downgrading of these positions.

As a matter of fact, this Committee was quite interested in these downgradings when the problem arose in 1970. The reason for the reclassification of these positions was as a result of the passage of Public Law 90-486 under which some 42,000 National Guard Technicians were brought into Federal service from state service. In addition to becoming eligible for a number of benefits, the enabling legislation also made the Technicians subject to Federal Classification Standards and wage grading systems.

A staff investigation in December 1970 revealed that approximately 8,700 jobs would be subject to downgrading, but about 10,000 would be upgraded.

In March the Civil Service Commission approved a plan proposed by the Department of Defense and the National Guard Bureau, which, among other things, provided that positions identified for downgrading were to remain at their existing grade for one year after the effective date of the alignment.

All the agencies involved worked to alleviate and solve a difficult problem.

Mr. HENDERSON. I feel sure that as I call our next witness, he will not mind or be embarrassed if I refer to him as one of the oldtimers. Mr. John McCart, operations director, Government Employees Council, has appeared before us on many occasions.

I would like to take this occasion, as we close with the last witness, to also recognize that one of our staff members of the subcommittee will be retiring at the end of the year. When I came to the Congress in 1961, I was assigned to the committee, and to the subcommittee, then chaired by Judge Davis from Georgia, and Miss Justine Snipes was a member of the staff. I am sure that no one could agree with me more than you can, John, that she has served us most efficiently and in a manner that has been in the highest tradition of the Capitol employees.

I have asked her to come and sit by me at this moment, so that I could pay my respect and fond admiration for the fine job she has done for us. I afford you equal time, also, John.

Mr. McCART. It pleases me no end to have Miss Snipes sitting there as an ex officio member of the subcommittee at the moment, because over the years we have had the utmost cooperation from Justine. She has always been most courteous and helpful. I can recall just a couple of weeks ago I had occasion to ask her for help in securing some documentary material, and she took a half-hour to try to find the particular material I was looking for. So I certainly second your comments, Mr. Chairman. I want to convey to her, through you, our very hearty congratulations on her retirement.

Mr. HENDERSON. Justine, we wish you well, and we will miss you.

Mr. McCART. Mr. Chairman, we have supplied the subcommittee with our formal statement, and with your approval, I would like to just summarize our views on the pending bill.

Mr. HENDERSON. Without objection, the entire statement will be printed in the record following your comments.

**STATEMENT OF JOHN McCART, OPERATIONS DIRECTOR,
GOVERNMENT EMPLOYEES COUNCIL**

Mr. McCART. The Council wishes to heartily endorse the measurement under consideration at the moment, H.R. 6335.

The first portion of our statement brings a brief history of pay retention for classified and wage grade workers in the Federal service, dating back to the early 1950's and culminating in the enactment of the Wage Reform Act in 1972. You, of course, played a very, very vital role in much of that legislation, particularly in the last statute to which I alluded.

We have maintained consistently, Mr. Chairman, as a matter of basic principle, that a worker who incurs any kind of adverse action at the hands of management, for conditions beyond his control, should not suffer any financial or social or other loss in rank or opportunity.

The Civil Service Commission, and the agencies over the years have characterized the job evaluation system as a management tool. If this is so, it just simply reinforces the position I have just outlined to you, that employees who are subject to adverse management actions should not incur loss, since they had no opportunity to control the decisions that are made.

One of the theories that was advanced when the Classification Act legislation was pending in 1958 was that the 2-year period of pay retention would permit agencies to find a suitable job for downgraded workers, at the same level that they occupied prior to the reduction in grade.

That has simply proved unrealistic. In general, the individual retains pay for 2 years. No other jobs are found equal to the grade prior to downgrading, and salary retention is lost at the end of the statutory period. This becomes even more aggravated in periods of reductions in force, when the opportunities for finding other positions at the grade that the individual formerly occupied are just almost invisible.

It is for these reasons that we strongly support the bill that is pending and we express our appreciation to you, Mr. Chairman, for introducing it.

