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95-36 **FEDERAL EMPLOYMENT PREFERENCE FOR CERTAIN
NON-INDIAN EMPLOYEES**

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HEARING

BEFORE THE

**SUBCOMMITTEE ON
PENSION AND EMPLOYEE BENEFITS**

OF THE

**COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES**

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 4153

A BILL TO ALLOW FEDERAL EMPLOYMENT PREFERENCE
TO CERTAIN EMPLOYEES OF THE BUREAU OF INDIAN
AFFAIRS, AND TO CERTAIN EMPLOYEES OF THE INDIAN
HEALTH SERVICE, WHO ARE NOT ENTITLED TO THE
BENEFITS OF, OR WHO HAVE BEEN ADVERSELY AF-
FECTED BY THE APPLICATION OF, CERTAIN FEDERAL
LAWS ALLOWING EMPLOYMENT PREFERENCE TO INDIANS,
AND FOR OTHER PURPOSES

JULY 26 AND SEPTEMBER 7, 1977

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FEDERAL EMPLOYMENT PREFERENCE FOR CERTAIN NON-INDIAN EMPLOYEES

TUESDAY, JULY 26, 1977

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

The subcommittee met at 9:30 a.m. in room 304 of the Cannon House Office Building, Hon. Gladys Noon Spellman presiding.

OPENING STATEMENT OF HON. GLADYS NOON SPELLMAN

Ms. SPELLMAN. The subcommittee will come to order.

The subcommittee is meeting this morning to consider H.R. 4153, a bill which would provide certain benefits to employees within the Bureau of Indian Affairs and the Indian Health Service. These are people who have been adversely affected by the application of Indian preference statutes.

In June 1974, the Supreme Court issued a decision in the case of *Morton v. Mancari* which upheld the legality of Indian preference in the Bureau of Indian Affairs and the Indian Health Service.

The Court found that Indian preference did not violate equal opportunity statutes but rather was a proper way to achieve Indian self-government.

The Court further ruled that Indian preference does not constitute racial discrimination but is more in the nature of a legitimate political discrimination based on the quasi-sovereignty of the Indian tribes.

Prior to the early 1970's, most Indians had received preference at the time of initial hire into the two agencies but not in subsequent personnel actions. Once hired, Indians and non-Indians competed equally for advancement. *Morton v. Mancari* changed that.

That decision has created a great deal of concern among employees who don't have Indian preference. Many of them believe that their careers have suddenly become truncated and that they will now be unable to achieve the promotions that otherwise would have been theirs. These lost promotions not only will mean lower salaries today, but eventually, lower retirement benefits as well.

The subcommittee has received a great deal of mail from nonpreference employees expressing frustration, hopelessness anxiety, and even some bitterness. It is evident that there may be some serious morale problems among this group. We want to learn the extent of the problem, if it is affecting the agency mission, and what steps are being or may be taken to improve the morale.

I believe that this morning we need to get into the question of good-faith dealings with employees. Most of the non-Indian employees who are affected today by Indian preference were apparently hired when their agencies were publicizing and promoting policies of merit promotion and equal opportunity.

These employees went to work for the Government with certain assurances of what to expect in years to come. They have discovered that those assurances, however sincerely made at the time, are not being carried through.

A factor other than merit may now decide who gets the job today.

Today we will be discussing various ways in which the Government might act in order to continue to deal in good faith toward this group of employees.

You are aware, I am sure, that the subcommittee acted on similar legislation during the 94th Congress. This legislation passed both Houses but was ultimately vetoed.

During the course of those hearings, it was brought to the subcommittee's attention that neither the BIA nor the IHS were adequately informing all new employees of the effects of the Indian Preference Act.

Subsequent to those hearings, the subcommittee made a suggestion that a written notice to this effect be read and signed by all new employees, Indian and non-Indian alike.

We will be interested to know what, if anything, has been done to implement this suggestion.

Also, we would like to know to what extent the outplacement programs allegedly implemented by the agencies are working.

We will now hear from the witnesses.

One of our first witnesses this morning will be a couple of my esteemed colleagues here in the House.

We will start with my very dear colleague and the author of the bill, The Honorable Tom Steed.

STATEMENT OF HON. TOM STEED, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. STEED. Thank you, Madam Chairwoman.

Let me say at the outset that I appreciate this opportunity to appear and the good work you and the subcommittee have done on what to most people would be very unimportant legislation, which I think is of great importance to those affected.

Ms. SPELLMAN. My dealings with you, Congressman Steed, tell me that you are always concerned about the people that you work with and the people that you represent.

So we are very happy to be working with you on this legislation.

Mr. STEED. Your opening statement so well states the issue, and my prepared statement covered some of that same material. If you would permit, I would submit that for the record and make a few other brief remarks.

Ms. SPELLMAN. It will be part of the record.

Mr. STEED. To begin with, I represent 13 Indian tribes. And I have something in the neighborhood of about 50,000 Indian constituents.

I have a district Indian office. I have two Indian boarding schools, a full-time Indian hospital and three Indian field clinics in my district. So, there are a number of these affected people employed and working in my district.

I think this program would have been fine until these court decisions came in and threw a monkey wrench into the whole thing. And it has this effect:

It froze these people in their jobs. It denied them the opportunity to transfer out to similar employment in other agencies of the Government and make room for the Indian employees to fill their slots. It also denied them any promotions. It took away the benefits that all other civil servants of our Government have.

It is so patently discriminatory against them that it kind of makes you wonder how to eliminate discrimination on the one hand by creating discrimination on another. It is not necessary to do so. Now, if we will adopt this legislation, what will happen? It will accelerate and speed up the disappearing out of the Indian service of the non-Indian employees and enhance the opportunities that my Indian constituents have and want and need to fill these same positions.

So you do two things with this legislation; you not only adjust an inequity done to good faithful legitimate Government servants, the non-Indian employee, on the one hand. But you also create more opportunity for the one we started out to help in the first place, which is the Indian employee in the service.

I have studied this and talked to these people, and if there is any other way on God's green Earth in view of the court decisions, any answer but this bill, I don't know what it would be.

I just don't see how anybody can really want to deny about 7,000 people in the Indian service the decency of having the Government treat them fairly as it does everybody else. I don't think the number of people involved is what is important. It is the principle of the thing.

This legislation would correct that and put our Government back in good balance and not only answer the legal equities of the thing, but also the morals of it.

I have been in very close touch with the tribes I represent. They are very advanced people. They are very qualified people. They are leaders in our communities. They are very fine citizens. And they would very much like to have this matter straightened, too, because they are aware of the fact that it is a thorn in their side. It delays and it throws out of kilter a lot of the promotional opportunities they thought they had won.

I just think that anybody who understands this would say that the least our Government can do is to correct this whole situation by enacting this legislation.

Ms. SPELLMAN. I think you are absolutely right.

I want to thank you for writing the bill and for its introduction.

The whole situation is so unbelievable to me. I just couldn't believe we had anything like this. Talk about justice and fairness; I can't see it there.

Mr. STEED. I suppose the court knew what it was doing and all that. But I am sure that if anybody who had anything to do with this bill in the first place had thought the situation out as to how it would de-

velop, that in the beginning, language would have been contained in the original act which would have forestalled such a situation arising as the one we are now faced with. Now the court may have had no choice but since that is a fact that happened after the original legislation was enacted, it is literally having the effect of defeating the purpose of the original bill in many instances.

Ms. SPELLMAN. The fear has been expressed that passage of this legislation would bring about a mass exodus, especially in grades GS-9 to 14, and that it would hurt the ultimate mission of BIA. Do you have any thoughts on that?

Mr. STEED. Well, I doubt that it would be as serious as anybody thinks. Most of these people are spread out in the field. We have 42 tribes in Oklahoma, for instance, so these are not concentrated in a given place to where one to two vacancies would create an insurmountable problem.

I think you are going to find that there are plenty of qualified Indians who can fill these slots as fast as they become vacant and the service will go ahead without very much interruption. That's been true down in my part of the country, and I am sure that that holds true everywhere else.

Ms. SPELLMAN. Right. For those who think that there aren't qualified people who could be moved into these jobs, you know that there are.

Mr. STEED. There may be some other places, but if some of these folks think Indians don't know how to handle themselves, if they would come down to my district, I can give them some demonstrations that will change their minds.

Ms. SPELLMAN. Very good.

We thank you very much.

Mr. STEED. Thank you, Madam Chairman.

[Mr. Steed's statement follows:]

STATEMENT OF HON. TOM STEED

Mrs. Chairwoman, I appreciate the opportunity of being allowed to come before your Subcommittee today to express my interest in adoption of my bill, H. R. 4153, as well as similar bills, which would allow Federal employment preference to certain employees of the Bureau of Indian Affairs, and to certain employees of the Indian Health Service, who are not entitled to the benefits of, or who have been adversely affected by the application of, certain Federal laws allowing preference to Indians, and for other purposes. This legislation is designed to mitigate the adverse effects of the Indian preference policy resulting from two 1974 court decisions, one by the U. S. Court of Appeals in the case of Freeman versus Morton, and the other by the U.S. Supreme Court in Morton versus Mancari. These rulings upheld the constitutionality of Indian preference laws and have required them to be applied to all promotions, lateral transfers and reassignments to vacant positions with the BIA and IHS.

Thus, this has blocked the approximately 7,000 non-Indian employees of these agencies from further advancement in their careers. They are stranded in mid-career through no fault of their own. They do not have equal job opportunity, are not subject to the Civil Service Merit system and are deprived of advancement opportunities and the income that would be normal in a situation of unrestricted job opportunities. These factors have combined to foster morale and management problems which jeopardize the efficient operation of these two agencies and the delivery of vital services to several hundred thousand American Indians and Alaska Natives. Those non-Indian employees who stay in their jobs can expect lower annuities upon retirement, since the balance of their service is likely to be without promotion.

Indian employees as well as non-Indians are experiencing frustration, as many jobs into which ambitious, well-qualified Indians are eager to advance are occupied by non-Indians who now are unlikely to be promoted or transferred and who are years away from meeting minimum civil service retirement requirements. To alleviate this problem, employees who are trapped by Indian preference should be assisted either to find other employment or attain an early retirement. This proposed legislation has the endorsement of the National Federation of Federal Employees, the American Federation of Government Employees, the National Council of Bureau of Indian Affairs and Indian Health Service Locals, the Fair Action Coordinating Team (FACT), Phoenix Area which represents a large number of concerned Federal employees in Arizona, California, Nevada and Utah, with counterpart organizations throughout the United States. It is supported by many Indian employees since enactment would open up job and promotion opportunities for Indians.

My bill provides equity for the non-Indian employee by allowing him to retire earlier than normally would be the case, thus releasing jobs which qualified Indians are anxious to fill. The bill would provide increased retirement benefits only to those non-Indians who retire on or before December 31, 1989, after completing 25 years of service, or 20 years of service at age 50. Also, these employees must be employed by the BIA or the IHS on the date of enactment of this Act, and not entitled to annuity under other sections of the civil service retirement, or not entitled to a preference under section 12 of the 1934 Wheeler-Howard Act, or any other provision of the law granting a preference to Indians in promotions or other personnel action.

In order to encourage non-Indian employees to retire at the end of their normal service, the bill provides that an employee's annuity shall be based on 2.5 percent of his average pay for each of the first 25 years of service, or 20 years of service upon reaching age 50, and 2 percent of his average pay for each year thereafter. This bill will assist those long-term Federal employees now finding their careers at a virtual standstill because of the Indian preference decision. To assure that essential services to Indian people are maintained, my bill provides authority to the Secretaries of the Interior and Health, Education, and Welfare to postpone, for not more than 12 months, the retirement of an employee in their Department, if such postponement is found to be necessary.

One of the primary purposes of this bill is to redress the deleterious effect Indian preference has had on non-Indian employees. Further, it will enhance the cause of Indian self-determination by encouraging non-Indians to retire early, thus releasing more middle and higher level positions for qualified Indian applicants.

By way of further identification of my interest, Mrs. Chairwoman, I'd like to point out that in my congressional district, I have a district Indian office at Anadarko, I have a field office in Shawnee, I have the Riverside Indian School at Anadarko, the Indian School at Lawton, and the Indian Hospital at Lawton, and involving about 13 tribes. Because of the potential benefit for both Indian and non-Indian peoples, I want to urge this committee to favorably report these bills. We must show good faith to these groups of employees.

It is my understanding the total number of employees eligible for early retirement is 2,326, and this figure is not adjusted for mortality. Also, I would like to point out there are 492 non-Indian employees who will be eligible for retirement before October 1st, 1977, who will not be included in these benefits unless we change the language on page 2, line 5, (3) to read "was not otherwise entitled to full retirement benefits." I would appreciate the committee's consideration of this proposed change in order for these people to be included.

I have provided your committee with a copy of a letter from Mr. Harold Sanders of Anadarko, Oklahoma, pointing out an inequity due to only a few months difference in length of service. I would like to cite one example set forth in his letter, as follows: "Take the case of an employee with 29 years of service who would be eligible to exercise the option or take early retirement under the proposed legislation. His annuity would be computed as follows:

	Percent
20 years $\times$ 2.5.....	50
9 years $\times$ 2.0.....	18
Annuity computation factor.....	68

Now compare this with his co-worker who came to work a few months before him, but who has 30 years of service and is 55 years of age or older. This annuity would be computed as follows

	Percent
First 5 years $\times 1.50$	7.50
Second 5 years $\times 1.75$	8.75
Remaining 20 years $\times 2.00$	40.00
Annuity computation factor.....	56.25

The promotional opportunity of these two employees may have been similarly affected by the Indian preference ruling but due to only a few months difference in length of service one would qualify for an 11.75% higher annuity factor than the other. We believe all non-Indian career employees who were serving in these two agencies on July 17, 1974, who were not then eligible to retire, should have equal treatment and consideration. The current retirement eligibility status of these people should not be involved in determining eligibility for benefits which may be provided by this proposed legislation. Indian preference kept them from progressing to higher grades and higher annuities at retirement. There is no place to draw the line through this group of people. All of them have had their careers interrupted and their promotional opportunity virtually eliminated by Indian preference." Mrs. Chairwoman, I believe this point is well taken and I sincerely trust this committee will give careful consideration to this group of employees who, through no fault of their own, will be further discriminated against unless remedial action is taken.

I am happy to have the support of my colleagues, Congressman Pressler, Congressman Runnels, Congressman Risenhoover, Congressman Marlenee, and Congressman Mark Andrews, who have introduced similar bills. As you know, a comparable measure passed both the House and Senate last year, but was vetoed by the President. The need to remedy this inequity remains, and I am hopeful we will be successful this year in our efforts to provide the relief we are seeking for this group of fine Federal employees. I thank you for your attention.

Ms. SPELLMAN. Next we will be hearing from another of my colleagues, the Honorable Harold Runnels.

STATEMENT OF HON. HAROLD RUNNELS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. RUNNELS. I appreciate the opportunity to appear before you today to express my thoughts on H.R. 4153, H.R. 5603—my own bill—and similar legislation. As you may know, I was the sponsor of similar legislation in the previous session of Congress. As a congressman with a large Indian constituency, I naturally have a very large number of constituents who are employed either in the Bureau of Indian Affairs or the Indian Health Service.

In recent years I have been contacted by an increasing number of these constituents who have found their government careers adversely affected by the "Indian preference" policy.

On the face of it, this seems like a small issue, and in fact, most people have little idea of what Indian preference means or how it affects the employees of these two agencies. Unfortunately, the application of Indian preference is an extremely complex situation and is far from being simple. This is illustrated by the fact that some 3 years after the Supreme Court issued its ruling, it is not yet entirely clear what steps have been or will be taken to carry out this policy.

The Indian preference policy affects the fundamental principles upon which our Federal civil service is based and the fundamental relations with the Indian tribes and the Indian people of this nation.

In all the time I have been involved with this issue I have not heard a single constituent who is affected by this policy take issue with the idea of giving the Indian people great responsibility in the operation of these agencies. The Supreme Court upheld the intention written in 1934 by the Congress to have the Indian people run the political entity that controls to a large degree their daily lives.

The debate, of course, centers around how we place this policy into operation and its effect on the non-Indian employee. As I mentioned, this is not a simple issue. It is indeed complex. Even today the debate continues on the legal definition of an Indian employee. However, it is my understanding that the Department of the Interior is now using the figures of 8,751 Indian and 4,442 non-Indian employees within the Bureau of Indian Affairs. This is 67 percent Indian and 33 percent non-Indian.

When one reviews the figures for promotions within BIA during 1976 it is obvious that the non-Indian employee is confronted with the very real situation that his or her career in regard to promotion, training opportunities, and transfers is restricted as a result of policy changes and new interpretations of the law as a result of the Indian preference policy.

It is the national policy of the U.S. Federal Government that we will not condone preferences in employment decisions because of a person's race, ethnic origin or sex and that we will not tolerate failure to vigorously carry out affirmative actions in support of equal employment opportunity. But, in this unique situation, we do not have equal employment opportunity, we have preference. Preference authorized by the Congress and upheld by the U.S. Supreme Court.

I reemphasize that the debate is not over the issue of giving the Indian people greater opportunity to control the operation of these agencies. There seems to be a general agreement that this should be their right, but how about the rights of the nonpreference employee?

Should we just bluntly tell them that we are not going to let you go—but of course don't expect any promotions or other opportunities that normally go along with a good job?

The indecision of this situation has created considerable disruption within these two agencies resulting in low morale, a lack of efficiency and serious damage to the interpersonal relationships between Indian and non-Indian.

One just has to review the figures provided me by BIA employees to understand why this situation is so uncomfortable to the average employee. Last year, for example, 77 percent of the promotions went to Indian employees. The non-Indian personnel were promoted only 23 percent of the available opportunities. Indian employees represented 83 percent of the new hires and 60 percent of the separations. While non-Indian employment is declining, the average Indian employee holds a GS grade of 5.79 and the average non-Indian has a grade of 9.05.

Numerous studies by the Civil Service Commission, the Department of the Interior, and the evaluation by my own office have revealed that the situation under Indian preference has created considerable discontent and in some cases even bitterness.

Without going further into the complexities of the problems of morale and the lack of efficiency that this policy is causing, I would like to state that the purpose of my bill is identical to H.R. 4153, and to S. 666 on the other side of the Hill.

Many of the employees who have found themselves adversely affected by this policy are individuals who have invested a considerable portion of their life to the Bureau of Indian Affairs and the Indian health service, and have now been placed in the position that their job holds little future promise. Many are at the age where the chances of starting a new career are also limited, and jobs in other Federal agencies, at the grade level which they have attained are small in number.

Many of the positions held by non-Indian employees of BIA and IHS have no counterpart in other Federal agencies. This, too, limits the ability of finding employment in other Government agencies.

These people have served the Federal Government, and in the interest of fairness and equality, we must offer some meaningful alternative in order that they might support themselves and their families. I feel strongly that the retirement bills under consideration by this subcommittee provide one such alternative.

There have been several objections raised to this method of bringing justice to this unique situation. Most of these objections have overlooked the personal hardship, personal injustice and personal inequities that absolute Indian preference has created.

It is estimated that approximately 2,302 of the employees of BIA would be affected by this legislation and would be able to meet the provisions of completing 20 years of service before December 31, 1989 and having been continuously employed prior to June 17, 1974.

It had argued in previous years that there were other ways to accomplish equity and justice for the nonpreference employee. The alternative being outplacement to other parts of Interior HEW or other Federal agencies. I submit to you that with the nature of employment in the BIA and the Indian health service, with the cutbacks in other Federal agencies, and the grade level of the employees we are discussing, this isn't a practical or just alternative. Second, if you provide preference for outplacement, you deny equal opportunity for employees of other agencies.

In conclusion, we are faced with the unique situation in an agency that the Supreme Court said:

In the sense that there is no other group of people favored in this manner, the legal status of the BIA is truly different service from anything else in the United States.

These people were hired under one set of rules, and now we have changed the rules which, in effect, say that no matter how talented you are—whether your past accomplishments have been outstanding—you are no longer competing equally for any vacancy. And, the statement that appears on every Federal job announcement—"Equal Employment Opportunity"—doesn't apply to you if you're seeking advancement in the Bureau of Indian Affairs or the Indian health service.

In the name of justice for both the Indian people and the non-Indian employees, I think the solution offered by this legislation is

essential and just. I strongly urge the subcommittee to grant its approval of the legislation.

Ms. SPELLMAN. Thank you very much for an excellent statement that pretty well spells out what the story is.

If I may, I just want to ask one question. The administration is concerned about the high cost of the bill in regard to the unfunded liability of the civil service retirement system.

I am wondering what your thoughts might be on requiring the BIA or the Department of the Interior to compensate the fund, since they were the ones carrying out the 1934 Indian Preference Act.

Mr. RUNNELS. Madam Chairwoman, you know, if you have watched my voting habits, I am a fiscal conservative. I do not believe that we should waste money. But a Government that spends \$460 billion, I have been led to believe, that the cost of this piece of legislation, if everybody were to drop out right now, would be \$144 million.

If they waited until the end of the rope, it would cost the American taxpayers \$142 million.

I know that that is a lot of money, but I think to be fair, to straighten out an inequity that we caused and in all justice, that the cost, whether it be \$142 or \$144 million, is an amount that should be taken care of.

And, there is more to the bill than just the money involved. I think we have made a commitment. I think we must live up to our commitment and surely, if we believe in human rights on both sides of the stick, then I see why no one would be against this piece of legislation because it would be correcting something that is completely out of kilter.

Thank you, Madam Chairwoman.

Ms. SPELLMAN. Mr. Harris, do you have any questions?

Mr. HARRIS. I just have one.

I wasn't too clear on what the \$142 million figure was. Was that the total cost or an annual cost?

Mr. RUNNELS. That is the total cost over a 30-year period to implement and carry out the provisions of this bill.

Mr. HARRIS. How do you feel that should be funded? Do you feel that the Bureau of Indian Affairs should, as part of their budget, contribute to the funding of this program?

Mr. RUNNELS. I would see nothing wrong with that.

Mr. HARRIS. I think one of our great heritages here on this subcommittee, was that the past actions of Congress gave the goodie but didn't bother about the funding. I do think, and I am sure you agree, this is an irresponsible thing. If the policy judgment is made that this type of benefit should be provided, then I think those providing the benefit should also take the onus of figuring out the funding.

I think that this subcommittee is trying to develop that discipline. And this is one, I think, where we will find no questions. I happen to agree with everything you said.

I think we have got some people here who are being treated unfairly, and if this Government wants to inflict policies like that on people, then they have got to recognize it. We can go around blaming a whole lot of people for the situation in the BIA, but I don't think we can blame these employees.

Mr. RUNNELS. No.

Mr. HARRIS. I think unless we come up with a program to balance the injustices here, then we are lacking, but, at the same time, we have got to come up with the mechanism to fund those benefits or we are irresponsible.

It seems to me that perhaps the Bureau of Indian Affairs is the one that should work out the funding for the program.

Ms. SPELLMAN. Thank you.

Any questions, Mr. Leach?

Mr. LEACH. I just wanted to thank the gentleman for his very excellent testimony.

Mr. RUNNELS. My pleasure.

Ms. SPELLMAN. Thank you very much.

Mr. RUNNELS. Thank you, Madam Chairwoman.

Ms. SPELLMAN. The next witness is the Honorable Mark Andrews.

