COLLECTIVE BARGAINING FOR RETIRED EMPLOYEES

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 13535

TO AMEND THE NATIONAL LABOR RELATIONS ACT TO PROVIDE THAT THE DUTY TO BARGAIN COLLECTIVELY INCLUDES BARGAINING WITH RESPECT TO RETIREMENT BENEFITS FOR RETIRED EMPLOYEES

HEARING HELD IN WASHINGTON, D.C., ON SEPTEMBER 19, 1978

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APPENDIX

COLLECTIVE BARGAINING FOR RETIRED EMPLOYEES

TUESDAY, SEPTEMBER 19, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2261, Rayburn House Office Building, Hon. Frank Thompson, Jr. (chairman of the subcommittee) presiding.

Members present: Representatives Thompson, Cornell, Kildee, and Erlenborn.

Staff present: Fred Feinstein, counsel and Edith Baum, minority counsel for labor.

Mr. THOMPSON. The subcommittee will come to order.

I have called this hearing today to examine the problem of the bargaining rights for retired employees. The bill under consideration, H.R. 13535, would amend section 8(d) of the National Labor Relations Act to make negotiations with respect to retirement benefits for retired employees a mandatory subject of bargaining. This is a problem that has been of special concern to over 25 Members of Congress, some of whom are honoring us by being here today. We have introduced a total of 12 bills on this subject during this session alone. I am glad to say that two of my distinguished colleagues will be testifying today.

At present, bargaining concerning retirees is a permissive subject of bargaining. This means that either side of the bargaining table can refuse to discuss this issue with no adverse legal consequences. It also means that conditions affecting retired employees can be altered unilaterally by either the union or management.

The need for this bill arose as a result of the court decision in the case of *Allied Chemical and Alkali Workers of America Local Union No. 1* v. *Pittsburgh Plate Glass*. The National Labor Relations Board decided that retirees were "employees" for the purpose of collective bargaining. However, the Supreme Court overruled this decision and held that retirees were neither employees nor members of the bargaining unit, and therefore, bargaining about their retirement benefits was not mandatory.

I have had a long interest in the plight of the retired employee, this subcommittee having held hearings on the subject in the last Congress. Retired employees live on fixed incomes in an inflationary economy. The cost of living has increased dramatically in recent years, but most private pension plans have no automatic cost of living adjustments.

Many pensioners who retired several years ago are required to live on pensions that reflect the low-wage levels of the distant past. The

tragedy of this is that the men and women who laid the foundation for the modern day pension plans and who have helped build the labor movement as well, can no longer survive on their pensions. In practical terms, the powerlessness of retired workers at the bargaining table is another one of the ways in which senior citizens are being forced to shoulder an unjust share of the burden of inflation.

The Supreme Court decision does not prohibit an employer and a union from voluntarily bargaining on retiree benefits. However, when such bargaining does occur it is strictly at the will of either side and can terminate without notice. The bill under consideration would eliminate this lack of predictability and would simply guarantee the benefits of retired employees a place at the bargaining table.

The true importance of this bill lies in the future. The number of retired employees is growing rapidly and is predicted to expand even further. The cost of living is also predicted to increase. The guaranteed right to bargain over retired employee benefits must be assured for the future expanded ranks of retired workers.

I do hope that these hearings today will start a serious consideration of this most important issue.

The text of H.R. 13535 and a staff analysis of the bill will be given in the record at this point.

[Text and summary of H.R. 13535 follow:]

[H.R. 13535, 95th Cong., 2d sess.]

A BILL To amend the National Labor Relations Act to provide that the duty to bargain collectively includes bargaining with respect to retirement benefits for retired employees

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 8(d) of the National Labor Relations Act is amended—

(1) by inserting after "other terms and conditions of employment" the following: ", including retirement benefits for retired employees", and

(2) by inserting after "all the terms and conditions" in paragraph (4) of the proviso the following: "(including terms and conditions relating to retirement benefits for retired employees)".

H.R. 13535 TO AMEND THE NATIONAL LABOR RELATIONS ACT TO PROVIDE THAT THE DUTY TO BARGAIN COLLECTIVELY INCLUDES BARGAINING WITH RESPECT TO RETIREMENT BENEFITS FOR RETIRED EMPLOYEES

EXPLANATION OF THE BILL

H.R. 13535 would amend section 8(d) of the National Labor Relations Act to make bargaining with respect to retirement benefits for retired employees a mandatory subject of bargaining. A mandatory subject of bargaining is one about which employers and unions must bargain in order to fulfill their legal duty under the Act to bargain in good faith. In addition, it is unlawful to make unilateral changes in an area considered to be a mandatory subject of bargaining. Currently matters affecting retired employees are permissive subjects of bargaining meaning that either side at that bargaining table is permitted to refuse to discuss the issue with no adverse legal consequences. It also means that conditions affecting retired employees can be altered unilaterally by the union or management.

The NLRB has ruled that employees' pension plans are included within the term "wages" and are therefore a mandatory subject of bargaining. In *Pittsburgh Plate Glass Co.*, 177 NLRB 911 (1969), the Board extended this concept by defining "employees" to include retirees for the purposes of bargaining about changes in retirement benefits. This meant that retirement benefits of an employee were a mandatory subject of collective bargaining both before and after retirement. The Supreme Court, in *Allied Chemical and Alkali Workers of America Local Union No. 1* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971), over-

turned the Board's decision and held that retirees were neither employees nor members of the bargaining unit and therefore bargaining about their retirement benefits was not mandatory.

H.R. 13535 adopts the view of the Labor Board. It would overrule the Supreme Court decision in the *Pittsburgh Plate Glass* case by requiring discussion of retirees' benefits when raised as a collective bargaining issue.

NEED FOR THE BILL

Retired employees live on fixed incomes within an inflationary economy. The cost of living has risen steadily in recent years and the cost of hospitalization has doubled in some parts of the country. Yet pension and hospitalization benefits under collective bargaining agreements have tended to lag behind costs because the adjustment of these benefits remains a permissive rather than mandatory subject of bargaining. Absent legal compulsion, some employers and unions have voluntarily continued their practice of bargaining with regard to retirees' benefits, but others have taken the opportunity to stop serious bargaining in this area as well as to make unilateral changes (usually negative) in the retirees' benefits.

The law must make it possible to discuss adjustments to collectively bargained retirees' benefits plans in response to changes in the economy altered public support programs and new retirement fund practices. Retired persons should not be made to bear the burden of changing economic conditions. As the Board in its *Pittsburgh Plate Glass* decision, "With respect to new problems which arise under a . . . plan for retired employees, collective bargaining is not only a suitable method for exploring different solutions, but it is probably the most rational and effective method." 177 NLRB at 916

CHANGES IN EXISTING LAW MADE BY H.R. 13535

(New matter is printed in italics and existing law in which no change is proposed is shown in roman.)

H.R. 13535 would amend the National Labor Relations Act as follows:

NATIONAL LABOR RELATIONS ACT

* * * * * * *

Unfair Labor Practices

Section 8. * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, *including retirement benefits for retired employees*, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

* * * * * * *

(4) Continues in full force and effect without resorting to strike or lockout, all the terms and conditions (*including terms and conditions relating to retirement benefits for retired employees*) of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

Mr. THOMPSON. Our first witness this morning is the Honorable Henry A. Waxman, a Representative from the State of California.

STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Good morning, Mr. Chairman, distinguished members of the subcommittee. I am pleased to testify this morning in support of H.R. 13535. As you know, the bill is identical to two bills I introduced last year (H.R. 5128 and H.R. 7989) on behalf of 30 of our colleagues.

I want to commend the chairman for scheduling this hearing, and for his steadfast support of this legislation.

I should mention at the outset that this legislation deals with an issue of particular personal concern to me. It is an issue which originally arose from among my constitutents, and an issue which vitally affects my constituents.

As the chairman knows, the first discussions of this bill took place in 1975 before this subcommittee in field hearings in California. At that time, one of the leading proponents of the legislation was a man from my district, a retired member of the Retail Clerks Union and the president of that union's retirees club, Sam Berman.

Sam worked tirelessly to move the bill from an idea to a reality. He organized his club's membership as well as the members of retiree union clubs across the country in support of the bill. He corresponded regularly with my office and visited personally when he came to Washington as a delegate to the National Council of Senior Citizens' annual convention.

He persuaded me that the issue of adjusting pension benefits for already retired union members was a matter of need, a matter of justice, and a matter of equity. He produced figures documenting the pitifully low level of some pension benefits which have become even smaller as a result of inflation.

It is due to Sam's efforts that this legislation has received the strong sponsorship of our colleagues.

Unfortunately, Sam is no longer here. He died a few months ago while still working to gather support for this bill. I feel a responsibility to him, and to other retirees to help fulfill Sam's dream.

The need for adjusting pension benefits which have been eroded by inflation is quite apparent. I have some figures from a list of local 770 retired employee's benefits and the years of service they represent which I would like to share with you:

Wilma Chamber, 11 years' employment, $30 monthly benefit.

Leo Berger, 17 years' employment, $33 monthly benefit.

Charlotte Haas, 16 years' employment, $57 monthly benefit.

Melvin Dailey, 13 years' employment, $29.58 monthly benefit.

Dolly Itzkowitz, 21 years' employment, $34.45 monthly benefit.

But you will hear further testimony today from others more qualified than I to document this issue. I would therefore like to discuss some points about the bill itself, what it will and will not do.

First, it would add retirement benefits for retired employees to the statutory items of obligatory collective bargaining. Currently, the law defines mandatory subjects for bargaining as "wages, hours and other terms and conditions of employment." This legislation would add retirement benefits for retired employees to the definition of terms and

conditions of employment. By specifying this area, the legislation would require that the subject be raised when management and labor come to the bargaining table.

The bill does not mandate the results of that bargaining; it simply insists that the subject of retiree's benefits be discussed. Many unions are ready to raise the issue when they are in negotiations, but if employers are not interested, then it cannot be discussed. This bill would assure that the question of pensioners' benefits be open for discussion and that proponents of change have the opportunity to be heard.

A second part of the bill would modify section 8(d)(4) of the National Labor Relations Act, which describes the steps needed to be taken when either party wants to modify a current agreement. The bill would add a requirement that all terms or conditions of the current contract would remain in full force for 60 days after the parties have given notice of a wish for modification. This section is needed to protect workers from unilateral modification or termination by the employer.

It is important to note what the bill in its current form does not do. It does not change the definition of "employee" to include the retired worker, and thus does not expand the meaning of "employee" for purposes of other aspects of the NLRA. It simply mandates that the subject of retirees' benefits be discussed during negotiations over contracts.

This means that whether there would be an improvement in benefits for retirees would depend on the objectives and tactics of the unions and employers, and would not be mandated by law.

It has been suggested by some that the bill be amended to include a change in the NLRA definition of "employee." I feel such a change is complicated, and could have wide ramifications which are not yet fully understood. Additional research is needed before a change in the definition of employee is justified.

For the moment, I believe it sufficient to get the issue of adjusting retirees' benefits on the bargaining table, and see how readily the unions take up the cause of their own retired members. If few of them do, then indeed we need to address ourselves to the broader definitional question.

It is hard to predict the cost of this legislation to employers. The National Senior Citizens Law Center estimates there are approximately 2 million retirees receiving pensions through collectively bargained agreements. Some retirees do have automatic increases already built into their plans and thus would not represent additional cost to their employers.

I have not yet been able to obtain any figures on the percentage of retirees whose benefits are not automatically adjusted to more accurately reflect cost-of-living increases. It would be helpful to try and get that data so we can be more knowledgeable about the actual cost of this legislation. I would urge the subcommittee to undertake this task, if it does not already have the information.

It is clear to me, however, that cost cannot be the barrier to moving this legislation forward. We simply have to be mindful of the human cost in allowing retired workers to exist on benefits which bear little relationship to actual cost of living. We owe such workers the chance to have their current needs brought before their bargaining agents for full discussion.

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I am convinced that only by making retirees' benefits a subject of mandatory bargaining will they be considered and renegotiated to reflect living costs more fairly. We cannot significantly improve the financial plight of retirees by leaving these benefits to chance or employer good will.

Sam Berman cannot personally benefit from this bill but his fellow retired workers can. I feel a responsibility to see this legislation passed, and I urge the subcommittee to respond positively to it.

I also want to announce that later you will be hearing from Marie Dulski, one of my constituents, who is very knowledgeable about this whole issue. She will, I am sure, be able to add a great deal to your consideration of this legislation.

Mr. THOMPSON. Thank you very much. I am particularly glad you mentioned Sam, who was a really wonderful human being, who did indeed generate much interest and activity in this regard.

I understand, Mr. Waxman, you have another committee meeting so with my thanks, we will express our gratitude to you for your testimony.

Mr. WAXMAN. Thank you very much.

Mr. THOMPSON. Our next witness to speak briefly on this is our colleague, Representative Gary A. Myers, of Pennsylvania.

STATEMENT OF HON. GARY A. MYERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MYERS. Mr. Chairman, I very much appreciate the opportunity to appear before the subcommittee this morning to discuss H.R. 9625 and other bills which would amend the National Labor Relations Act to provide that the duty to bargain collectively includes bargaining with respect to retirement benefits for retired employees. I realize the subcommittee desires to hear from a number of witnesses, and I will be brief.

Mr. Chairman, I have in my files a number of letters on retirement benefits for retired employees in the 25th District of Pennsylvania—many of them from retired steelworkers or the widows of retirees. It is my understanding that the subcommittee will be hearing testimony from retiree groups and therefore, I will not go into detail about the plight of many of these retirees and widows. I believe it sufficient to say that the benefits received by many of these citizens are often vastly inadequate by today's standards. Many of these benefit packages were relatively modest when they were formulated; after a decade of high inflation, they are now sometimes pitiful.

H.R. 9625 and related bills will not, in my estimation, make earth shattering changes in the way labor-management negotiations are conducted. The bill only clarifies section 8(d) of the National Labor Relations Act to include "retirement benefits of retired employees" among those "terms and conditions of employment" with respect to which management and labor must bargain collectively. As the subcommittee well knows, there is nothing in the act and nothing in the proposed amendment to the act that would "compel either party to agree to a proposal or require the making of a concession." Rather, I believe this amendment would properly return to private sector labor-management negotiations many pension and benefit issues that are more properly handled in that sector than in legislation or Federal regulations.

Mr. Chairman, I am not an expert in labor-management relations. I have, however, worked for 18 years in an industry, I would comment I am not speaking for that industry today—in which many of the compensation issues and many of the working conditions are determined by collective bargaining. It is my observation that frequently labor and management enter collective bargaining with a reasonably sound idea of just what resources are available to be discussed at the bargaining table—in other words, just what size pie can be sliced. The real issue is often how the pie will be sliced. And this legislation will only add one additional group of individuals to those who may share the available resources.

Speaking of sitting at the bargaining table, it is my understanding—and I hope the subcommittee will make this clear in future deliberations on this legislation—that H.R. 9625 and related bills confer absolutely no rights on retirees to actually participate in the bargaining process at the bargaining site. An interpretation of H.R. 9625 conferring such rights could be disruptive of the negotiating process in my estimation.

Mr. Chairman, I have no interest in weakening American business or labor or in devitalizing the collective bargaining process. Rather, this legislation is the kind of change that could further invigorate the process while helping many retirees to a better life.

This legislation should not be viewed as a panacea for those who presently possess inadequate retirement or survivors' benefits; it is a long way between making retirement benefits for retired employees a negotiating item and actually seeing increased benefits. Rather, this proposed change should be seen in the context of other reforms Congress has made or is contemplating. Changes in section 8(d) along with changes in the mandatory retirement age, pension laws, as well as IRA's and other aspects of our tax laws, taken together, can make life better for retirees while leaving as many decisions as possible in the private sector.

Thank you for providing me the opportunity to appear here today, Mr. Chairman.

[Subcommittee note: H.R. 9625 is identical to H.R. 13535.]

Mr. THOMPSON. Thank you very much, Mr. Myers. I appreciate your testimony and we will keep very much in mind the suggestion which you made.

Our next witnesses are representatives of local 107 of the Retirees Association of the United Electrical, Radio & Machine Workers. To be introduced by Representative Robert W. Edgar of Pennsylvania.

Good morning.

Mr. EDGAR. Good morning, Mr. Chairman.

Mr. THOMPSON. Good to see you, Mr. Block and Mr. Baker?

Mr. EDGAR. That is correct.

STATEMENT OF HON. ROBERT W. EDGAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. EDGAR. Mr. Chairman, I want to thank you for holding these hearings this morning and to commend Mr. Waxman and Mr. Myers, who have testified before me, a Democrat and a Republi-

can, supporting this particular piece of legislation. I want you to know how pleased I am to be here and how glad I am that these hearings are being held. My statement will be brief. I am sure you are well aware of my support for legislation which would make collective bargaining for union retirees mandatory. In fact, I too, have introduced a bill which would accomplish this goal.

My main purpose in being here this morning is to introduce a group of gentlemen who, I believe are the single most important force in causing these hearings to be held. As I am certain you will recall, early in this Congress they traveled to Washington from Delaware County to urge that hearings be held on this issue and to explain why it is so important that action be taken as quickly as possible. Since that time, they have been patiently waiting for the hearings, yet persistent in their efforts to bring them about quickly.

Mr. Chairman, these gentlemen represent the U.E. 107 Retirees Association of the Lester Plant of Westinghouse Corp. in Delaware County.

As I introduce the people who are behind me, I would like them just to stand briefly so that they could be recognized. The men here today are Dick William, 31 years service and vice president of the association, George.

Mr. THOMPSON. Mr. Williams.

Mr. EDGAR. Ed Boehner with 26 years service; Jim Sutherland with 25 years of service; and Art Schiller who worked for Westinghouse for 47 years. I happen to be only 35 years old and 47 years sounds like a long time to work in one place.

Mr. THOMPSON. As you get older it won't.

[Laughter.]

Mr. EDGAR. Later in the hearings, Mr. Chairman, you may want to ask them some questions but also to ask them what is the pension that they receive from Westinghouse after working 47 years or 25 years, or 26 years, or 31 years.

The most attractive feature of this proposed legislation is its cost. Unlike most bills with which Congress deals, this proposal costs the Federal Government nothing. It simply makes bargaining for retired union employees, a mandatory subject of collective bargaining under the National Labor Relations Act. It requires that employers listen to a retired worker when he has a grievance regarding his or her pension.

Mr. Chairman, because this legislation only requires that the subject of retirees' benefits be considered, there is no guarantee that pensions will be increased. Labor and management, during negotiations may determine that adjustments in retiree benefits are not necessary. However, at least the retired worker will be considered. As it stands now, little or no thought is given to the pensioners. They are left to their own devices in trying to cope with our inflationary economy on a fixed income which is sometimes so inadequate as to be unconscionable. I am certain that the testimony which follows will highlight this contention.

This legislation would correct an inequity created by an unfair Supreme Court decision and allow pensioners to live their retired years in dignity. Mr. Chairman, these people are not asking for something which is not theirs. They are not requesting pension increases so that they might live an affluent life style. Far from it. They are simply

making an effort to maintain a minimal standard of living which is consistent with today's economy. They are tired of being legally ignored in their efforts to receive what belongs to them.

I now would like to introduce two individuals. The first to speak will be Boris Block, who is the secretary-treasurer of the UE International. He will be followed by a very creative person from my congressional district, Mr. George Baker, who has given about 28 years of service to Westinghouse and has been at the forefront of this particular piece of legislation. He is very active in our community, I respect him and his insights, and I hope that he will be able to share fully his statement to you.

First, Mr. Block.

STATEMENT OF BORIS H. BLOCK, GENERAL SECRETARY-TREASURER, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, AND REPRESENTATIVE OF UE LOCAL 107 RETIREES' ASSOCIATION

Mr. BLOCK. I am Boris H. Block, general secretary-treasurer, of the United Electrical, Radio & Machine Workers of America (UE). We represent 165,000 workers in such companies as General Electric, Westinghouse, Westinghouse Air Brake Division of American Standard, Allen Bradley, Foster Wheeler, and in hundreds of smaller companies.

Mr. Chairman, we have submitted a statement which in considerable detail delineates our position on the matter being heard before this committee, but in the interest of brevity I would like to outline our position as follows:

Mr. THOMPSON. Mr. Block, without objection your statement in full will be made a part of the record immediately preceding your informal remarks.

[The full statement of Mr. Block follows:]

TESTIMONY OF BORIS H. BLOCK, UE GENERAL SECRETARY-TREASURER AND REPRESENTATIVE OF UE LOCAL 107 RETIREES ASSOCIATION

I am Boris H. Block, General Secretary-Treasurer, of the United Electrical, Radio and Machine Workers of America (UE). We represent 165,000 workers in such companies as General Electric, Westinghouse, Westinghouse Air Brake division of American Standard, Allen Bradley, Foster Wheeler, and in hundreds of smaller companies.

Our union is particularly concerned with the plight of the thousands of retirees from these companies who have small-to-moderate company pensions to supplement their social security. These pensioners have seen the real value of their pensions dwindle rapidly as a result of the severe inflation over the past decade.

Our union has been able to negotiate substantial improvements in the prospective pensions of workers now on the job. In negotiations, we urge the companies to extend these gains to retirees. But the companies flatly refuse to bargain with the union for their retirees.

Their position is based on a Supreme Court decision a few years ago that ruled that unions did not have the right to demand bargaining on behalf of already retired employees. Although the retirees want their union to represent them and protect their rights, the unions were told this was a bargaining matter which was not mandatory but only voluntary.

As a result, major companies in the electrical manufacturing industry refuse to bargain with the unions with respect to the pensions of their retired em-

ployees. Among them are the General Electric Co., Westinghouse Electric Corporation, GTE Sylvania, American Standard's Westinghouse Air Brake division, Foster Wheeler, and Allen Bradley.

The General Electric Co. has an unyielding position of refusing to bargain for its pensioners. Only following a storm of outraged protests by pensioner groups and union membership, does the company make unilateral and small increases in retirees' pensions.