I would like now to take a moment with respect to the second full paragraph on page 3 of our statement. We referred to the language in lines 13 to 17 of the bill. Shortly after we presented this statement to the subcommittee, prior to this hearing, a member of the staff called to inform me that I had apparently misconstrued the intent of that language. Our statement took the interpretation that the bill would require an individual to remain in a grade for 3 years prior to downgrading in order to be eligible. I was grateful that this misinterpretation was brought to my attention.

What it means is that the bill actually requires that the job be graded at a specific grade for 3 years in order for the individual to be qualified for pay savings.

Now that I have cleared up the misconception on my part, we have reservations about the language, because actually, the time limitation goes to the job. It doesn't go to the individual. In other words, the individual has no control over the amount of time that a job is graded, and therefore, we don't think that that condition should be imposed on him.

Why shouldn't an employee who has occupied a particular grade for 1 year, when that job is downgraded, be qualified for salary savings?

I really want, Mr. Chairman, to clear the record on the matter and to ask your approval in amending our statement to reflect our correct understanding of what the language intends.

Mr. HENDERSON. I thank you very much for making that point. The 3-year requirement of the bill goes to the classification of the position. There is no requirement at all for the length of service in that position for the employee who happens to be holding the position at the time of downgrading to get the benefits of the bill.

Mr. McCART. We are not advocating that time in position limitation, but if the change is going to be made, it could be made more logically on that side, because traditionally there has been a 2-year requirement.

Mr. HENDERSON. As I understand the AFGE testimony, they were suggesting that the 3-year provision of the bill be changed to 2 years on the position classification.

Thank you very much, Mr. McCart. Your appearance is always helpful and it is good to see you.

Mr. Sadler?

Mr. SADLER. If the committee is still in session, I would like to add our congratulations to Justine. She has been a great help to AFGE over the years and I will miss her as much as you will.

Mr. HENDERSON. I appreciate that very much, and I am sure Justine does.

The subcommittee stands adjourned.

[Whereupon the hearing was adjourned at 11:45 a.m.]

[The prepared statement submitted by Mr. McCart follows, along with a statement from the National Association of Government Employees.]

STATEMENT OF JOHN A. MCCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYEES COUNCIL

Mr. Chairman and members of the subcommittee, the Government Employees Council and its 30 AFL-CIO unions, which represent more than 1 million classified, wage grade, and postal workers in the Federal Government, strongly endorse H.R. 6335.

We are grateful, indeed, to the Chairman of the Subcommittee, Representative David Henderson, for introducing the measure.

The concept of retaining salaries of Federal workers whose jobs are downgraded originated in 1951, when the Civil Service Commission attempted to adopt it by regulation applicable to individuals covered by the Classification Act. When the rule was invalidated by a decision of the Comptroller General, it became apparent that legislation would be required to solve the problem.

Congress first acted on the matter in June, 1956 (Public Law 594—84th Congress). It was necessary for the legislature to enact two additional clarifying laws—Public Law 85-737, August 23, 1958 and Public Law 87-270, September 21, 1961. The 1961 law introduced salary retention to the Post Office Department also.

All of these activities centered around salary protection for classified workers. The general result was to guarantee those employees whose positions were downgraded "saved" salary for two years. Of course certain conditions were invoked, such as an employee status, two years service in the same job prior to downgrading, satisfactory performance during the previous two years, and exclusion of grade reductions which are voluntary or disciplinary.

During these years, the pay of wage grade workers was fixed by the various agencies where they were employed. Thus the determination of the "saved pay" principle was in the hands of agency officials.

In 1962 and 1963, the military agencies applied the salary retention technique to wage grade positions by administrative action. Three years later, the Comp-

roller General sanctioned the general concept for these employees in the Department of Defense, but noted the varying rules among the military agencies (44 CG 476). He recommended that the Department adhere closely to the conditions prescribed for classified and postal workers in statute.

With the institution of the Coordinated Federal Wage System in 1968, the pay saving principle for wage grade employees became a part of the basic plan. However, it lacked a statutory basis.