STATEMENT OF HON. MARK ANDREWS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

Mr. ANDREWS. Thank you, Madam Chairwoman.

I appreciate the opportunity to testify in behalf of H.R. 4162, legislation I have introduced that would extend to certain employees of the Bureau of Indian Affairs and the Indian Health Service, improved retirement provisions to offset their loss of competitive status for promotions and transfers. These are employees who are not entitled to the benefits of, or who have been adversely affected by, the application of certain Federal laws allowing employment preference to Indians.

The two groups most adversely affected by the national policy of Indian preference are, in fact, those employed by the BIA and IHS. Many of these employees have established commendable careers of dedicated public service, but are now finding the door closed to further promotion and advancement opportunities because of this policy. I'm all in favor of individual effort and achievement being justly rewarded—by Indians and non-Indians alike. However, many non-Indian BIA and IHS professionals are being treated in a manner inconsistent with this view in order that another policy, Indian preference, might be accommodated.

In an effort to resolve this conflict, I have introduced H.R. 4162. It will achieve equity for the non-Indian employee by allowing him to retire earlier than he normally would. This action, incidentally, would also release jobs which qualified Indians are anxious to fill.

My bill would provide increased retirement benefits only to those non-Indians who retire on or before December 31, 1989, after completing 25 years of service, or 20 years of service after age 50. In addition, these employees must be employed in the Bureau of Indian Affairs or the Indian Health Service continuously from June 17, 1974, to the date of his separation, and must not be otherwise entitled to full retirement benefits.

Finally, an employee must not be entitled to preference under section 12 of the 1934 Wheeler-Howard Act, or any other provision of the law granting a preference to Indians in promotions or other personnel actions.

Mr. Chairman, I do believe enactment of this legislation is a sound way to relieve the situation created by the Indian preference policy which confronts many non-Indian employees today. I, therefore, urge the subcommittee's prompt attention to this bill, which offers a realistic and practical solution to the problem.

SUMMARY

And I would like to summarize what my colleagues have said, particularly my colleague from Oklahoma, Tom Steed.

Tom and I sit on the Appropriations Committee together and we take a look at the dollars continually. In fact, I am wearing glasses I didn't have to wear before I came to this Congress not too many years ago, I guess, because of looking over piles of figures.

But people are far more important than the figures, and the figures really, as my colleague Mr. Runnels just pointed out, aren't that far apart.

We have an obligation to these people toward their retirement. We have an obligation toward American Indians in that we want to make job opportunities in the BIA more broadly available to them.

And all we are saying is that let's maintain the pledge we made to professionals who came on board, the non-Indian professionals, who were assured of a good job, a challenging job with regular advancement based on merit, and from no fault of theirs have found that this idea was totally sidetracked.

They have dedicated the best part of their life to serving the Indian American. And certainly, they deserve this type of treatment.

I think the bill is a very necessary one and I certainly appreciate the continuous support that you have given it in the past, and I would hope that an enlightened White House will see its way to signing this.

Ms. SPELLMAN. I do think we have a more enlightened White House these days.

Mr. ANDREWS. In some ways, Madam Chairwoman, that is very true. But speaking as a farmer, we are a little frustrated from time to time.

[Laughter.]

Ms. SPELLMAN. It just depends upon which day we are looking.

Mr. ANDREWS. It certainly depends on which day we are looking at it, and that's this great American system. But it's our White House, whichever side of the political aisle we are sitting on and we certainly hope that they bat a whale of a lot closer to 1,000 than down in the strikeout category, because it is so important in a host of different fields.

Ms. SPELLMAN. Indeed.

I did want to talk about cost. Our subcommittee has figured that this legislation would cost \$174.9 million over the 30-year period, which would be \$10.8 a year.

Mr. ANDREWS. But to get a fair figure, you have to compare that \$174 million figure, which is a little different than the one my colleague gave, with the figure that would be applicable if we didn't implement this.

Ms. SPELLMAN. You are so right.

Mr. ANDREWS. Because it isn't to say that these people had not earned their pension rights and wouldn't get pension rights.

And I would suspect that the difference—what difference do your figures show? You are talking about gross difference, the difference between implementing this program allowing them to retire as they presently will, is \$174 million.

Mr. HARRIS. That is the difference.

Mr. MCCLUSKEY. That is the increase in the unfunded liability.

Mr. ANDREWS. That is the increase in the unfunded liability, which is a considerable amount. I think that is based on the idea that every-one of them is going to walk off the job immediately. And I doubt very much that that will be the case. I think that many of them that are in teaching positions may elect to say on.

I think the very fact of knowing that they have this option will give them the peace of mind and the feeling that they can continue, that they aren't in a dead end. Many of them are feeling that they have to get out while they are still relatively young, while they still have 10, 15 years of service left and get into another position.

So I would think that the results of this legislation might well mean a more orderly retirement than an all-at-once treatment.

Mr. HARRIS. Madam Chairwoman, I was going to make that point. If we talk about the \$174 million figure, which is the figure we got, but that is the outside figure. That's the figure if everybody retired tomorrow, I think.

Mr. ANDREWS. But you have to realize that a lot of these people, the teachers and administrators wouldn't be in the job they are in if they didn't feel a great deal of rapport toward the Indian people.

And this isn't any case of "ussens" against them. They are dedicated people. They are intrigued with their job. They have been doing a good job, most of them, for a long time. And many of them, I am sure, will continue.

But then as the need comes to move out, they then have the opportunity to move, which they don't have in the present situation.

Ms. SPELLMAN. Any other questions?

Thank you.

Mr. ANDREWS. Thank you so much for your time.

Mr. STEED. Madam Chairwoman, may I ask your indulgence to make one contribution that might be helpful.

Since I chair the Subcommittee on Appropriations which handles the budget for the Civil Service Commission—

Ms. SPELLMAN. That's why I am very comfortable; if we get it passed, we won't have any problem.

[Laughter.]

Mr. STEED. Well, there is a little information about the retirement plan that might be helpful to you, if this matter comes up.

You know, the Federal Government owes the retirement fund something between \$60 and \$70 billion. We have worked out a deal in the last few years where this isn't increasing any more. We are being current now.

So this money you are talking about will be partly taken out of the employee's check and matched by the Federal Government, so that it wouldn't make any additional debt on the fund.

Now what we did with the debt, we have reduced that to equivalent of a Government bond, and we have the Treasury Department at the end of the year, find the average interest rate that the Government pays on all its bond through the years, and then we make that contribution into the retirement fund, as though it had been a bond and would have earned that kind of interest.

This is keeping our retirement fund in very good balance, so I am sure that you would find that this would be considered a very minor impact. But every time we have a cost-of-living adjustment, or we have any pay increase, those impacts on the fund are astronomical and we take those in stride, so I don't think you would find this would cause even a ripple on the surface.

I just thought you might like to know that this is a matter that is very much under control now.

Ms. SPELLMAN. We have had people testifying here who are sure the sky is falling. We always reassure them of the fact that the Federal Government does owe the fund money but is paying interest on it.

Mr. STEED. And it is holding its own and we are not getting any worse and we actually improved quite a bit this year.

The interest payments on the debt that are not needed to pay the pensions that we are now paying is used to reduce the amount of that debt. Hopefully some day it will get back down into what we consider manageable proportions.

Mr. HARRIS. The chairman, though, does realize that this subcommittee has bill after bill before it for another little ripple. While each one of them appears to be kind of small, there is sort of an accumulative effect as we go along with these different little requests for additional—out of the fund.

Mr. STEED. Well, the impact—see, these new ripples, we pay for those as they come up now and for the next 30 years. The employee pays and the Government matches. For so long, the Government didn't match at all. What the employee paid was enough money to take care of the pension, so they just put IOU's in the fund.

They don't let them do that any more. So the impact is then the amount of cash that the departments have to dig up to do their matching for their employees' retirement and we do require that now, and so it is keeping the ball game from going out the window. And I think it is very manageable.

Mr. HARRIS. I think the subcommittee should make a note of the work that you have done toward bringing just straight honesty and balance to the fund. I think you anticipated the problems and I think we owe a great debt of gratitude to you for having done this, because as we run into this whole period now where we have got tremendous problems with regard to retirement benefits across the board, whether it is military, I think more and more people have come to realize that it is something that should have been dealt with before.

The fact that on our civil service retirement program it has been dealt with, I think is a great boon to every Federal employee.

Mr. STEED. And while we are dealing with astronomical figures when we talk about the Government retirement program, all of them are quite manageable and they are quite within our means, and we do better than strike a balance every year right now.

Mr. HARRIS. Do you want to take on the military retirement program.

Mr. STEED. Thank goodness I don't have that one.

Ms. SPELLMAN. I just wanted to remind my colleague from Virginia what I have been telling my constituents, and that is that we don't always spend our time here spending money. We also save money. H.R. 4337, which is now sitting in the Senate, saves the Government some \$150 billion—correction, million.

When I am telling it on the campaign trail, it will turn out to be billion. [Laughter.]

Ms. SPELLMAN. At the moment, it is \$150 million. So we are saving money, too.

Ms. SPELLMAN. The Honorable Mark Andrews and the Honorable Albert Quie, members of the Study Group on Indian Education, are next.

Mike, are you chairman of this study group?

Mr. BLOUIN. Yes; and Congressman Quie is a ranking minority member.

STATEMENT OF HON. MICHAEL BLOUIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BLOUIN. Thank you very much, Madam Chairwoman.

Let me first of all express our appreciation for this subcommittee's willingness to give us some time to testify this morning and communicate some of our thoughts regarding Indian preference and the civil service.

If I may, on behalf of Congressman Quie and myself, I would like to submit our joint testimony for the record and request the subcommittee's permission that Congressman Quie and I be allowed to summarize the essence of what is contained in that prepared statement.

Ms. SPELLMAN. Certainly.

Mr. BLOUIN. Allow me to preface my remarks by pointing out that my thoughts and suggestions are based on field trips to Arizona, New Mexico, Iowa, North Dakota, South Dakota, Oklahoma, and Utah, when I discussed Indian problems with Indian personnel, both BIA and public schools, parent advisory committee members and Bureau staff people, as well as the Indian tribal councils.

In reading the prepared text, I hope you will notice that it dwells exclusively with the BIA educational program as it relates to teaching and administrative personnel.

I realize that the bill presently before you also address the problem of Indian preference as it relates to non-Indian personnel within the Bureau. I am very much aware that many feel the answer to the so-called dead end street dilemma, many non-Indian personnel now placed because of Indian preference, can be found by allowing non-Indian BIA personnel the option of early retirement.

As I view the present situation, I would like to offer, at least with regards to Bureau educational policy, a somewhat more positive solution to this problem.

Keep in mind—and I think that this is extremely important—that the BIA education component is the largest personnel component in

the Bureau, that its economic and social impact on the reservations is tremendous and that a vast majority of those Indians now within the Bureau began from within the Bureau's educational system.

This process will increase in the future. In addition, the future of the Indian and his role in non-Indian society will to a very large degree be determined by how well the education system addresses the needs of the Indian.

With this thought in mind, allow me to share with you what Indian preference via the civil service system has done to the Bureau's educational program:

To put it in simple terms, the present system under which a school administrator fills a staff vacancy, creates a vacuum in the educational process. He must first go through several bureaucratic divisions to inform a superior that a vacancy even exists.

Then an administrator will receive a list of teaching candidates submitted to him from a national list of civil service qualified applicants.

From this list, the administrator may choose a teacher if one is available. I don't think it is necessary to give a full description of this process, as I am sure you are very familiar with it, especially members of this subcommittee.

However, such a process has greatly curtailed the continuity needed in education. The process has caused vacancies to be left unfilled for months, even years, at a time.

Sometimes a vacancy exists for an entire school year or longer. The results should be obvious: Indian children who already suffer because of language barriers, poverty, isolation and so on, are left without a teacher.

If this were to happen in public schools anywhere in this country, if it were to happen in classrooms where my daughters were educated or our children generally, I think all of us as parents would be outraged. It goes on as a matter of course with BIA and reservation-connected schools.

Allow me to cite an example of abuses that occur:

Last year the Navajo high school at Many Farms needed a principal. The anglo assistant principal was supported in his bid for the job by the local school board who had watched him perform in an acting capacity for several months.

However, the Bureau appointed an Indian applicant to whom the board was personally and bitterly opposed.

In January, this Indian principal left Many Farms and never returned. He lived in Phoenix with one of his employees for a period and then drifted.

Today this person, who is related to persons within the Bureau's Washington office, is being considered for an assignment to the Washington central office. The work of the school was conducted by the rejected anglo assistant principal. I prepared a list of additional examples for submission to the record with your permission, and I would like to request that that list be allowed to become a part of the record. It is in the form of an appendix.

Ms. SPELLMAN. With no objection, it will be made a part of the record.

Mr. BLOUIN. And I would like to just briefly cite one or two of those examples.

In the Fort Defiance agency in Navajo in the 1976-77, they began with no title I teachers in any of the 11 schools because of civil service delays. Teachers were finally hired starting in November and ending in March of this year.

If the bill before you becomes law, I am fearful of what may occur within the Bureau schools. A non-Indian teacher or administrator competent in his or her job may very well leave the Bureau, knowing that under the present law, promotion is extremely unlikely.

However, if his or her professional competence is known in the Indian education community, professional advancement will be forthcoming dictated by Indians themselves.

Again, Madam Chairwoman, I appreciate your willingness to listen. Should you or any members of this subcommittee have any questions, I will do my best to answer them.

Ms. SPELLMAN. Thank you for your excellent statement.

STATEMENT OF HON. ALBERT QUIE, A REPRESENTATIVE FROM THE STATE OF MINNESOTA

Mr. QUIE. I agree with everything that Mike Blouin has said.

Let me say that many Indians came to us, both Indian administrators and Indians on Indian parent committees or Indian school board members and said to us: Why can't we hire the non-Indian we want to? We are concerned about the education of our children. If a non-Indian can do a better job, why shouldn't we be permitted to do that?

I think the Indian preference really should have been to protect Indians from non-Indians and there was a period in the BIA when they needed that kind of protection, and now it goes too far.

Also, in 1972, following the court decision *Freemon v. Morton*, Secretary Morton changed the practice which called for a preference in initial hiring to one that called for a preference in all employment transactions, regardless of the person's qualifications or their capability. We know we can't have good education in that way.

Looking at the school administrators' attempts to secure teachers: When they have an application for teacher personnel, it goes to the local school superintendent, back to the agency, and then to the area and then to Albuquerque and then back again, tracing those steps back. The result is excessive paperwork delays.

The register itself is open only for a short period of time, and therefore, everybody who might be interested doesn't get on the register. There is a tendency of pirating teachers from one agency to another which means you create a vacancy some-place while you fill one in another.

The vacancies often run an average of 3 to 6 months, but I believe that Mike has incidents where it goes way beyond that.

And then what it causes is extreme physical and cultural isolation because there is no relationship developed between that teacher and the board and the people of that community.

At Fort Sill Indian school, the career education slot has been vacant for over a year, in spite of the fact that the Fort Sill Indian school is located on the outskirts of Lawton, Okla. and has an abundant supply of potential teachers immediately and readily available.

At Intermountain Boarding School, a secondary school and special vocational training facility, two teacher training instructor positions have been vacant for over 15 months. In one of these, the area has sent through two job descriptions and made three requests from the civil service register. Intermountain Boarding School is located in Brigham City, Utah which is an excellent source of new teachers.

I, like every parent, want to see his child receive the best education possible. This same kind of concern is what I am expressing for Indian children.

Unfortunately, civil service, coupled with Indian preference, has created a bureaucratic monster which is resulting in inferior education for Indian children. The answer to this problem is not to merely retire the non-Indian personnel. The real answer, in our opinion, is twofold:

One, we must change the method of Bureau hiring in order to allow the local administration the right to hire educational personnel from whatever source available.

The national list could be maintained. But it should be used as only one source of teaching personnel. Why should the administration of a school not be allowed to advertise locally? The public schools do this and do it successfully.

Why should school administrators not be allowed to place educators within the Bureau under contract? Again, the public schools do this very successfully.

Two, Indian preference ought to be defined as just that, Indian preference; the local parent advisory committee ought to be consulted as to who they prefer to hire to fill existing vacancies. If they feel the position should be filled by a qualified Indian, that's fine; fill the slot with an Indian. If the parent advisory committee feels that the slot can best be filled by a non-Indian, no matter how many Indian applicants exist for that position, that non-Indian ought to be hired. This, in my opinion, is real Indian preference.

Today in the eastern agency on Navajo, there is a man who suddenly is up for promotion. He has just discovered he is one-sixteenth Cherokee and thus fulfills the Bureau's requirements.

Similarly, Indian preference promotions should take into account the best interest of the Indian people themselves. The Bureau should be forced to promote based on quality of work and competence, not "Indianess."

This kind of hiring and promotion apparatus is, in my opinion, the commonsense approach to the development of a quality education program.

And so I think that is no wonder that Indians are doing poorly in BIA schools from just the way the civil service operates, handling those lists.

And so as Mike indicated, to just permit the non-Indian a quick way out, doesn't solve the situation. I believe we have to go much further than that.

We intend to write legislation. And a part of that, it will be necessary for us to deal with you on the whole civil service question, in order that we can help the schools secure the well-qualified personnel that meets the standards of the community.

Ms. SPELLMAN. I want to put one question to you. Currently we are without an adequate number of teachers. What you have said is almost a horror story for anybody who is concerned about education, as I am sure all of us are.

This bill encourages retirement. Are there, in fact, enough qualified Indians to fill the slots? Will we be really hurting the BIA?

Mr. QUIE. If we are tied down to continuing to seek out teacher employment strictly through the civil service system, we are going to have a mammoth problem compounded dozens of times beyond our examples, on your hands, in every BIA area in the country where BIA schools exist.

There is already a shortage of available teachers from the lists that are there today. If dozens, hundreds of new vacancies occur across this country as a result of early retirement op-out, they just aren't going to be able to fill it with qualified people within that system.

Ms. SPELLMAN. What are we doing to train Indians to become teachers? Are we doing enough in that area?

Mr. QUIE. There probably isn't enough, but we have a pretty good program now, scholarships, and there is a growing number of Indian community colleges to encourage them to go into postsecondary education.

And as you know, this is a long process. But I believe there has been substantial steps that makes me be optimistic about it.

One of the problems is that with this operation under the civil service for BIA schools and not operating under any contract, there are a large number of Indians who go to public schools where those Indian teachers should be available to teach so they have the role model there in the public schools, but that is really being prevented also by this system of civil service.

Ms. SPELLMAN. Thank you very much.

Mr. QUIE. Thank you.

Mr. BLOUIN. Thank you.

[The statement follows:]

STATEMENT OF HON. MICHAEL T. BLOUIN, CHAIRMAN, ADVISORY STUDY GROUP ON INDIAN EDUCATION, ACCOMPANIED BY HON. ALBERT H. QUIE, RANKING MINORITY MEMBER, COMMITTEE ON EDUCATION AND LABOR

Thank you, Madame Chairwoman, for allowing us to testify. Currently the Post Office and Civil Service Committee is considering several bills that would allow early retirement and/or preferred job placement to non-Indian employees of the Bureau of Indian Affairs. These bills are an attempt to alleviate the problems currently associated with implementing the policy of Indian preference.

During the past year, the Committee on Education and Labor has conducted an intensive study of the delivery of educational services to Indian students. Through the efforts of the Advisory Study Group on Indian Education, an investigative arm of the Committee, many of us are aware of the complicated and extensive problems which current Bureau actions have caused. No one will dispute the fact that changes within the present system need to be made. Any attempt at determining what those changes should be, however, calls for a careful weighing of alternatives.

Many of the problems related to Indian education have already been identified, and some solutions have already been reached. Of those problems to be solved, two areas related to the bills presently being considered by the Post Office and Civil Service Committee, are in need of immediate attention: 1) the practice of Indian preference in the Bureau of Indian Affairs; and 2) the practice of hiring teachers and school personnel under Civil Service. We feel that if

these questions are considered and dealt with in a prompt manner, there is no need for a "non-Indian retirement" bill.

No one will dispute the fact that good teachers are critical to having an effective learning experience. A well-equipped classroom is substandard without a teacher who will stimulate and aid the students. Yet, the BIA finds itself operating within a hiring system that fosters a shortage of available and skilled teachers. Whether the blame for the current problem rests with the Bureau or another body is immaterial. Congress must act now to ensure these Indian children proper instruction and educational training from qualified teachers.

Currently a teacher employed by the BIA is not hired under contract. Thus, while a teacher hired under Civil Service has the protection of regulations, the Bureau has no reciprocal means of ensuring continued presence on the job. Due to unique situations on the Indian reservations, a teacher will often terminate his or her employment with little or no notice. The replacement times often run several months, with periods of teacher vacancies of 3 to 6 months common. Since this is often during a school year, it means an empty classroom and idle or crowded students.

Why do these delays occur? Does the Civil Service hiring system foster a shortage of, or short service by, teachers? The Civil Service hiring system is lengthy and complicated. Any school principal or superintendent in need of additional teaching staff files a form with the Agency office, which forwards the form to the Area office. From there, the request is passed to the Civil Service office in Albuquerque (in some areas, the delays are compounded by other intermediate steps). A list of applicants is then sent back through each of the branches, finally reaching the local administrator and enabling him to choose from a national list of eligible applicants. Then the process of paperwork proceeds through the channels back to the Area office to "get the person signed up and on board". This lengthy process often delays hiring a teacher whose assistance is needed immediately, even if the teacher is immediately available.

On its face, the system is too cumbersome. In practice, several factors make it a nightmare:

(1) The Bureau and Civil Service do not expedite their personnel matters. Frankly, the urgency and importance given to education matters varies widely between areas. Often, the officials who are in charge of the hiring process are unsympathetic or uncaring. Unnecessary delays result. In some Agencies, school superintendents say that the only way to get a request out of the Area Civil Service people is to act as a pest. Often, requests are lost, requiring that the process be begun anew. These delays have led to a practice by BIA officials of "pirating" or "seducing" qualified applicants (especially Indians who can be hired immediately) from other nearby BIA schools or facilities. Thus, they fill their vacancies by creating others. These new vacancies must then be filled from the start.

(2) The "National List" is only open for a few weeks a year for applicants. It is woefully out of date. When administrators finally get a list of names, they find that most are under contract elsewhere, or cannot even be reached because of the system's outdated addresses. To compound this problem, (a) the names are ranked and must be contacted in order, and (b) only partial listings (10 to 20 names) are sent. When none of these prove available, a new partial list must be requested. (At Standing Rock Agency a list of four potential social science teachers was received. Upon checking, it was learned that all had been terminated from former employment as incompetent. One was in resultant litigation. When questioned, Civil Service said to try one out anyway, and if he doesn't work, fire him).

(3) The lack of a contract system similar to that used in public schools, enables a teacher to leave in the middle of a year. As those familiar with education can testify, it is almost impossible to obtain the services of a good teacher in mid-year, since most are under contract elsewhere. For this reason, the major number of new reservation teachers are inexperienced and, occasionally, not the best qualified. While the dedication of these teachers is beyond reproach and deserves our respect, the unique cultural and educational needs of the Indian student puts a strain on the inexperienced teacher, leading to low teacher morale, and subsequently, a high turnover rate. This in turn leads to more hiring problems and the vicious cycle continues. Congress must take steps to break it now.