In our 1973 negotiations with General Electric, the company agreed to raise minimum pensions applicable to present employees that were from $6.50 to $7.50 a month for each year of service to $6.50 to $9.50 a month, effective July 1, 1973. But pensioners who had not received a pension increase since January 1, 1971, had to wait another 18 months, through a period of four years of raging inflation, before the company increased their pensions by about one-fourth to one-third of the increase in the cost-of-living. Thus an employee who had retired on or before January 1, 1971 received a 12-percent increase in pension, the maximum paid, to cover the period from January 1971 to December 1974 when prices increased 30 percent.

Again in the 1976 negotiations with General Electric, pensions applicable to active workers were raised to $8 to $12 a month for each year of service. But General Electric waited another 18 months, for a total of three years, before it increased retirees' pensions up to 10 percent, or about half the 20 percent increase in the cost-of-living.

In the 1976 negotiations, General Electric provided information on the average monthly pension of workers who had retired prior to 1973. The average pension of these 22,410 retirees amounted to $146 a month. But, 7,589 of these retirees had a pension of $100 a month or less. These miserably small pensions were increased by the company a maximum of 23 percent from the period January 1, 1971 to December 31, 1977, a period during which consumer prices rose 56 percent.

The situation of retirees in the Westinghouse Electric Corporation is even worse than those at the General Electric Company. In the past, Westinghouse has made its pensioners wait six months after the effective date of General Electric pension increases to put into effect its own increases which were as miserably small as those of General Electric.

This time it was eight months after the General Electric increase, and only on the day before nationwide demonstrations at Westinghouse plant gates by Westinghouse retirees were to take place, that the company came across with an increase. Moreover, this adjustment was considerably worse than GE's. Westinghouse retirees had to live on their fixed pensions for three and one-half years while their cost of living increased by 25 percent, and only then did Westinghouse announce a pro-rated increase with a maximum of just 10 percent. For most retirees, this increase amounted to only 1.44 percent per year for each year they had been on retirement since January, 1974, or an adjustment of about one-fifth the increase in cost of living.

Does this Committee think that pensioners in their 60's, 70's, 80's and even 90's should have to "hit the bricks" and picket the plants to shame the companies into paying attention to them?

At Westinghouse Air Brake division of American Standard, UE negotiated increases that brought pensions to $10.50 a month for each year of service for workers retiring in 1977 and thereafter. However, the company refuses to bargain for pensioners, and has increased retirees' pensions only once by a small amount in 1970.

Thus Tony Trink retired from Air Brake in 1963 after 40 years of service with a pension of $72.84 a month. In 1970 it went up to $87.84 a month and there it has remained until today although consumer prices have increased by 66 percent.

If Tony Trink had retired today, his pension would have been $420 a month.

Mike Pici retired from Air Brake in 1961 where he had worked for 25 years and currently receives a $76.50 a month pension. If he were retiring today, his pension under the union agreement would have been $262.50 a month.

At Foster Wheeler Co. the 1975 negotiations raised the pension of $6.25 a month per year of service to $10.00 a month in 1977. These increases applied only to workers presently employed and the company refused to apply these increases to previous pensioners.

Our UE Local therefore undertook a petition campaign in which all workers participated, addressed to the officers and Board of Directors of Foster Wheeler. It said in part:

"Foster Wheeler has not raised the pension of its retirees since 1953, although the cost-of-living has been skyrocketing. As a result, retirees of Foster Wheeler have to subsist on company pensions of as little as $2.75 a month for each year of service."

The petition called upon the Foster Wheeler management "to have a heart" and increase retirees' pensions. This plea was ignored and the company's starvation pensions were not increased.

Union-company negotiations in the companies cited above provided a respectable—although far from opulent—level of benefits for workers currently employed. But holding fast to their position of refusing to bargain for their retirees, the companies were able to either deny pensioners any increase at all or to foist completely inadequate increases upon them.

Major companies in auto, steel, aluminum, and can industries have agreed to bargain with unions for their retirees. As a result, the pensions negotiated in these industries are far superior to the unilateral pittances of the electrical manufacturing and other industries that take advantage of the Supreme Court decision and refuse to bargain on the issue.

Our union feels that it has an obligation to protect the living standards of workers when they are retired just as we protect them in the shop. We have helped them organize into retiree groups. Our active members and our retirees have joined together to lobby on a national, state, and community basis to work for legislation in the interests of all the people.

We have sharply raised the plight of pensioners at negotiation meetings. We have worked together with pensioners to picket company headquarters, distribute leafleats, and publicize the company's position to shame the company into meeting its obligtaion to its pensioners.

We've had only limited success in pressing the plight of pensioners because the Supreme Court has blocked us from our most effective weapon, the strength the union can muster in the collective bargaining process.

Together with other unions we have been campaigning for legislation that would require companies to bargain with unions for their retirees.

It would take a simple amendment to Section 8(d) of the Labor-Management Relations Act of 1947 to rectify this injustice. Year after year, bills with this amendment are introduced into Congress and die in Committee without even going to a hearing.

It seems that company lobbyists, up to now, have carried more weight in Congress than the plight of millions of pensioners.

This session of Congress also has before it several bills that would give unions the right to bargain for retirees.

I urge this committee to use its influence in the Congress to strive for the enactment of this piece of legislation so crucial to the well-being of millions of pensioners.

Mr. BLOCK. We come before this subcommittee with a grievance for which we seek redress; namely, that since the Supreme Court ruling that companies do not have to bargain for retired employees, while we in the electrical and machine industry, like other mass production industries, have been able to negotiate substantial improvements for our active members, we have because of this Supreme Court ruling run into somewhat of a stone wall insofar as being able to negotiate any pension adjustments for our retirees—those retirees who gave many years of their lives to enrich the companies for which they worked—and while under normal conditions this is in our view improper and unfair, it has become especially critical because of the skyrocketing inflation.

Our only recourse has been by publicizing the plight of retirees, to in effect shame companies like General Electric and Westinghouse into making some adjustments for pensioners. But even those adjustments have been woefully inadequate. For example, all we were able to negotiate in July 1973, an improvement in pensions at GE, pensioners, retirees, who had received nothing since January of 1971, were forced to wait an additional 18 months, and then the most received by any retiree was 12 percent to cover a period when the cost of living had

soared by 30 percent. This again was repeated in 1977 when the most received was only one-half of the increase of the cost of living.

Westinghouse Corp. did even less than GE.

We think that it is short of criminal that working people have to be forced to picket and demonstrate to call public attention to their plight in the hope they can thereby shame the giant corporations into handing out a few crumbs.

Every other major industry, auto, steel, aluminum, and the canning industries, have, despite the Supreme Court ruling, agreed to bargain with the collective bargaining representatives for their retirees. We ask in effect for simple and just redress to our grievance and the right to bargain for retirees, removal of the obstacle faced by the employees when we sit across from them at the bargaining table. This can be simply and promptly done by an amendment to section 8(D) of the Labor Management Relations Act of 1947.

We urge the committee to use its good offices to see this is done so that justice and first-class citizenship can be regained by millions of needy and deserving pensioners.

Mr. EDGAR. Mr. Chairman, our next witness is George Baker, and he has just indicated to me that he has some additional material he would like unanimous consent to give to the committee along with his statement, and he will read his statement.

Mr. THOMPSON. Without objection, his statement in full and the supporting materials will be made a part of the record. Please proceed.

STATEMENT OF GEORGE BAKER, MEMBER, UE LOCAL 107 RETIREES' ASSOCIATION

Mr. BAKER. My name is George Baker. I live with my wife in Delaware County, Pa., where we raised three children. I worked for the Westinghouse Electric Corp. located in this county for 28 years in a skilled capacity before I was forced to retire at the age of 65 in 1964. That's 14 years ago, and I am now 79 years old.

I am appealing to your committee not only in my own behalf, but also for the many hundreds of retirees at the company's Delaware County plant who have formed an organization called the UE Local 107 Retirees Association. We exist mainly to get pension justice from this billion dollar corporation, so that we can live out our lives without dependence upon our kids, who have families of their own to take care of. We exist so that we can maintain our homes and especially our dignity. We are people who have given this corporation our talents, skills, and sweat for most of our adult lives in the manufacture of the turbine, a product that supplies the world with electricity.

All year we have been literally hounding the staff people of your committee to get hearings started on a bill that would allow unions which have represented me and my kind during our working years to continue to represent me and my kind during our years of retirement.

We can explain how important this is by submitting a list of Westinghouse retirees for your study which includes their names, their retirement dates, the length of their company service, the number of their dependents, and the amount of their monthly pensions. We submit it as a record showing corporation neglect toward those of us who made Westinghouse prosperous. I will cite just a couple of cases from this list.

One retiree after 25 years' service retiring in 1958 is getting $87 per month. Another retiring in 1963 after 33 years' service is getting $95.93. And another retiring in 1964 with more than 35 years in the service of Westinghouse with a dependent to support is getting only $157.61.

During the 14 years of my retirement, Westinghouse did adjust the pensions of retirees on two occasions. Those gestures, believe me, weren't made out of the goodness of the corporation's heart. Far from it. We in our organization devised year-long campaigns, agitational efforts, and demonstrations at the company's Pittsburgh headquarters to get Westinghouse to yield a couple more dollars toward our pensions.

Very frankly, we don't feel we can go through other campaigns like these. We can't fork up the dough to hire buses and our physical stamina is running out. All this is a reason why we need the union to represent us, because with even these efforts Westinghouse stonewalled it and came across with nothing.

To get back to the adjustments Westinghouse made in our pensions, the first of these was so small I forget the amount involved and the year it took place.

The second adjustment was this year, in June 1978. I and my retired fellow workers are just now tasting it. All pensions were raised by 10 percent for persons retired before 1971, a lesser increase for those retired later.

Could I interject a word of my own on that?

Mr. THOMPSON. Please.

Mr. BAKER. This was 10 percent for 3 years. It wasn't 10 percent for each year. At that time the social security had gone up with the cost of living 20.3 percent.

So that the fellow who retired in 1958 got a mere $8.70 more. How we got this is a story in itself. Our association and all our unions in the electrical industry had planned demonstrations at plant gates all across the country on a certain date. They were scheduled for the lunch hour when workers on the job would join them without in any way interfering with production. Our message was a simple one: Raise the pensions. And on the very day before the demonstration, Westinghouse announced its increase.

It hardly needs any comment from me about the slender pension adjustment the company was finally shamed into giving us. In light of past and ongoing surges of inflation, the company's weak gesture toward our needs was scant to say the least.

In granting the pension increase, Westinghouse timed it to coincide with the increase due from social security this year. This was obviously done, after a long-delayed time, to make its small contribution coupled with social security seem like a big thing. By this maneuver, Westinghouse is actually cutting an increase that is morally due us by an amount equal to the rise in Federal old age monthly payments. In effect, what the company was telling us was: Social security will take care of your problem.

I also added here in this a letter from the company at the time that they gave us the 10-percent raise and you will understand their stand on social security.

This kind of game the company is playing with its retirees is being played more and more by many employers in setting up pension plans, mostly in nonunion shops. And it is undermining the Congress' purpose to offset inflationary effects of those of us with fixed incomes. In each of the last 3 years, social security has provided increases totalling 20.3 percent. The Westinghouse increase over the same period is 10 percent for those retired before 1971, much less for those after. And that wasn't yielded until all of us had been enduring the full effects of inflation.

Unions representing their members still on the job fortunately have been able to prevent abuses such as this. We feel that the union could also prevent employer abuses on retired workers. That is why we urge passage of legislation to grant the right of unions to bargain collectively on our behalf.

Let me put it this way. Our members have had good union representation all our working lives and depended on it. Now at 65 years of age Westinghouse has cut us off from this representation at an age when it is needed no less than before we retired.

Now, to further explain our predicament as retirees. At contract negotiations in the past, a package is agreed upon and in this package so many cents per hour are set aside for pensions, which we felt at the time was fair, but inflation has overcome this fairness. And we have no representation to correct the inequities that are compounded.

Testimony before the Committee on Aging chaired by Congressman Rooney brought out the point that no one gives any thought to retirement until retirement comes and then it is too late because the retirees have no one to represent them while inflation keeps moving on and eating into our pensions.

At Westinghouse, the inequities of the pension policy stand out. A worker, for instance, who retired with 35 years' service in 1975 get $9 per month for each year of service. A year and one-half later in 1976, under the terms of an improved contract, the retiring worker gets $11 per month for each year of service. That's a difference of $70 more per month in just 1½ years.

Again, and finally, all this is why we ask for legislation requiring employers to negotiate with our unions. The legislation we are asking for will cost the Government nothing. What it will do is restore the employers' responsibility to their retired workers. We see in this legislation an opportunity to give us a chance. And a chance is all that we are asking for. We think that's the American way.

Thank you.

[Information submitted by Mr. Baker follows:]

The following schedule shows a comparison of pension incomes received by the retirees belonging to Local 107 Retirees Association, and it directly reflects the cost of living changes in respect to the buying power of the dollar. The older retirees are being severely hurt by this. In addition, the medical and hospital expenses usually get much greater as their age increases, and every retiree from the date of his retirement must expect the same continual decrease in his ability to make ends meet.

Name	Retirement date	Years service	Coverage	Amount of pension	Age
J.E. Matthews	1957	13		62.03	86
G. Zener	1958	25		87.00	85
Carl Schrader	1958	36	Self	159.00	85
Walt Reber	1958	44	do	199.28	85
Ed McDonough	1960	20	do	105.00	84
George Boch	1962	25	do	103.00	81
Harry McGuire	1963	33	Self-wife	95.93	80
Oris Sharn	1963	39½	Self	179.00	80
Dan Martelli	1964	35¼	Self-wife	157.61	79
George Baker	1964	28	Self	140.38	79
Emory Harris	1964	41	do	184.00	79
Carl Soderberg	1964	42	Self-wife	156.00	79
Bobert Bellar	1965	45	do	149.18	78
William Hutchins	1967	16	do	82.94	76
E.L. Fitzsimons	1967	24	do	86.00	76
A. Downie	1968	27	Self	127.00	75
John Vzdanovich	1969	21	do	113.71	74
Nelson Ernst	1971	27	do	165.00	72
Alex Brozoshil	1971	30	do	148.00	72
J. Florenza	1971	29	do	189.00	72
J.A. Lincolin	1972	31½	Self-wife	171.00	71
Paul Volk	1972	43	Self	308.75	71
Ken Wagner	1972	48	Self-wife	328.00	71
Alvero Acereto	1974	33	do	274.46	69
John Tonkenson	1975	18½	do	132.00	68
D.F. Palmisano	1975	38	do	308.00	65
Arthur Schiller	1975	47	do	383.00	68
John Schneck	1976	18	Self	193.00	67
Frank Baginsky	1976	42¾	Self-wife	374.00	67
Herb Lewin	1976	31	Self	350.00	67
P.C. Christie	1377	40	Self-wife	366.68	66

WESTINGHOUSE ELECTRIC CORP.,
Pittsburgh, Pa., May 24, 1978.

DEAR PENSIONER: Once again I am pleased to bring you the good news of another increase in pensions provided by Westinghouse. As I have said before, the matter of providing benefits for those already retired after faithful service to the Corporation is always of great concern to our management.

We recognize that rising prices are a particular burden to those living on retirement income, and over the years a number of adjustments appropriate for the times have brought additional benefits to our retirees. We are pleased to announce that as of July 1 there will be an increase in the monthly pension for all those who retired before January of this year. This increase will also go to those who are receiving pensions under the survivor provisions of our Pension Plan.

You know, of course, that another increase in Social Security benefits will be included in the check you get at the end of June. Adding the new increase in your pension from Westinghouse on top of the Social Security increase should be a substantial help in easing the burden of rising costs.

In establishing the amount of the new pension increase, we had to take into account two very significant factors. One is that the increase will apply to nearly 30,000 men and women on our pension roll. Years ago, when we first made an adjustment for people already retired, there were only 6,000 on the pension roll. Now, with nearly 30,000 to provide for, an increase in monthly benefits represents a considerable cost to Westinghouse.

Also, we have to take into account the fact that every increase in Social Security benefits adds to our costs. As you may recall, since 1974 increases in Social Security benefits have been automatic every year. The only way our government gets the money to pay for those increases is from companies like Westinghouse and from the employees of the companies. Westinghouse must match what our employees pay in Social Security taxes, dollar for dollar. As a company, last year we paid more than $96 million in Social Security taxes.

In determining the amount of the pension increase, the fairest arrangement seemed to be to grant the largest increases to those retiring on or before January 1, 1971. Improvements in our Pension Plan since then have meant higher benefits for those retiring in succeeding years. On that basis, the new adjustment will mean a full 10 percent increase for those who retired *on or before* January 1, 1971. For those of you who retired *after* that date, the increases are gradually smaller, depending on the year and month when you retired.

If you are among those who retired after January 1, 1971, on the back of this letter are some examples of what the new increase will mean. There is also a space for you to figure for yourself what the amount of your increase will be.

Of course, if you retired *on or before* January 1, 1971, your increase will be a full 10 percent of the pension you have been receiving.

Your pension increase will begin with the check you receive July 1. After you receive your July check, if you have any questions, I suggest that you contact Mr. P. E. Toothman, Supervisor, Pension Plan Administration, Westinghouse Electric Corporation, Westinghouse Building, Pittsburgh, Pa. 15222.

Speaking for our management and the Board of Directors, I want to say how pleased we are to be able to make this announcement. And personally I should like to take this opportunity to send you my best wishes for many more years of happiness and good health in the retirement you have so well earned.

Sincerely,

ROBERT E. KIRBY.

EXAMPLES OF INCREASES IN PENSION BENEFITS (FOR THOSE WHO RETIRED AFTER JAN. 1, 1971)

[The new increase will be 0.0012 times the number of months of retirement before Jan. 1, 1978.]

	Months retired prior to Jan. 1, 1978		
	Example A—Retired on Dec. 1, 1972 and is presently receiving a pension of $210 a month	Example B—Retired on May 1, 1974 and is presently receiving a pension of $250 a month	Your own figures
Year:			
1977	12	12	----------
1976	12	12	----------
1975	12	12	----------
1974	12	8	----------
1973	12	----------	----------
1972	1	----------	----------
1971	----------	----------	----------
Total months	61	44	----------
	×.0012	×.0012	×.0012
	.0732	.0528	.
Present pension	$210	$250	$----------
	×.0732	×.0528	×.
Pension increase	$15.37	$13.20	$----------
Present pension	$210.00	$250.00	$----------
New pension	$225.37	$263.20	$----------

Note: For those who retired on or before Jan. 1, 1971, the new increase will be 10 percent (0.10) of your present pension: Present pension $ times 10 percent equals pension increase.

Mr. THOMPSON. Thank you very much. All of you.

I am sure you are aware of not only our continuing interest but that of Congressman Edgar who has spoken to us many times about this legislation. I am sure you are aware also that we have had a very, very heavy schedule of legislation in this Congress and that is the reason why we are taking this up at a relatively late date. We do think that it is extremely important that it be heard and that interest in it continue and I hope expanded so that the atmosphere with respect to it improves.

I do find that a great many of my colleagues, in addition to the 30 some who have legislation in, have expressed interest and sympathy in this because I don't think there is any section of the United States that doesn't have a great many retired persons living in it, especially many who have worked in industry, as have you gentlemen.

Mr. Erlenborn.

Mr. ERLENBORN. Thank you very much, Mr. Chairman.

I noted that we will be having later in the day some attorneys who maybe would be better qualified to answer most of the questions that I have, but let me say at this point, I don't think there is anyone in the Congress who would argue with the purpose of this legislation. It certainly is well-meaning legislation and it certainly reaches a problem of great proportions, but to fail to ask the questions that must be asked and the answers must be provided would, I think, do a disservice to all of you. We should not let you believe there is no problem at all with legislation of this sort, so I intend to ask some of these hard questions so that the hearing record may establish exactly what this legislation does and does not do.

I noted Mr. Edgar said that this legislation has no cost. He amended that to say it has no cost to the Federal Government. There is very little in this life that we can do that is worthwhile that doesn't have a cost, and I think he recognizes there is a cost in this legislation, though it is not a direct cost to the Federal Government.

Mr. Block, let me ask you this. You are a union official. You, no doubt, have engaged in negotiations. Is there anything in the Pittsburgh Plate Glass decision that prohibits you from negotiating for a cost-of-living increase clause in the pension agreement?

Mr. BLOCK. Well, very simply, that the companies like General Electric and Westinghouse take a flatfooted position that they are not required, that the union does not represent retired employees and the company is not required to negotiate.

Mr. ERLENBORN. Let me restate the question. I am not necessarily talking about increasing the benefits of retired employees but rather negotiating a cost-of-living increase clause for the current contract, which would affect current employees as well as those already retired.

Mr. BLOCK. Well, the company makes it very clear that they are not willing to negotiate anything that is going to benefit employees who are retired from the company, be it an adjustment or a cost-of-living clause.

Mr. ERLENBORN. Is it your opinion then that the Pittsburgh Plate Glass decision prohibits you from negotiating with the company as a mandatory item of negotiations the addition of a cost-of-living clause to the pension agreement?

Mr. BLOCK. I am not really sure about that, Mr. Congressman. I am not quite sure of the technicalities of the law but I know quite well what the attitude of the company is and I want to repeat it. They make it crystal clear they will in no way negotiate anything that is going to benefit any employee who is retired from the company.

Mr. EDGAR. If I could respond to that. I think what the decision says is that you could negotiate for present workers so that when they retire they do have a cost of living increment. That would not be retroactive to include someone like Mr. Baker who retired in 1964 and whose cost for groceries and rent and housing is the same as that person who retires in 1979 or 1980 but who would receive a pension far less because he would not be covered by that particular provision. I think that bargaining negotiations could consist of a discussion of a cost of living increment for present workers.

Mr. THOMPSON. If you would yield. As I understand the law, as Pittsburgh applies, the companies could voluntarily, and some do, take

into consideration retirees, but they have an absolute right under Pittsburgh to say, "No bargaining relating to retirees at all." So it is a voluntary situation.