That defect was remedied when Congress enacted Public Law 92-392 in August, 1972. The Chairman of this subcommittee played a vital role in the passage of that important law reforming the wage grade system.

One of the theories advanced by those who favored the original legislation for classified employees was that continuation of an individual's previous salary for two years following reduction in grade would enable agencies to locate jobs for downgraded workers at their earlier rate and rank. Experience has proved that objective to be more of a hope than a reality. At best, opportunities for individuals to regain the grades they occupied before downgrading are limited. In a period when substantial reductions in force are contemplated throughout Federal service, the possibility of acquiring a job with the earlier grade becomes even more remote.

As a general principle, our Council has maintained that employees should not experience any adverse result from decisions undertaken by management over which the workers have no control. Downward classification of jobs is initiated by agencies. The appeal rights available to employees do not change the source of the action. For the few individuals who are successful in appealing grade reductions, the system proves satisfactory. But the great majority of employees do not have that experience. They must accept the actions proposed by their agencies.

This means that there is ample justification for approving the permanent salary and wage retention proposed in H.R. 6335. So long as an employee continues to work in the same agency and is not reassigned, promoted or demoted for personal cause, reduction in force, or at the individual's request, he should continue to receive the earnings in effect prior to the downgrading action.

Mr. Chairman, the Council commends you for your sincere desire to correct the present deficiency, and strongly recommends that the subcommittee act expeditiously on the pending bill.

STATEMENT OF ALAN J. WHITNEY, NATIONAL EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Dear Mr. Chairman, The National Association of Government Employees (NAGE) appreciates being granted this opportunity to comment on the provisions of H.R. 6335, a bill which was introduced by the Chairman of this Subcommittee to provide grade retention benefits for certain employees who are subjected to down-grading actions not initiated at the employee's request, for personal cause or as the result of a reduction in force.

The NAGE fully supports the objective of this bill, which principally is to protect both General Schedule and Wage Grade workers from the injustice of demotion and loss of pay where it is determined that their positions have been improperly classified through management error or as a result of a change to a classification standard.

H.R. 6335 would provide grade and salary retention for employees who are affected by a reduction in grade after January 1, 1973, as long as they remain in the same agency and are not reassigned or promoted.

Under existing law, as set forth in Title 5 of the U.S. Code, an employee who is reduced in grade retains his rate of pay (saved-pay) for a period of two years if he is earning more than the top step of the grade to which he is demoted. This bill would permit the employee to retain both his grade and his rate of pay so long as the position from which he is being demoted had been classified at the higher grade level for at least three years.

It is the belief of the NAGE that approval of this proposed legislation would not only correct the basic injustice of punishing an employee for the classification error of his employing agency, but also would provide a strong incentive to agency personnel staffs to be more efficient in their classification functions. A third benefit would be that the U.S. Civil Service Commission would be forced to be more definitive in its classification standards.

Enactment of H.R. 6335 also would provide protection against the arbitrary and wholesale reduction in grade of thousands of employees, as experienced by the civilian technician workforce of the Army and Air National Guards. This sorry chapter in the history of the Commission's classification program saw agency-wide grade reductions throughout entire occupations without regard to the skills levels or responsibilities of the individual technicians affected.

An additional benefit would derive from H.R. 6335 in that, if enacted, it would deprive ill-intentioned managers of the shady tactic of accomplishing an "adverse action" against an employee by rewriting his position description to reflect lower level duties when they know they have no case for an adverse action.

In short, this bill would do much to instill employee confidence in the integrity of the Federal Government's classification system by assuring them that they would not be subject to an arbitrary reduction in grade once they have, in good faith, accepted appointment or promotion to a specific position and grade level.

We would, however, recommend one change to the language of H.R. 6335 by suggesting that Section 5366 be amended to provide that an employee need have been classified at the grade from which his position was reduced for *two* consecutive years prior to the reduction, rather than three years.

Adoption of this amendment would bring the bill into conformance with the existing two-year requirement for saved-pay entitlement, as set forth in Section 5337 of Title 5, U.S. Code.

Thank you for considering the views of the NAGE.