(4) Vacancies also stem from the recruitment practices fostered by the Civil Service. The most frequent problem voiced by teachers was the extreme physical and cultural isolation they experienced in coming to the Indian school. An instance was cited where a teacher, who had been hired by telephone, arrived on site, stayed long enough to look around, quit, and drove back the same day. Recruitment and hiring often take place miles from the local school and result in severe strain on new personnel, who come with vague perceptions of their responsibilities and the facilities and environment in which they are expected to work. This "long distance" hiring should be reduced to a minimum.

Indian preference further aggravates the problem of recruiting and hiring. As originally instituted by the Congress, the Indian preference policy allowed the American Indian a means of entering the system that effectively governed all facets of his everyday existence by breaking down the discriminatory barriers that prevented him from doing so. The intended thrust of Indian preference was always viewed as a political, and not a racial, preference. Correctly practiced, it can be seen as one of the earliest Congressional steps taken in the chain of statutes which culminated in the Indian Self-Determination Act of 1975.

The original intent of Indian preference, which was to enhance the progress of Indian people by lessening Federal domination of service programs and yielding to Indian "preference" in staffing, seems to have been perverted by the Department of the Interior so that it no longer acts on the behalf of Indian peoples.

In 1972, Secretary Morton, following a Federal Court decision, changed the practice which called for preference in initial hire to one that called for preference in all employment transactions. Beginning with this edict, and continuing until the present time, some Bureau personnel have systematically extended this to mean that only Indians, regardless of competence, experience, expertise, or special skills can be promoted, transferred, etc. In some instances, this has been in spite of concerted opposition by the local Indian population, who felt the Indian applicant unsatisfactory.

In other instances, jobs have gone unfilled or requests have been changed because of a lack of a qualified Indian applicant. Indians have received promotions, not in line with skills or experience, but because they were the only Indian applicant on the list. Non-Indians stand in "dead end jobs" or in fear of job loss, since non-Indian transfer is practically nonexistent.

Lack of leadership and policy uniformity in the Bureau has led to the formation of local policies, seldom monitored above an Area level. Some Areas have tried to be fair in implementing Indian preference. Anti-Anglo sentiment of some Indian administrators, however, has led to a complete morale breakdown (In the Shiprock Agency, non-Indians have been told that they are not welcome). In several Agencies, the Indian employees of the BIA also suffer from these policies which foster favoritism. Yet the group that suffers the greatest harm is the Indian peoples, because untrained and inexperienced people cannot efficiently deliver the services that they are desperately in need of.

While the problem is not universal, abuses have been prevalent and visible enough to cause a mood of unrest among non-Indian employees. Many feel hurt; many feel trapped and betrayed. Quite a few are bitter, and almost all are scared. The majority feel that Indian preference is a correct policy when it is seen as local decision-making. What many non-Indians object to is the current practice which places unqualified people before them. This is not preference. It is discrimination.

We feel as strongly about this as the field personnel. It must be changed, but not by merely providing an "out" for non-Indians. While this may provide relief to some non-Indians (and the field support for this measure is questionable), it will create a chaotic situation within BIA, for there are not sufficiently trained and experienced Indian personnel to fill the leadership vacuum that would be created. Some Indian groups will applaud these recommendations. They want control now and feel that any loss of services will be made up for by having pride in Indian control. It is questionable, however, whether total and immediate Indian control will serve the best interests of the Indian peoples.

In light of these problems facing Indian communities now, the following recommendations are offered:

(1) That a contract system for teachers within the Bureau of Indian Affairs, similar to that used by public school systems, be phased in. No "new hires" within the Bureau for teaching positions should be made except under contract

provisions. Local school administrators should be given more authority to hire individuals who are qualified, especially in circumstances where failure to hire such an individual will create a vacant classroom situation. This would eliminate the mandatory processing of applicants from the Civil Service offices in Albuquerque, and the excessive delays that now result. It would also allow local school authorities direct contact with recruits, enabling them to develop good communication about the type of responsibilities needed and the facilities and environment in which they would work. To move recruiting to the local level could cut down the number of terminations due to insufficient information on the part of new personnel who "didn't know that they were getting into" (Precedent for a hiring system of both a local and centralized base currently exists in the Department of Defense schools where a teacher may be hired in the States or in a local overseas area). The responsibility for the paperwork for personnel should be at the Agency or the Area level.

(2) Full protection of current Civil Service employees against loss of accrued benefits (retirement, seniority, etc.) be provided by inserting a "grandfather clause" that would give all current employees the option of continuing under the Civil Service system.

(3) All teacher appointments, whether they come through Civil Service or are hired by local administrators, meet with the educational certification requirements in the State in which the school is located in an effort to maintain quality of instruction.

(4) Local lists (Agency and Area) of qualified applicants be maintained at both the Area and the Agency level, along with "national lists" from the Civil Service, allowing administrators a wider selection of applicants. Special emphasis on strong local lists would facilitate administrators in the immediate hiring of personnel.

(5) Hearings be held to ensure that all the personnel actions of the Bureau which involve the Civil Service Commission, from job evaluation to termination, are handled in a fair and expedient manner, having in mind that the timeliness of action bears directly on the services rendered. Also the hearings should focus on promotion by factors including, but not limited to, seniority (i.e. continued education, etc.), outreach programs for hiring, and rotation of personnel.

(6) That hearings be held to determine whether Bureau educational personnel at the school level, who do not serve in a teaching capacity, should also be placed under contract, and if so, to what level?

(7) Responsibility for maintaining a "master" personnel system within the Bureau should be an authority delegated by the Congress to the Bureau. The Bureau's Central office would be responsible for keeping complete records on all hirings, dismissals, and vacancies throughout the Bureau.

(8) That Congress enact legislation which requires an individual's qualifications and experience be considered before, or on a weighted basis with, Indian preference, to provide the BIA constituency with the most qualified person.

(9) In order to facilitate upward mobility of Indians within the Bureau, the Congress mandate that the Bureau institute a vigorous outreach recruitment policy and an extensive upward mobility policy, programs of internship with actual "on the job experience", and a training program for Indian applicants.

(10) That the Congress make changes in present law or establish guidelines necessary to allow local Indian communities more input into the selection of the people to serve them. A preferred way of doing this would be to make the local recommendation binding unless good cause could be shown a reviewing authority for not following the recommendation. This would be true "Indian preference" and would allow maximum Indian control.

(11) The Secretary of the Interior institute an outplacement program for non-Indian BIA personnel who wish to use it. Applications for this service could be delayed for a period to be determined if the Secretary finds that immediate transfer will hurt delivery of services. However, transfers could not be denied.

(12) The Secretary, or his designee, shall ensure that personnel policies are adhered to, and that non-Indian BIA employees are not subjected to discrimination, harassment, or any other detrimental act by BIA administrators, and that a procedure be established to oversee this, with swift and harsh punishment for transgressors.

Urgency in dealing with these problems is dictated by the fact that they concern our nation's most precious resource—children. These are children for whom the Federal government has undertaken the responsibility of providing an education. Thus, ultimate responsibility rests on the Congress for providing

the education they need and deserve. Adequate training will enable these children to become the leaders of future Indian communities, consistent with the original intent of Indian preference—Indian ability to make their own decisions!

APPENDIX

During our field research, we encountered vacancies and personnel delays in every location we went to. It was the universal complaint. To give some parameters to the scope of the problem, we are including the following list of ten situations we encountered. Sad to say, these instances are not "horror" cases. They are representative of the conditions all too prevalent in the field.

(1) On the Navajo Area, the position of Assistant Area Director for Education (the key education specialist and coordinator for the entire area) was vacant for over four years and has only been recently filled.

(2) In the Fort Defiance Agency of the Navajo Area, the 1976-1977 school year began with no Title I teachers in any of the eleven schools because of delays. Teachers were finally hired starting in November and ending in March of this year. At Seba Delkai, a Title I reading slot had been vacant for one and a half years in November of 1976, so it was simply cancelled.

(3) At Chuska, the Superintendent's slot became vacant in February of 1977. It was not even advertised as available until 7/18/77.

(4) At Fort Sill Indian School, the career education slot has been vacant for over one year, in spite of the fact that Fort Sill Indian School is located on the outskirts of Lawton, Oklahoma and has an abundant supply of potential teachers immediately available.

(5) Fort Yates Senior and Junior High Schools (Standing Rock reservation, North Dakota) anticipates six vacancies in their teaching staff of sixteen for this year, including the absence of both principals. This is causing problems in the school administration, compounded by the fact that Fort Yates is a cooperative program with a public school.

(6) On Navajo, the position of principal was filled after long delays at the Tohatchi and Greasewood schools, despite vigorous opposition to the candidates on the part of the local committees. Due to community opposition and personal problems, both positions were again vacant in a year.

(7) At Intermountain Boarding School, a secondary school and special vocation training facility, two teacher Training Instructor positions have been vacant over fifteen months. On one of these, the Area has sent through two job descriptions and made three requests from the Civil Service register (Nursing instructor). Intermountain Boarding School is located in Brigham City, an excellent source of new teachers.

(8) At Sequoyah High School in Tahlequah, Oklahoma, Title I positions for the coming year have not been filled, due to a delay in the grant and the system. A music position is also vacant and this class will probably not be held during the Fall. These conditions exist, despite what school administrators call "an abundance of teachers" in the vicinity.

(9) At Polacca day school (which is on the Hopi Indian reservation in Arizona), there will be two vacancies out of eleven teachers at the start of this school year. In addition, one of two Title I teachers is absent.

(10) At Riverside Indian School in Oklahoma, there are presently four vacancies out of nineteen total and "the school year is very close." The average delay is four months (a special education teacher was requested in August of 1976 and not hired until January, 1977). This delay is unnecessary since there is an adequate pool of potential teachers available for local recruiting.

Ms. SPELLMAN. We will hear from Mr. James Pierce, the president of the National Federation of Federal Employees next.

STATEMENT OF JAMES PIERCE, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY GEORGE TILTON, GENERAL COUNSEL, AND MAUREEN CLANCY, LEGISLATIVE LIAISON

Mr. PIERCE. I have with me George Tilton, our general counsel, on my left, and Maureen Clancy, our legislative liaison, on my right.

I am James M. Pierce, president of the National Federation of Federal Employees. The NFFE is the largest of the independent general Federal employee unions, representing employees both here and abroad, including a substantial majority of all BIA and IHS employees.

The bill now before this subcommittee, H.R. 4153 represents a serious effort to address and correct certain facts and circumstances and to redress inequities that are unique in the Federal service.

We refer, of course, to the fact that in the Bureau of Indian Affairs and the Indian Health Service, non-Indian employees do not have the same opportunity for promotions, transfer, and assignments as do persons of Indian descent. This situation was created by various acts of Congress which are collectively known as the Indian Preference Laws, and date back to 1834.

The very legitimate and worthwhile goal the Congress sought to achieve through passage of these laws was advancement of the Indian peoples. One of methods the Congress chose to achieve this goal was to grant all persons of Indian descent a preference in employment in Indian agencies.

Prior to 1972, this preference was uniformly interpreted to mean that Indians would enjoy a preference for initial appointments in the Federal Civil Service.

In June 1972, the Secretary of the Interior, and prior to that date, the Indian Health Service, determined that the preference also applied to promotions and transfers.

Action taken by the Government to extend the preference was in consonance with the intent of Congress and to help achieve the legitimate goal of advancing the interest of the Indian people. For this the Government deserves credit.

However, it must also be pointed out that the action was taken without preplanning or, indeed, any consideration of the effect this departure from tradition would have on careers and lives of the non-Indian employees in BIA and IHS.

This total failure by the Government to consider the effect the new interpretation would have on non-Indian employees, coupled with the utter lack of any plan or provision to respond to those employees, caused massive upheavals and plummeting morale within BIA and IHS.

Even worse, the basic mission of the agencies, service to the Indian peoples, was seriously jeopardized and the desired goal of better and increased employment opportunities for Indians was essentially unsuccessful.

The problems which started in 1972 persist today. Indeed, in a recent Civil Service Commission personnel management report of the Albuquerque, N. Mex. BIA office, the Civil Service Commission reported that the office was a shambles. The Commission found, notwithstanding the intent of the Secretary of the Interior, that there was still limited employment of Indians and they comprised only 55 percent of the total full-time work force and of that number most are concentrated in the lower salaried jobs.

H.R. 4153 will largely correct the problems we have mentioned. In the first instance, H.R. 4153 will unquestionably achieve the goal of providing more and better jobs for persons of Indian descent.

Second, and equally important, the bill will do much to correct the Government's initial failure to adequately plan for a transition stage and to compensate those non-Indian employees who were adversely affected by the full implementation of the preference provision.

The bill compensates and will correct an inequity caused by an official act of Government, by permitting certain BIA and IHS employees who retire prior to December 31, 1989, and have at least 25 years of service, or who reached age 50 and have completed 20 years of service prior to December 31, 1989, to retire with an increased annuity.

Besides these limitations, the worker must also have been employed continuously from the date of the Supreme Court decisions in the case of *Morton v. Mancari*, is not otherwise entitled to full retirement, and finally, is not entitled to a preference pursuant to the act of Congress of June 18, 1934.

The limitations are obviously quite restrictive. Indeed, we believe they are unnecessarily so. In particular, we object to the elimination from coverage of those persons who are "otherwise entitled to full retirement benefits."

We, of course, are well aware of the justification behind this particular subsection. Essentially, the argument is:

Since a person is eligible for retirement, an injury cannot be presumed, and therefore the additional retirement benefit cannot be justified. The argument is logical but overlooks certain very important facts.

First, the disparate treatment accorded the two categories of employees works a harsh inequity. Take, for example, the case of two employees, one of whom is 65 years of age and has 20 years of service and is "otherwise entitled to a full annuity," and another employee who is 50 years of age and has completed the same 20 years of service. Both employees have the same years of service, both have made precisely the same 7-percent contribution to the retirement fund, but the younger employee will receive a much higher annuity solely because of age, an accident of birth.

Second, although the older employee may in fact be able to retire at any time, the presumption of lack of injury is, nevertheless, erroneous. Annuities are based on the so-called high 3 years of service. Because the preference applies to promotions, and transfer which may affect promotions, it is clear that an employee who has been denied a promotion because of the preference has also experienced a loss. Accordingly, we recommend that the subcommittee consider a special provision for these employees.

There is one other area in need of some clarification. We refer to section 8336(h) (2) which provides that an annuity if he "was employed continuously from June 17, 1974, to the date of his separation." We fully support the intent of this subsection.

However, since June 1972, there are a few instances where career employees were involuntarily separated without cause from the BIA and who have since been reemployed.

Clearly, in those relatively few instances, the affected employees fully intended to be "continuously" employed and would have been so employed but for an act of Government.

Therefore, we recommend that the section 8336(h) (2) be amended as follows:

An employee is entitled to an annuity if he (2) was employed in the Bureau of Indian Affairs or the Indian Health Service continuously from June 1974 to the date of his separations: *Provided, however*, That any person who was involuntarily separated from the service without personal cause, and who was reinstated on or before the effective date of this act and who otherwise qualifies for an annuity, shall be entitled to an annuity.

We are aware that there is opposition to this bill, that it is too expensive and will constitute a bad precedent. With regard to the latter objection, this bill will not be a bad precedent. We know of no other situation in the Government that is even remotely similar to the situation in BIA and IHS. Indian preference is unique both to the law and the civil service. The only precedent it will establish is that the Congress was willing to do justice to a very small group of employees.

The first objection is undoubtedly true, but in our estimation, unimportant under the circumstances. Clearly, this bill will be expensive and will increase the unfunded liability of the retirement fund. Costs have been estimated at approximately \$107 million, a figure which we regard as fair and reasonable under the circumstances.

We can offer no tangible savings or setoff except that a generous and wealthy nation is rendering justice to a relatively small number of employees who have been injured by an act of Government. It will also improve morale and restore integrity in the BIA/IHS staffing system.

And let there be no mistake; these employees were injured by an act of their Government. We do not say that the Government acted in bad faith or intentionally injured them, but the fact remains that when the Department of the Interior announced the new Indian preference policy in 1972 and the Supreme Court upheld it in June of 1974, that was a Government act.

When the present nonpreference employees of the BIA and IHS went to work, conditions were vastly different than they are now, and they changed through no fault of the employees. The Government of the United States made those changes, and we believe that in justice the affected employees should be compensated.

Indeed, we suggest that there is a strong moral obligation to pass this bill. It was, after all, the Congress that created this situation, and the Congress should now take whatever steps are necessary to insure that these employees are adequately compensated.

In this connection we wish to point out one other area that the subcommittee should examine. Specifically, we are concerned about all of those employees who may not immediately qualify for retirement, or who because of family or other financial responsibilities simply cannot afford to retire, or who for other reasons wish to continue their careers in Government. These employees will naturally prefer employment in an agency where they can freely compete for promotions et cetera.

Obviously, this cannot occur in either BIA or IHS. Accordingly, we urge the subcommittee to consider separate legislation which would establish a statutory outplacement program for these employees.

The Department of the Interior has recognized the validity of this concept by administratively establishing such a program.

Unfortunately, and notwithstanding former President Ford's veto message to the contrary, its implementation has been a failure, and it is now clear that legislation is the only viable alternative.

Madam Chairwoman and members of the subcommittee, we wish to express, on behalf of all our BIA and IHS members, our appreciation for the effort that you have all expended on their behalf.

Indian and non-Indian alike will greatly benefit by the enactment of this bill. It is a good, progressive bill that will further the long-standing congressional policy of advancing the interests of the Indian peoples and will, at the same time, achieve a real measure of equity for those employees who were unintentionally, but nevertheless adversely, affected by the full applications of the Indian preference policy.

This will conclude our statement. I shall be pleased to respond to any questions you may have.

Ms. SPELLMAN. Thank you very much for your statement.

I would like to note that this is your first time before this subcommittee since you became president of your organization. We are very pleased to have you here.

We will take note of the fact that you say Congress created this situation. On behalf of the Congress I want to plead its innocence.

It passed a law in 1934 which we think was misimplemented by the Department of the Interior. We think it was greatly responsible for creating this untenable situation.

But pointing the finger isn't going to help very much. We know that we have to make some changes.

What do you think of requiring an employee to show that he or she, in fact, has been passed over because of the Indian preference law?

Mr. PIERCE. I think this is an area that it would be virtually impossible to go over past records and reconstruct them to such an extent that an employee could prove beyond a shadow of a doubt that they had in fact been passed over.

I think with the Civil Service Commission audits that we have had in BIA over the past few months, that it is obvious that the personnel practices or policies, even, in BIA, haven't been what they should have been.

It would be our opinion and experience from dealings with BIA that such records, in fact, do not exist to the extent that they could prove whether they have been passed over or not, through no fault of the employee, again.

Ms. SPELLMAN. It has been suggested, and you mentioned it too, that a transition period be imposed. If this bill should have a transition period, suppose that it required a qualified Indian to be available to fill the job.

Mr. TILTON. Madam Chairwoman, you know, we suggested exactly that point about 4 years ago. We suggested that there should be a training program which would entail training a qualified Indian for a specific position. At that time the Department of the Interior had sufficient funds to do it and could have done so.

And that idea was never accepted. And although it may be a good idea, the fact remains that relief is needed now. And had it been ac-

cepted when we first suggested it, it would have been appropriate, but now the bill should simply be passed as is.

Ms. SPELLMAN. Because too much time has passed in the interim? There is a question here.

Mr. McCLUSKEY. Mr. Tilton, you said you suggested this 4 years ago, that the Department of the Interior have a training period of some sort for the Indians.

Was that before a specific committee, or in a letter?

Mr. TILTON. I think that was, as I recall the circumstances, we did that both in the form of letters and with personal meetings with officials of the Department of Interior.

My recollection is that we suggested it personally to Under Secretary Rogers at that time, as well as to other officials in the Department.

I believe we may have also suggested that in some of the statements before the predecessor to this committee. But clearly, we did suggest it to the Department at that time and they did not accept it.

Mr. McCLUSKEY. I wonder if you would be so kind as to submit any letters on that particular subject to the subcommittee for the record.

Mr. PIERCE. We will check our archives and see what we can dig up and we will submit what we can find.

Mr. McCLUSKEY. Thank you.

Thank you, Madam Chairwoman.

Mr. PIERCE. I might add to what Mr. Tilton has said, that if I recall the date, in 1970, I attended a conference in Albuquerque where this very thing was discussed; the fact that if Indian preference was going to take the perspective as we know it today, that it should be phased in. That there, in other words, should be some phase-in and there should be a training program established.

I, as George has already indicated, we recollect over this period of time, from 1970, I think that is the right date, clear on up into 1972, 1973, advancing the recommendation that there should be a phase-in of this very area of Indian preference.

However, the law said otherwise. But I think it was within the scope of the authority of the Department of the Interior to have affected a training program in which that particular recommendation was not followed.

Ms. SPELLMAN. Thank you very much for your testimony. We are plagued with bells this morning.

My colleague, Larry Pressler, would have liked to testify at this point, but with bells ringing in our ears, we know that won't be happening.

If you care to do so, Congressman Pressler, we would be happy to have you introduce your constituent who will be testifying.

Mr. PRESSLER. Mrs. Spellman, I would like to introduce, before we go to vote—I may not be able to come back—a constituent of mine who has done a great deal of work on seeking favorable consideration of H.R. 4153, which is identical to legislation that I have introduced and I have a statement to put into the record.

The witness is Thomas Goninion of Aberdeen who is on your witness list. I am sure you will be hearing him, but I wanted to present him to the subcommittee as well as submit for the record a statement

since we have to go vote. There being no objection, I would like to submit my statement at this time.

Ms. SPELLMAN. There is no objection. We would be very happy to put your statement into the record.

We are glad that you were able to stop in and be with us today, and we fully understand the kind of schedule that you are working under.

Mr. PRESSLER. The same one you are.

[Mr. Pressler's statement follows:]

STATEMENT OF HON. LARRY PRESSLER, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF SOUTH DAKOTA

Thank you for this opportunity to urge your favorable consideration of H.R. 4153—which is identical to legislation I have introduced, H.R. 4216.

My comments today will be brief, as I am anxious for you to have an opportunity to hear from a gentleman who has devoted a good share of his life to the betterment of our native Americans as an employee of the Indian Health Service—Mr. Thomas Goninion of Aberdeen, South Dakota.

In its well-intentioned attempt to provide opportunities for the advancement of our Indian peoples, Congress has severely penalized some of our most specialized, capable, and dedicated civil servants, ironically, the very people Congress had hoped to assist with its actions—the native Americans of this country—have found themselves in an equally deplorable situation.

The objective of the legislation we are discussing today is simply to encourage the retirement of employees of the BIA and the IHS so that qualified Indian people can take over the responsibilities Congress gave them in enacting the Wheeler-Howard Act of 1934. The cost is minimal—the benefits great—and it is only right that Congress act to relieve the suffering it has created, while at the same time promoting the good it intended.

At this time, I would like to present Mr. Thomas Goninion to the subcommittee—and to urge once again that this legislation be given favorable consideration. Thank you.

Ms. SPELLMAN. Mr. Fosdick, president of the National Council of Bureau of Indian Affairs and the Indian Health Service Locals, and Eleanor Ward who is the secretary-treasurer are next.