I think, as you said earlier, there are questions which need to be asked and answered from later witnesses, the lawyers, and we will get to those, I am sure.

Mr. BAKER. Mr. Chairman, I would like to get a point right on that subject. Three years ago, when negotiations were going on in Pittsburgh between Westinghouse and GE, Westinghouse and the UE organization, at that time we were picketing outside the Westinghouse plant and I guess we made a little bit too much disturbance and they invited two men up out of the pickets and brought them up and the minute they go up in the hall, the minute they got up at the bargaining table, everybody closed up their books, left their pencil and listened and said "Thank you, goodbye" and that was it. They don't have to negotiate under the law as it is.

Mr. ERLENBORN. Mr. Block, I have done a good deal of work in the area of pensions on another subcommittee of this committee and was one of the draftsmen of ERISA, with which I am sure you are familiar. If you have anything to do with the pension plans you have a lot of reports to fill out. There are varying theories as to what a pension plan is, ranging from deferred compensation to employees pooling of current compensation, to protect them for their retirement years, to welfare benefits.

How do you view a pension agreement? Is it a contractual agreement or is it a welfare plan, or is it a pooling by the employees, or some other theroy?

Mr. BLOCK. I consider it as a contractual agreement, and more than that, I consider it as a right that a worker, someone, a man or woman, who goes to work for a corporation and puts in the best years of his or her life work for that corporation, enriching that corporation, that there is some responsibility on the part of the company to provide for that worker when the worker can no longer work.

Mr. ERLENBORN. Pursuant to the agreement reached between the employees and the employer?

Mr. BLOCK. In our case pursuant to the agreement reached between the employees and the employer, but I think it goes beyond that, Mr. Congressman. I think there is a moral right, obligation.

For instance, I would like to give you a couple of examples of what I am talking about. We have a fellow by the name of Tony Trink who retired from Westinghouse Air Brake in 1963 with 40 years of service, with a pension of $72 and in 1970 it went up to $87, and there it remains although consumers prices have increased by some 66 percent, and the record is replete with these kinds of examples. I know you may think that we are sort of cherry picking. I am prepared to provide the committee if you so desire a complete breakdown of General Electric employees and Westinghouse employees who retired and what their pensions are, and believe me there is nothing grandiose about them, they are pretty poorly.

Mr. ERLENBORN. Let me ask you this. Under this legislation is it your understanding the retired employees would have to remain members of the union to be entitled to this service?

Mr. BLOCK. No, it is not.

Mr. ERLENBORN. Would they be required to pay dues?

Mr. BLOCK. No; they would not be required to necessarily. They could or could not.

Mr. ERLENBORN. Would the union be required to represent the retired employees in a grievance procedure? I know Congressman Edgar's statement says the bill requires that employers listen to a retired worker when he has a grievance regarding his or her pension. If there are grievances, who represents the retired employee with the company or with the pension trustee?

Mr. BLOCK. At the present time, nobody.

Mr. ERLENBORN. I mean under this legislation will the union be required to represent the retired employees in grievance procedures?

Mr. BLOCK. Oh, I would hope so.

Mr. ERLENBORN. That brings up another question. I am not going to extend this questioning. As I said, probably most of these questions can best be answered by the lawyers later. I think I would like to have the union viewpoint as well. Most people feel that in negotiations there is a certain amount of compensation that can be given by the employer. There are other theories that say the employer has a bottomless well. Most people say there is so much for the employer to pay in total compensation to remain competitive, then through the negotiations you decide how much will be directed to salaries, how much will go for health benefits, how much for retirement and so forth. Now, I think that was referred to by our colleague Gary Myers, as "a slice of the pie."

Let us say we have a whole pie here as the amount the employer is able to pay. Will there be a conflict of interest for the union negotiator in deciding how much of that pie will go to retired employees versus how much will go to current employees who are active union members? Is there not a conflict of interest that will be faced by union negotiators in determining the former union members' part of that pie versus the current union members' part of this pie?

Mr. BLOCK. I would think not, no more than the conflict that we are confronted with when we negotiate improvements in vacation, when we decide whether the employee who has 25 years of service gets an extra week of vacation while the employee who has only 2 years only gets a day. I would think not.

The characterization of slicing up a pie is one that is kind of a little repugnant to met. The fact of the matter is retirees now are eating humble pie.

Mr. CORNELL. Would you yield?

Mr. ERLENBORN. Yes, sir.

Mr. CORNELL. It seems to me, if I recall correctly, that the first contract negotiated in the last coal dispute reduced the benefits. There was agreement to reduce the benefits for retirees, so there is substance to what you say that it is possible that the retirees may not benefit necessarily by the representation by the elected union officials at a given time if there are others concerned about the benefits of those who are presently working.

Mr. THOMPSON. If the gentleman would yield further. As I interpret this proposal—this is for your benefit, Mr. Block—it would seem to me that the union would become involved in a grievance for

retired employees only, if that grievance had a direct relationship to the contractual agreement arrived at before the recipient of the pension retired, and only for that purpose.

Mr. BLOCK. Exactly.

Mr. ERLENBORN. I am not certain I see that in this legislation, but it is your feeling that if a grievance arises relative to an employee already retired, that that grievance would not be handled by the union?

Mr. BLOCK. What kind of a grievance could arise?

Mr. THOMPSON. It's absent explicit language that leaves it, as I see it, implicit that the union would represent in a grievance procedure the retiree only when there was a direct relationship between the grievance and the retirement contract under which the worker retired.

Mr. BLOCK. The only conceivable grievance I could see under those circumstances, Mr. Congressman, would be one where the company failed to pay benefits they had contractually agreed to. I could see no other grievance. When one payment starts then it becomes automatic until termination by death.

Mr. ERLENBORN. Well, there are many varieties of pension contracts. You have joint and survivor annuities that may give rise to some.

Mr. BLOCK. Once the election is made then your feet are in cement on the thing.

Mr. THOMPSON. That is a northern New Jersey expression.

Mr. BLOCK. In northern New Jersey it is more than feet.

Mr. THOMPSON. That depends on how far you stick them into the concrete.

Mr. ERLENBORN. From your experience with the defined benefit plan, how would this act apply to a defined contribution plan?

Mr. BLOCK. I don' think it would be any different. I don't think it would have any different effect while you have a defined contribution plan, eventually it has to be converted into benefit.

Mr. ERLENBORN. Well, then, would the union be representing the retirees before the trustees of the Taft-Hartley jointly administered plan?

Mr. BLOCK. Well, our experience, and I can only speak from our point of view, we have no such plans so that we would not be concerned with that.

Mr. ERLENBORN. I think that is the sort of question perhaps we should direct to the attorneys later.

Thank you very much.

Mr. THOMPSON. Father Cornell.

Mr. CORNELL. No questions.

Mr. THOMPSON. Mr. Kildee.

Mr. KILDEE. Just raising a point.

Mr. THOMPSON. Did your father retire?

Mr. KILDEE. My father was in the first group of retirees from General Motors in 1950, a few years after they carried him out of the plant, I might add. My mother by the way is receiving some benefits under the last General Motors contract. Part of her Blue Cross is paid, but under the present law it is like extracting teeth to get anything because they can close the books up and refuse.

Mr. THOMPSON. UAW and the auto industry do voluntarily bargain.

Mr. KILDEE. Yes, but it is difficult. At the present time there is a

fairly good arrangement but at any point they can close the books up and say, we will not negotiate this under that decision of the Supreme Court.

Mr. ERLENBORN. Would you yield, the gentleman mentioned Blue Cross and health benefits. I wonder does this proposed legislation cover that type of retirement benefits?

Mr. KILDEE. I was going to ask two things on that. From my knowledge of labor negotiations there are two steps. One is negotiating for the contract——

Mr. BLOCK. Yes.

Mr. KILDEE. And then subsequent to negotiating for the contract is the handling of grievances.

Now in the discussion back and forth here I think there has been a kind of blending of those two separate things, first of all negotiate for a contract and second take the processing of grievances. This bill primarily addresses itself, does it not, to negotiating for the retirees. That is the primary purpose, is it not?

Mr. EDGAR. That is correct.

Mr. KILDEE. Later on there may be some grievances. Maybe my mother might find out her Blue Cross payments have stopped. She might go to the local union hall and ask them to check out why they are stopped. That would be rather peripheral to the purpose of this bill. The bill is really negotiating for retiree benefits.

Mr. BLOCK. Correct.

Mr. EDGAR. If I may speak to that briefly. I think the many Members of Congress who have put this legislation together have sought to redress the problem of having some mandatory help in negotiating on behalf of retirees. I think that Mr. Erlenborn, Mr. Cornell, Mr. Kildee, Mr. Thompson and others on this committee, as you question the lawyers and the legal people, can draft amendments that can cover the instances of concern that have been raised today.

I think what we have tried to do in putting the legislation together is to demonstrate to you that there is a real problem and that there is a frustrating problem, particularly for someone like Mr. Baker, 79 years old, retired in 1964, and who simply can't afford to exist on the meager pension that he receives. He needs some help with that particular problem, and I don't think the retirees want to get into a long contractual problem of grievances and counter grievances, et cetera. I think they simply want equity in their pension plans and feel that if they could have this as a mandatory item of negotiations, as it is done voluntarily by most unions and management, that really have consciences as it relates to their retirees, that they could be helped and they could be provided with a standard of living, not an affluent standard of living, but a standard of living that could at least keep them in touch with where we are in our society.

Mr. KILDEE. Congressman Edgar has summarized basically the point I was trying to make. It is in the contractual part during the negotiation of the contract that you find the vital decisions being made that will affect the retirees.

Mr. BLOCK. That is correct.

Mr. KILDEE. Thank you very much.

Mr. BLOCK. I think it is important to point out, Mr. Congressman, were such legislation to be passed, of course, doesn't automatically flow from that that pensioners are going to receive any benefits. All that

does is give us the right to negotiate. There is no guarantee and, of course, our experience with those corporations is that they are not the least bit bashful about saying no. Then the problem comes of convincing them they ought to do something about pensioners. The legislation doesn't do that.

Mr. THOMPSON. We understand that. Thank you very much, Congressman Edgar and gentleman.

Mr. EDGAR. Thank you.

Mr. THOMPSON. Our next witness is a representative of locals 254 and 255 of the Retired Members Council of the IUE of the AFL–CIO.

STATEMENT OF LEO A. RODGERS, A REPRESENTATIVE OF LOCALS 254 AND 255, RETIRED MEMBERS COUNCIL, IUE, AFL–CIO

Mr. RODGERS. My name is Leo A. Rodgers. I formerly served as vice president and chief of staff during two or three terms of the union that I joined. I was kept out of that union for 9 years after 1950, then I came back in. I am now president of locals 254 and 255, Retired Members Council.

Before I start, I would like to say something to this gentleman here, if I could, on the questions he asked Mr. Erlenborn.

You asked me why we are interested in this bargaining bill. In the first place, whatever you do in negotiations with a company, even indirectly when we buy a car, we have to take and pay for that increase as retirees when we buy a car. When people get a raise in your pension, or anything like that, we indirectly have to take and pay additional taxes to take care of the situation, so I believe what we are doing is trying to get equity in the fact we are taking and paying an awful lot of costs, like the schoolteachers when they get a raise, and State taxes in my State, especially this is going to cost us $500 million more per year to take care of the State and local governments. That is why we need more help.

Mr. ERLENBORN. I don't think there was any question of that and I didn't question why you would want it. That was not one of my questions.

Mr. RODGERS. Also, I would like to say this. We are a bunch of people that worked for 44 years for the General Electric Corp., and I think that I gave them a good day's work every single day I worked. By no means will I have to go on welfare and starve myself the rest of my life. My statement is very simple. Most of it has been said here.

Our locals 254 and 255, Retired Members Council, IUE, AFL–CIO, has sent me here to represent them and present their views on H.R. 263 or H.R. 7989, the bill which will give our unions the right to bargain for us.

In 1971, the Supreme Court decision on the *Pittsburgh Plate Glass* case ruled that companies did not have to bargain with unions for those already retired.

We, along with many other clubs and organizations, started to ask our Congressmen to enter a bill into Congress to give our unions the right to bargain for us as retirees.

Bills on this subject have been introduced into Congress for the past 6 years. We are in hopes that they will be acted upon at this

time. Here are a few reasons for asking the committee to look into this bill and to give it careful consideration.

One: The moneys in our plan—General Electric—have been contributed both by the company and by the employees. This should give the employees a say as to how the moneys are disbursed. Most of us, who are now retired, contributed from the beginning to the end of our working years into our pension plan, and for this reason, our union should have the right to speak for us.

Two: Inflation, since 1970 there seems to be no way of checking inflation. Federal, State, teachers, and other governmental employees have a cost of living built into their pensions. This means we must pay increased costs in taxes, higher postal rates, et cetera, to take care of these cost-of-living increases. We, in the same way, would like to have a cost of living built into our pensions. We need a law to help us to do this.

Three: Workers who retired before 1970 average about $100 per month. In our company they have received two raises, 12 percent and 10 percent since 1970. Cost of living meantime went up approximately 75 percent. It is no wonder that they are in trouble making ends meet. This group really needs our unions to bargain for them. The workers produced for the war effort and made the country what it was. Now they need your help.

Four: It will not raise the national budget. In this day of inflation, this is a big reason to favorably report on the bill. I say that because we are not responsible for what it is today. We work up until 70 or so and we quit.

One last thought I would like to leave with the committee is that last July, my wife and I received $30 more in our cost-of-living adjustment on social security and this equals $360 per year. It was just in time as the taxes on our home went up $352 and our State income taxes went up $55 as we lost our medical deduction. Just an example of what one faces when he or she lives on a fixed income.

Thank you for listening to our side. Our club hopes you will act favorably on H.R. 13535.

Mr. THOMPSON. Thank you very much.

Mr. RODGERS. That is my statement for your committee.

Mr. THOMPSON. Mr. Erlenborn?

Mr. ERLENBORN. Just briefly. Do employees as well as employers contribute to your plan at General Electric?

Mr. RODGERS. When we negotiated the plan in 1946 it was purely on a contribution basis. We both contributed to that plan to get it started.

Mr. ERLENBORN. Is this still true?

Mr. RODGERS. We know there is $3.9 billion in there now. We know over the next year there is going to be over $4 billion. If that money is invested at 8 or 10 percent it would bring enough income to pay off with last year, with all the additional people retiring now, they only paid out $150 million in benefits, so we know this plan can stand a few more dollars.

We would like to get a cost of living built in.

Mr. ERLENBORN. Is it still true the employees contribute as well as the employer?

Mr. RODGERS. I think it is 1966 or something, they negotiated to strike out the 2 percent that the employees were paying on their first social

security amount of money, that would then become part of their pay envelope, but that is the same, still contributed, because they got a 2-percent wage increase, they do pay an additional 3 percent, which is over the social security limit. I think it is $6,600 that they set.

Mr. ERLENBORN. So the employees do still contribute?

Mr. RODGERS. That is right. I want to say this. John Chambow, chairman of the GE board, I attended a GE board conference, I talked to and explained to him, read off the report, we get it on the pension trust, broke it down for him and showed where the company can give it to them.

He said:

> Bus, we use your facts and figures and argue with the company getting the increase. The only ones we can get for is the people already working. When it comes to your people the company says if that is all you have to talk about, let's adjourn.

We want to try to stop that.

Mr. ERLENBORN. Would it be possible that those who are working for General Electric today and contributing to the pension plan might feel that their contributions are going to pay higher pensions for retired workers?

Mr. RODGERS. I don't believe you will find that to be very much in the majority because I speak before the membership of our locals and everyplace, I go all over the northern part of New England speaking to them, and I have yet to run into that. Every year they raise the amount of money they will be contributing to support our people and making our locals go. Each year it goes up $200 or $300 while the amount of people working in the factory goes down at least 400 or 500 people a year.

Mr. KILDEE. On that point, I was at one of the local union halls in my district this weekend and purchased a button for $1, called a COLA—cost of living adjustment—button. These were sold by the young workers. When I bought my button it was a fellow about 22 years old and he was campaigning and sold me the button to get a cost-of-living adjustment for retirees, so you do find this fraternity and comradery. They realize they are all in the same lifeboat together.

Mr. RODGERS. Most of these people in our plant, I would be the father of people working, my wife and I would be father and mother of those people, they don't want to go against what we are doing now and it would be the same way generation after generation. We are looking for protection, we are trying to get, which your committee is finally doing something, by allowing us to come to this hearing and present our views.

Mr. THOMPSON. Thank you very much.

Mr. RODGERS. I want to thank you, too, for letting me come.

Mr. THOMPSON. Our next witness is Marie Dulski, the president of the Retail Clerk Union's, Local 770 Retirees' Club, and secretary-treasurer of the Southern California Council of the Retail Clerks' Retirees' Clubs.

I might note Ms. Dulski succeeded the late and marvelous Sam Berman.

STATEMENT OF MARIE DULSKI, PRESIDENT, RETAIL CLERKS UNION, LOCAL 770 RETIREES' CLUB AND SECRETARY-TREASURER, SOUTHERN CALIFORNIA COUNCIL, RETAIL CLERKS' RETIREES' CLUBS

Ms. DULSKI. Yes, I have sort of taken over for him since he is gone. He has gone and I worked with him all the while that he was working on this, being secretary of the club and taking his notes and everything.

I am not going to read the detailed statement that I have here because it is lengthy.

Mr. THOMPSON. Without objection, your statement and appendices of the letters will be made a part of the record.

[The statement referred to above follows:]

STATEMENT OF MARIE DULSKI, PRESIDENT, RETAIL CLERKS UNION, LOCAL 770 RETIREES' CLUB

Gentlemen, my name is Marie Dulski, and I am Secretary-Treasurer of the Southern California Council of Retail Clerks Retirees' Clubs. I am also President of the Retail Clerks Union, Local 770 Retirees' Club in Los Angeles, California. Rather obviously, I think, I am a retiree myself, and I am sincerely grateful for this opportunity to address you on an inequity that is causing severe hardship to thousands of us older citizens. Today, I represent not only more than 11,350 Retail Clerks Union retirees in Southern California, but also unnumbered others who are not privileged, as I am, to be here to discuss the vital need for passage of HR 7989.

In 1960, I retired from work as a Retail Clerk with over 25 years of service in the Retail Drug industry, and 20 years as a union member. I receive a pension of $52.60 a month with no provision for adjustment to meet the rising cost-of-living. I'm sure you realize that my present pension, along with Social Security, leaves me almost destitute toward the end of each month. But I did not come here to complain of my personal status. I have a much more important mission.

I must urge you to take long-delayed action on the current pending legislation to make it mandatory under the National Labor Relations Act for an employer to bargain collectively with respect to retirement benefits for retired employees.

As you know, in 1971, a Supreme Court decision held that retirees are neither employees nor members of their bargaining unit and therefore employers could not be required to negotiate for retired workers. I'm sure the Court, in its wisdom, felt there were legal requirements which made the decision necessary. But I'm also sure the Justices failed to realize the impact their decision would have on thousands of retired persons like myself.

Without realizing it, they made an inhumane decision that has placed an undue burden on retirees ever since. Everything that is fair and equitable flew out the window when they handed down their judgment. For example, you are well aware that several increases in Social Security have been made during the past several years. But because employers do not have to consider their past employees' benefits, those of us on union-won pensions stay at the same low level as when we started.

Some might say pensions should be based on wages current at the time the pension is granted. It sounds good. But it doesn't work. It doesn't take note of the cost-of-living spiral—the ever-rising price of food, the skyrocketing cost of medical care (even with Medicare's welcome assistance), the inflation that continues to erode the paychecks for those who still work for their living, let alone those who have retired.

May I point out that the proposed legislation has been pending for many years. My late colleague, Sam Berman, testified before a Congressional Committee in San Francisco on November 24, 1975, almost three years ago. Sam, God rest his soul, has since passed on—just a few months ago, in fact. And I carry the same torch, feeble though it may be, as he did.

If action had been taken on his plea, there would now be the possibility of some improvement taking place. You see, my union (along with eight other

locals in Southern California) has just completed negotiations on a major contract, covering the food industry in that area. So it will be another three years before there is any possibility of favorable action in behalf of our members, even if Congress passed HR 7989 tomorrow! Prior to those negotiations, we retirees sent a letter to each of the nine local unions involved, along with a resolution to be presented to their members, urging that their negotiators seek revision of our pension program, to provide greater benefits. Copies of that letter and resolution are attached to my statement. And I am proud to say that the active members of all these unions—numbering some 75,000—approved our resolution, urging that their leaders take action in our behalf.

Now—what happened?

Let me quote from the Voice of 770, Local 770's monthly publication. This is from President Kenneth Edwards' report to the membership, just published last week. Writing about the five-day strike which resulted in a new contract, he said this:

"On the subject of pensions, let me comment on something that was most distressing to me! Our retirees, the people who made this Union and helped us so much during the strike, deserved much more than their existing pensions. A strong demand was presented from all of the Local Unions and it was on the bargaining table at the very last moment of negotiations. Unfortunately, it would have been the only unresolved issue which, at that point, would have made a strike illegal, as it is not mandatory for employers to bargain on this issue. We were therefore unable to win anything more for retirees. This emphasizes the need to redouble our efforts to change the law to permit us to strike for this principle. It is painfully clear that the employers will not improve the pensions as a matter of equity or morality. We need that change in federal law."

Gentlemen, I have attached to my statement which you have in your files, a letter sent to me by President Edwards, in which he says essentially the same thing. I believe this statement and letter make the entire problem crystal clear—without a change in the law, we retirees must continue to suffer—needlessly!

Incidentally, the unions were able to negotiate a substantial gain for currently employed members—they will receive up to $900 after 30 years of service, during the third year of the new agreement. I think that's wonderful! But it emphasizes even more how pitfully small is my $52.60 a month! We who laid the groundwork for that fine pension are shut out by federal law, while the current workers, both young and middle aged, would seem to owe us a special debt—one that cannot be paid because of restriction laid down by a Supreme Court that has made a supreme oversight! They leave us to shed bitter tears, because the employers have chosen to treat us as lepers.