STATEMENT OF DONALD J. FOSDICK, PRESIDENT, NATIONAL
COUNCIL OF BUREAU OF INDIAN AFFAIRS, ACCOMPANIED BY
ELEANOR WARD, SECRETARY-TREASURER

Mr. FOSDICK. We are so pleased at the opportunity to be here, Madam Chairwoman, and we want to thank you for this chance.

And I might try to inject a little bit of humor, although I am not very good at it. Before we started, I said to Eleanor, I think it would be proper if I introduced you first and let you speak first. And Eleanor said: Well, it is not ordinary that I let you go first, but in this case we will make an exception.

Ms. SPELLMAN. We women always have the last word.

[Laughter.]

Mr. FOSDICK. Rightfully so.

We are here representing the National Council of Bureau of Indian Affairs and Indian Health Service Locals. We are supported by all of the FACT organizations in the United States.

We are delighted that two of the representatives of FACT groups are here with us, also.

We have worked closely with the American Federation of Government Employees on this legislation.

We would like to ask that our testimony be introduced into the record and I also have with me a set of petitions from educators on just one of our reservations, here, that I would respectfully like to ask be incorporated within the record, because they are also asking for the passage of this bill. As your opening statements indicated, Ms. Spellman, they are asking for outplacement opportunities also.

Ms. SPELLMAN. Those will all be placed into the record.

Mr. FOSDICK. Thank you very much.

These petitions come from affiliates of the National Education Association, and we have also been working with them on the passage of this legislation for the last several years.

I will try to restrict my comments to those that have not been presented here, but I must recognize that they have been so comprehensive and such a beautiful job has been done by everyone, that I just have a few things that I can comment on.

In your opening statement, Mrs. Spellman, you asked for an evaluation of what it is that is transpiring in the Bureau of Indian Affairs with respect to outplacement and with respect to the wonderful job that was done by your staff in coming to the Bureau of Indian Affairs and conferring with personnel officers and personnel management officers and with the administration of the Bureau to see if a statement couldn't be incorporated into the record of every single employee, that he was completely cognizant of the Indian preference laws and how they impact upon him or her.

That has been accomplished, thanks to you, and will prevent in the future, any employee from being entrapped without realizing what it is that these laws are and what they stand for.

Ms. SPELLMAN. We appreciate your telling us that. We have trouble enough holding Mr. McCluskey down to the \$200,000 a year that we pay him.

[Laughter.]

Ms. SPELLMAN. Now that you have said that, it will be even more difficult. He has, indeed, done an excellent job.

Mr. FOSDICK. If we may, let us ask for one more favor from this subcommittee. I think that the Indian employees of the Bureau of Indian Affairs and the Indian Health Service would be delighted if you would also ask for the same type of approach to be used with Indian employees when they are hired by the Bureau of Indian Affairs, because they need to know the benefits of these laws and how they apply to them. Many new employees, of course, are young people who are not completely cognizant of them yet. They need that same opportunity. So we respectfully request that.

As I said earlier, the testimony that's been delivered has been magnificent. I would like to point out that the original purpose of the bill, the first purpose of the bill, is to provide jobs for Indians. I don't believe that it has been stated here, but from 40 to 80 percent unemployment exists on reservations throughout these United States of America.

Indian people need tens of thousands of jobs created for them if they are going to get out of their economic backwash. The great value of this bill is that there are 2,326 employees in the Bureau of Indian Affairs who are eligible under this bill in the next 12 years. Approximately an additional 1,000 employees are in IHS. We don't have an exact run on that figure, but we do have on the Bureau of Indian Affairs. If

these 3,000-plus jobs were available to Indians, it would mean that yearly, approximately \$40 to \$50 million in salaries would come into their economies from the positions that are currently held by non-Indians. I think that is a point that has not been brought out. And I would like to mention that.

There also has been a question about the brain drain raised here. The statistics prove that geographically, the employees affected are from all parts of the United States and pretty equitably distributed. Therefore, it would not, in my estimation, have an adverse impact upon the employment picture in the Bureau of Indian Affairs, resulting in a brain drain.

Second, I would like to say that those of us who have worked for years with Indian people know what a remarkable job they have done in lifting themselves by their bootstraps. And to make an observation that there would be a brain drain seems quite insulting to me. They would be more than equal to the challenge of moving forward and claiming the 33-percent of the positions remaining in the Bureau of Indian Affairs unoccupied by Indians.

If I may make a few comments—and if I could switch my hat, which I didn't expect to do this morning, from that of a union person to a management official—I want to mention that for the last few weeks I have been placed in a position, Acting Chief of the Branch of School Operations, which deals with exactly the issues that were raised this morning by Mr. Quie and Mr. Blouin.

Now, I will never be able to obtain that job, but I am extremely interested in it because I know how it will benefit Indian children everywhere.

The Bureau of Indian Affairs currently is trying to do some of the things that Messrs. Quie and Blouin pointed out. It is recognized how backward the Civil Service Commission's recruitment procedures are. Teachers in public schools are ordinarily available in the months of March and April for their contracts. We don't receive teachers until August, September, or October.

Therefore, school boards and Indian tribes need to have the opportunity to hire on a contract basis. In the investigations that have taken place so far, we have been assured orally by the Solicitor's Offices and by the congressional liaison offices, that there is a possibility that the opportunity can be provided to school boards to contract for teachers, which means that they would be able to obtain teachers immediately, the teachers of their choice. And that is one of the things that is being pursued right now.

I would like to say a second thing in regard to the teachers who are in the Bureau of Indian Affairs: I think that they are very fine professionals.

It is true that they are in the largest group in the Bureau who will be benefitted by this bill, but they are people who are dedicated to the cause of educating Indian children under extremely adverse circumstances. These people want to remain and work with Indian children. The benefit of this bill is that it would provide them relief to their hurt and therefore, they would continue to carry on with their contributions to Indian children, much as they have done in the past.

There also is a bill before Congress, I understand, that is related to the transfer of retirement funds from States, and therefore, the

Bureau of Indian Affairs schools are included under it. If this bill is enacted, then it would mean that many teachers could move from a Bureau school to a State school and that transfer possibility of their retirement funds would be a possibility.

Another thing that did not come out this morning, which disappointed me as a manager, was that there have been massive downgradings of teachers in the Bureau of Indian Affairs. We worked valiantly 10, 15, 20 years ago, trying to get teachers a financial opportunity to remain in the classroom, because the opportunities for financial increments, are usually restricted to supervisory positions and management positions in education. We finally managed to get a master teacher program that would help move teachers into the GS-9 and GS-11 positions. It now has been threatened by these massive downgradings from the Civil Service Commission. No one has risen to the teachers' defense and to the harmful effects on children.

I think that that is something else that should be brought up to Mr. Qu'e and Mr. Blouin so that they know about it. We have asked Senator Abourezk if he would request a computer run from the Bureau of Indian Affairs on all of these massive downgradings so that the spotlight could be focused upon this, because Indian children do deserve good teachers. Good teachers who want to be in the classroom teaching children should be there, but receive a salary that makes it possible for them to live a life that is worth while.

Another problem that wasn't raised this morning, with regard to the problems of teachers, is that they live on extremely isolated, remote reservations where they have to do their teaching job. There should be something done with regards to the pay for these individuals in these isolated locations so that Indian children will be entitled to the best teachers available.

Taking my management hat off now and going back to the union hat: in talking about the costliness of the bill, we liked what it was that we heard this morning from you and from Congressman Steed and others that there is no financial problem from this bill to the Civil Service Commission in retirement fund. We were most pleased to hear you talk about the possibility that this would be a line item in the Department of the Interior or HEW's budget, or the IHS or BIA budget. Because I think it would have a very therapeutic effect upon the Bureau and the Department. The effect would be: we should have implemented the 1934 law correctly all of these several years. We did not. We are in a bind now and financially we are having to pay for it. Let's don't permit this type of thing to happen again in the future.

I think that there are some other areas which might be problem areas for the Bureau's management.

I would like to raise one question. Chairperson Spellman, along another line. And that is: Why aren't our management officials of the Bureau of Indian Affairs and the Indian Health Service and the Department of the Interior and the Department of HEW, the Civil Service Commission or any others here from management to testify on this bill? We have worked on it for over 5 years. There has been more than ample opportunity for them to develop their positions. I wish that there was some way that we could see the testimony that we understand they are to deliver to you on September 7 so that we

could have the opportunity to make a comment on it. Because they are obviously not going to consult with us before they deliver it to you.

It seems to me as though the sunshine should come in.

Ms. SPELLMAN. We will certainly make that testimony available to you. You can give us, in writing, your comments on that testimony and your comments can be included in the record.

Ms. FOSDICK. Thank you very much.

I would like to make a concluding remark. President Carter addressed us as employees in the Department of the Interior auditorium. He was asked a question about this bill and he responded just generally that if the bill were nonpunitive to non-Indians he would favor it, but he needed an opportunity to study that bill in order to comment intelligently on it, which is certainly a sound position to take.

Recently, also, he cast the direction for the entire Nation and the international community by advocacy of human rights. He said at 3 p.m. in his White House press conference on July 16:

My opinion is that the American people believe very deeply in the concept of human rights. I think there has to be some means in a democracy like ours for a President to exemplify or to personify what the American people believe. I believe it is time for our country to hold a beacon light of something that is pure and decent and right and proper, that would rally our citizens to a cause.

As a student of international and comparative education, I personally would not like for people of the Union of South Africa to know what it is that we are considering today. I wouldn't like for the Communist people to be able to talk in the United Nations about this situation.

Ms. SPELLMAN. I believe that this bill is a mirror that can beacon that light that the President was talking about.

We respectfully request your efforts with the White House as well as with Congress to expeditiously move this bill forward because it will be the first step to solve these personnel problems in the Bureau of Indian Affairs.

Thank you.

Ms. SPELLMAN. Thank you very much for a most eloquent statement. I fully agree with you that what we are talking about is a concept which seems to be un-American. You can't believe it.

Ms. Ward?

STATEMENT OF ELEANOR WARD

Ms. WARD. Madam Chairwoman, I am Eleanor Ward. I am secretary-treasurer for the National Council of the Bureau of Indian Affairs, and I am chief steward for local 1658 of the BIA, Central Office, Washington.

I am pleased and honored to be here to represent these organizations and also the FACT organizations that support us.

I will be very brief in my statement, knowing that I am coming behind Mr. Fosdick. There will be very little to be said.

Ms. SPELLMAN. That is a hard act to follow; isn't it?

Ms. WARD. Very true.

I would like to urge that you please support the bill, for we feel that there are many of us who are victims of circumstance that we were not aware of before. I feel it is a partial solution to our problem inasmuch as some of us who have different avenues or other means of

escape; I would like to think of Mr. Blouin's statement of that the teachers would just disappear.

We all are going to just disappear soon if we don't have some other avenue or some other means of getting out. We have been told by the law that we should get out because of Indian preference. We know that the morale of the Bureau is at the bottom now and there is no place for it to go. We are not able to advance. I have experienced it and many others have, because of Indian preference.

We are at the point that if we could hear something more favorable, we could be more productive.

So I would conclude in saying to you and to other members of your subcommittee, to please if at all possible, get this bill passed.

Thank you.

MS. SPELLMAN. Thank you ever so much.

You commented on the downgrading, as you spoke. I want to take a moment to say to you though that downgradings are taking place throughout the Federal Government right now, so we don't think that you, especially, have been singled out. It doesn't help very much to know that it is happening to somebody else when it is happening to you, but I think you should know that.

We thank you very much for your statement.

MR. FOSDICK. Thank you, Madam Chairperson.

MS. WARD. Thank you.

MR. MCCLUSKEY. Do I understand from the basis of your testimony, Mr. Fosdick, you are countering the Education and Labor Subcommittee by saying that there are sufficient numbers of applicants available to take over these teaching positions?

MR. FOSDICK. I think of the 3,000 positions in education that only about 700 of them at the present time are filled by Indians.

I think that there is no problem today because of tremendous overages of teachers in finding qualified individuals to take positions, because we have 200 or 300 applicants for every vacancy that occurs.

So I think that there is a possibility that Indian children will be served, especially if the recruitment or the hiring of teachers can be improved. It is one that should be handled directly by a school board in relationship with the individual, through their administrator, the superintendent.

I am going to ask when I return, of the Director of the Office of Indian Education Programs, if we can't have an opportunity to work with Mr. Quie and Mr. Blouin and see if we can't surface some of these concrete answers, and of course, we need to develop the answers to many of the things they pointed out because they are very, very right in many of their criticisms, the way the teachers are hired.

Thank you, Madam Chairwoman.

MS. SPELLMAN. Thank you very much.

[The statements of Mr. Fosdick and Ms. Ward follow:]

Statement of Donald J. Fosdick, President of the National Council of Bureau of Indian Affairs and Indian Health Service Locals before Chairperson Gladys Noon Spellman and other members of the Subcommittee on Retirement and Employee Benefits:

In the interests of conserving the Subcommittee's time, the National Council of BIA and IHS Locals and their supporting FACT organizations testify to Chairperson Gladys Noon Spellman, and members of the Retirement and Employee Benefits Subcommittee of the House Post Office and Civil Service Committee, favoring the IMMEDIATE PASSAGE of H. R. 4153 and other supporting similar legislation. The hearings from previous years do not even need updating on the legitimacy of H. R. 4153 as a solution to our problems EXCEPT for one fact: our employment conditions worsen daily. In spite of the then President Gerald Ford's instructions in his message on this Early Retirement Bill last year that other solutions be found and implemented by the Civil Service Commission, the Departments of Interior and Health, Education and Welfare and all other Administrative organizations of the Executive Branch of Government, our employment situation has deteriorated month by month to an even deeper abyss.

Since 1972 employees in the Bureau of Indian Affairs and the Indian Health Service have worked valiantly for the passage of this legislation. During these five years we have seen our numbers decreased by reductions in position ceilings, massive downgrades, reorganizations, and deprivation of opportunities afforded other employees of the Federal government. Today, there are few if any possibilities of promotion, reassignments or lateral transfers of non-Indians without violating our fellow Indian employees who should be entitled to the full implementation of the Indian Preference Laws. Correctly, national Indian legal organizations today are scrutinizing the personnel practices of the Bureau of Indian Affairs and the Indian Health Service to see that the Indian Preference Laws are followed. They are uncovering violations.

The National Council has supported unequivocally the Indian Preference Laws since the June 17, 1974, Supreme Court Ruling which called for all positions in the Bureau of Indian Affairs and the Indian Health Service to be turned over to Indian people, promoting thereby Indian self-determination. We still heartily recommend the enforcement of these Preference Laws in spite of the harm to our careers as BIA/IHS non-Indian employees. Long ago the vast majority of us identified ourselves with promoting the advancement of Indian people everywhere. The Early Retirement Bill before this body for consideration is one method of turning over approximately 2,326 positions to Indian people, affording them thereby a fantastic boost to their economies which suffer from unemployment rates as high as 80% on many reservations in these United States of America. The salaries to Indian people every year from positions held by non-Indians would be in the tens of millions of dollars.

We have also advanced the concept of an outplacement program for non-Indians by the Department of Interior and the Civil Service Commission. Our efforts were rewarded by a Department of Interior "paper" program that was nothing more than an administrative response to the threat of possible outplacement legislation proposed last year by the House and the Senate. After proving what "good boys" they were to The Hill, the previous administration of the Department of the Interior and Health, Education and Welfare, left a record of non-placement of us as employees that is an completely reprehensible as any personnel program I have ever seen managed by the Federal government. I hope this Subcommittee has the Departments' deplorable track records of outplacement before every single member of this Subcommittee. I will always firmly believe and advocate that the managers

who participated and continue to participate in this shameful betrayal of their fellow Federal employees should be outplaced in a university and forced into taking programs in Humanism. When they have memorized at least Portia's admonitions to Shylock that "The quality of mercy is not strained...", they could perhaps be returned to their administrative posts, where conceivably they could perform without extracting blood as well as a pound of flesh from their employees. Where is one managerial voice in this Hearing Room raised in favor of the Indian and non-Indian employees of the Bureau of Indian Affairs and the Indian Health Service? Who should be here to testify and why are they not here? Does their silence indicate their abuse of the very employees essential to their success? Is this silence similar to the silence that gave assent to abuses that grew to atrocities in the memory of all of us in this room? Why is there open admission of bad morale by management but yet not one single solution already immediately available to management utilized to fill the hole in the dike? But the silence of management should be contrasted with the actions of employees throughout the United States who have continued to be productive under completely unfavorable circumstances. They have pled their cause openly with letters, mailgrams and telegrams. Even though they are small in numbers advocating solutions to problems that can never be the number one national and international priorities of this Nation, they have never resorted to shameful tactics that would embarrass the taxpayers of this nation.

But perhaps new brooms will sweep clean. And the Carter Administration has brought managers like Secretary Cecil Andrus, Under Secretary James A. Joseph and Assistant to the Under Secretary Wallace Green to the Department of Interior. These gentlemen have already left a favorable track record with us as employees by thoroughly researching our personnel problems. They have conducted hearings with us and formally requested through memorandum that all employees in the Bureau of Indian Affairs write them of their views on the necessity of passing H. R. 4153. Naturally, we are disappointed--after our valiant efforts to respond to them--that they are not here to cross the finish line for us by testifying in favor of H. R. 4153. They have convinced us though that we must have faith in them that they will restore us to our rightful place as Federal employees. Repeatedly, we are encouraged by rumors that an outplacement program comparable to the Department of Defense's can and will be instituted by Interior. We hope HEW will do the same. We realize outplacement is not the total answer but like the Early Retirement bills it affords realistic job opportunities for Indians and new careers for non-Indians.

We respectfully request the assistance of you and your Subcommittee, Chairperson Spellman, by asking the Departments and the Civil Service Commission to report to you quarterly on their successful outplacements. Our resources are at your disposal to aid in evaluating the progress.

The National Council of BIA and IHS Locals was present at the very beginning of the launching of the Early Retirement Legislation. From the very genesis of this proposed solution to our problems we have had prophets of doom predicting our death before our birth. But we have also had the tremendous support of the highly respected former leader of the American Federation of Government Employees and his total staff and the present President, Ken Blaylock, who has been unstinting in his efforts to achieve the passage of this legislation. Even though the numbers of our employees in A.F.G.E. is unbelievably small, President Blaylock and his staff must be recognized as true leaders of Indians and non-Indians seeking solutions to problems of discrimination and reverse discrimination. We also must recognize all of the FACT organizations that sprang up all over the country to also champion the cause of Indians and non-Indians. Every FACT organization has contributed unstintingly of its human and financial resources to keep us the National Council alive to pursue our objectives of Early Retirement Legislation and outplacement. I also ask Chairperson Spellman that

you permit the introduction into the record of these petitions from affiliates of the National Education Association, supportive of H. R. 4153 and S. 666. To Congresspersons and Senators like you, Chairperson Spellman, and to members of your staff, we are deeply grateful that you provided us your valuable time to hear our problem, to recognize the injustice to both Indian and non-Indian, and to take such problem solving steps as holding these hearings. You have kept our faith alive nearly a decade and activated us to solve our problem democratically.

Our National Council testimony is already available in the Senate Hearings, dated June 18, 1975 and in the House Hearings dated February 3, 1976. Since we are positive that these documents have been thoroughly reviewed by this Subcommittee and its staff we must not waste your time by laborious repetition. Suffice it to reiterate, we need H. R. 4153 to move Indians into jobs in the BIA and IHS and to move non-Indians into the main stream of equal employment opportunities.

Our great plea to this Subcommittee is that no recommendation made to you today or in the near future will receive favorable consideration if it is designed to handcuff employees financially into their present positions, which by Law are non-promotional, non-transferrable, and non-reassignable. To accept a compromise position less than Congressman Steed's Bill, H. R. 4153, denies Indians the rightful opportunity to be the masters of their own destiny and places non-Indians in Solzhenitsyn-like Siberian work camps.

Our President is ushering our nation into a leadership role internationally through advocacy of human rights. The human rights of non-Indian employees' have been ignored for nearly a decade while Indian employees' rights have suffered beyond human memory. Job-like, because of massive criticism, we as Indian and non-Indian employees have examined our consciences and our actions while performing the most difficult job ever conceived of by government: helping our fellow-man lift himself by his bootstraps. H. R. 4153 would place our Nation in a leadership role of human rights established by precept and example--not by, "Do as I say,"--before the International community.

At the 3:00 p.m. White House Press Conference on July 16, 1977, our President stated:

"Every time I have ever made a statement about human rights, I think without exception I have always included our country in as a people who are constantly searching for ways to alleviate or to reduce discriminatory practices and to insure that our high standards for human rights be realized.

... I think there has to be some means in a democracy like ours, first of all, for a President to exemplify or to personify what the American people believe. My opinion is that the American people believe very deeply in the concept of human rights.

I think it is important that this commitment be expressed publicly. We have been through some sordid and embarrassing years recently with Vietnam and Cambodia, Watergate and the CIA revelations, and I felt it was time for our country to hold a beacon light of something that was pure and decent and right and proper that would rally our citizens to a cause."

Respectfully, therefore, we urge immediate favorable action on H. R. 4153 and further respectfully request every assistance in placing this Bill on President Carter's desk before Congress adjourns in October of 1977 for our human rights to be recognized.

Thank you, Chairperson Spellman, on behalf of the National Council and its supporting FACT organizations for this opportunity to appear before you and the members of your Subcommittee.

Donald J. Fosdick

Donald J. Fosdick
President, National
Council of Bureau of
Indian Affairs and Indian
Health Service Locals

RESOLUTION OF THE NAVAJO AREA CHAPTER
OF THE NATIONAL FEDERATION OF BIA/IHS EMPLOYEES

Requesting Relief From Conditions Affecting Job Security and Career Advancement Caused by Changing National Policies and Administrative Application of Law.

WHEREAS:

1. Section 12 of the Indian Reorganization Act of 1934 (48 Stat. 986; 25 USC 472) provides:

The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed without regard to civil service laws, to the various positions maintained, now or hereafter by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians should hereafter have the preference to appointment to vacancies in any such positions; and

2. Prior to 1972, the Indian preference provision was administered by the Bureau of Indian Affairs as applying only to initial appointments and not to subsequent promotions. And in 1972 the BIA policy was changed to extend the preference to promotions, transfers from outside the BIA, and reassignments within the BIA which improved promotional prospects. The 1972 policy did not extend Indian preference to purely lateral reassignments which did not improve promotional prospects; and

3. Indian Preference is utilized in establishing employee retention registers for use in reduction in force situations in contravention of the opinion of *Mescalero vs. Morton* January 1971.

4. On April 25, 1974, the United States Court of Appeals for the District of Columbia in *Freeman vs. Morton*, 499 F. 2d. 494

upheld an unreported District Court decision in a suit brought by four Indian BIA employees, that held that under the 1934 Indian Preference provisions, Indian Preference applies to the filling of all vacancies and reassignments in the Bureau and that no exceptions are possible where there is at least a minimally qualified candidate who is eligible for Indian Preference; and

5. On June 17, 1974, the United States Supreme Court in an 8-0 decision (*Morton vs. Mancari*, 417 US 535) reversed the decision of a three-judge District Court for the District of New Mexico which had held, in a suit by a group of non-Indian BIA employees that the 1934 Indian preference provisions (25 USC 472) had been impliedly repealed by enactment of section 11 of the Equal Employment Opportunity Act of 1972 (86 Stat. 111; 42 USC 2000 e-16) prohibiting discrimination in most Federal employment on the basis of race, and the Supreme Court held that Indian Preference was not a racial preference, but rather it was an employment criterion reasonably designed to further the cause of Indian self-government, and to make the BIA more responsive to the needs of its constituent groups; and furthermore the Supreme Court specifically cited in *Morton vs. Mancari* that "To be eligible for preference in appointment, promotion and training an individual must be one fourth Indian blood and be a member of a Federally recognized Tribe." And further in *Morton vs. Mancari* "This operates to exclude many individuals who are racially to be classified as 'Indians'". In contravention of this clear intent of the Supreme Court new more liberal regulations have been issued that allow practically anyone of Indian blood, no matter how slight, to be given Indian preference. The new regulations allow persons of one half or more Indian blood, even though they are not a "member" of a Federally recognized tribe to be also given Indian Preference. This is of course a racial requirement pure and simple; and

6. In addition, the BIA/IHS now encourages tribes to contract for control and operation of most BIA/IHS reservation activities; and

7. The January 1975 enactment of section 102 of the Indian Self-determination Act (88 Stat. 2206 USC 450f) directs the contracting of most BIA/IHS activities "upon request of any Indian tribe"; and

8. These changes in national policy have placed non-Indian employees in a unique position in the Federal service, since as long

as a qualified Indian applicant is available, these employees do not enjoy equal opportunity for career advancement and transfers; and

9. Thus the law or at least the Government's failure to properly interpret and enforce it over a long period of time has had a deleterious effect on these employees; and

10. These actions constitute a material change in national policy and have had far-reaching impact on both Indian and non-Indian employees; and

11. Many employees of the BIA/IHS occupy positions which are unique in the Federal service, and who are not able to find positions in other Federal agencies for which they qualify; and

12. The Department of the Interior's new Career Placement Assistance Program has not been effective in helping displaced employees or those who have suffered loss of advancement opportunity; and

13. Indian tribes are participating at an accelerating rate in the P.L. 93-638 contracting option and this action is adversely affecting both Indian and non-Indian employees; and

14. The retirement law affecting law enforcement and fire fighter personnel was changed by P.L. 93-350 to adjust the annuity compensation formula for personnel covered by special law enforcement and fire fighter provision as follows:

- (a) $2\frac{1}{2}$ percent of the high-3 average pay multiplied by 20 years of law enforcement and/or fire fighter service; plus
- (b) 2 percent of the higher-3 average pay multiplied by each year of service over 20.

NOW THEREFORE BE IT RESOLVED THAT:

1. The members of the Navajo Chapter of the National Federation of BIA/IHS Employees petition the Congress of the United States to enact legislation to provide relief from the adverse conditions caused by the changes in law and in the national policy by:

- (a) revising the retirement benefits of certain non-preference employees of the Bureau of Indian Affairs and the Indian Health Service not entitled to Indian Preference and all employees of the Bureau of Indian Affairs and the Indian Health Service who have had their position contracted away as a result of P.L. 93-638, Indian Self-Determination Act.

The benefits petitioned are: authority to retire on an immediate annuity prior to December 31, 1985 provided the employee has completed 25 years of service or after becoming 50 years of age, has completed 20 years of service and has been continuously employed by the Bureau of Indian Affairs or the Indian Health Service since June 17, 1974, and is not otherwise entitled to full retirement benefits, and on an annuity computation formula providing that an employee covered by the bill shall receive 2½ percent of his "average pay" for each of the first 20 years of service and 2 percent for each year thereafter.

(b) Preference eligibles and non-preference eligibles who have had their positions contracted away as a result of Public Law 93-638 shall have the option of receiving placement assistance within the Department of the Interior if a BIA employee or the Department of HEW, if an IHS employee. If the employee chooses to utilize the out-placement option, he shall be entitled to be appointed to any vacancy in the Department outside the BIA/IHS for which he is qualified and if he is once passed over, he shall be entitled to appointment to the next vacancy for which he is qualified. If the employee does apply for appointment he may be passed over only for compelling reasons determined to be sufficient by the Civil Service Commission.

(c) Employees of the BIA/IHS who occupy positions unique to the BIA/IHS shall be eligible for training, which will supplement their qualifications, that will prepare them for other career fields in the department where they are employed. The Civil Service Commission shall develop rules and regulations which will (1) identify those positions in BIA/IHS which are eligible for participation in the program; (2) set limits on the kind and nature of training provided; (3) set eligibility requirements.

STATEMENT OF ELEANOR M. WARD, SECRETARY-TREASURER OF
THE NATIONAL COUNCIL OF BIA-IHS LOCALS

Chairperson Spellman and distinguished Members of this Subcommittee, my name is Eleanor Ward. I am the Secretary-Treasurer of the National Council of Bureau of Indian Affairs and Indian Health Service Locals and the Chief Steward of Local 1658 of the National Federation of Federal Employees, BIA Washington Office.

I am pleased and honored to represent the members of those organizations and all of the FACT organizations that support the National Council. As an employee of the Bureau of Indian Affairs, however, I am also representing myself. I am here to offer testimony in support of H.R. 4153 and urge this Committee to send it forward for early enactment.

H.R. 4153 is in harmony with the administration's, and Congress' philosophy of Indian self-determination, equal employment opportunity and the protection of human rights.

The purpose of the bill is to provide a fair and equitable means of making the Bureau of Indian Affairs a fully Indian operated Bureau. It is designed also to correct or off-set an unfortunate employment situation non-Indian employees have had thrust upon them through no fault of their own and over which they have no effective control.

As recently as July 15, 1977, Secretary Andrus stated in a letter to the Chairman of the Civil Service Commission:

"The employment condition of the non-Indian employees in BIA has posed severe managerial and morale problems since the *Freeman v. Morton* decision in 1972, which was allowed to stand by the Supreme Court in *Morton v. Mancari* in 1974. The result of those decisions has been to restrict greatly our ability to utilize non-Indian employees and has created difficult relationships with the workforce. Solutions must be found."

President Carter visited the Department of the Interior on February 18, 1977. When asked in a public forum whether he would support S. 666—an identical bill to H.R. 4153 which is now before the Senate—he stated:

"My strong inclination is to make sure that we have more native Americans occupying high positions of authority within the Government and in the Administration particularly with the Affairs of American Indians themselves. If the legislation is designed so that there is no punitive aspect for those who are not Indians who've been in these positions I would favor it and also sign it."

The President's statement of commitment to S. 666, Madam Chairwoman, can be found in the February 28 issue of White House Documents.

I submit to the Committee that the bill you are now considering provides a partial solution to our employment dilemma. As fair minded legislators you must be dedicated to the principal of fair and equal treatment under the laws of this great country.

That is all we are seeking. We do not oppose Indian preference, but rather wholeheartedly support and are working towards Indian self-determination. That's the law of the land. I do not believe the Administration can have a philosophy of Indian self-determination without their and our strong support for this legislation.

Passage of H.R. 4153 will go a long way towards making Indian self-determination and equal treatment under the law a reality. I urge your speedy approval of the bill.

Thank you Madam Chairwoman for the opportunity to appear before you.

Ms. SPELLMAN. Victor Hill, for the Fair Action Coordinating Team of the Oklahoma and the Phoenix area is next.

STATEMENT OF VICTOR E. HILL, REPRESENTING THE FAIR ACTION COORDINATING TEAM OF THE BIA ADMINISTRATIVE AREAS OF MUSKOGEE, OKLA., AND PHOENIX, ARIZ.

Mr. HILL. Madam Chairwoman, I am Victor Hill from Muskogee, Okla., and when I am on the CB, away from home, I say that I am that original Okie from Muskogee. [Laughter.]

I represent the FACT group of Anadarko and Muskogee areas of Oklahoma and the Phoenix area; a total of some 30 groups that have been very actively supporting H.R. 4153. I am going to try and discuss a few highlights from a different perspective and I would appreciate having my full statement entered as testimony.

Ms. SPELLMAN. Without objection, it will be made part of the record.

Mr. HILL. Thank you.

I guess I should preface my statement by stating that I am retired after 30-plus years with the BIA in which I served in many locations throughout the United States and Alaska including 10 years in the Washington office.

It was my dubious honor to be present, frequently acting as Director of Education, during the development of the Indian Preference concept in the Bureau.

I will be glad to comment on any questions you might have about this period of drastic policy change.

First, I want to say that Indian preference began in the mid-1960's with Commissioner Bennett's concept that Indians should be more involved in policy issues.

Indian preference in all employment did not become an active part of the administrative policy until 1970; I will offer two pieces of evidence a little later, in support of this.

Many people have written or called me and have asked if I would raise various issues. Some of these issues have been raised this morning and I am not going to unduly belabor them.

I do want to say, however, that from the employee's point of view, the outplacement program is truly a travesty of bureaucratic justice. It talked to a personnel director in the Department of the Interior about 1 year ago now, and he very bluntly said: "I can't sell a person from the Indian Bureau to any of our staff because the reputation of the Bureau is a laughing stock, all because of the Indian preference issue."

While much has been said about the employees and the injustices to the nonpreference employee, I believe that the Indian employee also has a legitimate grievance. As the concept of Indian preference became synonymous with self-determination Indians felt that these jobs would immediately become theirs. Obviously, they haven't. A small percentage of top management jobs are held by Indians today.

An it isn't solely because there aren't qualified Indians; there are many qualified Indians throughout the Nation.

The brain drain has also been mentioned two or three times, this morning; this issue was one of the objections presented in the testimony last year. It is my understanding that that is why the additional clauses were added to this bill requiring or permitting the department or HEW to require a person to work another 12 months, not to exceed 12 months, after they were eligible to retire. I would ask, is the brain-drain a phoney issue?

A number of Indian people have written or talked with me and said: I think the bill should include Indians. I guess if I were a 50-year-old Indian who had devoted a career to the BIA and saw my fellow man retire with a little bonus, I would feel exactly the same way. But the cold facts are that the Indian still has preference. He can move as he chooses. If there is a contracting-out situation in which he loses his job, he has preference of transfer and/or employment, while the non-Indian does not.

It has also been mentioned that the solution to this dilemma is to include a grandfather clause in the Act, to say that all employees at the time of the *Mancari* decision would be counted as Indians for personnel practices.

I think this, of course, is a delaying tactic and I would accuse the Department of practicing a delaying tactic deliberately. If not, they are really going off—well, I will use the phrase, shooting from the hip. And I am trying to be kind.

I have a letter from an employee that I received last week, a non-preference employee, enclosing a letter to his superintendent of his resignation. I would like to attach this letter as part of my testimony, please. This ex-employee says, and I quote:

The principal reason for resignation is reverse discrimination with absolute Indian preference. Absolute Indian preference has removed the challenge of competition and destroyed any initiative for superior performance.

It is my opinion that regardless of a non-Indian's qualifications, ability, dedication or the quality of his performance, he has no future within the Bureau.

After 10-plus years of federal service, it is very discouraging to know that one is faced with 20 additional years in a job with no possibility for promotion or advancement.

I should add that this man was very complimentary of his co-workers. And he closed by stating that in his experience, the majority of Indian employees did not need Indian preference.

The two documents that I would like to attach to validate that preference began in the mid-1960's are each documents signed by the Commission of Indian Affairs, dated July 30. I will quote a paragraph from each of them to make the point here. Both of these documents comment on the low morale in the BIA and acknowledge that preference practices were the cause and as such, are in conflict with the merit principle.

My Fellow Employees:

I am deeply concerned about the reports I have received of poor morale in the Bureau. I understand that this is in a large part caused by the impression that the Bureau no longer offers career opportunities for its employees. Indian employees feel that their opportunities are thwarted. Equally strong views are held by non-Indian employees who feel their opportunities have been eliminated or sharply curtailed. Unfortunately, statements and actions have contributed to these views.

And in the last paragraph of the promotional bulletin which is the second document, it states, and I quote again:

Opportunities for advancement will be on ability and in accordance with merit promotion principles. Safeguards will be provided in procedures to assure that merit principles are observed and provision will be made for corrective action and an accounting when violations are discovered.

Madam Chairwoman, I would argue that Indian preference was in full swing long before there were any suits against the legality of the practice. The official issue of July 3, 1972, however, did bring a letter from the Civil Service Commission on July 7. Mr. Hampton, the chairman, while approving the concept of Indian preference, stating he recognized the potential danger when he stated, and I quote:

One aspect of the new policy causes us some concern and we suggest it be given special consideration, to the non-Indian employees, that is the matter of longstanding statutes suddenly being interpreted differently. After working under one set of rules, these employees may feel that their careers are in jeopardy and with no change in the law to point as the reason for the new condition. As career Federal employees, they have a right to expect that they will still be given every opportunity to fulfill their hope and aspirations as was implied under the conditions that existed at the time they were employed. We urge this will be kept in mind as the new policy is carried out.

I think his prediction of what was going to happen by recommending caution did happen. It is unfortunate that there wasn't any followup from the Civil Service Commission to see that caution was exerted.

I didn't have any fuss then, nor do I now have, with the concept of Indian preference as a basic step toward self-determination of Indian people as valid, or good. I do, however, have strong feelings of support for those individuals whose rights have been trampled in the process. And, I have expressed in my formal testimony my hostility to those agencies of Government who have been a party to this, either tacitly or actively, in letting preference develop as it has.

As mentioned earlier, there are many things that could have been done to have solved this problem, or to have determined what preference meant and preference could have been channeled into an administratively acceptable, constructive management tool; unfortunately, this was not done. The people who are the victims of Indian preference today are both the Indian and the non-Indian employees and their families. They are the victims of a political situation that existed through this period and the leadership of the Department and the Civil Service Commission, or lack of same, is responsible.

I want to say one final word; that is that the success of higher education programs in the Bureau is the keystone as to why and how Indian people are now ready to manage their own affairs.

I don't mean to say, Madam Chairwoman, that there are enough Indian teachers today available, but there will be in a very few years. Within the last 20 years, over 6,000 4-year degrees have been earned

by Indian youth and older adults. In addition, over 125 have earned doctorates. And I add that this is last year's data, and a great many of the doctorates are from Ivy League schools. This same success story in academic training is also true in on-the-job training. For instance, in Oklahoma, all, or 100 percent of the GS-15 employees are Indian; 75.5 percent of all employees in the State of Oklahoma are Indian.

I believe this is illustrative of what can be done with Indian people filling the jobs when the opportunity is given them.

This concludes my statement. I will be glad to answer any questions.

Ms. SPELLMAN. Thank you very much.

I just want to make one comment which I think in all fairness needs to be said. This subcommittee had and still has markup on this bill set for September 12 so that the agencies not submitting their statements here today won't delay the schedule.

As a matter of fact, it bodes well that they are not here, because had they been here, the statement would have been very strongly in opposition to the bill. They are attempting to find a middle ground. So we are glad to give them some additional time.

Mr. HILL. May I make one additional comment, please. I think if we seriously consider the bill as having two key factors, one of justice to the nonpreference employee, and second, as opening up positions for Indians for further self-determination, great caution needs to be given to the issue of whether any reduction can be made in the percentage computation or the time given credit. If either is materially reduced the non-Indian cannot afford to get out of the Bureau and the present condition will continue.

Today, the BIA management is desperate. Envision a school in which you have a large percent of non-Indian teachers and yet you can't promote one of them to become a supervisor as you can't pay them for supervisory duties. The BIA is in an absolutely unmanageable dilemma.

Ms. SPELLMAN. Thank you very much.

Mr. HILL. Thank you.

[The statement of Mr. Hill follows:]

STATEMENT OF VICTOR E. HILL

Mr. Chairman, and members of the committees, thank you for this opportunity to present the views and serious concerns of over 2,000 BIA employees and I assure you of their unqualified support of H.R. 4153 and the companion bills as written.

H.R. 4153 is designed to accomplish two things:

(1) Advance the cause of Indian Self-Determination by making positions available due to the early retirement of non-Indian employees and;

(2) Correct the inequities of Indian preference for non-Indian employees by enabling them to retire early. These actions will, in turn, restore to all employees in the BIA and related Agencies, with whom contact is frequent, renewed faith in our system of government and the process in the redress of grievances.

Non-preference employees are currently trapped in dead-end jobs; they cannot routinely be promoted, reassigned or transferred. They are, in fact, in a quasi-condition of involuntary servitude. For seven years non-preference employees have seen promotional opportunities to fill positions, for which they were most often eminently qualified, pass them by. They have long since accepted the fact that a curtailed "High-three" will seriously reduce and greatly modify their anticipated retirement life-style. They have seen the few straws-of-hope such as the Department's vaunted out-placement programs become a travesty of bureaucratic justice; what agency wants a cast-off from the Indian Bureau?

The Bureau whose reputation has made it, for over half of a decade, if not the laughing stock, at least the abandoned step-child of its guardian Department whose practices obviously abrogate the very policy of self-determination is so proudly proclaims; the policy whose implementation has caused or created the current problem.

One might assume from the plight of the non-preference employee that individuals with preference have the best of both worlds. However, nothing could be farther from the truth. They too, are disenchanted with the status of self-determination. They find long-term, non-Indian employees holding most of the better jobs, individuals who are in fact blocked by the preference regulations from moving up the career ladder and thus effectively blocking the upward mobility of the Indian employees.

A statement frequently overheard today is, "I can't get a promotion to a higher grade while that 'White-eyes' remains". Hostility between the two groups is inevitable! This condition of social divisiveness breeds intimidation, harassment, and in a few instances to date, the threat of physical violence. Obviously the stage is set for violence.

The passage of this proposed legislation offers an economic incentive for retirement and several hundred vacancies would materially tend to diffuse the present combustible working environment. It would help self-determination become a reality, rather than a paper program directive, and help restore the Merit System along with the Civil Service System's motto of being an Equal Opportunity Employer; non-preference employees could again retire with a feeling of pride and satisfaction in their life's work, rather than embittered employees leaving the BIA because they couldn't take it anymore. There is an urgent need for the passage of H.R. 4153 and its companion S. 666.

Mr. Chairman, I have had calls and letters from all over the nation, including several copies of correspondence sent this Committee. I note that those to the Committee have remained fairly objective, urging the hearings, while those written to me have often candidly talked about injustices they have encountered as an outgrowth of Indian preference. They often cite various statements in opposition to this legislation. They often give credit to the Civil Service Commission and the Department of the Interior for the statements. I wish to address some comments to these issues. An understanding of the employees point of view by the Committee is my assignment.

The Civil Service Commission in testimony last year and apparently in a draft position paper object to the 2½ percent formula as providing an unearned reward. They also see this as causing employees to remain until December 31, 1989, the cut off date in the bill. It is interesting to note that this latter view is in conflict with the Department's view expressed in last year's Senate testimony. They argued that the 2½ percent would create a mass exodus of top employees and—in my words—the brain-drain would seriously handicap the programs at a time of great need. I had been given to understand that it was this point of view that brought about the one addition to this bill that makes it different from last year, i.e., postponement of retirement for not more than 12 months; it can certainly be argued with justification that the unearned reward or undeserved income is small compensation for the seven years to date since preference was in practice carried out.

The concern that non-preference employees would continue working until mandatory retirement could become a reality, if the bill doesn't pass. Economic necessity will require a longer working career. This can be predicted in direct ratio to the amount and reduction in the add-on percentage. Any reduction in the percentage would be a blow to the creation of vacancies, thus affecting self-determination accordingly.

Another argument being advanced is, that being frozen at one's present job level isn't too bad, the employee hasn't lost his job, and/or that only a limited few reach career potential anyway; and the Federal Government doesn't guarantee promotion to top level positions. Aside from the patronizing and condescending rationale advanced in these arguments, it should be noted that a transfer or a promotion isn't only made to the top. The problem is that non-preference personnel have been removed from the Merit System by Court ruling on Indian preference, thus competition for a position based on merit is no longer available to the non-Indian in the BIA. Neither are all employees frozen at a journeyman level, an argument used to rationalize why preference isn't harmful to non-Indian employees.

Last year, after some five or six years of no action, the Department of the Interior placed great emphasis on their soon to be released out-placement program. Outplacement for years—as mentioned earlier—has been a non-functioning, non-funny joke! This “New-Program” appears to be as impotent as earlier efforts. The kindest thing that can be said about it is that a formal plan, after years of delay, does exist.

Several Indians have expressed concern that they as Indians weren't included in the early-out entitlements of the bill; also, that contracting out will deprive Indians, as well as others, of a job. I would argue that it isn't preference entitled personnel that have been frozen at their job and grade level and if contracting-out deprives an Indian of a job, he would have preference to transfer and employment elsewhere in the BIA. Again, this privilege doesn't exist for the non-Indian.

While a job such as it is continues for non-preference employees, they are working under great pressure—often from preference entitled co-workers—but not always. I will place in the record as a part of my testimony a copy of a resignation sent me that states, and I quote: “The principal reason (for resignation) is reverse discrimination with absolute Indian preference. Absolute Indian preference has removed the challenge of competition and destroyed any initiative for superior performance. It is my opinion that regardless of a non-Indian's qualifications, ability, dedication, or the quality of his performance, he has no future within the Bureau. After 10 plus years of Federal service, it is very discouraging to know that one is faced with 20 additional years in a job with no possibility for promotion or advancement”.

This man was very complimentary of his co-workers and closed by stating that in his experience the majority of Indian employees did not need Indian preference.

One of the more intriguing alternatives to H.R. 4153 advanced was: to remove the sting and unfairness of preference ask Congress for a Grandfather Clause to grant all employees at the time of Mancari Decision, the rights of preference. This suggestion might have prevented some of the present hostility had it been put into practice at the onset of the Indian preference practices. It is now over seven years too late. This sounds like another delaying tactic of the Department. I see this suggestion as planned catastrophe, or just “shooting from the hip”.

Mr. Chairman, I have attached to this statement two official documents, each dated July 30, 1970, signed by Commissioner Louis R. Bruce. Both documents comment on the low morale in the BIA and acknowledge that preference practices were the cause and in conflict with the merit principle. One of these documents is an update of the Bureau's placement and promotion policy. I will quote a short paragraph from each to illustrate the misconceptions and confusion that employees have lived with so long; and to offer evidence that employees not only thought they were hired under the full protection of the Merit System, but these memos reaffirm that belief.

Dated July 30, 1970, this is from the transmittal memo of Commissioner Bruce: “My Fellow Employees:

“I am deeply concerned about reports I have received of poor morale in the Bureau. I understand this is in a large part caused by the impression that the Bureau no longer offers career opportunities for its employees. Indian employees feel that their opportunities are thwarted. Equally strong views are held by non-Indian employees who feel that for them opportunities have been eliminated or sharply curtailed. Unfortunately, statements and actions have contributed to these views.”

The last paragraph of the Promotional Bulletin:

“Opportunities for advancement will be on ability and in accordance with merit promotion principles. Safeguards will be provided in procedures, to assure that merit principles are observed, and provisions will be made for corrective action and an accounting when violations are discovered.”