Gentlemen, America has always had a basic sense of fair play. That's the keystone of democracy—government of the people, by the people, for the people. Yet, in this instance, we whose need is greatest are shut out. I realize there are many pieces of legislation for Congress to consider. But this bill—H.R. 7989—is one whose time has come. Human compassion, if not commonsense, necessitates changing that Supreme Court ruling.

For most of the retirees in our Southern California Retail Clerks Unions, new contracts covering the food industry, drug industry, and other retail sales stores have been recently signed for the next three years, so that early action by the current Congress will be of no usable value until these contracts expire in 1981. But what a lift all of us would experience, just knowing that our voice has been heard in the halls of Congress—that come 1981, our union leaders can insist that consideration be given to adjustment of past retirees' pensions and benefits.

I've heard that the Employee Retirement Income Security Act of 1974—known as ERISA—has brought a lot of changes in pension programs across our land. I think that is fine; I hope ERISA does a lot of good for a lot of people. But I also think it is high time that collective bargaining rights concerning those already having retired be restored.

I guess I'm repeating myself.

Just one more point, gentlemen: I could have provided you with statistics on the small amounts many other retirees, like myself, now receive, with no hope of improvement unless the law is changed. But I think you've already reviewed those figures. So I address myself to only one thing: human compassion.

For all the elderly of our land who are locked into a meager existence with no hope of a better tomorrow, you can paint a rainbow of anticipation. You can pass H.R. 7989 out of committee and promote its passage on the floor of the House and in the Senate as well. It may well be that like so many others who have

passed on, your action will be of no benefit to me. But if my appearance here today can spark your interest, your dedication to see to it that this unfair situation is changed, my greatest goal will have been achieved. I hope you'll let an old lady enjoy knowing that this small effort on my part will not go unnoticed.

Gentlemen, I urge passage of H.R. 7989. Your reward will be the heartfelt thanks of thousands of retired workers who deserve your consideration, and who can look only to you for relief.

Thank you very much!

RETAIL CLERKS UNION LOCAL 770,
Los Angeles, Calif., September 1, 1978.

MS. MARIE DULSKI,
President, Retail Clerks Union, Local 770 Retirees' Club,
Los Angeles, Calif.

DEAR MARIE: By the time you receive this letter, you will have heard that the food contract settlement has been ratified, after a five day strike that was in its own sense a "five day war."

Believe me, Marie, that even in the final hours of negotiations before the strike, we were pleading the cause of the retirees—to no avail.

The fact that we had to strike to secure acceptable working conditions and wages for the 55,000 members employed in the Southern California food markets should give you some indication of the employers' attitude toward retirees!

Since negotiations for retirees is not a mandatory bargaining issue, appealing to the employers to make an adjustment for retirees based on merit or morality alone was useless. But we tried until the 11th hour! And we'll try the next time as well. Meantime, we must direct our efforts continuously to the legislatures to make this a mandatory bargaining issue. I'd suggest you and the other Club members renew even more vigorously your efforts in this direction, starting immediately.

In the meantime, again my thanks to all for offering your support during these difficult negotiations.

Kindest regards.

Sincerely and fraternally,

KENNETH EDWARDS,
President.

DEAR PRESIDENT _____: Attached is a resolution drafted by members from the various Southern California Retail Clerk Retirees Clubs. We feel that bargaining for improvements in pension benefits for past retirees should be a top priority in the 1978 Food, Drug and General Sales negotiations.

We understand that retirees do not vote for the acceptance or rejection of contract proposals and for this reason negotiating on behalf of retirees is not always given a top priority. This is evidenced by the fact that in the Food Division, no increase has been granted to the retirees since April of 1969 and at that time although we received a one time increase, we also lost the cost-of-living adjustments that we enjoyed until 1969.

For this reason we have drafted the attached resolution in the hope that you will present it to the active members of your local at the next scheduled membership meeting.

If this resolution is passed it will provide you and the Retail Clerk negotiating team with a mandate from the membership to negotiate on behalf of retirees. We feel that this approval from the active membership is necessary because so often we hear that the unions are unable to negotiate on our behalf since employers do not have to bargain for us under the Taft-Hartley law. And yet the employers tell us that their main concern is the total amount of money negotiated and not the distribution of that money into benefits for actives rather then retirees. We ask that a commitment be obtained from the membership that a portion of the total package be used for retirees. Since this portion of the money negotiated might otherwise be used for the benefit of the active members we feel the decision on whether or not we are entitled to a decent retirement ought to be up to the membership. After all, we were the ones who established the union and fought for so many of the benefits that they enjoy today. A small committee of retirees would be glad to explain our plight at the time this resolution is presented to the membership.

Thank you in advance for your prompt attention to this request, we are,
Fraternally yours,

P.S. Would you please advise us of the date your membership acted on the resolution.

Whereas, the Southern California Retail Clerks Unions, with the support of the rank and file membership, pioneered pension trust funds over two decades ago, and

Whereas, many thousands of Retail Clerk retirees are presently receiving inadequate monthly pensions because adjustments in pensions for past retirees haven't been accomplished in recent negotiations, and

Whereas, the General Sales, Drug and Food Pension Trusts have grown significantly in financial strength, and

Whereas, negotiators, this year, will deal with revising present pension programs,

Now therefore be it *Resolved*, That the active membership of Local _____ go on record of supporting the union negotiators and endorsing the concept of improving pensions for our past retirees.

Mr. THOMPSON. I note the bells have just rung. I would like to inform those in the room that we were scheduled to go in at noon today but because we had to rise early yesterday for the joint session of last night, we are going in at 11 and so we would like to speed along, however, without denying anyone the right to say what they want. It is my understanding we face three immediate votes on the unfinished work of yesterday.

Please proceed.

Ms. DULSKI. Well, you have the detailed statement and there is no reason to repeat that. The Supreme Court decision has crippled all the negotiations to help the past retirees in updated contracts and knowing that the detailed materials that Sam Berman brought to your hearing almost 3 years ago from our local unions and also from the California Federation of Labor, the Meat Cutters' Union, Andrew Beimiller, AFL-CIO, regulations and all, Sam really did a terrific job of getting all his information together, so there is no need for me to go through the same, even if I had time to do it.

I do want to give some new information and the only thing that I really could come up with was the Southern California Council of the RCIU Retirees' Clubs, of which I am secretary-treasurer, sent a letter to all nine union presidents, and said when they were holding the meetings before the negotiations started. They asked the employees what they would like to have in the future contracts, and we sent this letter with some resolutions attached and asked the union presidents to read these at the membership meetings.

In fact, the president of our Southern California Council, Phil Cowan, went to a food meeting at Santa Monica Local 1442 and he read these resolutions to them, and the members of the union voted unanimously to ask the union to please work to get something in the contracts for the past retirees.

I happened to go to the food meeting for Los Angeles Local 770 and also to the save-on drug membership meeting and they were really shocked to learn about our problems. They didn't know we were getting so little, and so they, too, voted unanimously to ask the president of the union to try to get something in the contracts for us.

Well, we really were thrilled. We thought, well, that is a mandate from the members and the employers would go for it, you know, but we were foiled, because the employers would not recognize the em-

ployees' mandate. They only recognized a Supreme Court decision, and that was that, and even the mediators who arrived from Washington said that this was not a strike issue as retirees are no longer union members.

Well, we lost again and nothing can be done for us as far as southern California retirees are concerned, and no negotiations will be held now until 1981 because the contracts have been signed, sealed, delivered, and done for this year. But we are not selfish and we are thinking about the many unions across the country who need this bill passed. They really have to have some relief for their past retirees, and we plead with you to take action on this immediately, if not sooner, as it is imperative and vital to past retirees of many unions across the United States. Maybe if we are still alive it will help us in 1981 when the contracts come up again.

So, I thank you for your indulgence. If there are any questions you would like to ask?

Mr. THOMPSON. Thank you. I hope that we do something with this before 1981. I do appreciate your coming.

Ms. DULSKI. Thank you.

Mr. THOMPSON. Our next witnesses are to be pension specialists, Mr. Jay Tower, staff attorney for the Pension Rights Center. We have Mr. Ed King, representative of the National Senior Citizens Law Center, the two of you together; is that right?

Mr. TOWER. I understand that is supposed to be the form.

Mr. THOMPSON. Mr. King, Mr. Tower, please proceed.

[The prepared statement of Jay Tower follows:]

STATEMENT OF JAY W. TOWER, STAFF ATTORNEY, PENSION RIGHTS CENTER

Mister Chairman, I am Jay W. Tower, Staff Attorney for the Pension Rights Center, a nonprofit independent group organized two and a half-years ago to promote and protect the pension rights of individuals.

My comments today on H.R. 13535 will be general in nature. With the Chairman's permission, however, we will submit a more detailed evaluation of the Bill in four weeks.

We fully support H.R. 13535 as an essential first step toward ensuring that the workers of yesterday will not fall victim to the economic vicissitudes of today. Our experiences indicate that in all too many instances, retirees must live on pensions the real value of which is shrinking rapidly. One of the reasons for the shrinkage in value is the inability of either retiree or active worker to force employers to consider the plight of the retiree.

H.R. 13535 would require employers to bargain when those unions which want to push for increases in retiree benefits do so. However it does not resolve the basic retiree benefit level program. Amendment of Section 8(d) of the National Labor Relations Act only makes the benefit of retirees a mandatory subject of bargaining for actives. It does not instill an obligation on either union or employer to raise the issue of retirees' benefits. Furthermore, when the issue is raised, the amendment does not require the union to push for improved benefits with a fervor equal to that on behalf of the benefits of active workers. If a union's active membership decides that retirees benefits are to be sacrificed in favor of greater pensions for active employees, the retiree is left in the lurch.

There are at least two plausible remedies to this remaining problem. Further consideration should be given to redefining the bargaining unit for the purpose of negotiation and to the allowance of separate units of retirees, complete with resort to significant economic weapons. Our supplemental statement will elaborate on these points.

Thank you for the opportunity to appear before you this morning. I would be happy to answer any questions you may have.

STATEMENT OF JAY W. TOWER, STAFF ATTORNEY, PENSION RIGHTS CENTER

Mr. TOWER. Mr. Chairman, members of the subcommittee, I am Jay Tower, staff attorney for the Pension Rights Center, a nonprofit group organized 2½ years ago to promote and protect the pension rights of individuals.

My comments today on H.R. 13535 will be general in nature. With the chairman's permission, however, we will submit a more detailed evaluation of the bill in 4 weeks.

Mr. THOMPSON. Before going on to Mr. King, I just have one comment. Mr. Erlenborn asked a witness if those still working would be aware or would in essence implicitly be at least sympathetic to those retired. That is going to be, as you point out, a matter of option for those who are still working and who are in the union.

We had an example of that in the National Football Players Association, after they came into the act, and these big television contracts and other things were negotiated. The former players said, in effect, we made the game and you fellows are benefiting to the average of about $67,000 a player, and we want you to negotiate pension rights or give us some of our pension rights. Early on the active players refused. Later they changed their minds and now are at least giving consideration—I don't know exactly the details but are giving consideration to the former players. So that that situation could exist anywhere.

It is just a matter of a compulsory subject of bargaining and that doesn't mean that the employer would have to give in or that the union would have to make a representation on behalf of its retirees, that is entirely up to them.

Mr. King, may I ask unanimous consent that your statement be made a part of the record in full and that you summarize it, if possible?

[The prepared testimony of Edward King follows:]

TESTIMONY OF EDWARD C. KING, DIRECTING ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

My name is Edward King. I am Directing Attorney of the National Senior Citizens Law Center in Washington. The National Senior Citizens Law Center is a Legal Services program funded by the Legal Services Corporation and the Administration on Aging dedicated to redressing the special legal problems of the elderly poor. Our contact with elderly poor clients and the Legal Services attorneys representing them indicates that a problem of utmost immediacy is the failure of retirement plans to provide their beneficiaries adequate incomes and health benefits in these days of double digit inflation and escalating health costs. We believe that making retirement benefits for retired employees a subject of mandatory bargaining under the National Labor Relations Act would do much to alleviate the plight of the more than two million retirees currently receiving retirement benefits under collective-bargaining agreements nationwide.

Recent studies show that few private pension plans contain cost-of-living escalators [Robert M. Ball, "Social Security Today and Tomorrow," Columbia University Press, New York, 1978, p. 414]. In order for pension payments to continue to be meaningful throughout the retired employee's life, pension plans need to provide an increase in benefits in accordance with the cost of living. Without this protection against deterioration of the value of benefits in later years, the pensioner's purchasing power will be continually and drastically reduced while he no longer has any way to supplement the pension or any bargaining power to improve the terms of his pension. As the former Commissioner of the Social Security Administration, Robert M. Ball, has observed, "* * * it is not only those who are officially defined as poor who are having great difficulty in making ends meet. For a majority of the retired aged, an inadequate income

is still the number one problem, bringing with it a host of other problems: Inadequate housing, inadequate opportunity for participation in community activities and recreation, and inadequate health care" Id at 89. The problem of keeping benefits up to date with rising wages and the cost of living is unlikely to be effectively addressed unless those who are most affected are allowed some voice in the formulation and alteration of pension plan policies. And yet, retired workers are now denied that voice.

The plight of these retired workers is well known. While great progress has been made in the establishment of pension and health plans for workers who will retire, little effort can be expended on keeping those plans abreast of current economic conditions when to do so requires the voluntary agreement of the union and the employer that increased pension and health benefits are appropriate subjects about which to bargain. The cost of living has risen astoundingly in recent years, yet pension benefits have remained static because such benefits are a subject of permissive bargaining. The cost of hospitalization has in some cases in some parts of the country been reported to double in recent years, yet health benefits remain woefully inadequate for the same reason. The upshot is that workers whose efforts were instrumental in building the labor movement in this country are now frozen at entirely inadequate pension and health care levels with no hope of protection against the ever-increasing costs of living and staying healthy.

The condition of these retired workers was brought about to a great degree by the U.S. Supreme Court's decision in *Allied Chemical and Alkali Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157 S.Ct. 383 (1971). In *Pittsburgh Plate Glass*, the Supreme Court held that, under the National Labor Relations Act, first, retirees are not employees within the act's definition of "employee" at section 2(3); second, retirees are not members of a bargaining unit within section 9(a) of the act; third, retirees' benefits are not manadatory subjects of bargaining as "terms and conditions of employment" within sections 8(a)(5) and 8(d) of the act; and, fourth, only mandatory subjects of bargaining are protected from unilateral modification by the employer.

The potentially tragic consequences of the *Pittsburgh Plate Glass* decision were dramatically illustrated during the United Mine Workers strike early this year. A month after that strike began in December, 1977, all pensioners who had retired before January 1, 1976, were notified that their Pension Trust had exhausted its resources and all pension payments to them would be indefinitely suspended.

The insecure financial condition of that Trust can be directly traced to a 1974 agreement to split what was originally a single trust fund into four separate trusts. Prior to 1974, all members of the United Mine Workers of America participated in one pension plan through the original Fund. The United Mine Workers 1974 Wage Agreement separated workers into two groups: Miners who had retired or would retire before Erisa requirements went into effect on January 1, 1976, and miners who would retire after that date. The splitting of the Fund created two new pension trusts. The 1950 Pension Trust provided pensions to miners who retired before January of 1976; the 1974 Pension Trust to those retired after that date. The 1950 Pension Trust was funded solely from employers' royalty contributions; the 1974 Pension Trust was funded from royalty contributions plus employees' contributions based upon hours worked. Contributions to the 1974 Trust were not available to pay the pensions under the 1950 Trust.

Royalties alone were insufficient to fund the 1950 Pension Trust, and its assets decreased steadily until finally all pension benefits were suspended in February, 1978. During the same period, the 1974 Pension Trust remained fully solvent and actually increased its reserves; it possessed at all times assets substantially in excess of liabilities.

Obviously, those whose benefits came from the 1950 Pension Trust were retirees, to whom, under *Pittsburgh Plate Glass*, the United Mine Workers owed no duty of fair representation. These victims of mismanagement and inadequate funding—those whose pension payments were stopped in February—were the vested beneficiaries of the Original Fund. As long as there was a single Original Fund, employer contributions to that Fund remained a mandatory subject of bargaining since the the terms governing those contributions would affect current employees as well as retirees. But once the Original Fund was split in 1974, retirees were dependent upon the 1950 Pension Trust in which no working miners participated.

Consequently, employer contributions to the 1950 Pension Trust, unlike the Original Fund, were not a mandatory subject of collective bargaining under *Pittsburgh Plate Glass.*

In sum, the 1974 Wage Agreement divested 1950 beneficiaries of the right to receive pensions from a fund in which both working and retired miners participated. The right would have insured that employer contributions, upon which future pension benefits depended, would remain a mandatory subject of collective bargaining.

That the splitting of the Original Fund would result in the crisis of financial exhaustion was eminently foreseeable at the time of the 1974 Agreement. The only conclusion to be drawn from the split is that the United Mine Workers of America was far more concerned with the rights and benefits of its active workers than it was with those of retired miners who were already receiving pensions. In essence, a policy decision was made to completely sacrifice the financial interests of retirees in order to benefit present workers. And, since, according to *Pittsburgh Plate Glass,* the union had no duty to fairly represent those retirees, the retirees had no legal right to compel collective bargaining over the terms and conditions of their pension benefits, and no effective way to voice their concerns.

The purpose of the amendments proposed by H.R. 13535 is to overturn the Supreme Court's decision in *Pittsburgh Plate Glass* and to ensure that the rights and interests of retired workers are not ignored or sacrificed in the collective bargaining process, as they were by the United Mine Workers of America in 1974. In their present form, the proposed amendments to sections 8(d) and 8(d)(4) would make retirees' benefits mandatory subjects of bargaining as "terms and conditions of employment," and would protect collectively bargained retirees' benefits against unilateral modification or termination by the employer. However, the proposed amendments do not address the Supreme Court's other two holdings in the case, that retirees are not employees and that retirees are not members of a bargaining unit. To insure that the purpose of the amendments is achieved, this subcommittee should consider two additional revisions to the act. First, the definition of "employee" in section 2(3) of the act could be revised to specifically include retirees. Second, the limitation contained in section 9(a) of the act on subjects about which the employees' bargaining unit can bargain collectively, which closely parallels the limitation on subjects on mandatory bargaining contained in section 8(d) of the act, could be revised with the same language proposed to revise section 8(d) so that retirement benefits for retired employees would specifically be included among the subjects about which the bargaining unit can collectively bargain. These additional suggested revisions would insure that future judicial determinations would not circumvent the purpose sought to be achieved by the proposed amendments.

The National Senior Citizens Law Center is convinced that retirees' benefits must be made a subject of mandatory bargaining. Only by making retirees' benefits a subject of mandatory bargaining under section 8(d) of the act can it be insured that retirees' benefits are not left to chance or to the caprice of the employer, who may or may not agree to bargain about such benefits. Only as a subject of mandatory bargaining will retirees' benefits be considered each time contracts are negotiated for, at present, as the Supreme Court has made abundantly clear in *Pittsburgh Plate Glass,* "even if industry commonly regards retirees' benefits as a statutory subject of bargaining, that would at most * * * reflect the interests of employers and employees in the subject matter as well as its amenability to the collective bargaining process" (404 U.S. at 176; 92 S. Ct. at 396), and "by once bargaining and agreeing on a permissive subject, the parties naturally do not make the subject a mandatory topic of future bargaining" (404 U.S. at 187; 92 S. Ct. at 402). Only as a subject of mandatory bargaining would collectively bargained retirees' benefits be protected from unilateral modification by the employer. In the *Pittsburgh Plate Glass* case, the Supreme Court's holding that "a modification—of a collective-bargaining agreement—is a prohibited unfair labor practice only when it changes a term that is a mandatory rather than a permissive subject of bargaining" (404 U.S. at 185; 92 S. Ct. at 400) allowed Pittsburgh Plate Glass Co. to unilaterally adjust its health insurance plan for retired employees without first negotiating in good faith with the union. A similar result in other cases is easily imaginable in this day of escalating labor and production costs and shrinking profits if collectively bargained retirees' benefits are not protected against unilateral termination or modification.

The National Senior Citizens Law Center feels that this legislation is vital to protect the interests of retired workers. Only by its enactment will the unions have the protection of the law as they endeavor to preserve a decent standard of living for their retired members.

Thank you for your time and thank you for your consideration of these views.

STATEMENT OF EDWARD C. KING, DIRECTING ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

Mr. KING. Yes, Mr. Chairman, I would be pleased to do that.

I am directing attorney of the Washington, D.C., Office of National Senior Citizens Law Center. We are part of the National Legal Services Corporation network. Within that network we are a support center and our particular center specializes in problems of the elderly in law. It is, I think, relevant to this occasion to point out that most of our work in pension matters in particular, is done in our Los Angeles office. Bruce Miller of our office has prepared a statement or draft of the statement that has been filed in our behalf. He has asked me to relay that.

I consequently do not hold myself out as an absolute expert in the area of pension law but I will be more than happy to undertake to obtain responses from our center and present from those who do specialize in pension law on the matters.

I think the only thing that I would like to add to what has been said by the other groups, there is an additional dimension to this problem that has been alluded to, I think indirectly—that is, aside from the ability presently under current law of management to unilaterally refuse to enter into negotiations or even to adjust some rights because of the *Pittsburgh Plate Glass* case—there is the lack of enthusiasm and lack of concern unions may have presently for representations of rights of employees. We point out in our statement the difficulty of the United Mine Workers trust in which, at the time that ERISA became effective, the United Mine Workers divided their trust systems into several trusts and former retirees who had retired as of the time of the effective date of ERISA were treated differently than those afterward in that their trust received only employer royalty contributions and not employee contributions.