Mr. Chairman, as shown, Indian preference was in full swing long before any suits were filed to test the legality of the practice, and the official issue on July 3, 1972, did bring a letter on July 7th of admonition from Mr. Robert E. Hampton, Chairman of the Civil Service Commission. While approving the concept of Indian preference, he recognized the potential danger when he stated: “One aspect of the new policy causes us some concern and we suggest it be given special consideration to the non-Indian employees, that is the matter of long-standing statute suddenly being interpreted differently. After working under one

set of rules these employees may feel that now their careers are in jeopardy, and with no change in the law to point to as the reason for the new conditions. As career Federal employees they have a right to expect that they will still be given every opportunity to fulfill their hopes and aspirations as was implied under the conditions which existed at the time they were employed. We urge this will be kept in mind as the new policy is carried out."

Mr. Chairman, the sense of this letter expresses the faith that every employee had as to his government's obligation to him in protecting his rights when he accepted federal employment. This is the last time I find any record of the flag of equal-opportunity being waved by either Agency; and it is far cry from the tenor of the Commission's condescending testimony of last year. It would appear that the velocity of history caught the Commission and the Department of the Interior in a conspiracy of silence with the BIA in this failure to raise a voice of caution or suggest even one element of relief for their non-Indian employees. To date, either the BIA, the Department, or the Civil Service Commission has publically acknowledged there is a problem. They are much like the fable of the king and his magic garments. While he walked nude among his followers, the word was out that only the pure-of-heart or true-loyal subject could see him. The ohs and ahs over his presumed attire was shattered by a child crying—"the King has no clothes!" Let us hope that the Agencies concerned hear today's cry and their non-Indian employees are in dire need of relief and they too can get behind H.R. 4153 and urge its passage. The one Amendment I could urge would be to cover all employees retired since the Mancari Decision date of June 7, 1974. A number of employees have retired in the frustration that no action would be taken and they were no longer able to function in their work climate.

Mr. Chairman, I retired from the BIA after a long, and I felt successful, career. I was privileged to serve in the Division of Education in the Central Office some ten years. I was present at many of the discussions between the personnel staff and the Commissioner's staff when the 1970 push to get Indian preference accepted as the recognized policy. I had no fuss then, nor have I now, with the concept of Indian preference as a basic step toward the self-determination of Indian people. I do, however, have strong feelings for those individuals whose rights have been trampled in the process. Thus, my expressed hostility to those Agencies of Government who have been a party, either tacitly or actively, in letting the situation develop that exists today.

It is with faith in our system of Government, as a whole, that I bring this petition before this Committee, as the working arm of the Congress, and ask that the grievances of some 2,500 BIA employees be heard with favorable action taken on H.R. 4153.

One final issue needs comment: i.e., the success of the Higher Education Program in the Bureau is the keystone as to why and how Indian people are now ready to manage their own affairs. Within the last 20 years over 6,000 4-year degrees have been earned by Indian youth and older adults.

In addition, over 125 (this record is one year old) have earned doctorates—a great many from the better known "Ivy League" schools. This same success story in academic training is also true in the work areas of on-the-job training; for instance, in Oklahoma, all of 100 percent of the GS-15 jobs are held by Indians, with an astounding 75.5 percent of all employees of the BIA being Indian. This record illustrates why Indian people feel frustration that there are so few jobs occurring in the BIA offices and field locations.

I'll be pleased to respond to any questions.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

JUL 30 1970

My Fellow Employees:

I am deeply concerned about the reports I have received of poor morale in the Bureau. I understand this is in a large part caused by the impression that the Bureau no longer offers career opportunities for its employees. Indian employees feel that their opportunities are thwarted. Equally strong views are held by non-Indian employees who feel that opportunities for them have been eliminated or sharply curtailed. Unfortunately, statements and actions have contributed to these views.

I recognize the difficulty in convincing you that we do want, and intend to have, a personnel management program which provides opportunity for all employees, while giving special attention to responsibilities to Indians. With this objective in mind, I have issued instructions for a review of personnel policies and procedures to (1) place maximum attention on Indian preference in initial employment; (2) provide maximum training and development opportunities for all employees, while augmenting regular training resources to give special attention to needs of Indian employees; and (3) assure advancement opportunities on merit promotion principles, with safeguards to assure that this is achieved.

The success of our programs is directly dependent upon the efforts of each of you. I congratulate you on the remarkable job you have done, often under trying circumstances. I am proud of you. Please help us renew the confidence of all employees that the Bureau offers opportunities both for service and a career experience.

Louis R. Bruce
Commissioner

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

JUL 30 1970

Memorandum

To: Central Office Jurisdiction Staff
Area Directors
Superintendents

From: Commissioner of Indian Affairs

Subject: Placement and Promotion Policy

During the conferences for Area Directors and Superintendents, I spoke about the placement and promotion policy in this Bureau, and a policy statement was provided. This statement is included in a memorandum to all employees, which I want distributed.

I am deeply concerned that many employees have interpreted our efforts to provide increased opportunities for Indians as an effort to extend preference to advancement opportunities. I am aware that statements, both written and oral, have contributed to this impression.

Expanded opportunities for Indian people, and for other groups, is the very essence of an equal opportunity program, and there need not be -- I say, will not be -- an inconsistency with the policy which provides opportunity for all.

The success of our programs of assistance to Indian people are directly dependent upon the abilities of our employees. This responsibility requires that we have the best possible staff. In turn, we must have a personnel management program that enhances the opportunities for all groups while giving special attention to our responsibility to Indian people. This presents a challenge to each of us.

I am asking the Chief Personnel Officer to carefully review our personnel programs and policies, in consultation with many of you, to assure maximum opportunity for all of our employees. In conducting this review, the following guidelines will be observed:

1. An all-out effort will be made to observe Indian preference in initial hiring, with particular reference to those grade levels and occupations where Indian employees in much greater numbers can, with experience and training, compete with other employees on merit.
2. A vastly expanded training and development program will be undertaken, which:
 - a. is sufficiently flexible to meet individual and group needs of all employees;
 - b. identifies priorities for development as well as job training needs, and makes maximum use of training funds;
 - c. augments regular training funds with program funds, to meet special needs of Indian employees;
 - d. makes maximum use of work assignments in addition to training programs.
3. Participation of tribal governing bodies in the selection of employees for initial employment and advancement will be encouraged, with the understanding that selection consideration must take into account the needs of the Bureau and the tribes

and the circumstances which must be met in managing a large work force. Final selection must reside with a Bureau official.

4. Opportunities for advancement will be on ability and in accordance with merit promotion principles. Safeguards will be provided in procedures, to assure that merit principles are observed, and provision will be made for corrective action and an accounting when violations are discovered.

Rainis R. Bruce
Commissioner

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Tahlequah Agency
P.O. Box 825
Tahlequah, Oklahoma 74464

February 14, 1977

To: Joe Parker, Superintendent
Tahlequah Agency

From: , Appraiser

Subject: Resignation from the Bureau of Indian Affairs

This memorandum is to inform the proper Bureau personnel that I no longer have a desire to work for the Bureau of Indian Affairs. I wish to resign from my position and leave the Bureau of Indian Affairs, effective on or about April 9, 1977.

The principle reason is reverse discrimination with absolute Indian preference. Absolute Indian preference has removed the challenge of competition and destroyed any initiative for superior performance.

It is my opinion that regardless of a non-Indian's qualifications, ability, dedication, or the quality of his performance, he has no future within the Bureau. After 10 plus years of federal service, it is very discouraging to know that one is faced with 20 additional years in a job with no possibility for promotion or advancement.

I plan to work as an Independent Fee Appraiser, also I plan to devote more time to the efficient management of my agricultural operations, and to Real Estate Development.

I wish to express the respect I have gained for the employees of the Tahlequah Agency in working with them.

In view of the ability of the Indian employees which I have been associated with at the Tahlequah Agency and the Bureau of Indian Affairs, I feel that the majority of the Indian Employees do not need Indian preference.

Motivation along with education is the key to the Indian people's needs. The Indian employees that I have associated with are as intelligent and capable as any non-Indians.

Ms. SPELLMAN. Our last witness is Mr. Thomas Goninion of the Indian Health Service, Aberdeen, S. Dak. We are delighted to hear from you.

STATEMENT OF THOMAS GONINION, REPRESENTING THE INDIAN HEALTH SERVICE, ABERDEEN, S. DAK.

Mr. GONINION. Thank you.

In the interest of brevity, I would request that the prepared statement be entered into the record, and I would like to talk almost off the top of my head.

The problems that brought this bill before the Congress that passed the bill in the 94th Congress, are still with us today. They have not been alleviated or amended in any way. If anything, they have been aggravated by yet another decision in the Federal Court for the District of Columbia, and I would like to quote briefly from section 2 of judgment and decree by the Honorable Barrington D. Parker, U.S. District Judge for the District of Columbia in the case of Don Louis Tyndall, on behalf of himself and all others similarly situated, versus the United States, David Mathews, everybody and his dog:

Section 2. Defendants are hereby ordered to fully implement sections 44, 45, 46, 47, and 472 of title 25, U.S.C., by providing absolute preference without exception, to qualified Indian applicants in filling all vacancies within the Indian Health Service no matter how such vacancies are created, including all initial hirings, reassignments, lateral transfer, promotions, or any other personnel action intended to fill a vacancy.

That pretty well sums up the problem. The nonpreference employee is locked in. The administration, HEW, and Interior, have spoken of outplacement programs available within those agencies over the past 2 years. I understand the position of the Public Health Service of the Department of Health, Education, and Welfare is that they have had very few applicants for these programs.

You raised the question about, I believe you addressed it to Mr. Pierce, how he felt about people having to prove that they had been affected by Indian preference. This is a part of the requirement of the Indian Health Service outplacement plan.

I submitted my application in March. Along with it, I submitted my rejection slips for about a dozen positions with other agencies. The personnel officer selected two and it took them until May to decide that, yes, Indians had been appointed to these positions.

I would submit the criteria for judging the success of a program is not the number of people who apply for that program—in the face of a virtual assurance that nothing is going to happen as a result of their application—but rather, to asking the people who are managing that program how many of those applicants have they in fact placed in other positions.

I am afraid that the only answer that can come out of either agency is a fraction of a percent of the applicants. The positions are just not there.

Mr. Hill alluded to the fact that personnel managers in other agencies look upon the personnel of the Bureau of Indian Affairs and the Indian Health Service as somehow less than totally competent.

This is true. I have raised this issue in testimony before this committee in the 94th Congress and in the Senate. And again, I will reiterate: I am sure that the personnel managers, the Civil Service Commission et al., will determine that this is nonexistent, but it does in fact exist.

Which brings me to another point: The Civil Service Commission has decided to assist and they have set forth the basic features of an assistance program. Item 1, the BIA and IHS personnel officers will publicize programs.

Item 2, the employees will be referred for employment consideration informally. They will not be referred on a priority basis. Referrals will be limited to the geographic boundaries of the Denver region, South Dakota, North Dakota, Utah, Montana, Colorado, and Wyoming. That is a lovely part of the United States. If you haven't visited there, I urge you to do so. But there are just not that many employment opportunities in that region.

And finally, the benefits of these efforts will extend for 6 months, at which time a decision will be made as to whether or not a continuation, et cetera. Again, I submit; that is not the way to judge the program.

The costs of this proposal have been bruited about several times over. I understand the Indian Claims Commission has been extended by the Congress for an additional 2 years. I believe that Commission's original life span was 2 years, starting in 1945 and this is the umpteenth extension.

We heard talks this morning; we heard figures of \$44 million, \$144 million, \$170 million. Those are rarified figures, but I submit that the Black Hills claim alone amounts to tens of millions of dollars. Now this is settling a valid claim for aboriginal rights to territory that was taken over by the United States.

The dollar amounts I have heard connected with the Passamaquoddy claim in Maine runs into the billions of dollars. And again, I suggest that \$174 million in the face of such astronomical sums is a pittance, and should be considered in the same light; as part of the cost of doing business; of settling once and for all the Indian right to self-determination.

And no that happy note, I will conclude.

If you have any questions, I would be happy to try to answer them for you.

Ms. SPELLMAN. I don't have any questions.

I will ask our counsel if he has any questions for the record.

Mr. McCLUSKEY. I would like to suggest that if you have a copy of that Civil Service letter, please submit it for the record.

Mr. GONINION. I have this one.

Mr. McCLUSKEY. And do you also have a copy of the case that you referred to?

Mr. GONINION. I just happen to have.

Mr. McCLUSKEY. If you would submit both of those for the record, it would be very much appreciated.

Ms. SPELLMAN. Thank you for an excellent speech. It makes very good sense.

Mr. GONINION. I will also make you a present of a copy of Prof.

Nathan Glazer's book, "Affirmative Discrimination." I don't know whether you have had an opportunity to read it.

Ms. SPELLMAN. That is an interesting title.

Mr. GONINION. Professor Glazer is a professor of the sociology and education department at Harvard University and he raises some fascinating and disturbing questions as to the direction of affirmative action for employment opportunity in the United States.

Ms. SPELLMAN. Is this going to be considered a bribe?

[Laughter.]

Mr. GONINION. Actually, you are getting it the same way I got it. It didn't cost me anything. So you can consider it absolutely valueless. I think the publisher and the author might argue with that.

Ms. SPELLMAN. They might object to our saying that.

Thank you very much.

Mr. GONINION. Thank you, Madam Chairwoman.

[The statement follows:]

STATEMENT OF THOMAS H. GONINION, ABERDEEN, S. DAK., AREA, BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE FEDERAL CIVIL SERVICE EMPLOYEES

Both the preference and non-preference employees of the Bureau of Indian Affairs and the Indian Health Service have been placed in a virtually untenable employment situation by the sudden rigid application of the Indian Preference Provisions of the Wheeler-Howard Act of June 18, 1934, by the Secretaries of Health, Education and Welfare and Interior, 42 years after enactment! In response to the decision of the Supreme Court of the United States in *Morton v. Mancari* (No. 73-362 June 17, 1974) and the U.S. District Court for the District of Columbia in *Freemen v. Morton* (No. 327-71 December 21, 1972) these agencies have broadened their policy to apply Indian preference to all personnel movements in the Bureau of Indian Affairs and the Indian Health Service.

The Supreme Court held that:

"Contrary to the characterization made by appellees this (Indian) preference does not constitute 'racial discrimination'. Indeed, it is not even a racial preference. Rather, it is an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups."

The legality or constitutionality of the several Indian preference statutes, dating back to 1789, is not at issue. On the contrary, the Courts have decided that this preference is a reasonable attempt to assure the Indian tribes of the right to govern themselves and to operate the government programs which affect them. This right has been reiterated by the Congress in numerous Acts and is supported by the Courts in case after case. We do not quarrel with the decision of the Courts and we must abide with them.

However, the actions of the Courts have, in effect, informed several thousand Federal civil servants that there are no further opportunities for non-preference employees in either the BIA or the IHS. The protections of the Civil Service Merit System have been judicially and administratively erased. The primary criterion for promotion, transfer, in fact, any personnel action, is Indian descent! Potential advancement is effectively blocked, not only for non-preference employees, but for the preference employees as well, because their advancement is impeded by the presence of the non-preference employees.

In his remarks in connection with the introduction of his Senate Bill 4070 in the 93rd Congress, Senator Ted Stevens of Alaska said:

"These persons (non-Indian BIA and IHS employees), not told differently, quite rightly assumed that they would be able to develop their full career potential within each of these two principal organizations serving the needs of the Indian people."

Since the non-preference employees of these agencies were not only "not told differently", and we were repeatedly and emphatically assured that we would, indeed, be able to develop our "full career potential", there was no need to assume otherwise. Now, however, it appears that we were seriously, and in some cases perhaps deliberately and callously, misled by authorized agents of the U.S. Gov-

ernment. We were hired under the rules and regulations of the U.S. Civil Service Commission concerning criteria for employment in the Federal Civil Service: Ability, Training, Education, Skills and Experience.

Item.—Memorandum to all BIA employees from the Commissioner of Indian Affairs, July 30, 1970: "I have issued instructions for a review of personnel policies to (1) place maximum attention on Indian preference in initial employment; (2) provide maximum training opportunities for all employees; and (3) assure advancement opportunities on merit promotion principles, with safeguards to see that this is achieved."

Item.—Commissioner of Indian Affairs Memorandum, three months later: "The Bureau's Equal Employment Opportunity Program will emphasize the fact that Indian preference will be given only in instances of initial employment and re-employment. Promotions shall be made only on the basis of merit. Bureau employees are Federal employees, and as such, the nature of their employment is controlled by Civil Service Commission regulations."

Item.—Memorandum from the President of the United States to Heads of Departments and Agencies, March 6, 1975: "Our Nation's strength is based upon the concept of equal opportunity for all our citizens. Decisions motivated by factors not related to the requirements of a job have no place in the employment system of any employer and particularly the Federal Government."

Item.—Letter from the Chairman of the U.S. Civil Service Commission to Senator Gale W. McGee, Chairman, Committee on Post Office and Civil Service, U.S. Senate, September 15, 1974: "The general rule under Commission regulations is that every employee in the competitive Civil Service is eligible to move non-competitively that is, without further competition with the general public in Civil Service examinations—to any other position in the competitive service he qualifies for."

It would be difficult, if not impossible, to find clearer statements of the commitment of the United States Government to the intentions of the Congress that Federal personnel systems be conducted on the basis of merit, without regard to matters of race, sex, religion, national origin, or affiliation. However, consider the following memorandum from the Commissioner of Indian Affairs, Morris Thompson, to all BIA Area Directors, Personnel Officers, and Equal Employment Opportunity Officers on April 4, 1975:

"Subject: Adherence to Regulations, Law, Court Orders and Policy Governing Indian Preference in All Accession Actions in the BIA:

"On March 11, 1975, we furnished you a copy of a teletype to the Anadarko Area which requested a report of an alleged reassignment of a non-Indian employee without competition. The attached copy of our teletype of March 31 directs the cancellation of the reassignment. During the 30 days since this action was taken, we have had numerous reports of it and questions about it.

"Critical emergency situations which dictate the movement of an employee occur in every area as well as this office. These are the kinds of cases which were presented to the appeals court when we asked for limited authority for the Commissioner or the Secretary to be able to make exceptions for reassignment of non-Indian employees. The three-judge court denied the appeal. Therefore, in cases which involve non-Indian employees who must be moved because of loss of effectiveness with the Indian people, threats to life and property, health reasons, etc., there must be maximum cooperation among areas to locate jobs for which qualified Indian candidates are not available. When these emergency situations arise, efforts must be initiated immediately to locate suitable vacancies for which the employee may apply or may be nominated. This action should not be delayed until details from duty stations have reached or exceeded the time limits.

"We are hopeful the outplacement program which we are putting into final form for the Bureau and those programs which are being discussed in the Congress for early retirement and outplacement assistance will be of benefit to the affected employees.

"The memorandum of June 28, 1974 (copy attached) states the Bureau policy. All appointments, reinstatements, reassignments, and promotions must conform to the Freeman Court decisions which provide for absolute Indian preference in filling vacancies however created."

Item.—Letter to Senator Roman Hruska of Nebraska from Assistant Secretary of the Interior for Management, Richard Hite, March, 1975: "The position of the Department on the referenced Bill S-509 dealing with early retirement for

non-Indians is that it does not represent a viable solution to the problem. It could deprive the Bureau of an inordinately large number of highly experienced employees at a time when their expertise is most needed. We believe that sufficient alternatives are available to those non-Indian employees who feel restricted, either through Departmental mandatory or priority placement assistance."

Gentlemen, the position of the Department of the Interior and the Indian Health Service is abundantly clear. To wit: We must abide with the law concerning Indian preference. Furthermore, these Departments are convinced that they have sufficient alternatives to early retirement through the non-existent outplacement programs of the Department of the Interior and the Civil Service Commission. And, these Departments have concluded that they cannot perform their statutory functions without the services of "a large number of highly experienced employees". Consider, for a moment, the implications of the several statements just recited:

(1) Federal Civil Service Employees of the BIA and IHS are deprived of their potential for advancement.

(2) At a time when millions of Americans are on the dole for want of employment, these employees are offered the alternative of accepting the status quo or resigning!

There is a very ugly word which describes such a situation in which an employee is found to accept the terms of employment or starve—peonage!

There are several references to Departmental outplacement programs in the mass of statements in opposition to the proposed legislation which have been offered by the representatives of the Administration. Yet, to our knowledge, there is no such program. We suggest that you inquire of the representatives of the Department of the Interior, the Civil Service Commission and the Department of Health, Education, and Welfare: 1. How many non-preference employees of BIA and IHS have been transferred to other programs through in-house or CSC outplacement mechanisms?

The Indian Health Service has historically followed the lead of the Bureau of Indian Affairs in personnel policy matters. We are convinced that this has been done in violation of the intent of the Congress and of the "Equal Protection" clauses of the Constitution of the United States. Even the most cursory perusal of the legislative history of the Act of August 5, 1954, which transferred the Indian Health responsibilities from the Secretary of the Interior to the Secretary of Health, Education, and Welfare, will reveal that the fundamental factor influencing this transfer was the inability of the Bureau of Indian Affairs to attract sufficient qualified personnel to operate the Indian Health facilities. Even the Supreme Court left this matter open when they devote only a footnote to the Mancari decision to the matter: "Presumably, despite this transfer, the reference in Section 12 to the 'Indian Office' has continuing application to the Indian Health Service." We are sure a thorough test in the courts would demonstrate the error of this presumption.

As further evidence of the cavalier attitude of the Department of the Interior and the Bureau of Indian Affairs in giving lip service to employee rights and concerns while continuing to hold the non-preference employees in economic peonage, we would like to call the attention of the Committee to two recent events:

The first is a memorandum from Mr. Jose Zuni, Director, Office of Administration, Bureau of Indian Affairs, to the Commissioner of Indian Affairs outlining a proposed action by the Department which can only be interpreted as being designed to effectively scuttle any outplacement program.

Mr. Zuni's memorandum transmits the results of an "informal survey" which purports to indicate the number of BIA employees who would desire outplacement assistance along with a few high priority outplacement employees who we assume must be moved but have no place to go in the Bureau of Indian Affairs. The number desiring outplacement assistance as given in the memorandum represents less than one-sixth of the BIA staff personnel. It is extremely difficult for anyone familiar with the situation in the Indian Services to accept this estimate; however, it would seem to contradict the Bureau's argument that early retirement or an effective outplacement program would be extremely costly and result in an unprecedented exodus of "highly experienced employees when their expertise is most needed." Contrary to the opinions presented by the opponents of the proposed legislation, the employees with whom we are familiar who wish to leave the Indian Services want to get out by whatever route is available to

them, not only to continue their careers in the Federal Civil Service, or, if they must, attempt to begin new ones, but also, although it may seem unrealistically altruistic in view of the treatment they have suffered, to provide an opportunity to the Indian employees who will replace them. Therefore, the total who desire outplacement should provide an indication of the number of BIA employees who might take advantage of early retirement, but of course, the actual number would be much less because many employees would not be able to afford it.

The second recent event we would like to call to your attention is the memorandum from the Commissioner of Indian Affairs to all Bureau of Indian Affairs employees, December 1, 1975. Subject: Department Career Placement Assistance Program. A copy of this memorandum is also attached. Among the prerequisites an employee must fulfill to meet the outplacement assistance eligibility criteria of the Bureau of Indian Affairs is one which requires the employee to submit evidence that he has applied for at least two vacancies for which he was qualified and for which a preference candidate was selected over him. It is apparently not sufficient humiliation to be a *de facto* second class employee, the employee must himself provide the evidence which afford the Administration the opportunity to remind him of that distressing fact at least twice. The final section of the "out placement program", Section 4, Counselling, contains this statement: "There are presently 46 Foresters GS-9 in the entire Bureau. Two Indian and forty-four non-Indian. With this ratio, the non-Indian Forester still has opportunity for advancement in the Bureau."

If this was meant to imply that their chances for advancement have not been seriously limited, it is patently false! In the face of this limited ratio of non-preference to preference employees, the Bureau still had to fill the agency's top forestry position with a preference candidate. The two preference GS-9's, along with other preference Foresters at other grade levels would, as a matter of statutory entitlement, have the choice of jobs, leaving only the less desirable positions and locations for the non-preference candidate. When a situation such as this exists, it cannot be denied that the affected employees have been damaged, nor can it be argued that their career opportunities have not been seriously affected by the intransigent attitude of the Agencies.

It is further submitted for your consideration that no class or profession employed in the Indian Services can be demonstrated not to have suffered significant damage as a result of the Indian Preference requirement of the Act of 1934. Most individuals, when joining an organization, look very carefully at the career development opportunities in the organization as a whole, not within a narrow segment of it. In the past, Foresters have had the opportunity to move up; to become Administrators, Realty Specialists, Programmers, etc. These avenues of upward mobility, advancement, and career development have been closed. This is true not only for Foresters, but for non-preference employees in other disciplines as well. There is not, and with the presence of the Indian preference statute, there cannot be an equal employment opportunity in the Bureau of Indian Affairs nor in the Indian Health Service. There is either preference or non-preference, and any semblance of opportunity for non-preference employees is at best, superficial and ephemeral.

Under the Constitution of the United States only the Congress has the authority to legislate in Indian Country. An exhaustive review of the legal history of United States-Indian Tribal relations, and the legal status of Indians and Indian Country, submitted to the Secretary of the Interior by his Solicitor General, Mr. Nathan R. Margold on October 25, 1934, leaves no room for conjecture on this point. It is the law of the United States and only the Congress of the United States has the power to provide an equitable remedy for the unfortunate interpretation of the intent of the Congress which has been handed down by the Judiciary.

Congressmen from several states with substantial Indian constituencies, have proposed legislation which we believe will go far toward solving this dilemma by allowing non-preference Civil Service employees having completed twenty years of service before December 31, 1985, and continuously with the Bureau of Indian Affairs or the Indian Health Service since June 17, 1974, the date of the Supreme Court's decision in Mancari, to retire from the Federal Service, thereby providing additional opportunities for the employment and advancement of Indians. In order for the Indian people to assume total control and responsibility for the Government programs which most affect their lives, they must control these powerful agencies which are most closely related to them.

To accomplish this end, they must, of necessity, displace the non-Indian and non-preference employees of these agencies. We can be sure the Indian people will approve of this; they want these opportunities, there will be no lack of preference applicants for every vacancy. When the non-preference employees leave Federal Service, there will be no vacuum in BIA or IHS.

Substantial opposition to this proposal has been voiced by the Commissioner of Indian Affairs, the Chairman of the Civil Service Commission, and the Director of the Indian Health Service. The most frequent argument is that the exodus of the non-preference employees would deprive the Indian Service of large numbers of highly experienced employees at a time when they are desperately needed to fulfill the mission of the Bureau and Indian Health Service. However, there is no opportunity for advancement. . . . Again, this is tantamount to peonage.

Another frequently heard argument against the enactment of this legislation is that this proposal would create a "Special Case" for a relatively small segment of the Federal Civil Service. Such an argument is illogical and ignores the facts of the matter. The Congress and Judiciary have established that a special case exists; in the Indian Preference statutes. Pure logic demands that if "A" is a special case before the Law and "B" is affected by the application of the statutes, then "B" is also a special case. *Res ipsa liquitur!* The things speaks for itself.

There are additional precedents: The United States Military enjoys twenty-year retirement for which they are not required to contribute a substantial percentage of their annual gross income. Similar "Early Retirement" benefits have been provided for Law Enforcement and Firefighters; for Air Traffic Controllers; legislation is pending which will extend this same retirement option to employees of the Customs Service.

The proposed before you has been written to place the annuity into close agreement with the provisions of the Federal Law Enforcement and Firefighter's Retirement Act, as here briefly quoted from the Federal Employee's Almanac, 1975:

"The basic annuity of an employee who retires under the special provisions for Law Enforcement and/or Firefighting personnel is figured by taking 2½ percent of the high 3 average pay and multiplying the result by 20 years (including credit sick leave). They also take no cut in annuity for retiring under age 55."

In your deliberations of the retirement annuity computation provisions of this legislation, we beg you to take into account the fact that the annuity benefit an employee will receive will be based on his "high 3" average pay and that this baseline figure will be determined by his grade level and years of service. Quite frankly, we know of very few, if any, affected employees in either the BIA or IHS who will be able to continue his or her present life-style on the 50 percent of their salary they would be entitled to receive under this legislation. The average grade of the Aberdeen area employees who would be affected by this Act is GS-9, which would result in an average retirement pension of \$6,750 per year or \$130 per week which is less than many so-called disadvantaged persons receive in public assistance.

This raises another of the opposition's favorite arguments against the enactment of this legislation: The cost! If all of the several hundred employees of the BIA and the IHS who were eligible were to retire on the date the law took effect, the cost of the Civil Service Retirement System would actually be less than 1 percent of the BIA-IHS Budget for fiscal year 1974!

In February, 1975 we wrote a letter to Mr. Robert Hampton, Chairman of the U.S. Civil Service Commission, asking him for a statement of the Commission's position of Senate bill S-509, similar legislation to the bills now under consideration. Our inquiry was promptly acknowledged, and on June 2, 1975 we finally received a reply from Mr. John G. McCarthy, Associate Director of the Bureau of Retirement, Insurance and Occupational Health, U.S. Civil Service Commission, from which the following is quoted:

"We recognize that current BIA and IHS personnel policies do limit non-Indian employee career prospects, and thus we can understand your concern in this matter. However, it should be considered that the Civil Service Retirement System is a staff retirement plan; its primary intention is to reward the performance of career service for the Federal Government by providing benefits at retirement in amounts directly related to an employee's Federal service

and salary history. In light of this objective, we have generally opposed the introduction of employment factors into the retirement annuity computation procedures which are essentially unrelated to the length of an employee's Federal service or to his salary history during the period."

The balance of this letter indicates that the agency whose entire reason for being since its inception almost a century ago has been to protect the Federal Civil Service from the spoils system in Federal employment and stand as a safeguard against manipulation and coercion of employees and contravention of merit principles, considers the Civil Service Retirement System a "management tool" and a "reward." Gentlemen, "benefits at retirement in amounts directly related to an employee's Federal service and salary history" are at the heart of the matter here under discussion!

It should be obvious that any restriction of an employee's career potential or upward mobility must, of necessity, place a similar restriction on his ultimate retirement benefits. In effect, we are being asked to sacrifice our opportunities to earn reasonable security and a modicum of dignity for our twilight years on the altar of expediency. The non-preference career civil servants of the BIA and IHS are required, as a matter of law, to accept less than their abilities, skills and efforts might achieve because others might be encouraged to seek "special" benefits and that would diminish the retirement system's values as a "management tool", and the Civil Service Commission views this as a "highly undesirable prospect". Furthermore, if retirement is indeed a reward, why then are we asked to contribute 7 percent of our annual gross income to the retirement fund? My copy of Webster's New World Dictionary of the American Language, College Edition, defines "reward" as: "Something given in return for good or, sometimes, evil or for service or merit."

There is nothing there concerning contributions on the part of the recipient other than service or merit. Civil Service Retirement is not a reward any more than death benefits paid by an insurance company. On the contrary, it is a hard-won, earned and paid for benefit, and as such, is a substantial portion of the compensation of every Federal employee.

In all candor, can the conditions of employment with the BIA or IHS be called anything other than peonage? "Take what we give you or get out!" "Don't complain or attempt to exercise your constitutional rights as free citizens or you may be subjected to the wrath of the administration." Can anyone offer another single word which so accurately describes this situation?

During the Ninety-Fourth Congress, Mr. Henderson has offered an alternative to early retirement. House bill 5465 would provide for mandatory outplacement reference for affected non-preference employees to migrate to other Federal agencies. At a time when millions of other Americans are unemployed, while Government agencies are being required to reduce their workforces, it is proposed that displaced non-preference employees of BIA or IHS should be given preference in filling vacancies in other Federal agencies! Such a program would be as patently unfair to the present employees of the receiving agencies as the existing Indian preference policy is to us.

Some time ago, Mr. Paul Harvey devoted one of his broadcasts to this issue. In commenting on the recent proliferation of affirmative action plans, hiring quotas and other schemes to "correct" prior discrimination, Mr. Harvey stated that, if discrimination, for whatever reason, is wrong, that wrong cannot be corrected by "reverse" discrimination, because, as is so eloquently enunciated in the first principle of social behavior most of us learned at our mother's knee: Two wrongs don't make a right!

There is an additional argument against the viability of any outplacement measure. It is the fact that there is a distinct stigma of less than complete professional competence connected with employment in the Indian services. We are quite certain that this allegation will be vigorously denied by the Civil Service Commission and others opposed to the adoption of this legislation. But, believe me, just as certainly as there is an imaginary equatorial line which divides north from south on this whirling ball of mud, this barrier to migration to other Federal agencies or departments without a substantial and humiliating reduction in grade and salary exists.

In the face of the limit written into the proposals, some provision must be made for those non-preference employees who will not complete the required twenty years of Federal service by the deadline date. For these people, an outplacement program is the only alternative. But, bear in mind that any such

measure must have sufficient strength to overcome the natural reluctance of program directors to accept personnel imposed upon them by outside agencies.

We who are urging the adoption of these proposed statutes are not responsible for any of the alleged wrongs or discrimination the Indian people may have suffered during the past 300 years. None of us are in positions to control the policies of the U.S. Government toward the Indian people. We have done our utmost to fulfill our obligations to give an honest day's work in return for an honest day's pay. Most of us have reached that stage in our lives where the possibilities of developing new careers are extremely limited. Yet we are being told that there are no more rungs to our ladders. Eligibility for promotion, transfer, training, in short all of the usual personnel movements are reserved for others, not because they have done any more to earn them than we, but because the law says it is their right. In all sincerity, we cannot dispute the right of the Indian people to attempt to rule their own destinies. As we stated earlier, however, in order for them to accomplish the goal, then we, the non-preference employees, must be displaced to make room for them. If they are to be allowed to develop to their potential, it is neither just nor equitable to restrain this natural process by impeding their upward mobility.

One final word: Custer did not die for our sins! If the American Indian ethnic identity, the surging tide of their cultural awareness is to be given the opportunity to meet the challenges of today, the non-preference employees who now occupy mid-level and supervisory positions must be given an incentive to retire and leave the field with honor.

ADDITIONAL STATEMENT OF THOMAS H. GONINION

My colleagues and I have prepared a statement of our views on the matters before this hearing, but in discussions with the subcommittee staff we learned that you preferred not to duplicate the testimony presented to the Senate Subcommittee hearings, rather, you were interested in hearing of specific cases. Therefore, with your permission, I will present our prepared statement to the Clerk for the record, and confine my remarks there to more definite evidence of the effects the application of section 12 of the Indian Reorganization Act of 1934 has had on the non-preference Federal Civil Service employees of the Bureau of Indian Affairs and the Indian Health Service.

At the outset it is necessary to overcome the difficulty of shifting the burden of proof of our allegations from the employees to the agencies. We recognize this as contrary to the basic tenets of jurisprudence, and respectfully suggest that in this instance you should set aside this concept, and seek the truth, wherever it may be found. We believe it will be found in the files of the agencies.

In the real world, it is not always possible to produce proofs in accordance with the rules of evidence. I will present several cases of which I have personal knowledge and am able to answer your questions. However, I will give you, for the record, a substantial volume of documentary and other evidence for consideration, and request that you forward this material to the Comptroller General of the United States for investigation.

With your permission, I will present this to the Clerk for the record. Copies have been made available to members of the subcommittee staff. Briefly, we ask the Comptroller General to investigate our allegations that certain officers of the United States have failed to fulfill their ministerial duties in the application of section 12 to the personnel policy of the Indian services; that they have ignored the whole body of Civil Service Law and Regulation in abrogating the Constitutional, Statutory and Civil Rights of the non-preference employees of these Agencies, who are career Federal Civil Service Personnel.

"Accuse" is perhaps too strong a word to describe this situation. This word implies some sort of malevolent intention on the part of the Commissioner of Indian Affairs and the Director of the Indian Health Service, the Secretaries of the Interior and Health, Education and Welfare, and the Chairman of the U.S. Civil Commission. No one involved believes such a thing. However, many people have begun to believe that there is no hope of any remedy, short of an appeal to the courts for relief. We are convinced that the U.S. Government, in the administration of the Indian services has erred grievously in the application of the Indian preference laws. We cannot believe that the Congress of the United States intended to destroy the careers of almost 9,000 civil servants when this law was enacted! Furthermore, we are convinced that the several cases involving Indian

preference were so narrowly drawn that the courts had no choice; they were forced to decide these cases on their merits and the various arguments presented.

For example, nowhere in the decisions, either *Freeman v. Morton* or in *Morton vs. Mancari*, have we found any reference to the Equal Protection clauses of the various amendments to the Constitution of the United States. We think this concept of equal protection under the law as handed down by the Supreme Court of the United States in *Yick Wo v. Hopkins*, and *Brown v. Board of Education* apply to our situation.

We are certain the court erred in the decisions in *Freeman* and *Mancari*, and we fully expect them to be reversed, just as *Plessy v. Ferguson* and other landmark cases have been reversed. But it takes time for the Supreme Court to reconsider and correct an error in a decision. For this reason, we have brought our plight to the Congress. The fact that we are invited here today is an indication of the concern of the Congress, and also of the various constituencies, that there is a wrong here which must be redressed.

Before I begin this recitation of grievances, please let me assure you that we are not attacking the Indian peoples in any way. We do not intend to imply that the thousands of hardworking, competent and dedicated Indians employed in the Indian services are the cause of this problem. On the contrary, the Indian peoples are as much victims of the system as the non-Indians! The presence of the non-preference employees impedes their progress toward full self determination and realization of their goals just the same as the application of Indian preference to all personnel actions in the Bureau of Indian Affairs and the Indian Health Service interferes with the careers of non-preference employees.

If you have any questions on any of these cases, please don't hesitate to let me try to answer them. As I said, I will go into details only on those cases of which I have personal knowledge, and trust you to investigate the others.

The first case involves a Secretary in my office. This employee worked in the same position for 6½ years in a full-time temporary status. The Aberdeen Area Indian Health Service Branch of Personnel Management determined that in order to convert this position from temporary to permanent career status it would have to be advertised for seven (7) days. The incumbent employee was the only qualified applicant. She was selected by her Supervisor, with the concurrence of the Office Director and the signed Selection Certificate was forwarded to the Area Equal Employment Opportunity Office. The Acting Equal Employment Opportunity Officer recommended that the position be readvertised for an additional 30 days in order to allow more time for Indian candidates to apply. The Equal Employment Opportunity Officer personally recruited preference candidates to apply, two (2) of whom did so. One declined the position, and an unknown individual informed the other that she had been selected before the Selection Certificate had been signed or the candidate interviewed! The case is now in the formal grievance process in the Indian Health Service.

The second case concerns a Supervisory Statistical Assistant, non-Indian, female, with ten (10) years progressively responsible experience since 1964 in the Indian Health Service Program Analysis and Statistics Branch, six years at the GS-9 level, who applied for the announced GS-11 Public Health Analyst and Chief, Program Analysis Branch, position on the retirement of her supervisor. She had previously been given a temporary promotion to GS-11 to provide a temporary Branch Chief while her supervisor was in extended leave (trial retirement) status from December 1973 to March 1974. From the time of her supervisor's retirement in October 1974 until an Indian candidate was selected in April 1975, she was designated Acting Branch Chief. The preference candidate was appointed in an initial class B excepted category at GS-11 until he has completed a year's experience. The non-preference incumbent received a letter of non-selection.

The next one deals with the Service Unit Director position at one of our IHS Hospitals. The non-Indian, female Acting Service Unit Director was passed over by the Selecting Official (The Tribal Health Board!!) although she had functioned in the position in all but title and salary 5 years, before enough political pressure was brought to bear to put an Indian in the position. The individual selected to fill the position is now in an on-the-job training program under the woman he replaced! She stays on the job because she has a deep love and respect for the people she serves and cannot bear to see them suffer because of her misfortune! She has also invested over fifteen (15) years of her life in her career.

Then there is the case of Roy Max Johnson, a GS-9 Forester, Staff Assistant, in the Minnesota Agency BIA, who applied for the position of Forester, GS-9/11

in the Fort Washakie, Wind River Agency, Mr. Johnson has served over ten (10) years as a BIA Forester, in progressively responsible positions. A preference candidate with less than two (2) years limited experience was selected over him by the Tribal Council! Mr. Johnson asked in his formal Equal Opportunity Complaint whether the United States Civil Service Commission Regulations include the review of applications for Federal Employment (Standards Form 171, Personal Qualifications Statement) by other than authorized appointing officials and selecting officials.

(It is now routine practice in both the BIA and the IHS for applications for Federal Employment to be referred to non-Federal persons and agencies for review and selection for positions in the Federal Civil Service!)

The highly qualified and extremely competent Hospital Maintenance Foreman who was passed over for a similar position in Alaska.

The GS-9 teachers at Fort Thompson who wrote a special resources project (and successfully operated it) who was informed that it should be a GS-11, but she wouldn't want to lose her situation would she? It would have to be advertised and a preference applicant would be certain to be appointed.

The teacher who lost out on a transfer to the Forest Service because his Principal didn't think he could operate the school without him and refused to provide a favorable recommendation.

The GS-13 Health Educator who was offered a GS-14 position, but when his Area Director refused a recommendation the offer was withdrawn.

The isolated Indian Day School that operated without a Principal for over a year, before a preference candidate was found who would accept the assignment.

Howard P. Edwards, Housing Program Coordinator who has applied for at least six positions, all but one of which has been filled by a less well qualified preference candidate, and had his EEO complaints answered by quotations of EEO technicalities and bureaucratic doubletalk.

Frank E. Pick, GS-9, Education Specialist, was detailed from the Education Department of the Navajo Area to the U.S. Indian Police Training & Research Center, Academy Unit, Brigham City, Utah, for 1 month. He has been there over 2 years, without an official position description and without orders. During this time he has lost over 200 hours of accumulated annual leave because he was required to assist with the training program.

Vernon L. Erickson, GS-9, Criminal Investigator, with over 12 years progressively responsible experience in BIA Law Enforcement. Passed over for a preference candidate who was minimally qualified. Also passed over for a minimally qualified candidate who had flunked out of the BIA Police Training Academy where Mr. Erickson taught.

John Fleming, GS-13, Assistant Area Director, passed over for a GS-14 Public Health Advisor position in the Denver Regional Office. Liaison between IHS and the Regional Office, highly qualified, training in Administrative Law. A school teacher with a clouded employment record was selected, but rejected by the Director, Indian Health Service. The position was readvertised, a preference candidate from Oklahoma was selected. Mr. Fleming wasn't even considered, yet his application was on file in the personnel office!

Jerry Ochsner, Engineering Draftsman, GS-4, since September 1974, displaced by a qualified preference applicant.

La Ywauna Jean Hatwan, GS-3, Clerk-Typist from July 1970 until a "qualified" preference applicant was located for the position in November 1971.

Donald Lee Keller, Backhoe Operator from March 1971 until February 1975, the job had to be advertised and a "qualified" Indian took the job from him.

Paul Edward Keller, Construction Inspector, GS-7 from July 1970 until the Branch was instructed to advertise the position and a "qualified" Indian was located.

Robert J. Kramer Construction Inspector, GS-5 from October 1970. The job was advertised and a "qualified" Indian applied. Mr. Kramer resigned effective January 21, 1975.

Eldoris Schamber, Secretary, GS-5 entered on duty 1968, resigned October 16, 1975. The position was advertised and no qualified candidates applied. Miss Schamber returned when the job was readvertised, but couldn't be hired for her old job because a qualified Indian applied.

Donna Wagner, Clerk-Typist, GS-4 from April 1970 until September 1972 when her job was advertised and a "qualified" Indian applied.

In 1975 the Billings Area Office, Indian Health Service, advertised for a Contracting Officer, GS-12. K. L. Thompson, GS-11 Contract Specialist in the

Aberdeen Area Office for four (4) years, thirteen (13) years in Indian Health Service Hospital Administration, 1½ years as Property and Supply Officer Services, applied but was passed over in favor of a GS-9 applicant with no previous Indian Health Service experience but with a minimal amount of Indian blood.

A GS-13 Safety Officer in the Bureau of Indian Affairs Area Office elected to accept a reduction in grade and salary to transfer to the U.S. Fish and Wildlife Service.

In December 1973 a GS-7 Property Management Assistant (non-Indian), with ten (10) years of procurement experience was advised verbally (later by memo) she was being detailed to the Procurement Section as Acting Procurement Officer (the position was classified GS-9). In February of 1974, the Area Property Management Officer (non-Indian) was advised he would be responsible for and supervising the Procurement Section in addition to his other duties; this also by memo. Both of the employees were led to believe that the situation was temporary—until a reclassification of their jobs could be made. In August of 1974 both employees were summoned by the Acting Deputy Area Director to his office. He said he had been advised by the Branch of Personnel that if their jobs were reclassified to include the additional duties, the jobs would have to be advertised, and if one person with Indian preference applied and was even minimally qualified he/she would be selected and the two (2) employees would "be out in the cold!" He said under these conditions if he were them he'd "sure get out of BIA. There's not much future for either one of you here." He said the Property Management officer was being relieved of his additional duties immediately. The GS-7 would continue as Acting Procurement Officer, however, she was being given a temporary promotion to GS-9, not to exceed 120 days—this action was "to buy time until we can decide what to do." Upon termination of the temporary promotion, A GS-5 Purchasing Agent (non-Indian) was designated as Acting Procurement Officer (by Memo) for the next six months, through June 30, 1975; since that date the office has been without a Procurement Officer!

The Property Management Officer GS-9 (non-Indian) has since been advised that due to restructuring of the Area Office he was to become a Division Head, again with additional duties: Procurement, Office Services, Supervision of eight (8) subordinate positions, but there would be no promotion. Such an advance would have to be advertised.

Employee, non-Indian, GS-4, with 10 years experience applied for the following positions during calendar year 1975: Accounting Technician, GS-5; Clerk-Typist, GS-4; Contract Clerk, GS-3/4; and General Clerk, GS-5.

Each time this employee was passed over and preference applicant Indians with little or no previous experience were hired.

One employee was selected for a GS-5 Secretarial position, but was not given the job in spite of the fact that of the thirteen applicants she was the only person "highly qualified". Three appeals, the last one being to the Department of Health, Education, and Welfare were denied on the basis of Indian preference. This employee applied for two other vacancies and was notified that other applicants had been selected in accordance with the provisions of the Agency Promotion Plan.

In 1973 a Phoenix Area employee with twenty-one years experience in Administrative Services, including approximately two years in the Aberdeen Area Office applied for the Branch Chief's job in Albuquerque. He was rated as the best qualified of all the applicants for the job but was passed over for a preference applicant Indian who was rated third on the register.