As a result of that, during the strike last winter, February 1978, the assets within the former retirees' trust had depleted to such an extent that there were no longer any payments; payments had to be suspended entirely at that time. This, I think, is a rather dramatic example of the impact of the lack of right of representation for union retirees. It is a problem that needs to be considered as well as the ability that unions need through this kind of legislation to force management to talk about these kinds of issues.

There is a need also for current review of benefits, such as cost-of-living increases, that are needed, and matters of that sort that have been pointed out.

So, in our view, this kind of legislation is badly needed. We enthusiastically support the concept of the legislation and I think that is a fair summary of my statement. I appreciate the opportunity to address this point and to speak in behalf of the legislation. Thank you.

Mr. THOMPSON. Thank you.

You might be able to answer some questions which Mr. Erlenborn might have with respect to some of the legal aspects, so I yield to Mr. Erlenborn.

Mr. ERLENBORN. Thank you very much. This is what I have been waiting for, to get at the lawyers.

Mr. THOMPSON. Help yourself.

Mr. ERLENBORN. I want to get their attention.

The first question I would ask of both of you, I note the legislation uses the term "retirement benefits" rather than "pension benefits." Would you not agree that retirement benefits is a much broader term than pension benefits?

Mr. TOWER. The term isn't defined in either the Wagner Act nor ERISA and practice has tended to view it as expansive.

Mr. ERLENBORN. So. rather than being just legislation directed to getting a cost-of-living increase for retirees, this bill also encompass negotiating for medical benefits, for dental benefits, or for what has become quite popular now, legal services, all of which if rendered to retired employees would come under the general term "retirement benefits." Would you agree?

Mr. TOWER. I would agree.

Mr. KING. I would agree also and feel that is an important aspect of the needs of retirees.

Mr. ERLENBORN. Then you would feel that it is not by chance the term is "retirement benefits" rather than "pension benefits" but was specifically chosen?

Mr. TOWER. I would think this bill was designed to cover the situation shown in the United Mine Workers negotiation of last year, where one of the large stumbling blocks was the health benefits for people who had already retired. The fact that these benefits had been cut off. If this bill is only concerned with pensions, then unions or employers and unions in a Taft-Hartley situation would indeed be able to sacrifice the health benefits of retirees. Considering that they are indeed often more important in terms of monetary aid to a retiree than his pension, this is invaluable.

Mr. ERLENBORN. Would you agree that without changing the definition of employee, the requirement to fairly represent will not attach to retired employees? In other words, the union will automatically make the same obligations as it has to its active union members or active employees to fairly represent them?

Mr. KING. A suggestion we have made in our written statement is that the definition of employee be expanded to meet that problem.

Mr. ERLENBORN. Do you think it is possible to fairly represent the two groups, retired employees and current employees, when it seems almost given that their interests run contrary to each other in many cases?

Mr. TOWER. I would say it is not impossible. I think there are unions that are quite capable of representing both their active members and their retirees. On the other hand, the possibility of conflict does exist. In the Taft-Hartley situation, where you have a pension plan administered by both union representatives and employer representatives, there is a question as to the situation where you have got a union person representing a grievance coming before a Taft-Hartley board of trustees, where their true interests lie, can they truly represent a person trying to get more benefits when the trustees are trying to preserve assets of the plan, for the active members who haven't retired yet? That is a problem that we have in general with the Taft-Hartley plans. I don't think that it is any more exacerbated by this bill.

Mr. ERLENBORN. Do I take it then from your answer, that you believe the bill would require the union not only to negotiate for benefits for retired employees but also to represent the retired employees in grievances?

Mr. KING. No, no, what——

Mr. ERLENBORN. How do you feel about that?

Mr. TOWER. Let me first explain the example I was using. That arises in a voluntary context, in many instances where unions as part of the grievance procedure in a pension plan have established that the pensioner must use the union as his representative and that is where we have examples of potential conflict of interest.

Addressing the other question, I don't think the bill, as it presently stands, does require the union to represent a grievance and the pension rights center has not formed a final opinion yet on whether or not this is an idea of merit.

Mr. ERLENBORN. Could I ask, by the way, is your organization, the pension rights center, connected with Ralph Nader?

Mr. TOWER. We are funded by a number of private foundations. Ralph Nader's Center for Study of Responsive Law is one of those.

Mr. ERLENBORN. As I recall, before our other subcommittee, then called the General Labor Subcommittee, Mr. Nader testified when we were considering ERISA that we should prohibit defined benefit pension plans. His idea of good Federal law was to have only defined contribution plans and require all employers to maintain defined contribution plans.

When I say defined contribution, that was also coupled with a separate account, not a pool as we have in the Taft-Hartley multiemployer plans.

If we had followed Mr. Nader's suggestion, wouldn't you agree that the issue before us would be moot, because the people would not have the right to increase their pension? Once they retired, they could only drawdown on the account that had been established during their working years.

Mr. TOWER. I don't agree, Congressman. Even though defined contribution plans are, technically, the benefit as a result of the amount of money—that is, purely the result of the amount of money that has been put into the fund—I see nothing to prevent negotiations that would retroactively increase contribution levels.

Mr. ERLENBORN. Or continue contribution after retirement?

Mr. TOWER. Not so much continue contributions after retirement but put a lump into the account after retirement.

Mr. THOMPSON. Mr. Erlenborn, if you would yield, I think that you are following quite a logical train of thought, but that you are relating ERISA to this particular narrow amendment to one section of the National Labor Relations Act.

I strongly suspect that beginning early next year, the survivors in this institution will be taking a much needed and hard look at ERISA, but with respect to negotiating for grievances and so on, as I see it, unless I am wrong. This is simply limited to, as I stated before, the right of the union to represent a retired worker in an instance only where it relates to a negotiated pension plan under which the worker who had grievance is retired.

Now, the concept of ERISA could be changed possibly, and if Mr. Nader's proposal were made a part of ERISA, it might change the application of this rather dramatically, we don't know.

Mr. ERLENBORN. Could I direct a question to the term you just used—the term "pension plan?" Both of these witnesses have agreed retirement benefits is a much broader term than pension plan.

Mr. THOMPSON. I agree with that also.

Mr. ERLENBORN. This bill would not be limited to pension rights but all retirement benefits.

Mr. THOMPSON. Yes.

Mr. ERLENBORN. Is it warranted to have the record clear on that?

Mr. THOMPSON. Yes, sir.

Mr. ERLENBORN. I am afraid I am probably taking more time than I should with the limits that we have. Let me ask the two witnesses, if the union does elect to represent the retired employees to negotiate improvement in retirement benefits that result in a new agreement, that does or does not increase those benefits? Would the retired employees have the right to vote on ratification of a proposed contract?

Mr. THOMPSON. The Chair would undertake to answer that in the negative. They are no longer union members.

Mr. TOWER. Congressman Erlenborn, this is something I would want to study, but my initial reaction would be they would not be entitled to vote and that is one of the reasons that we suggest that study be given to the redefinition of the bargaining unit, such that retirees will indeed be considered employees for the purpose of the bargaining unit independent of whether they are allowed to vote in any votes within the unit. That could be a separate question. The definition of an employee could be sufficiently refined to preclude it.

Mr. ERLENBORN. Is there anything in the act to prohibit a union from providing that retirees to be eligible for the benefits of representation must be members of the union?

Mr. TOWER. Logically it would seem to follow that they must be members of the union and I might point out the dissent of member Zagoria of the National Labor Relation Board in the *Pittsburgh Plate Glass* decision. He observed that one of the problems that we run into is that people frequently are a member of a union for 10 years, under ERISA 10 years is long enough to vest, and switch unions and when they retire they will qualify for a pension from the union that they were a member of from age 25 to 35, but where is the continuity, family continuity, any continuity, that would require that union to look out for the welfare of this person who is only a member for 10 years?

Mr. THOMPSON. Well, the key to the thing, if the gentleman will yield, if I understand it, is that one can be a member of the union. I, for instance, belong to the United Auto Workers No. 731. I have been a member of that local for 40 years, but I am not a member of the bargaining unit and, therefore, I can't sit at the table, I can't vote, and as unpredictable as sometimes the NLRB seems to be, I think they would hold with that unit distinction.

Thank you.

Mr. ERLENBORN. Well, my question really was directed to whether a union could require retired employees to be active, dues paying, union members to be eligible for the benefits under this act?

Mr. TOWER. At this point I have no opinion.

Mr. KING. I am not confident but I don't see why they would have to be, if they were within whatever the bargaining unit was required, they were representing, even if they were not union members, it seems to me they would not have to be.

Mr. THOMPSON. Certainly nothing in this legislation would create such a situation. That is an entirely separate question, as I see it.

Mr. TOWER. Congressman, if I may make one final point. That is, as we see this legislation, this particular bill, is essential, we think that basically it allows unions to pursue retirement, the issue of retirement benefits for their retired members. Whether further steps are to be taken, we think some should be suggested. We think that retirees should be members of the bargaining unit so that there is a definite duty of fair representation owed them but that should not stop this bill. This bill is needed.

Mr. ERLENBORN. Thank you very much.

Mr. THOMPSON. Thank you very much, gentlemen. We appreciate your coming.

The next witness is Mr. Harold Coxson. Without objection, I think having heard of our situation, your statement will be made part of the record in full, and if you could summarize it, we would appreciate it.

[The prepared statement of Harold Coxson follows:]

STATEMENT ON H.R. 13535, RE: COLLECTIVE BARGAINING WITH RETIREES

My name is Harold P. Coxson, Jr. I am the Director of Labor Law for the Chamber of Commerce of the United States.

The National Chamber is the largest federation of business and professional organizations in the United States, and it is the principal spokesman for the American business community. The National Chamber represents more than 73,000 business firms, 2500 chambers of commerce in the United States and abroad, and 1200 trade and professional associations.

Over the years, the National Chamber has played an active role in presenting the views of its membership concerning proposed legislation in the field of labor management relations. It has also participated, either as a litigant or as amicus curiae, in significant labor law decisions of the courts and administrative agencies which have helped to develop our national labor policy.

On behalf of the National Chamber, I wish to thank the Subcommittee for this opportunity to express opposition to H.R. 13535 which would amend section 8(d) of the National Labor Relations Act to expand the arena of collective bargaining negotiations by making retirement benefits for retired employees a mandatory subject of bargaining. In this regard, H.R. 13535 is designed to overturn the Supreme Court decision in *Chemical Workers* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971), wherein the Court held that retirees are not "employees" within the meaning of the National Labor Relations Act, that retirement benefits for retirees is not a mandatory subject of bargaining, and that an employer does not violate his duty to bargain in good faith by making unilateral modifications in the benefits of retirees.

The National Chamber submitted a brief amicus curiae with the Sixth Circuit Court of Appeals and with the Supreme Court in the *Pittsburgh Plate Glass Co.* case. Then, as now, the Chamber believed that mandatory bargaining on retirement benefits for retirees, instead of promoting stable bargaining relationships and industrial harmony would introduce into collective bargaining an entirely new dimension of instability and chaos to the detriment of employers, current employees and their bargaining representatives, retirees, and the public.

For these reasons, as more fully explained below, the National Chamber urges this Subcommittee to reject H.R. 13535.

EFFECTS OF H.R. 13535 ON COLLECTIVE BARGAINING

Collective bargaining, as it has been traditionally understood since the inception of the National Labor Relations Act (NLRA), is an on-going process for de-

termining the wages, hours, and conditions under which workers are currently employed. While the benefits workers are to receive upon retirement are encompassed in the scope of the bargaining obligation, these benefits are in the nature of deferred compensation for services being performed when the collective bargaining agreement is negotiated. In this manner, the determination of wages and benefits represents the mutually agreed upon value of an employee's services made at the time those services are being performed, in the context of the prevailing economic facts of the business and with regard to the general wage and benefit levels then prevailing. Once that determination has been mutually agreed upon, and retirement benefits have been bargained for, earned, and becomes payable, the contractual obligation is protected by the NLRA, as well as by the Employees' Retirement Income Security Act (ERISA).

Thus, although employers currently are required to bargain with active employees regarding benefits to be received upon retirement, H.R. 13535 would extend that bargaining obligation, as defined by Section 8(d) of the NLRA, so as to follow a worker into retirement. In this manner, retirement benefits would continue ad infinitum, to be subject to mandatory renegotiation. The result would be a wide-open contingent wage cost liability for employers, and a choatic, unstable bargaining relationship with current employees and their representatives.

Some of the potential consequences of making bargaining for retirees mandatory are in the following:

(1) The bargaining representative could demand mandatory bargaining with respect to upgrading or downgrading retirement benefits of past retirees, and call a strike of the current employees to enforce such a demand.

(2) The bargaining representative would be the sole and exclusive representative of the retirees; and, since the obligation to deal with the exclusive representative includes the obligation to deal with no other, the employer could not move unilaterally to improve benefits for retirees, and retirees could not individually, or as a group apart from the union, deal with the employer to improve their benefits.

(3) The current bargaining representative of current employees could enforce this exclusive right of representation as to retirees even where the representative was certified at a later date and never at any time represented the retirees when they were currently employed.

(4) The current bargaining representative could enforce its exclusive representation rights even though the retirees have no voice in union bargaining decisions, in the election of union officers, in the selection or rejection of their exclusive representative, or in the ratification of agreements. For example, retirees would not have the right to vote on whether to ratify or reject changes in their benefit program.

(5) The employer could never stabilize or finalize his legal commitments to retirees or arrive at any firm forecasts as to the agreed value of services rendered by employees since his obligations periodically to renegotiate benefits for various classes of retirees would be perpetual.

(6) The representative presumably could demand bargaining to renegotiate retirement benefits (such as life and health insurance, and other things) for persons who had retired early without pensions (i.e., before vesting) or on reduced pensions, although the terms on which they retired were agreed upon between the employer and the bargaining representative or between the employer and employee when he elected to retire.

The foregoing examples, although not exhaustive of the types of problems which could arise as a result of H.R. 13535, clearly would have an adverse effect on the stability and finality of labor agreements. Also left unsettled would be questions such as: the right of retirees to select a separate bargaining representative, to institute a rival union petition or a decertification petition; the status of retirees under a union-security agreement and their obligation to pay dues; and the right of retirees to participate in a strike vote to initiate, continue or end a strike by current employees. These questions have far-reaching implications for retirees. For example, if retirees are required to compensate the union for their representation at the bargaining table through the payment of dues and assessments, such costs could erode the financial benefits gained—particularly when such benefits are represented by increased health insurance coverage, rather than an increase in monthly income.

Many of these problems stem from what would be, if H.R. 13535 were enacted, a clear departure from the "unit" bargaining principle which has applied since the inception of the National Labor Relations Act. (Simply stated, retirees are

not "employees" within the definition of section 2(3) of the Act and do not share a "community of interest" with active employees. Since retirees have severed permanently their employment relationship, have no expectations of recall, perform no services and are paid no wages, and are in no way under the control of the employer nor under any restrictions as to other employment or activities, most of the threads which once bound them to a bargaining unit are severed. In fact, as the Supreme Court observed in *Pittsburgh Plate Glass Co.*, their interests extend only to retirement benefits to the exclusion of wage rates, hours, working conditions, and all other terms of active employment (404 U.S. at 173). Speaking for the Court, Justice Brennan noted:

> "Incorporation of such a limited-purpose constituency in the bargaining unit would create the potential for severe internal conflicts that would impair the unit's ability to function and would disrupt the processes of collective bargaining. Moreover, the risk cannot be overlooked that union representatives on occasion might see fit to bargain for improved wages or other conditions favoring active employees at the expense of retirees' benefits." (404 U.S. at 173)

H.R. 13535, therefore, would complicate unduly the process of collective bargaining by injecting a topic—retirement benefits for retirees—having only a remote and attenuated connection with the on-going employment relationship.

As Justice Brennan envisioned, unions would be in the unfortunate position of representing possibly opposing interests of current employees, their dues paying members, versus those of non-dues paying retirees. While we do not suggest that current employees would inevitably act in opposition to the interests of retired employees, it is apparent that H.R. 13535 would establish a structure which would institutionalize the contrary interests of retirees and current employees in the disposition of funds available for wages and employee benefit programs and which would greatly enhance the potential for conflict. As Justice Brennan further noted in the *Pittsburgh Plate Glass Co.* case:

> "Moreover, retirees given the bargaining power would lose their economic security, for just as surely as an employer may increase benefits, in bargaining, he may take them away. Even if retirees were given the statutory power to periodically renegotiate pension benefits previously earned, the union would be an inappropriate bargaining vehicle. It is not at all unlikely that a union negotiator, presented with the opportunity to advance employees' wages at the expense of retirees' pensions would choose to favor his constituents at the expense of the honorary union members, who retain no voting power."

Moreover, by extending the bargaining obligation to retirement benefits for retirees, H.R. 13535 increases the potential for industrial strife. This potential stems from the vital distinction between "permissive" and "mandatory" bargaining subjects. A mandatory subject is one which can be pressed to an impasse, followed by a union strike or employer lockout to enforce the demand. A permissive subject, on the other hand, is one in which a proposal can be made and a voluntary agreement reached, but which cannot be pressed by the proposing party to an impasse or used to justify a strike or lockout.

As noted earlier, future retirement benefits is a mandatory subject within the bargaining obligation for current employees; yet retroactive changes in retirement benefits for retirees is merely a permissive subject for bargaining. Thus, if bargaining becomes mandatory for retirees, as it would if H.R. 13535 were enacted, all matters pertaining to retroactive changes in retirement benefits must be bargained and the issue can be used to deadlock agreement overall and lead to strikes and lockouts. This means that even after an employee has retired with the bundle of benefits which have been previously negotiated on his behalf, and no longer is performing any work or services for his former employer, his benefits can be renegotiated again and again, without limitation. And these demands for renegotiation can be backed up by strikes and threats of strikes by the current employees. In this regard, H.R. 13535 is contrary to the fundamental purposes of collective bargaining which are to encourage the making of stabilizing agreements and to minimize strikes and lockouts which would burden interstate commerce.

EFFECTS OF H.R. 13535 ON RETIREMENT INCOME SECURITY

Employers are cognizant of the economic pressures facing former employees who have retired on fixed incomes. For this reason, many employers act unilaterally from time to time, and within the limits of available resources, to

upgrade benefits for their retired employees. And, of course, some employers negotiate benefits for retirees with unions representing current employees. These private benefits are valuable supplements to governmental programs financed by the economy as a whole, such as Social Security, Old Age Insurance, Survivors and Disability Insurance, Medicare, Medicaid, and Supplemental Security Income.

It must be recognized, however, that there are limits to the ability of a private employer—and particularly a small employer—to escalate indefinitely retirement programs to provide protection against inflation, while at the same time continuing to negotiate wage and benefit increases for current employees.

As the Sixth Circuit Court of Appeals stated in the *Pittsburgh Plate Glass Co.* case:

> "Changing economic facts relating to the employer's business or the general economy occurring after an employee retires cannot enhance or depreciate the value of his prior services or justify periodic post-retirement negotiations. The employer cannot retroactively increase his prices to compensate for these increased benefits, or fund expenses which are, as these would be, open-ended."

And, yet, H.R. 13535 would subject employers to such open-ended wage cost liability through retroactive renegotiation of retirement benefits. A union's enforceable demand to upgrade benefits for retired employees would destroy an employer's ability to finalize current wage costs, the same as if a union were able to renegotiate and retroactively adjust past wage settlements. As a result, the employer could respond only by limiting wage costs for current employees, or by dramatically increasing prices to offset these higher wage costs, or by simply going out of business.

The goal of greater economic security for retired persons is laudable, and one which the National Chamber fully supports. However, it is questionable whether H.R. 13535 would advance that goal. In fact, it could have the opposite effect.

Perhaps the most significant repercussion would be a chilling impact on pension plans. Undoubtedly, the chief demand of most retired employees would be for protecting their pensions against inflation by adding a cost-of-living index to the pension.

Very few pension plans now provide for an automatic cost-of-living escalator. The reason is quite simple. Built in cost-of-living adjustments can raise pension costs sharply. Moreover, "underwriting" future inflation after retirement creates a variable, open-ended liability that few private pension plan sponsors are willing, or able, to assume. The result could be an increase in private pension plan terminations, especially among small businesses.

Many industries are party to several pension and employee benefit plans, and thus come under the "multi-employer" provisions of the Employees Retirement Income Security Act (ERISA). Since the contingent liability provisions of ERISA impose economic liabilities on employers up to 30 percent of their net worth, the multi-employer provisions of the Act subject employers to potential liability exceeding 100 percent of corporate net worth. Thus, H.R. 13535 would impose the potential for further instability in funding pension plans, as well as greatly increasing an employer's liability in this regard.

CONCLUSION

While the goal of greater economic security for retired persons is a laudable one, that goal should not be achieved at the cost of jeopardizing the stability of the collective bargaining process.

H.R. 13535 would introduce into the collective bargaining process—and labor-management relations in general—a new dimension of instability to the detriment of employers, active employees and their bargaining representatives, retirees and the public. For this reason, the National Chamber opposes enactment of H.R. 13535.

STATEMENT OF HAROLD P. COXSON, JR., DIRECTOR OF LABOR LAW, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. COXSON. Thank you, Mr. Thompson. I will summarize my statement and submit the full statement for the record.

On behalf of the national chamber, I wish to thank the subcommittee for this opportunity to express opposition to H.R. 13535 which

would amend section 8(d) of the National Labor Relations Act to expand the arena of collective-bargaining negotiations by making retirement benefits for retired employees a mandatory subject of bargaining. In this regard, H.R. 13535 is designed to overturn the Supreme Court decision in *Chemical Workers* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971), wherein the Court held that retirees are not "employees" within the meaning of the National Labor Relations Act, that retirement benefits for retirees is not a mandatory subject of bargaining, and that an employer does not violate his duty to bargain in good faith by making unilateral modifications in the benefits of retirees.

The national chamber submitted a brief amicus curiae with the Sixth Circuit Court of Appeals and with the Supreme Court in the *Pittsburgh Plate Class Co.* case. Then, as now, the chamber believed that mandatory bargaining on retirement benefits for retirees, instead of promoting stable bargaining relationships and industrial harmony, would introduce into collective bargaining an entirely new dimension of instability and chaos to the detriment of employers, current employees and their bargaining representatives, retirees, and the public.

Collective bargaining, as it has been traditionally understood since the inception of the National Labor Relations Act—NLRA—is an ongoing process for determining the wages, hours, and conditions under which workers are currently employed. While the benefits workers are to receive upon retirement are encompassed in the scope of the bargaining obligation, these benefits are in the nature of deferred compensation for services being performed when the collective-bargaining agreement is negotiated. In this manner, the determination of wages and benefits represents the mutually agreed upon value of an employee's services made at the time those services are being performed, in the context of the prevailing economic facts of the business and with regard to the general wage and benefit levels then prevailing. Once that determination has been mutually agreed upon, and retirement benefits have been bargained for, earned, and become payable, the contractual obligation is protected by the NLRA, as well as by the Employees Retirement Income Security Act—ERISA.

Thus, although employers currently are required to bargain with active employees regarding benefits to be received upon retirement, H.R. 13535 would extend that bargaining obligation, as defined by section 8(d) of the NLRA, so as to follow a worker into retirement. In this manner, retirement benefits would continue, ad infinitum, to be subject to mandatory renegotiation. The result would be a wide open contingent wage cost liability for employers, and a chaotic, unstable bargaining relationship with current employees and their representative.

Some of the potential consequences of making bargaining for retirees mandatory are the following:

One: The bargaining representative could demand mandatory bargaining with respect to upgrading or downgrading retirement benefits of past retirees, and call a strike of the current employees to enforce such a demand.

Two: The bargaining representative would be the sole and exclusive representative of the retirees; and, since the obligation to deal with the exclusive representative includes the obligations to deal with no

other, the employer could not move unilaterally to improve benefits for retirees, and retirees could not individually, or as a group apart from the union, deal with the employer to improve their benefits.

Three: The current bargaining representative of current employees could enforce this exclusive right of representations as to retirees even where the representative was certified at a later date and never at any time represented the retirees when they were currently employed.

Four: The current bargaining representative could enforce its exclusive representation rights even though the retirees have no voice in union bargaining decisions, in the election of union officers, in the selection or rejection of their exclusive representative, or in the ratification of agreements. For example, retirees would not have the right to vote on whether to ratify or reject changes in their benefit program.

Five: The employer could never stabilize or finalize his legal commitments to retirees or arrive at any firm forecasts as to the agreed value of services rendered by employees since his obligations periodically to renegotiate benefits for various classes of retirees would be perpetual.

Six: The representative presumably could demand bargaining to renegotiate retirement benefits—such as life and health insurance, and other things—for persons who had retired early without pensions—this is, before vesting—or on reduced pensions, although the terms on which they retired were agreed upon between the employer and the bargaining representative or between the employer and employee when he elected to retire.

The foregoing examples, although not exhaustive of the types of problems which could arise as a result of H.R. 13535, were enacted, a clear departure from the unit bargaining principle which has applied since the inception of the National Labor Relations Act. Simply stated, retirees are not employees within the definition of section 2(3) of the act and do not share a community of interest with active employees. Since retirees have severed permanently their employment relationship, have no expectations of recall, perform no services and are paid no wages, and are in no way under the control of the employer nor under any restrictions as to other employment activities, most of the threads which once bound them to a bargaining unit are severed.

In fact, as the Supreme Court observed in *Pittsburgh Plate Glass Co.*, their interests extend only to retirement benefits to the exclusion of wage rates, hours, working conditions, and all other terms of active employment. (404 U.S. at 173.) Speaking for the Court, Justice Brennan noted:

> Incorporation of such a limited purpose constituency in the bargaining unit would create the potential for severe internal conflicts that would impair the unit's ability to function and would disrupt the processes of collective bargaining. Moreover, the risk cannot be overlooked that union representatives on occasion might see fit to bargain for improved wages or other conditions favoring active employees at the expense of retirees' benefits. (404 U.S. at 173.)

H.R. 13535, therefore, would complicate unduly the process of collective bargaining by injecting a topic—retirement benefits for retirees—having only a remote and attenuated connection with the ongoing employment relationship.

As Justice Brennan envisioned, unions would be in the unfortunate position of representing possibly opposing interests of current employees, their dues-paying members versus those of non-dues-paying

retirees. While we do not suggest that current employees would inevitably act in opposition to the interests of retired employees, it is apparent that H.R. 13535 would establish a structure which would institutionalize the contrary interests of retirees and current employees in the disposition of funds available for wages and employee benefit programs and which would greatly enhance the potential conflict.

As Justice Brennan further noted in the *Pittsburgh Plate Glass Co.* case:

> Moreover, retirees given the bargaining power would lose their economic security, for just as surely as an employer may increase benefits, in bargaining, he may take them away. Even if retirees were given the statutory power to periodically renegotiate pension benefits previously earned, the union would be an inappropriate bargaining vehicle. It is not at all unlikely that a union negotiator, presented with the opportunity to advance employees' wages at the expense of retirees' pensions would choose to favor his constituents at the expense of the honorary union members, who retain no voting power.

Moreover, by extending the bargaining obligation to retirement benefits for retirees, H.R. 13535 increases the potential for industrial strife. This potential stems from the vital distinction between "permissive" and "mandatory" bargaining subjects. A mandatory subject is one which can be pressed to an impasse, followed by a union strike or employer lockout to enforce the demand.

A permissive subject, on the other hand, is one in which a proposal can be made and a voluntary agreement reached, but which cannot be pressed by the proposing party to an impasse or used to justify a strike or lockout.

As noted earlier, future retirement benefits is a mandatory subject within the bargaining obligation for current employees; yet retroactive changes in retirement benefits for retirees is merely a permissive subject for bargaining. Thus, if bargaining becomes mandatory for retirees, as it would if H.R. 13535 were enacted, all matters pertaining to retroactive changes in retirement benefits must be bargained and the issue can be used to deadlock agreement overall and lead to strikes and lockouts. This means that even after an employee has retired with the bundle of benefits which have been previously negotiated on his behalf, and no longer is performing any work or services for his former employer, his benefits can be renegotiated again and again, without limitation. And these demands for renegotiation can be backed up by strikes and threats of strikes by the current employees. In this regard, H.R. 13535 is contrary to the fundamental purposes of collective bargaining which are to encourage the making of stabilizing agreements and to minimize strikes and lockouts which would burden interstate commerce.

Effects of H.R. 13535 on retirement income security

Employers are cognizant of the economic pressures facing former employees who have retired on fixed incomes. For this reason, many employers act unilaterally from time to time, and within the limits of available resources, to upgrade benefits for their retired employees. And, of course, some employers negotiate benefits such as social security, old age insurance, survivors and disability insurance, medicare, medicaid, and supplemental security income.

It must be recognized, however, that there are limits to the ability of the private employer—and particularly a small employer—to es-

calate indefinitely retirement programs to provide protection against inflation, while at the same time continuing to negotiate wage and benefit increases for current employees.

As the Sixth Circuit Court of Appeals stated in the *Pittsburgh Plate Glass Co.* case:

> Changing economic facts relating to the employer's business or the general economy occurring after an employee retires cannot enhance or depreciate the value of his prior services or justify periodic post retirement negotiations. The employer cannot retroactively increase his prices to compensate for these increased benefits, or fund expenses which are, as these would be, open ended.

And yet, H.R. 13535 would subject employers to such open ended wage cost liability through retroactive renegotiation of retirement benefits. A union's enforceable demand to upgrade benefits for retired employees would destroy an employer's ability to finalize current wage costs, the same as if a union were able to renegotiate and retroactively adjust past wage settlements. As a result, the employer could respond only by limiting wage costs for current employees, which is unlikely, or by dramatically increasing prices to offset these higher wage costs, which is more likely than unlikely, or by simply going out of business.

The goal of greater economic security for retired persons is laudable, and one which the national chamber fully supports. However, it is questionable whether H.R. 13535 would advance that goal. In fact, it could have the opposite effect.

Perhaps the most significant repercussion would be a chilling impact on pension plans. Undoubtedly, the chief demand of most retired employees would be for protecting their pensions against inflation by adding a cost-of-living index to the pension.

Very few pension plans now provide for an automatic cost-of-living escalator. This reason is quite simple. Built-in cost-of-living adjustments can raise pension costs sharply. Moreover, underwriting future inflation after retirement creates a variable, open ended liability that few private pension plan sponsors are willing, or able, to assume. The result could be an increase in private pension plan terminations, especially among small businesses.

Thank you.

Mr. THOMPSON. Thank you.

Well, I have a series of questions and comments but I will go over your statement. Again, I am afraid that the bells might ring at any moment but we will proceed as far as we can. I would appreciate the attempt to summarize by the next witness, and I ask them to please proceed.

[The summary and prepared statement submitted by Robert Palmer follow:]

NATIONAL ASSOCIATION OF MANUFACTURERS SUMMARY OF STATEMENT ON H.R. 13535

The National Association of Manufacturers opposes as unnecessary H.R. 13535, a bill that would amend the National Labor Relations Act to make the subject of retirement benefits for retired employees a mandatory topic of collective bargaining.

NAM believes that ERISA already provides substantial protection to retirees against reduction of benefits, thereby accomplishing one of the main purposes of this bill. Furthermore, compelling the employer to bargain over increases in

benefits of those already retired is no guarantee that retirees would be satisfied with the result. This is because many employers do not have the resources to improve such benefits significantly and because union negotiators would tend to place the interests of current work force members over those of retirees when priorities of the two groups conflict.

STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS ON H.R. 13535

I am Robert Palmer, Director of Labor Relations for the National Association of Manufacturers.

The National Association of Manufacturers represents 12,400 member firms which employ a majority of the country's industrial labor force and which produce over 75 percent of the nation's manufactured goods. Another 158,000 firms are represented by the National Industrial Council which is affiliate which the National Association of Manufacturers.

We appreciate this opportunity to be here today and to comment on Representative Frank Thompson's bill, H.R. 13535, which would make retirement benefits for retired employees a mandatory subject of collective bargaining.

Certainly, no one would disagree that inflation has had very damaging effects on fixed income retirement benefits in recent years. This bill is a natural expression of concern for retirees caught in the vise of rising prices on the one hand and a fixed pension on the other. H.R. 13535 seeks to curb the employer's power to modify benefit arrangement as well as to force negotiations over increases in retirement benefits when such increases are deemed necessary. The bill would reverse the U.S. Supreme Court ruling in *Chemical Workers* v. *Pittsburgh Plate Glass Co.*, 404 U.S.C. 157 (1971), which held that benefits for retired employees do not constitute a mandatory subject of bargaining and that the employer did not violate his duty to bargain by making unilateral modifications in the benefits of retired employees.

However, we believe that the underlying problem is more complex than H.R. 13535 recognizes, and that the bill is largely unnecessary. This is because the Employee Retirement Income Security Act of 1974 (ERISA) already accomplishes what this bill intends to do by way of preventing reduction of pension benefits, and because mandatory collective bargaining over benefits would not necessarily provide those already retired with a guarantee that their benefit levels would be increased.

First, as you know, ERISA is a comprehensive piece of legislation regulating employee welfare benefit plans and employee pension benefit plans. ERISA sets forth for virtually all employers in the private sector minimum requirements for retirement plans. These requirements include new participation and vesting standards, and preclude an employer from reducing the amounts of vested benefits. ERISA regulates such matters as plan terminations, types of benefits required to be offered, nonforfeitable rights and changes in plan benefits, all of which are primary concern to retired employees.

In short, most welfare and retirement plans have now come under federal regulation, preserving the rights of retired employees to benefits. Thus, notwithstanding the *Pittsburgh Plate Glass* decision, the benefits of retirees are in the main already protected against unilateral employer action.

Since retirees are already protected from benefit reductions, one important rationale has been eliminated for making retirees' benefits a mandatory topic of bargaining. Any further changes regarding the employer's obligation to continue benefits to retirees are the province of ERISA, and of bargaining for the future retirement benefits of those still in the active work force.

The other side of H.R. 13535, of course, involves compelling the employer to bargain over increasing from time to time the benefits of those already retired. However, it is doubtful whether the process of collective bargaining is capable of safeguarding retiree interests in this area. Many employers, of course, bargain voluntarily over this issue, so this bill is not needed to reach them. Other employers simply do not have the resources to substantially improve benefits of their retired employees, so compelling them to bargain over the issue is no guarantee that the retirees in question will be satisfied by the outcome of these negotiations.

Retirees would have an anomalous status under the bill, being unconnected to the active work force and having no membership in the bargaining unit. Thus,

we may wonder how vociferously union negotiators would bargain for the interests of former employees; particularly since, in the give-and-take process of collective bargaining, those negotiators might have to settle for fewer benefits for current members of the unit who pay dues and elect union officials.

The interests of the employer also would tend to favor current employees, who are directly responsible for keeping the business running, at the expense of retirees. Since the interests of both the union and the employer lean toward the current employees, it is unlikely that retirees could receive much protection from the collective bargaining process.

Furthermore, if a union fails to win benefit increases substantial enough to please a particular group of retirees, it is unclear whether those retirees would have any cause of action against the union for breach of the duty of fair representation; it appears they would not, since retirees would not be members of the unit. The collective bargaining process, therefore, cannot necessarily solve the problems of retirees; H.R. 13535, in this situation, holds out false hopes of doing so.

If, on the other hand, a union were willing to take up the cudgel for those already retired, the potential for conflict with the priorities of current members would be evident. Union negotiators could go beyond retirees' pension or health benefits into such proposals as, for example, retirement housing or other in-kind payments; if retirees' benefits were a mandatory subject of bargaining, the union could even bargain to impasse and then strike over this issue. Retirees do not possess the same "community of interest" as active employees do, and it is unreasonable to expect those current members of the work force to sacrifice their benefits for those of retirees in most cases.

Justice Brennan recognized this inherent conflict when he wrote in the majority opinion in *Pittsburgh Plate Glass*:

> "Incorporation of such a limited-purpose constituency in the bargaining unit would create the potential for severe internal conflicts that would impair the unit's ability to function and would disrupt the processes of collective bargaining. Moreover, the risk cannot be overlooked that union representatives on occasion might see fit to bargain for improved wages or other conditions favoring active employees at the expense of retirees' benefits." (404 U.S. at 173.)

In short, American industry believes H.R. 13535 to be incapable of achieving the sponsor's objectives. ERISA has already made one of its main purposes obsolete, by curbing the employer's ability to reduce or terminate pension benefits. The other major goal, to guarantee suitable increases in the benefits of those already retired, cannot be achieved in all instances through the collective bargaining process. For these reasons, we cannot support the passage of H.R. 13535.

STATEMENT OF ROBERT PALMER, DIRECTOR, LABOR RELATIONS, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. PALMER. My name is Robert Palmer and I am director of labor relations for NAM. I will be happy to try to summarize as briefly as possible.

As Congressman Erlenborn has already brought up this morning, I don't think anyone here quarrels with the purpose of this bill, nor do I think does anyone disagree with the problems presented by some of the pensioners who have been introduced this morning. However, I think we have certain problems with the bill.

I think a lot of them have been touched on this morning and I would like to briefly summarize some of those problems.

First of all, I think in the area of reduction of benefits, particularly in the area of reduction of pension benefits, I think this is an area that has been covered to a great extent by ERISA. As Congressman Erlenborn well knows, and as many others of the panel who are familiar with ERISA know, ERISA covers such areas as participation in vesting standards and precludes an employer from reducing the amount of vested benefits. So we think that one aspect of what this bill intends to cover, that is the unilateral reduction of pension benefits, we believe is already handled to a great extent by ERISA. ERISA has already accomplished one of the purposes of this bill.

But moving on to some of the other areas, we think that any further changes regarding the employers obligation to continue pension benefits are the province of ERISA, or bargaining by members of the current unit for future retirement benefits, and I think this is a point that has already been brought out this morning several times, that the *Pittsburgh Plate Glass* decision does not prohibit a union from negotiating retirement benefits for those who are already current members.

In other words, for negotiating the benefits that the current active work force will receive when those members of the force retire. We think this is the appropriate way of providing for such things as cost-of-living adjustments and inflation, whatever, in the future.

Now, as Mr. Block pointed out this morning, many employers already bargain voluntarily over this issue, and he gave us an example of a number of industries—the automobile workers, the steel industry, et cetera—where this is the case. So this bill apparently is not needed to reach employers in those industries who already bargain over this issue.

Other employees, we submit, do not have the resources to substantially improve the benefits of their retired employees, and again, as many people have brought up this morning, merely making this a mandatory subject of bargaining is no guarantee that the retirees are going to have the benefits substantially improved, or that they will be satisfied with the outcome of whatever negotiations take place, particularly in the give-and-take process of collective bargaining, where a union frequently has to give up something to get something else.

Again, I think there is the definite possibility of a conflict of interest in many situations where union negotiators will be unwilling to sacrifice benefits for current members of the unit in exchange for benefits of those who are already retired and no longer members of the unit.

Mr. THOMPSON. Wouldn't you agree that whether or not this were to become law, job action could be taken, notwithstanding that fact, as had been done?

Mr. PALMER. OK, you are referring to strikes in the event of this becoming a mandatory subject?

Mr. THOMPSON. In the event that the law stays just as it is, there is that right for job action to be taken?

Mr. PALMER. Yes, sir. But I think it would be more likely to occur under the circumstances this bill would present. I think there is a further problem. I think some of the witnesses this morning have brought up the problem of fair representation. I know with the last panel we had some questions over: Do the retired members of the unit have, for example, a cause of action for fair representation if, for example, the union does not bargain over this issue, or in the opinion of these retirees, does not bargain adequately over this issue?

Apparently this revolves around whether the retirees would be considered employees or not, and as we read this bill, they are not considered employees.

Mr. ERLENBORN. I think that was pretty well agreed, that the definition of employees is not being changed and, therefore, there is no duty of fair representation on the part of the union. You talk about remedies. Let me also suggest if we do make this a subject of mandatory bargaining, we also then run into the possibility of the preemption doctrine applying. Retired employees, then, would lose their

current rights of civil action to enforce their rights and would be limited to going to the National Labor Relations Board, so that there is a very definite hazard of the loss of rights without the attendant accretion of additional rights.

Mr. PALMER. Right. I think that is a very important point and one incidentally that I think the Court in *Pittsburgh Plate Glass* brought up, at least in footnote, is that the employees, or the retirees in this case, had a remedy, that being a suit under section 301 of the Taft-Hartley, rather than collective bargaining.

So, I think that the Court interprets it under present law that the employees in this case at least had some sort of remedy, even though it was outside of the sphere of the collective-bargaining process, or of the further collective bargaining——

Mr. ERLENBORN. Would you agree that that remedy that was recognized might be jeopardized by the passage of this bill?

Mr. PALMER. I think it would. As we read the bill I think it would. In short, we, too, are inclined to agree with Justice Brennan when, wherein he wrote in this case of the severe internal conflict that might arise in a bargaining relationship should retirees benefits become a mandatory topic of bargaining, and also the point Justice Brennan brought out of the possibility of union representatives favoring active employees at the expense of retirees benefits.

Mr. THOMPSON. Thank you very much.

Mr. Ellis.

STATEMENT OF JOHN ELLIS, ASSISTANT EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, ACCOMPANIED BY DALE WITCRAFT, SECRETARY, COLLECTIVE BARGAINING COMMITTEE, ASSOCIATED GENERAL CONTRACTORS

Mr. ELLIS. Yes; Mr. Chairman. Good morning, I will be happy to abbreviate my statement.

Mr. THOMPSON. Good morning.

Mr. ELLIS. I am John Ellis, assistant executive director of the Associated General Contractors of America. I am accompanied by several others of our staff here in Washington. The Associated Contractors of America must, however, reluctantly oppose H.R. 13535.

Many employer organizations oppose H.R. 13535. A common thread of reasoning among them is the problem of unpredictability—the cost, which could easily be enormous, of covering revised, ongoing retirement payments out of current income.

The construction employer would also face this frightening unpredictable liability, and we urge the committee to recognize the validity of that concern as expressed by others. I commend, particularly the statements you have just heard from the other two members of this panel.

In construction, however, there are unique problems which multiply the general industry difficulties with H.R. 13535. Since construction, at about 10 percent of our annual gross national product, is the largest industry, our particular concerns deserve careful attention.

Construction employers who use union labor are typically party to several pension plans—carpenters, laborers, teamsters, et cetera—and

thus come under the multiemployer provisions of ERISA. We are construed to be providing defined benefits to employees, rather than defined contributions to a pension program—though the latter is clearly the case.

The contingent liability provisions of ERISA have placed each such employer in economic jeopardy up to 30 percent of his net worth.

Mr. THOMPSON. If you will excuse me just for a moment, I have just been notified that my prediction as to what was going to take place on the floor is as usual dead wrong, and there is a bill coming up in a moment or so which I am supposed to handle. Mr. Erlenborn will preside over the rest of the meeting.

Thank you very much.

Mr. ELLIS. If any pension fund fails to which he is a contributor, employers contributing to four or more retirement funds, as is common in construction, are thus potentially liable for more than 100 percent. The potential for economic liability is so great, yet incalculable, that not a single insurance company has been willing to issue a policy to cover this risk. We are testifying next week before the House Ways and Means Committee on this subject. A copy of that testimony is attached to this statement and we request that it be made a part of the record here.

Mr. ERLENBORN. Without objection, so ordered.

[The statement referred to follows:]

STATEMENT OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, PRESENTED TO THE HOUSE WAYS AND MEANS COMMITTEE, SEPTEMBER 28, 1978

The Associated General Contractors of America is a management trade association representing 8,300 general contracting firms and 20,000 affiliate firms. Our member firms annually perform about 80 billion dollars of construction on which over three and one-half million workers are employed.

Many of our members are involved in multi-employer pension and employee benefit plans in all parts of the country, so we have very strong feelings on the application of Title IV of ERISA.

General contractor employers are in a position, which we suspect, was overlooked when the ERISA legislation was passed, i.e., unlike most employers we are regularly contributors to multiple plans. Most employers are involved with one benefit plan, but general contractors are usually involved in none (where they work full open shop) or in several (where they work union).

This gives rise to liabilities under ERISA which were probably unintended and which, by exceeding 100 percent of corporate worth, are patently impossible to satisfy.

It is the position of the AGC that employer liability under pension plans created pursuant to the collective bargaining process should be limited to the retirement contributions called for from such employers under the terms of the collective bargaining agreements involved. The creation of liability in excess of such amounts in inequitable, counter-productive, technically unworkable and contrary to the principles of collective bargaining which have worked so well in past years. It is also plainly contrary to the terms of the collective bargaining agreements involved.

We object strenuously to the imposition of unworkable liabilities upon employers who are not delinquent in making agreed contributions to the retirement plans covering their unionized employees. This added liability is threefold:

1. Liability to make up funding deficiencies (not caused by delinquencies in the contributions required under collective bargaining agreements) as they may appear under the funding standard account prepared at the conclusion of the period covered by each collective bargaining agreement;

2. Imposition of penalties for such underfunding (again, we object only to the extent that such underfunding is not attributable to delinquent contributions); and,

3. Resort by the Pension Benefit Guaranty Corporation (PBGC) to up to 30 percent of the net worth of the employer for each plan to which contributions are made, or *were* made in the past, that terminates with inadequate funds to meet vested accrued liability. Since most employers in the construction industry make contributions to more than one plan covering unionized employees, the liability to the PBGC could, if the law so construed, exceed 100 percent of net worth.

Contingent employer liability makes collective bargaining unrealistic for employers. In bargaining, both management and labor come to an agreement on the full terms and conditions under which management will employ labor. ERISA, however, adds a new wrinkle for management. By executing an agreement which contains provisions for employee benefit trusts that are construed as "defined benefit" plans under ERISA, management agrees to the full terms and conditions plus one unknown element. As a party to the resultant collectively bargaining contract, management assumes a potential undetermined liability which may be imposed at some unknown time in the future. Moreover, each individual employer involved assumes this unknown liability even though he may not cause the liability. For an employer, ERISA strongly tends to make collective bargaining unworkable and undesirable. Ultimately, the last employer in business is "left holding the bag."

In the construction industry, employers make contributions to multi-employer employee benefit plans based on a rate specified in the collectice bargaining agreement. Nowhere in the agreement is a benefit promised. The trustees of the benefit plan record the hours of employment of each employee according to reports submitted by participating employers and by conducting audits of the employers' payroll records, and thus keep track of the amount owed for each participating employee by each participating employer. Every possible interpretation of the English language dictates that such plans should be considered "defined contribution" and not "defined benefit" plans. Yet, under ERISA, the opposite is true.

To date, the construction industry has a good record in maintaining solvent employee benefit plans. Through a combination of self-policing, state laws and Federal laws, both the unionized and open shop segments of the industry have operated successful employee benefit programs.

ERISA provisions for contingent employer liability and potentially skyrocketing premiums due the Pension Benefit Guaranty Corporation are uncalled for and inequitable in light of construction's experience rating and the nature of the industry.

I should point out that it is not management alone that is concerned over employer liability. In reaction to the Pension Benefit Guaranty Corporation report to the Congress, Robert Georgine, President of the Building and Construction Trades Department, AFL–CIO, made the following statement: "* * * the PBGC has not recognized the imperative of the collective bargaining process which gave birth to and supports our plans. Simply stated, it is that where the contribution rate provided for in a collective bargaining agreement satisfies ERISA's funding standards, and the employer fulfills that contract, he should not be stuck with someone else's liability when and if the plan is forced to terminate. Employers faced with the threat of contingent employer liability may desert the plan, thereby precipitating its termination, a result which is of course totally contrary to the interests of the participants."

Another important point of contention is withdrawal by a substantial employer. Geographic mobility is characteristic of the construction industry and should not result in the penalties of increased liabilities and demands for bonds and escrow accounts. General contractors must be allowed the latitude to move about the country geographically and to do so in a competitive posture. By foisting liabilities on general contractors beyond those in the collective bargaining agreement, the unionized general contractor's ability to remain competitive is curtailed. This constrains the range of business operations of contractors who employ union labor under terms of collective bargaining agreements. In turn, employment opportunities for union labor are lessened.

We feel it is also important to note that approximately 80 percent of AGC contractor members are small to middle size, family-owned businesses. The constant addition of burdensome Federal requirements pushes these companies closer to extinction. Occupational Safety and Health Act requirements, ERISA requirements, IRS requirements, Equal Employment Opportunity requirements and so on force the general contractor to take on more and more administrative and clerical staff which many can no longer afford. Pensions are important, but the plethora of all these Federal regulations and reporting requirements taken together place an inequitable burden on this nation's small businesses.

In closing, it should be noted that on this matter AGC is in full agreement with and supports the views of the National Construction Employers Council, of which AGC is a member association.

We thank the Subcommittee for the opportunity to express our views. If the Associated General Contractors of America may be of any assistance, please do not hesitate to contact us.

Mr. ELLIS. In the construction industry, pension funds tend to be more severely affected by downturns in the economy such as that experienced during the 1973–75 recession, by changes in growth patterns such as the move from the northern industrial States to the Sunbelt and by the ever-increasing percentage of construction projects being performed by contractors operating without collective-bargaining agreements.

Regional growth patterns, for instance, have resulted in continued high unemployment of construction workers in New York and in the New England States. In such areas less money is being contributed to pension plans. Employees who work little, of course, will not earn a full year's pension benefit under the plan. Retirees, however, still must be provided benefits. It will therefore take a large percentage of current contribution to the fund to cover obligations to retirees. The result will be that funds that should be invested, to earn income to pay future benefits, will be paid out as current benefits.

The increasing—and already appreciable—percentage of construction work being performed by contractors operating without collective-bargaining agreements has an unstabilizing effect upon Taft-Hartley funds. A great many of the pension funds in the construction industry were negotiated during the late 1950's and 1960's. At that time little commercial, industrial, governmental, or institutional construction was performed by other than contractors operating with collective-bargaining agreements. Today conservative estimates are that 4 in 10 construction workers have no union affiliation.

In one major metropolitan area in the South, Tampa, Fla., 10 years ago by dollar volume, 85 percent of such construction was performed by contractors with collective-bargaining agreements. Presently, only 15 percent is performed by contractors employing workers represented by unions. Many other areas throughout the Nation have had similar if less dramatic experience.

With the recent growth of open shop construction, work recently performed by 1,000 union workers is now shared by perhaps 600 workers with union affiliation and covered by the pension fund, and 400 workers not affiliated with a union and not covered by the fund. It does not take much imagination to see what will happen to a pension fund that was designed to pay off its past and future service liabilities based upon a work force of 1,000, only to have that work force reduced to 600.

In those areas of the Nation, and there are many, where there is a pronounced shift in the work away from contractors with collective-bargaining agreements, and to contractors who operate without collective-bargaining agreements, each contractor bound to contribute to pension funds must under current law protect the assets of his company by ceasing doing business in that area at a time when the funds are still solvent.

As mentioned earlier, under the provisions of ERISA each employer has a contingent liability of up to 30 percent of his assets to

each fund to which he is a contributor should the fund be unable to meet its commitments to beneficiaries.

To add to the mandatory subjects of bargaining, the requirement that bargaining be conducted on the subject of "retirement benefits for retired employees," would obviously further unstabilize the pension funds, and employer liabilities, in the construction industry.

It should be noted, too, that much as the retiree is no longer an employee, neither is he paying dues to a union. Is it entirely reasonable to expect the union to protect his interests as strongly as the interests of the current dues-paying member? Or may the union, at times, feel compelled to sacrifice some retiree benefits to obtain a benefit for the current employee?

There are references in the *Pittsburgh Plate Glass* decision which we will not reiterate, you heard them earlier.

Thank you for your attention to my presentation. I will be happy to answer any questions, if I can.

[The prepared statement of John Ellis follows:]

STATEMENT OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Good morning. I am John Ellis, assistant executive director of the Associated General Contractors of America. I am accompanied by Richard Creighton and Dale Witcraft of the AGC National Staff.

The Associated General Contractors of America is a management trade association representing 8,300 general contracting firms and 20,000 affiliated firms. Our member firms annually perform about 80 billion dollars of construction on which over three and one-half million workers are employed.

The Associated General Contractors of America oppose H.R. 13535.

Many employer organizations oppose H.R. 13535. A common thread of reasoning among them is the problem of unpredictability—the cost, which could easily be enormous, of covering revised, on-going retirement payments out of current income.

Retirees are not employees. They were employees and while they were employees the parties to collective bargaining agreements entered into negotiations to develop pension plans which provided benefits upon retirement. Such benefits are made possible by employer contributions to the plan. Employer contributions are based upon hours worked by the employee in the bargaining unit. Contributed funds must pay not only the benefits of those employees who will retire in the future but also those retirees who worked only a few years under the fund before retiring.

The requirement that the parties bargain on benefits for retirees would further unstabilize the actuarial assumptions upon which the contribution rate and benefits schedule are based.

The construction employer would also face this frightening unpredictable liability, and we urge the committee to recognize the validity of that concern as expressed by others.

In construction, however, there are unique problems which multiply the general industry difficulties with H.R. 13535. Since construction, at about 10 percent of our annual Gross National Product, is the largest industry, our particular concerns deserve careful attention.

Construction employers who use union labor are typically party to several pension plans (carpenters, laborers, teamsters, etc.), and thus come under the "multi-employer" provisions of ERISA. We are construted to be providing "defined benefits" to employees, rather than "defined contributions" to a pension program (though the latter is clearly the case).

The contingent liability provisions of ERISA have placed each such employer in economic jeopardy up to 30 percent of his net worth if any pension fund fails to which he is a contributor. Employers contributing to four or more retirement funds, as is common in construction, are thus potentially liable for more than 100 percent. The potential for economic liability is so great, yet incaluable, that not a single insurance company has been willing to issue a policy to cover this risk. We

are testifying next week, before the House Ways and Means Committee on this subject. A copy of that testimony is attached to this statement and we request that it be made a part of the record here.

In the construction industry pension funds tend to be more severely affected by downturns in the economy such as that experienced during the 1973–75 recession, by changes in growth patterns such as the move from the northern industrial states to the sunbelt and by the ever increasing percentage of construction projects being performed by contractors operating without collective bargaining agreements.

Regional growth patterns, for instance, have resulted in continued high unemployment of construction workers in New York and in the New England States. In such areas less money is being contributed to pension plans. Employees who work little, of course, will not earn a full year's pension benefit under the plan. Retirees, however, still must be provided benefits. It will therefore take a large percentage of current contribution to the fund to cover obligations to retirees. The result will be that funds that should be invested, to earn income to pay future benefits, will be paid out as current benefits.

The increasing (and already appreciable) percentage of construction work being performed by contractors operating without collective bargaining agreements has an unstabilizing effect upon Taft-Hartley funds. A great many of the pension funds in the construction industry were negotiated during the late 1950's and early 1960's. At that time little commercial, industrial, governmental or institutional construction was performed by other than contractors operating with collective bargaining agreements. Today conservative estimates are that 4 in 10 construction workers have no union affiliation.

In one major metropolitan area in the South, Tampa, Florida, 10 years ago, by dollar volume, 85 percent of such construction was performed by contractors with collective bargaining agreements. Presently, only 15 percent is performed by contractors employing workers represented by unions. Many other areas throughout the nation had similar if less dramatic experience.

With the recent growth of open shop construction, work recently performed by 1000 union workers is now shared by perhaps 600 workers with union affiliation and covered by the pension fund and 400 workers not affiliated with a union and not covered by the fund. It does not take much imagination to see what will happen to a pension fund that was designed to pay off its past and future service liabilities based upon a workforce of 1,000, only to have that workforce reduced to 600.

In those areas of the nation, and there are many, where there is a pronounced shift in the work away from contractors with collective bargaining agreements and to contractors who operate without collective bargaining agreements, each contractor bound to contribute to pension funds must under current law protect the assets of his company by ceasing doing business in that area at a time when the funds are still solvent. As mentioned earlier, under the provisions of ERISA each employer has a contingent liability of up to 30 percent of his assets to each fund to which he is a contributor should the fund be unable to meet its commitments to beneficiaries.

To add to the mandatory subjects of bargaining, the requirement that bargaining be conducted on the subject of "retirement benefits for retired employees", would obviously further unstabilize the pension funds, and employer liabilities, in the construction industry.

It should be noted, too, that much as the retiree is no longer an employee, neither is he paying dues to a union. Is it entirely reasonable to expect a union to protect his interests as strongly as the interests of the current dues-paying member? Or may the union, at times, feel compelled to sacrifice some retiree benefits to obtain a benefit for the current employee? A court decision suggests these questions.

In 1971 the U.S. Supreme Court affirmed the U.S. Court of Appeals, Sixth Circuit in the *Pittsburgh Plate Glass* case. That decision stated that benefits for retired workers are not a mandatory subject for bargaining. Two points in the decision by the Circuit Court, on the practical result if mandatory bargaining on benefits of retirees was required, bear repeating.

"Once retirement benefits have been bargained for, earned, and become payable, the employer may not recant on his contractual obligation to pay them. Section 301, Labor Management Relations Act, 1947, 29 U.S.C. 185(a) (1964). Nor may retirees demand that they be increased. Changing economic facts pertaining to the employer's business or the general economy occurring after an

employee retires cannot enhance or depreciate the value of his prior services or justify periodic post retirement negotiations. *The employer cannot retroactively increase his prices to compensate for these increased benefits, or fund expenses which are, as these would be, open-ended.*"

"*Moreover, retirees given the bargaining power would lose their economic security,* for just as surely as an employer may increase benefits, in bargaining, he may take them away. Even if retirees were given the statutory power to periodically renegotiate pension benefits previously earned, *the union would be an inappropriate bargaining vehicle. It is not at all unlikely that a union negotiator, presented with the opportunity to advance employees' wages at the expense of retirees' pensions would choose to favor his constituents at the expense of the honorary union members, who retain no voting power.*" (Italics added for emphasis.)

Thank you for your kind attention to my presentation. Should members of the Committee have questions, I shall be glad to answer them.

Mr. KILDEE [presiding]. Thank you very much for your testimony. I apologize for having to step out for a while but I have two hearings going on simultaneously.

Mr. Erlenborn.

Mr. ERLENBORN. Thank you very much, Mr. Chairman.

Let me first make the observation that there is only one reason that we are here. The proposal before us, and I think that is made clear by the first witnesses and I think everyone since then, assumes that we are here for one reason, because of inflation.

It appears to me that the bill before us addresses the symptom rather than the cause. The cause is inflation. If the purchasing power of the dollar was not being eroded by the rampant inflation that we have experienced in recent years, there would be no need for this legislation. Pension benefits as negotiated would remain sufficient. So again, as we so often do in this Congress, we are addressing the symptom rather than the cause. What we ought to do is stop the inflation, which would benefit the retirees, the current workers and the employer as well.

But there seems to be little or no attitude that would lead in this Congress to a control of that pressing problem of inflation.

Let me ask you, Mr. Ellis, about the multiemployer situation which is what you face in the construction industry. Very often the contribution of the employer is based upon a negotiated cents per hour contribution of the current employees, is that not true?

Mr. ELLIS. That is normally the case.

Mr. ERLENBORN. Normally the case is the carpenter, the plumber, the mason, as part of his compensation, negotiated by his union, a certain number of cents per every hour that he works, goes into a common fund?

Mr. ELLIS. Yes, sir.

Mr. ERLENBORN. And from that common fund he and other people who are working for the employers who participate in this fund are guaranteed a level of retirement security in payments from that fund, is that not right?

Mr. ELLIS. Guarantee does not, however, flow directly to the employer.

Mr. ERLENBORN. It flows from the fund, which is a jointly trusteed fund, union and management trustees?

Mr. ELLIS. Yes, sir.

Mr. ERLENBORN. The employer does not pay the pension, does he?

Mr. ELLIS. No.

Mr. ERLENBORN. He makes his cents per hour contribution to the fund?

Mr. ELLIS. That is right.

Mr. ERLENBORN. Now, what we would be asking here in this legislation is to have some of those cents per hour that are earned by these current employees diverted to retired employees?

Mr. ELLIS. Exactly.

Mr. ERLENBORN. If you increase the pension of the retired employees the current employees' current compensation, which goes into the fund, by way of this consideration, is diverted to retired employees?

Mr. ELLIS. Yes, sir.

Mr. ERLENBORN. Isn't that a definite conflict of interest between current employees and their compensation versus retired employees?

Mr. ELLIS. It certainly seems so to me, Mr. Congressman.

Mr. ERLENBORN. I think this is the basic flaw in the bill, and as Mr. Coxson has pointed out, the very purpose of collective bargaining is to have a stable work force at a predictable cost to the employer and predictable income for the employees. What this would do is to say that if an employee, once an employee is always an employee for the purpose of compensation, because even after retirement the compensation of that employee may be increased. That really is the theory here, isn't it?

Mr. ELLIS. Yes, sir.

Mr. ERLENBORN. So often people think that the employer is paying the pension, whether it be a defined contribution or a defined benefit plan. The pension is paid out of a pension trust, it is not paid by the employer, isn't that correct?

Mr. ELLIS. Yes, sir.

Mr. ERLENBORN. And so it isn't the employer, refusing to pay a larger pension out of current income, the employer has made a contract, made the consideration to the pension trust, and it is the pension trust that is making the payment of the pension of the employee. What you are asking here is that the employer increase his consideration to the fund, not that he increase the pension that the employer is paying to the retired employee; isn't that correct?

Mr. ELLIS. Exactly.

Mr. ERLENBORN. Thank you very much, Mr. Chairman.

Mr. Coxson.

Mr. COXSON. If I could add a point to your earlier comments about our inflation. I would heartily agree we are dealing with a symptom. In fact, I think to some extent this bill could fuel inflation by increasing, by forcing an employer to offset these increased costs through increase in prices, and in that respect I think we are not only treating a symptom we are perhaps making the patient worse.

Mr. ERLENBORN. Thank you.

Mr. KILDEE. I understand, of course, I think I understand, that the amount that would be contributed to the fund by the employer would be a proper subject for negotiations under this bill?

Mr. ERLENBORN. In the multiemployer, Taft-Hartley-type multiemployer plan.

Mr. KILDEE. So the amount would be one of the items that——

Mr. ERLENBORN. That is always true. That is true today.

Mr. KILDEE. Today we have—it is permissive, but if one side wished not to discuss it?

Mr. ERLENBORN. That is mandatory. The amount of the employer contribution in a multiemployer plan is a mandatory item of collective bargaining. This does not change that. The only thing is how it is used. That is not up to the employer, it is up to the trustees in the multiemployer plan, the trustees of the plan knowing how much is being contributed, determine what level of benefits may be established.

Mr. KING. I wonder it that would necessarily follow. It occurs to me the language of this bill requires that the retirement benefits be mandatory subject of bargaining, so perhaps in the multiemployer case the benefit itself under this legislation would have to be negotiated rather than the contribution to it.

Mr. ERLENBORN. That would fly directly in the face of ERISA, if it is interpreted that way it would be in direct conflict with current law.

Mr. KILDEE. As chairman I will use my prerogative to ask the counsel to comment on that.

Mr. FEINSTEIN. I am not sure I have been following this accurately, but currently pension plans of current employees are a mandatory subject of bargaining. What is being proposed is that the pension plans of retired employees would also be a mandatory subject of bargaining. We are not suggesting a change in the distinction between benefit and contribution currently existing under ERISA.

Mr. ERLENBORN. If I might clarify, we are talking about the multiemployer situation, the typical Taft-Hartley plan. Let's say in the construction industry; you will find that also in the butchers, teamsters, and so forth. The subject of collective bargaining is the amount of the contribution by the employer to the plan, not the level of benefits. The level of benefits is not negotiated.

Now, what this bill says is that retirement benefits will become a mandatory item of collective bargaining. Now, in the multiemployer situation they don't negotiate benefits, they negotiate the amount of contribution, and then the trustees of the plan, the employer and union trustees, determine the level of benefits that can be made based on the amount of contribution.

Mr. FEINSTEIN. I think it is fair to say however that in negotiating contribution levels there is at least indirect consideration of the ultimate benefit levels.

Mr. ERLENBORN. That question is before the Supreme Court right now in a case coming out of Los Angeles, as to whether these are defined contribution or defined benefit plans.

Mr. FEINSTEIN. Right. But I am saying regardless of how that is—

Mr. ERLENBORN. For the record, the *Connolly* case.

Mr. FEINSTEIN. Regardless of how that is decided, how such plans are characterized, obviously the amount of resources in the plan is going to be a significant factor in considering what the ultimate benefit is going to be.

Mr. ERLENBORN. It is current contribution and not retirement benefits that are being negotiated.

Mr. FEINSTEIN. Right, but this is really not involved in the change proposed by H.R. 13535.

Mr. KILDEE. Thank you very much, gentlemen, for your contribution this morning.

I think counsel has a statement he wants to put into the record. Before we adjourn, we will have that.

Mr. FEINSTEIN. I wanted to indicate that Congressman Silvio Conte has introduced a bill that is identical to H.R. 13535 and has requested to submit a statement for the record.

In addition, Prof. Merton Bernstein, the United Automobile Workers, and the Communications Workers of America have submitted statements that will be included in the record.

The hearing record will remain open until 2 weeks from today and any additional statements for the record can be submitted until then.

[Statement of Merton Bernstein follows:]

STATEMENT BEFORE THE HOUSE SUBCOMMITTEE ON LABOR

Retirees need legislation to require bargaining over changes in retiree benefits. Only thus can retirees be protected against the vagaries of a constantly changing economy.

THE LEGAL NEED

The need for legislation derives from the decision in *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971) in which the Supreme Court held that retirees are not "employees" within the definition of that term in section 2(3) of the National Labor Relations Act and that benefits being paid to them are not a mandatory subject of bargaining (although the benefits to be paid to employees retiring in the future are a mandatory subject of bargaining). These conclusions derive from a dreadfully mechanistic reading of the statute and, oddly enough, from an expressed concern that union bergaining representatives might have conflicting interests between pressing to meet the needs of current employees (future retirees) and those already retired. Unfortunately, the net result was to deprive retirees of any effective representation because only the union representing current employees has any possibility of effectively representing retirees.

THE ACTUAL NEED

The subcommittee need hardly be told that constantly changing economic conditions bear heavily upon retirees, who rely on the benefits of Social Security and, if they are lucky, pension plans.

But while Social Security is indexed to changes in the cost of living, almost no pension plan benefits schedules are indexed. Unless unions with representative status under the National Labor Relations Act can require employers to bargain over changes in benefits for those already retired, no legal method exists for retirees to effectively press their claims for adjustment of benefits. Moreover, the several million persons retired before the effective date of ERISA requirements that a plan offer survivor benefits have no way to make employers consider making provision for those who live longest and suffer the most financial privation—widows.

Nor, as in *Pittsburgh Plate Glass*, need an employer bargain with a union as to how to adapt benefits (in that case medical benefits) to changes in the law, in that instance Medicare.

Some major employers do, in fact, bargain with union representatives over retiree benefits but insist that no such obligation exists. Others simply refuse to discuss the problems that occur so commonly and the law positively prevents unions from requiring them to do so as a condition of reaching a collective agreement.

THE REMEDIES REQUIRED

But if the subject of retiree benefits were a "mandatory" subject of bargaining, then unions could condition agreement upon agreeing on this subject, just as they now can do for other mandatory subjects of bargaining. This is the only practical mechanism for effectively pressing retiree claims to changes in benefits. While some employers are generous, many are more inclined to watch the balance sheet. *Pittsburgh Plate Glass* has made it possible to economize at the expense of retirees—to, in effect, reduce benefits by refusing to change them.

Making benefits for those already retired a mandatory subject of bargaining is one element in undoing the damage of the Supreme Court decision. In addition, legislation must overcome the Supreme Court's narrow holding that, contrary to the conclusion of the NLRB, retirees are not "employees" for the purposes of the

NLRA. It would seem most desirable to provide that they are and that they are eligible to vote in NLRB elections. At the very least, the legislative history should make clear that the union representative for the unit covered by the benefit plan, which is empowered to bargain about such benefits on behalf of those already retired, owes those retirees the duty of fair representation. That is the duty which the Supreme Court has held since 1944 owes to all unit employees "to exercise fairly the power conferred upon it in behalf of all those for whom it acts without hostile discrimination against them." *Steele* v. *Louisville & Nashville R.R.*, 323 U.S. 192 (1944).

REPRESENTATION FOR THOSE NOT PREVIOUSLY REPRESENTED

Retirees who never had a bargaining agent need the same opportunity to bargain with their former employer for the very same purposes. If they were "employees," they might do so if, in addition, the new legislation specified that a unit of only retirees can be regarded as an appropriate unit for collective bargaining. Merely because a group went unrepresented while active employees does not mean that they should be barred from representation when its need may be felt more keenly. Unions may find retirees an attractive and receptive group in special need of their services.

CONCLUSION

As retirees get older, they become less able to supplement their fixed income by earnings or do-it-yourself activity. At the very same time, inflation erodes their private pension benefits. They need the opportunity for union representation just as much as current employees do. *Pittsburgh Plate Glass* was a dubious decision on technical statutory grounds; it was a terrible decision as a matter of national retirement policy. Congress should reverse it legislatively.

Mr. KILDEE. Without objection, then, the Labor-Management Subcommittee will stand adjourned.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT BY HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS, FOR THE HEARING RECORD OF H.R. 13535 HELD BY THE SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS OF THE HOUSE EDUCATION AND LABOR COMMITTEE, SEPTEMBER 19, 1978

Mr. Chairman, colleagues, I appreciate this opportunity to submit a short statement to the Subcommittee on Labor-Management Relations in support of H.R. 13535, which would amend the National Labor Relations Act to provide that the duty to bargain collectively includes bargaining with respect to retirement benefits for retired employees.

At the request of former Congressman Thomas Rees of California, I introduced H.R. 263, a bill identical to H.R. 13535, at the beginning of the 95th Congress. Leo ("Bus") Rodgers, a retired General Electric Company employee from my hometown of Pittsfield and a witness in these hearings alerted me to this issue and has been a tireless advocate of the legislation before you.

Pension benefits for working employees are currently a mandatory subject of bargaining by union and management; renegotiation of such pension benefits for already retired workers is merely a subject for permissive bargaining. Though some employers bargain voluntarily on this subject, others have refused to include retirement benefits for already retired employees in talks with union negotiators.

This modification is necessary to insure that our retirees, who have given long years of their working lives to their employers, are not squeezed between the spiraling costs of an inflation rate which fluctuates around the double-digit threshold and the limited income provided by pensions scaled to the living costs of the past. Our responsibility and commitment to providing for those who have worked so hard for their retirement benefits is deep and abiding. The legal framework of our labor relations system should reflect this fact. The directive to bargain collectively on the issue of pension benefits for retired workers should be mandatory.

This legislation was formulated in partial response to the 1971 U.S. Supreme Court decision in *Allied Chemical and Alkali Workers of America* v. *Pittsburgh Plate Glass Co.*, which held that retirees are neither employees nor members of a bargaining unit under the National Labor Relations Act. Because retirees fell outside these categories, the Supreme Court further held that retirees' benefits were not a mandatory subject of bargaining as "terms and conditions of employment" of the retirees.

In its initial consideration of this case, the National Labor Relations Board held that retired workers continued to be "employees" under the act, so that an employer was obligated to bargain about changes in their benefits. On appeal, the Sixth Circuit reversed this decision and held that retired workers were no longer "employees", a decision which the Supreme Court affirmed. Though the decision did not affect the legal remedies of retired workers under previously negotiated pension plans and did not preclude voluntary bargaining between an employer and a union over changes in benefits for retirees, it pointed up the need to ensure that this vital right be always available to retired workers.

Such mandatory bargaining would help to adjust retirement plans to economic changes, changes in public support programs, and in retirement fund practices.

The existence of such bargaining on a voluntary basis in several major industries suggests that such a requirement is neither too onerous for employers on a practical level nor strongly against their interests. In fact, I feel that such bargaining redounds to the mutual benefit of retirees, management, and the union. The interests of retirees and unions are sufficiently related to be represented by one group since changes in benefits paid to retirees directly affect the terms and conditions of employment of the active employees as an integral part of their total compensation.

I believe that the modification of the scope of mandatory collective bargaining contained in H.R. 13535 is well-reasoned, timely and necessary to protect the interests of employees, current and former. Therefore, I strongly support this measure. Thank you.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, D.C., September 14, 1978.

Hon. FRANK THOMPSON, Jr.,
Chairman, Subcommittee on Labor-Management Relations, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to express the support of the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), for your legislation, H.R. 13535, to remedy the unfortunate Supreme Court decision in the *Pittsburgh Plate Glass* case.

Retired workers have a continuing right to employer sponsored benefits. As the present is a product of the past, so is the present profitability of a corporation the result of the labors of its retired workers.

The UAW has long been committed to gaining protection against the erosion of the purchasing power of our retired members and providing them with a fair share of productivity gains. Although this commitment did not end with the *Pittsburgh Plate Glass* decision, the decision has made our task more difficult.

In no negotiations are we satisfied with the total settlement unless we have been able to provide some increase for the bargaining unit's retired members. In some cases employers also recognize the need and are receptive to our suggestions. Too often, however, the employers used the decision to create an additional bargaining obstacle, thereby making it increasingly difficult to achieve adequate pension benefit improvements for our retirees.

The implications of the *Pittsburgh Plate Glass* decision are very serious. In 1950 the first pension plans negotiated by the UAW provided a monthly benefit of $1.50 per month per year of service, or in some cases $100 per month in combination with Social Security benefits.

Since that time, benefit rates have been increased continually for future retirees as have Social Security benefits, in recognition of inflation and higher living standards. The ability to negotiate for pensioners has enabled the UAW to improve their retirement benefits in a similar fashion. If *Pittsburgh Plate Glass* had been the law of the land since 1950, as a result, the UAW had been unable to negotiate retiree increases, those early retirees' pensions would now be minuscule and they would be on welfare. Instead some of these long service individuals are receiving as much as $340 per month in pension benefits in addition to Social Security.

To allow an employer not to bargain about benefits of those individuals who are responsible for the success of his business is to deny to those individuals the just fruits of their labors.

For this reason, we support H.R. 13535 which will once again require employers to bargain with labor unions about benefits for retirees and will rectify the injustice of the *Pittsburgh Plate Glass* decision.

We would appreciate it, Mr. Chairman, if you could include this letter in the hearing record on H.R. 13535 as a formal statement of the UAW position on this important issue.

Thank you very much.

Sincerely,

HOWARD G. PASTER,
Legislative Director.

COMMUNICATIONS WORKERS OF AMERICA.
Washington, D.C., August 28, 1978.

Hon. FRANK THOMPSON.
Chairman, House Subcommittee on Labor-Management Relations, Washington, D.C.

DEAR MR. CHAIRMAN: The Communications Workers of America wholeheartedly endorses the enactment of H.R. 13535, legislation you have introduced which would amend Section 8(d) of the National Labor Relations Act so as to include benefits for retired employees as a mandatory subject of collective bargaining.

This legislation would overturn a 1971 Supreme Court ruling in *Allied Chemical and Alkali Workers of America Local Union No. 1.* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, which held that retirees should not be considered as members of bargaining units and, therefore, are not subject to collective bargaining protection with respect to benefits.

As a result of this verdict, pensioners have been among the chief victims of the economic distress that has beset America in recent years. Indeed, because of their fixed income status, retirees are uniquely susceptible to the rising tide of inflation over which they have no control nor defense.

CWA pensioners have suffered especially as a result of the Court's decision. Between October, 1971 and January, 1977, more than 150,000 Bell System pensioners endured a loss of real income of 21.8 percent for those retirees with 20 years of service, a diminution of 19.3 percent for those with 30 years of work and a decrease of 17.9 percent for those pensioners with 40 years of service. This shrinkage of purchasing power is even more severe today as inflation has skyrocketed an additional 11.3 percent since January, 1977.

To remedy this problem, CWA is hopeful that Congress will examine in the near future the pressing issue of allowing unions to engage in collective bargaining for retirement benefits. The Union strongly believes that retired employees should be allowed to live out their "golden years" insulated from the ravages of inflation and free from the pangs of financial insecurity.

I am enclosing a copy of correspondence I recently sent to Mr. John de Butts, Chairman of the Board of the American Telephone and Telegraph Company. This enclosure provides additional information concerning the Union's position on this issue.

Sincerely yours,

GLENN E. WATTS,
President.

Enclosures.

COMMUNICATIONS WORKERS OF AMERICA,
Washington, D.C., August 15, 1978.

Mr. JOHN DE BUTTS, *Chairman,*
American Telephone and Telegraph, New York, N.Y.

DEAR MR. DE BUTTS: CWA remains most disappointed that the 1977 negotiated pension improvements were not extended to the more than 150,000 Bell System pensioners who retired prior to August 7, 1977. While a Supreme Court ruling does not legally obligate you to bargain with us over benefits for those people who have already retired, you have in the past accepted the moral responsibility to extend ad hoc and formula adjustments to retirees. Moreover, major employers in the Auto and Steel industries have voluntarily agreed to negotiate pension improvements for existing retirees with the unions representing their work force. Certainly the continuing need for such increases has been demonstrated by the pace of inflation in recent years which has significantly decreased the buying power of retiree pension checks.

For example, we have calculated that employees who retired just after the pension formula adjustment of October, 1971—despite five subsequent improvements in pension benefits and the formula—had suffered a loss of real income, as of January, 1977, as follows: A 21.8 percent loss for those retiring with 20 years of service; a 19.3 percent loss for those retiring with 30 years of service; a 17.9 percent loss for those retiring with 40 years of service.

In general, pensioners who retired between the years of 1971 and 1974, when inflation rates were extraordinarily high, had suffered a reduced buying power ranging between 10 and 22 percent as of January of 1977. Virtually all pensioners who have retired since 1969 had suffered some degree of loss in buying power.

The drop in real pension income is even more severe today than the above example indicates, because these figures were based on January 1977 price levels. Since that time inflation has risen an additional 11.3 percent, while pension income has remained fixed. In addition, future hikes in living costs will continue to erode the purchasing power of the retirees in question unless some type of relief is granted.

We see no valid reason why cost-of-living adjustments have not been made for these pensioners. We specifically challenge the explanation put forth in the Bell System "handout" that is entitled "No Increase in Pensions to Those Retired before August 7, 1977." This document alludes to "uncertainty (by AT&T) over new pension laws—specifically those laws requiring substantial advance funding before commitments for future improvements can be made to pensions of those

already retired." Pension fund actuaries retained by CWA have discovered no such requirements by federal law which would stand in the way of providing an adjustment this year in benefits for those who have already retired.

I strongly urge you to look into this matter right away and take action to upgrade benefits for the many thousands of retired Bell System employees whose real income has been eroded drastically by the tide of inflation.

Sincerely,

GLENN E. WATTS,
President.

ADDITIONAL STATEMENT OF BORIS H. BLOCK, UE GENERAL SECRETARY-TREASURER, BEFORE THE HOUSE SUBCOMMITTEE OF LABOR-MANAGEMENT RELATIONS

I request addition of this statement to the record in order to address some of the issues raised in the latter part of the hearing held September 19th on H.R. 13535.

The apparent strategy of the bill's opponents is to conjure up all sorts of hypothetical problems they claim would arise from enactment of the proposed legislation.

The representatives of the National Association of Manufacturers, the Chamber of Commerce and the Associated Contractors of America testified at considerable length and detail about technical matters such as ERISA, benefit plans versus defined contribution plans, etc.

More galling than all their contrived technical difficulties, which really aren't germane to the issue at hand, is their plea that enactment of H.R. 13535 would create a conflict between active union members and pensioners.

The fact is, and it can be well documented, pensioners have no qualms about the quality of union representation they would receive or about their ability to reconcile their interests with those of active union members. As Sister Dulski and Brother Rogers testified, there exists a deep well of support for pensioners among working union members—especially young workers.

As we indicated earlier, all these issues are raised to obfuscate the real issue which is whether or not collective bargaining agents should have the right to represent and bargain collectively with employers for improvements for pensioners.

That is the only real issue to be decided. H.R. 13535, which we support, will affirmatively determine that issue.

INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS,
Pittsfield, Mass., October 4, 1978.

Atty. FRED FEINSTEIN,
Committee on Education and Labor, Management Relations, Room 2451, Rayburn House Office Building, Washington, D.C.

DEAR MR. FEINSTEIN: At the September 19th meeting of your subcommittee held in Washington, D.C., there were statements made by representatives of the National Association of Manufacturers and representatives of contracting firms that we feel were more rhetoric than factual. These representatives stated that passage of the bill, H.R. 13535 or H.R. 263 or H.R. 7989, all essentially the same bill, would cause more strikes and demonstrations country-wide.

In our opinion, there is no foundation for a statement such as the one mentioned above, and we believe it was made as a scare tactic. In the first place, strikes would be impossible simply because the bill is designed for the relief of pensioners, people that have no jobs to strike. Second, the purpose of the bill is to give pensioners representation through their former unions at the bargaining table with a signed agreement.

The pension funds were built up from contributions by these retirees and they should have a place at the bargaining table when their money is being discussed. In this day and age with high inflation and the ever escalating food and hospital costs which are eating away at their meager savings, retirees need, and deserve, a cost-of-living clause for protection. We feel that many corporations can easily afford this protection.

For example, testimony before the House Subcommittee on Education and Labor, revealed that the General Electric Company, as of January 4, 1978, has a pension trust fund of $3.9 billion, and it expected this will reach $4 billion after January of 1979. The dividends alone from this fund were more than enough for the entire pension payments made in 1977, $156 million.

All that retirees are looking for is a reasonable pension payment, especially for those early retirees now just existing on a meager $75 per month. The retiree would like to live the twilight years of his life with the same dignity as in his working days.

To help assure this, a cost-of-living clause is a must for the retiree. We most sincerely urge you to concern yourself with this issue and to do whatever is in your power to insure its successful passage.

Respectfully yours,

LEO RODGERS,
President, Retired Pension Club, Locals 254 and 255.
ALBERT F. LITANO,
Business Agent, IUE, Local 255.

Attachment.

PENSION RIGHTS CENTER,
Washington, D.C., October 19, 1978.

FRANK THOMPSON, Jr.,
Chairman, Subcommittee on Labor-Management Relations,
Washington, D.C.

DEAR CHAIRMAN THOMPSON: On September 19, 1978, I testified in support of H.R. 13535. At that time I noted that the bill would provide much needed protection to retirees whose unions are now precluded from bargaining effectively for increases in their retirement benefits and urged enactment of this all-important legislation.

I am writing now to elaborate on my suggestion that consideration be given to adding protections for those retirees left otherwise unprotected by H.R. 13535. Specifically, I ask the Subcommittee to consider mandating a feasibility study of the establishment of independent bargaining units for otherwise unrepresented retirees.

This concept has been put forward on several occasions by Professor Merton C. Bernstein. Professor Bernstein suggests that when retirees are not represented by a union, or when their union elects not to bargain on their behalf, the retirees ought to be permitted to form bargaining units and to elect representatives to negotiate with their former employers.

As we envision operation, retirees would be free to elect a senior citizens' organization or a willing union, or to create their own group for bargaining purposes. Election procedures would be similar to those provided for by Section 9 of the National Labor Relations Act. The group would be certified by a federal agency as the official representative of a specified group of retirees.

Employers would have a duty to bargain in good faith with the certified retiree bargaining representative but would, as under the National Labor Relations Act, not be required to reach an agreement. Resort to economic weapons not intrinsically protected by the First Amendment would be legal only in the event of a refusal to bargain in good faith. Resort to such weapons in other circumstances would be unlawful and could be enjoined.

In our opinion this concept represents an intriguing response to an extremely troublesome problem. We think that it warrants careful scrutiny by your Subcommittee. For this reason we suggest that the Subcommittee consider adding to H.R. 13535, a provision for an in-depth study of this proposal.

The study could focus on: (1) a detailed assessment of the costs to employers, unions, retiree organizations, government agencies and the courts of the certified retiree bargaining unit approach; (2) alternative definitions of the bargaining unit—what limitations, if any, should there be on the membership in any such unit; should the unit be permitted to bargain with more than one employer or in more than one industry?; (3) Feasibility of retirees' concerted action; (4) the role of present government bodies in the certification of retiree bargaining units and the enforcement of fair bargaining practices; (5) application of procedures similar to those of the National Labor Relations Act; and (6) the nature and effectiveness of the economic weapons available to retirees.

The proposed study need not be expensive and could be awarded by an interagency grant review committee and administered by the Department of Labor which already has an extensive grant program underway in the pension area. The interagency review committee should include representatives from the National Labor Relations Board, the Department of Health, Education and Welfare, the National Science Foundation and the Congressional Budget Office

as well as the Department of Labor. It should be noted that a similar approach was recently adopted in the award of the grant described in the attached press release.

We would be pleased to discuss this suggestion with you at your convenience.

Sincerely yours,

JAY W. TOWER,
Staff Attorney.

Attachment.

HUD NEWS,
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., October 2, 1978.

IMPACT OF RISING PENSION COSTS SUBJECT OF HUD-FINANCED STUDY

The impact of escalating pension costs on state and local governments will be analyzed under a $449,617 research grant announced today by Housing and Urban Development Secretary Patricia Roberts Harris.

Recipient of the two year competitive grant, awarded after interagency review, is a consortium headed by the Urban Institute, in association with Howard Winkelvoss & Associates, and the Government Finance Research Center of the Municipal Finance Officers Association.

"Public retirement systems are a significant factor in the cost of government," Secretary Harris said. "The provisions and structures of the funds create serious implications for the functioning and future of various governments, as well as for the economic security of the retired population."

The Secretary said that policy makers at all levels of government need to acknowledge and address pension issues, and that the research funded under this grant is designed to provide new insights and information.

Donna E. Shalala, HUD Assistant Secretary for Policy Development and Research, said the pension study is an important part of the public finance research program she administers.

"Pensions are an increasingly important component of governmental finance," Dr. Shalala said, "with many state and local governments facing retirement costs that are escalating much more rapidly than revenues."

The consortium will provide research on the total liabilities of state and local systems under various funding approaches and will examine the implications of future pension costs for the state and local sector in general, and for specific fiscally troubled governments.

Assistant Secretary Shalaha noted that a series of Federal task forces are currently dealing with pension issues and the findings and reports from this research will be useful to them.

"Public pension fund issues cannot be considered in isolation," Dr. Shalala said. "The competitive award of this grant was made with interagency participation. This is an important piece of research that can bring together many of the facets of pension issue work."

Agencies on the grant review panel were: the Department of Health, Education and Welfare; Department of Labor, National Science Foundation; and the Congressional Budget Office.

The research consortium is to apply a combination of actuarial and economic analysis techniques to state and local pension issues. These issues include:

Pension benefits, to be analyzed in terms of adequacy in relation to earnings replacement and minimum living standards and comparability among jurisdictions and in relation to the private sector;

Pension costs, to be assessed for various state and local systems using a variety of cost-determining mechanisms, including a description of the sensitivity of cost estimates to actuarial assumptions;

Pension funding, to be considered through examination of the many different approaches advocated for, or used in, the state and local sector;

Pension fund investments, to be considered in terms of current investment policy and possible greater emphasis on socially useful investments;

Economic impact of pensions, to be analyzed in terms of inter-generational impacts on taxpayers and workers, the fiscal position of state and local governments, and the functioning of national capital markets.

The final report of the research grant is to be a comprehensive document. In the interim, specialized short summaries of the work will be made available consistent with the needs of the different decision makers expected to make use of the information.