In 1974, this same individual applied for the Area Property Management Officer's job in Anchorage, Alaska. He was passed over for an Indian who had no Government experience, and virtually no experience in Property Management—he worked for a commercial trucking firm in Anchorage.

In 1973 this same employee applied for the job of Assistant Chief, Administrative Services Branch in the Aberdeen Area Office. He was passed over for an Indian with no experience in the field of Administrative Services. Then an Aberdeen Area non-preference employee, (who was eligible but elected not to apply) was asked to train the preference applicant who was selected. A difficult situation, training your supervisor!

In 1973 a Grade GS-12 employee in the Aberdeen Area Administrative Services Branch applied for the job of Assistant Chief, Administrative Services and was bypassed for a preference applicant who had no experience in the field of Administrative Services.

In early 1974 the Aberdeen Area Office issued a Vacancy Notice for a position in Financial Management. A non-preference, highly qualified individual was selected. Before a formal offer was made, it was discovered that an individual eligible for Indian preference was interested and the certificate reopened and the preference eligible candidate hired.

In October 1975 the Aberdeen Area Indian Health Service Area Classification and Position Management position was advertised under the Promotion Program. Three (3) well qualified non-Indian candidates were certified to the Selecting Official, however, no selection was made from this certificate. On January 4, 1976, an Indian with no classification experience whatsoever was appointed to this critical management position.

An Assistant Director of Nursing position was filled with an outside preference applicant although two (2) highly qualified Nurses who were already employed in the Indian Health Service had applied . . . It is not only in the area of Federal Civil Service Career appointments that this reverse discrimination exists. It has been extended to include the various programs provided by the Congress to enable students and others to obtain valuable work experience and income.

Item.—The Aberdeen Area Director, BIA, a GS-15 has one son employed with the IHS as a GS-3. His daughter was also employed by the IHS during the past summer and now works part-time while attending the local high school. Another son was employed during the 1974-75 school term and was employed full time during the summer with the Indian Health Service. In August 1975 he resigned to attend college in another city. In the same vein, the Aberdeen Area IHS Tribal Affairs Officer, GS-14, and his wife, who is employed by the Bureau of Indian Affairs, have a daughter who is employed as a student aide while attending school. Meanwhile, the children of less affluent families are denied access to these supposedly public programs of student assistance.

A GS-12 employee of the Indian Health Service with over 25 years service accepted a downgrade to GS-9 and transfer to another Federal Agency in 1974 because he was convinced there was no opportunity in the Indian Health Service and he feared his career was in jeopardy.

Another IHS employee with a number of years of service transferred to the U.S. Forest Service as a GS-7 because he felt his career was blocked in IHS. He is now a Personnel Officer with that Agency.

A non-Indian employee applied for training on three occasions during the past three (3) years and was turned down each time, although preference eligible employees who applied were approved. We have two standards—one for Indians and one for non-Indians.

In yet another case, a minimally qualified Indian employee applied for a top Branch Chief position together with eight well qualified non-Indian employees. The supervisor wanted desperately to hire the best qualified individual but was forced to appoint the minimally qualified candidate.

In the Management Trainee program, in one Indian Health Service Area Office, Trainee positions were filled with preference candidates at Grade GS-5, 7, and even 12. Again, well qualified non-Indians were available and eager for the opportunities offered by this program, but none were selected. Many others are interested in this program but do not apply because they know that it is reserved strictly for preference candidates in the Indian Services.

To a great extent non-Indian candidates are no longer applying for advertised vacancies in the Indian Services because after being turned down time after time they have learned that the preparation and submittal of an application is an exercise in futility. "What's the use?" is the prevailing attitude. About the only vacancies being filled by non-preference candidates either by initial appointment or promotion are the hard to fill or highly skilled professional and para-professional disciplines or at isolated or otherwise less desirable locations. The non-Indian population of the Indian reservations know that they are not welcome, so why should they apply? Also, all non-Indians are well aware of the "Wounded Knee" situation at Pine Ridge and Rosebud and the activities of certain militant Indian groups on these reservations, and they are reluctant to subject their families to the potential hazards. They just don't want to become involved with BIA and IHS so they are not applying for advertised vacancies. The outplacement program proposed by the Department of Interior suffers from this one significant flaw—it requires that the employee demonstrate that he has been refused two positions in the competitive service before he is eligible for assistance, which is in effect asking him to prove that he is a second class citizen.

All the high sounding statements are worthless. Here, for brevity's sake, is a tabulation of positions recently affected by section 12 of the Wheeler-Howard Act:

1976

Community Planner, GS-11/12, Los Angeles, Calif.; Teacher, GS-7, Lower Brule, S. Dak., Clerk-Typist, GS-4, Lower Brule, S. Dak.; and Economic Development Officer, GS-12, Lower Brule, S. Dak.

1975

Tribal Operations Officer, GS-12, Aberdeen, S. Dak.; Education Specialist, GS-12 Aberdeen, S. Dak.; Education Specialist, GS-11, Flandreau, S. Dak.; Education Specialist, GS-12, Aberdeen, S. Dak.; Education Specialist, GS-11, Belcourt, N. Dak.; General Clerk, GS-5, Rosebud, S. Dak.; Accounting Technician, GS-6, Aberdeen, S. Dak.; Housing Development Officer, GS-13, Minneapolis, Minn.; Education Program Administrator, GS-12, Lower Brule, S. Dak.; Administrative Manager, GS-11, Lower Brule, S. Dak.; High School Principal, GS-11, Lower Brule, S. Dak.; Elementary Principal, GS-11, Lower Brule, S. Dak.; Maintenance Man, WG-7, Lower Brule, S. Dak.; Agency Superintendent, GS-14, Shiprock, N. Mex.; Housing Officer, GS-11, Tuba City, Ariz.; Education Program Officer, GS-12, Muskogee, Okla.; Personnel Officer, GS-13/14, Aberdeen, S. Dak.; Clerk-Stenographer, GS-4/5, Aberdeen, S. Dak.; Investment Officer, GS-9/11, Aberdeen, S. Dak.; Clerk, GS-2, Aberdeen, S. Dak.; Accounting Technician, GS-6, Aberdeen, S. Dak.; Accounting Technician, GS-6, Aberdeen, S. Dak.; and Preventive Maintenance Specialist, WG-10, Aberdeen, S. Dak.

1974

Housing Officer, GS-12, Juneau, Alaska; Program Officer, GS-12, Sacaton Agency; Budget Officer, GS-11/12/13, Aberdeen, S. Dak.; Plant Manager, GS-9/11, Wahpeton, No. Dak.; Plant Manager, GS-12, Pine Ridge, So. Dak.; Budget Analyst, GS-7/9/11, Aberdeen, S. Dak.; and Contract Specialist, GS-5/7/9/11, Aberdeen, S. Dak.

1973

Economic Planner, GS-12, Albuquerque, N. Mex.; and Secretary-Steno, GS-5, Fort Thompson, S. Dak.

1972

Contract Specialist, GS-9, Aberdeen, S. Dak.

1971

Economic Planner, GS-12, Albuquerque, N. Mex.

1970

Economic Development Officer, GS-12, Phoenix Ariz.; and Industrial Development Officer, GS-12, Phoenix, Ariz.

This list is certainly not complete. It was compiled by telephone and contribution of penciled notes in a matter of two days.

It is very easy to toss off allegations of discrimination and damage to individual careers, denial of guaranteed and retained rights, abrogation of Civil Service Commission protection, invasion of privacy in permitting confidential job applications to be reviewed by Tribal Councils, and interference with fiduciary and ministerial functions. It is also very easy to prepare a lengthy tabulation of positions which have allegedly been affected by the strict application of Indian preference to all personnel actions in the Bureau of Indian Affairs and the Indian Health Service. I would be disappointed if some of you were not questioning the veracity of this statement as I present it. That is why we have appealed to the Comptroller General of the United States for an impartial investigation of these allegations. The General Accounting Office has the necessary staff and resources to investigate all of this. We welcome such an investigation, and I believe many of the responsible officials of both the Department of the Interior and Department of Health, Education and Welfare would also welcome it, although there are undoubtedly some who will do all in their power to avoid it.

We are convinced that the Congress intended an orderly transfer of responsibility for Indian Affairs from the non-Indian domination of the past to a primarily Indian staff of capable, competent, well qualified employees. We cannot

believe that the present wholesale destruction of 9,000 careers was intended when Section 12 of the Indian Reorganization Act was written in 1934!

There is a growing body of evidence that many of the Indian employees themselves are dissatisfied with the trend of personnel policies in the Indian Services. Many Career Civil Servants of Indian descent have recently become aware of the threat to their livelihoods represented by the implementation of Public Law 93-638, The Indian Education and Self-Determination Act. They have realized that the contracting provisions of this law pose a very real danger to them. There are also indications that the Bureau of Indian Affairs and the Indian Health Service have recognized this fact and have initiated the exploration of the possibilities of having Indian employees who are threatened by the loss of their jobs through the implementation of PL 93-638 included in the provisions of this proposed legislation.

MEMORANDUM

JULY 6, 1977.

To: Service Unit Directors, Aberdeen Office and Branch Chiefs.

From: Chief, Personnel Management Branch, Aberdeen Area Indian Health Service.

Subject: Placement Assistance Program.

Attached is a copy of the letter from Gloria J. Dillon (Area Manager for the Rapid City Area Office, U.S. Civil Service Commission) which summarizes the basic features of the Placement Assistant Program for non-Indian employees of the Bureau of Indian Affairs and Indian Health Service who are adversely affected by Indian preference requirements.

Please furnish each non-Indian employee a copy of this letter and registration sheet. You should also discuss this material further with those employees interested in the program.

If there are any questions you should contact Mr. Wilbert Schultz, Area Placement Officer.

ROLLAND L. NIELSON.

U.S. CIVIL SERVICE COMMISSION,
RAPID CITY AREA OFFICE,
Rapid City, S. Dak., June 8, 1977.

Dr. RICE LEACH,
Area Director, Public Health Service, Federal Building, Aberdeen, S. Dak.

DEAR DR. LEACH: As previously discussed with your Personnel Officer, the Civil Service Commission will make maximum effort to assist non-Indian employees of the Bureau of Indian Affairs and Indian Health Service who are adversely affected by Indian preference requirements to locate other Federal employment.

The basic features of the assistance program are summarized as follows:

1. The BIA and IHS Personnel Officers will publicize the program and assist employees in completing registration forms.
2. The employees will be referred for employment consideration informally using the "status referral" method. Our intent is to make their qualifications and availability known to agency appointing officers. They will not be referred on a priority basis.
3. Referrals will be made as a part of the normal certification process. Referrals will be limited to the geographic boundaries of the Denver Region (South Dakota, North Dakota, Utah, Montana, Colorado, and Wyoming, except that employees whose qualifications are appropriate to positions which are filled under Announcement #421—Life Sciences, will be referred to those positions and locations within the 16 states that we service for which they indicate availability.
4. The benefits of these efforts will extend for 6 months at which time a decision will be made as to whether or not a continuation of the program is warranted.

As follows, are the action items for BIA and IHS Personnel Officers:

1. Open registration for all interested eligible employees regardless of grade at the earliest possible date.
2. Assist employees in preparing a Displaced Employee Registration sheet (Appendix-A-FPM Chapter 330). (Copy attached for ready reference). Items

7, 8, 10, 13, 14, 15 and 16, need not be completed. A current SF 171, Personal Qualifications statement must also be completed. Both forms will be forwarded to the U. S. Civil Service Commission, Rapid City Area Office, Federal Building, 515 9th Street, Room 201, Rapid City, SD 57701, through the BIA or IRS Personnel Officer.

3. The BIA or IHS Personnel Officer will insure that all information on the Registration Form and SF-171 are complete. For identification purposes, please mark all SF-171's boldly in red at top of form—"PA-BIA" "PA-IHS" (Placement Assistance).

On a weekly basis the Civil Service Commission Rapid City Area Office will forward registration documents to the Denver Area Office, who will informally furnish the names and addresses of registrants along with certificates per agency requests in all cases where appropriate vacancies exist.

The Denver Area Office will also publicize the availability of registrants (in skill form) as a part of a periodic circularization of displaced employees to all regional appointing officers.

The CSC Rapid City Area Office will review registration sheets and SF 171's for completeness and accuracy, and will establish and maintain a control register of applications processed under the assistance program.

The CSC Rapid City Area Office will periodically publicize to Federal Executive Groups in South Dakota, and in the SD Federal Agency Highlights, the availability by Position Title and Grade level, location, i.e., BIA or IRS, of employees registered for employment assistance.

All Federal Executive Boards and Federal Business Associations in the State of South Dakota will be informed by the CSC Area Office of the Placement Assistance Program for non-Indian personnel in BIA and IHS, and their support and placement assistance efforts will be solicited.

IHS and BIA Area Personnel Officers are encouraged to commence registration of non-Indian employees as soon as possible. If you have any questions or desire additional information on this special Placement Assistance Program, please call the CSC Rapid City Area Office, FTS 782-9261.

Sincerely yours,

GLORIA J. DILLON,
Area Manager.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DON LOUIS TYNDALL, SR., on behalf of himself, and all others similarly situated, *Plaintiff*, vs. UNITED STATES OF AMERICA; DAVID MATHEWS, Secretary of Health, Education & Welfare; U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; EMERY A. JOHNSON, Director of the Indian Health Service, Department of Health, Education & Welfare; INDIAN HEALTH SERVICE, Department of Health, Education & Welfare; JOHN W. DAVIS, Area Director, Oklahoma City Area Indian Health Service, Department of Health, Education & Welfare; WALTER F. CARTER, Chief, Area Personnel Branch, Oklahoma City Area Indian Health Service, Department of Health, Education & Welfare, *Defendants*.

Civil Action No. 77-0004

JUDGMENT AND DECREE

The parties having reached a settlement agreement to resolve the issues in dispute among them, and having moved the Court to enter judgment pursuant thereto, and the Court being fully advised, it is

Ordered, adjudged and decreed that:

1. Pursuant to Plaintiff's claim for relief, Defendants are hereby ordered to vacate within forty-five (45) days of the entering of this judgment, the position of Administrative Officer (Area Executive Officer) in the Oklahoma City Area Indian Health Service Office, as announced in Vacancy Announcement No. 75-116, for which Plaintiff had earlier applied and was not considered. Defendants are further ordered to announce and advertise said vacancy for a reasonable period of time and allow Plaintiff and other interested applicants to apply for said position and hire a qualified Indian for said position unless there are no such applicants.

2. Defendants are hereby ordered to fully implement Sections 44, 45, 46, 47, and 472 of Title 25 U.S.C. by providing absolute preference, without exception, to qualified Indian applicants in filling all vacancies within the Indian Health Service no matter how such vacancies are created, including all initial hirings, reassignments, lateral transfers, promotions or any other personnel action intended to fill a vacancy.

3. Defendants are hereby permanently enjoined from filling any currently unfilled vacancies and all future vacancies within the Indian Health Service without first advertising such vacancies for a reasonable period of time, and issuing timely and adequate vacancy announcements or reannouncements (after cancellation of a previous announcement).

4. The Defendants are hereby ordered to immediately rescind Indian Health Service Circular No. 71-1 (June 28, 1971) and any other agency memoranda, circulars, regulations and/or guidelines which are in derogation of the Indian preference laws, 25 U.S.C. §§ 44, 45, 46, 47, and 472 (1970), and are further ordered to issue a new comprehensive circular or guidelines within thirty (30) days of the entering of this judgment, which comply with paragraphs 2 and 3 above and which fully implements absolute preference for qualified Indian applicants in the filling of all present and future vacancies within the Indian Health Service no matter how they are created. Defendants are further ordered to apply the same definition of Indian for purposes of Indian employment preference as the Department of the Interior applies or will apply and Defendants shall publish regulations governing the definition of Indian for Indian preference purposes in the Federal Register within thirty (30) days of publication of the same by the Department of the Interior.

Each side shall bear their own costs.

Dated this 22 day of April, 1977.

BARRINGTON D. PARKER,
United States District Judge.

Mrs. SPELLMAN. On September 7, we will be hearing the testimony of three agencies who have been referred to a number of times today. Hopefully, they will come around full circle. Thank you very much.

The meeting is adjourned.

[Whereupon, at 12:11 p.m., the hearing in the above-entitled matter was adjourned.]

[The statements and letters which follow were received for inclusion in the record:]

STATEMENT OF HON. RON MARLENEE, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MONTANA

I appreciate this opportunity to submit testimony regarding H.R. 4153 and other similar legislation. I am a sponsor of H.R. 5201 which would allow certain non-Indian employees of the Bureau of Indian Affairs and the Indian Health Service to retire earlier than present Civil Service requirements would permit. These are employees whose career opportunities have been adversely affected because the Wheeler-Howard Act that provided for the preferential hiring of Indians by the BIA and also preference for subsequent promotions was not enforced until relatively recently.

When these non-Indian employees of the BIA and IHS began their service, they thought they would be able to compete equally with Indians and other employees for promotion, lateral transfers and reassignments to vacant positions with these two agencies. However, now that the Wheeler-Howard Act is being enforced, they cannot compete equally. This situation is unfair to them, and also Indian employees of these agencies are being adversely affected because they cannot advance into positions held by nonpreference employees who are now unlikely to be promoted or transferred.

The bill I have sponsored encourages these non-Indian employees to retire earlier than might normally be the case. H.R. 5201 would provide increased retirement benefits to those non-Indians who retire on or before December 31, 1989 after completing 25 years of service or 20 years of service at age 50. These employees must also be employed by the Bureau of Indian Affairs or the Indian Health Service on the date of enactment of this Act, and must not be otherwise

entitled to full retirement benefits, or is not an Indian entitled to a preference under section 12 of the 1934 Wheeler-Howard Act, or any other provision of law granting a preference to Indians in promotions and other personnel actions.

An employee's annuity would be based on 2.5 percent of his average pay for each of the first 25 years of service, or 20 years of service upon reaching age 50, and 2 percent of his average pay for each year thereafter.

If necessary to maintain essential services, the Secretaries of Interior or Health, Education, and Welfare may postpone an employee's retirement for not more than 1 year.

The intent of the Wheeler-Howard Act was to increase Indian self-determination through greater Indian participation and control over the BIA and the IHS when it was split from the BIA in 1954. Good intentions, however, have caused hardships for non-Indians since the law was not carried out at the beginning. H.R. 5201 presents an equitable solution to the unique position that these employees find themselves in and will allow Indians to gain advancement more quickly to middle and upper level positions in the BIA and IHS if these non-Indian employees retire early.

Therefore, I urge you to act favorably on this legislation.

STATEMENT OF HON. ARLAN STRANGELAND, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MINNESOTA

Mr. Chairman, thank you for allowing me to submit this statement in support of my bill, H.R. 6795, which would allow certain employees of the Bureau of Indian Affairs and the Indian Health Service to qualify for early retirement.

In recent years, as a result of official action by the Bureau of Indian Affairs and the Indian Health Service, Indian personnel have been given preference in promotions, transfers, and reassignments as well as in initial hiring. This policy has been upheld by judicial decisions. I have no quarrel with the Indian preference policy, but I do think that it is unfair to the non-Indian employees who accepted career positions with these agencies without full knowledge of the extent of the Indian preference program.

Since 1934 preference has been given in initial hiring, but it has only recently been extended to subsequent personnel actions. My bill would simply allow those individuals who now find themselves without any career potential to qualify for early retirement. I realize that this proposal will add to the cost of the government's retirement program. However, the individuals are few and the sum small compared to the overall retirement program. This bill limits coverage to those employees with substantial time invested in their careers in these agencies and requires them to have been employed at the time of the change in policy. In addition, the early retirement program expires in 1989.

Thus, only those who began service without knowledge of what lay ahead and who have substantial time invested would be allowed to benefit from this program.

I urge your approval of my bill and appreciate your bringing it up for consideration at this time.

STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES

Madam Chairwoman and members of this Subcommittee, we wish to thank you for providing us with this opportunity to express our support for legislation which seeks to remedy certain existing personnel administration inequities in the Bureau of Indian Affairs (BIA), Department of the Interior, and in the Indian Health Service (IHS), Department of Health, Education and Welfare.

The American Federation of Government Employees, AFL-CIO, represents over 700,000 Federal employees in exclusive units recognized under Executive Order 11491. Our membership includes employees in virtually every department and agency of the United States Government, including the departments of the Interior and HEW.

We would like to begin by saying that there has been a long-existing need for legislation which would help to mitigate the injustices which pervade the hiring and promotion practices of the BIA and the IHS.

The serious problems which these agencies are experiencing today result from the cumulative impact of Indian preference laws, recent administrative interpre-

tations, and recent court decisions regarding the status of so-called "non-preference" personnel.

Under the Indian Hire Act of 1834, the Indian Reorganization Act of 1934, and other laws passed prior to 1972, Indians were given a preference for initial hiring in the Federal civil service in certain Indian affairs agencies.

This practice was, at the time, thought to provide an equitable procedure for allowing disadvantaged Indians to enter the Federal service more easily.

The preferential treatment that was to be accorded Indians is illustrated by section 12 of the Indian Reorganization Act of 1934 (48 Stat. 986; 25 U.S.C. 472) which provides: "The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed without regard to civil service laws, to the various positions maintained, now or hereafter by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such position."

While Indians eligible for employment in the BIA and the IHS were thus given preferential consideration in hiring, any ensuing personnel actions after initial appointment, such as promotions and transfers, were to be based on merit considerations.

In the summer of 1972, however, the Secretary of Interior, following a precedent set by the Indian Health Service, determined that the Indian preference laws required that Indians be given preferential status, not just in hiring, but also in promotions and transfers.

This administrative determination dealt another blow to the already low morale of non-preference employees, and created within the BIA and the IHS internal conflicts which have only served to disrupt the necessary services which these agencies were established to provide.

The Secretary of Interior's determination that Indian preference applied beyond the initial appointment stage was challenged in the Courts by adversely affected non-preference employees. On June 17, 1974, the U.S. Supreme Court, in the case of *Morton, et al. v. Mancari, et al.*, unanimously upheld the Secretary's decision. In handling down their determination, the Justices concluded that: "On numerous occasions this Court specifically has upheld legislation that singles out Indians for particular and special treatment. As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed. Here, where the preference is reasonable and rationally designed to further Indian self-government, we cannot say that Congress' classification violates due process."

In further support of its decision, the Supreme Court also pointed out that the Indian Preference laws were not repealed by Congress when it enacted the Equal Employment Opportunity Act of 1972 (which applied to racial discrimination in Federal government employment).

The American Federation of Government Employees is not challenging the Indian preference laws enacted by the Congress or the above-cited U.S. Supreme Court decision.

We are, however, concerned with the issue of how best to provide all employees with fair employment opportunities, worthwhile careers, and equitable treatment generally.

A large number of the present "non-preference" employees of the Bureau of Indian Affairs and the Indian Health Service were originally hired when these agencies were advocating the principles and policies of merit promotions and equal opportunity after initial employment. They had expectations of future promotions and of fruitful careers with the Federal government and looked forward to receiving a well-deserved pension after the appropriate number of years of service.

Non-preference BIA and IHS employees, through no fault on their part, no longer have the chance to move up the career ladder, because of the intervening administrative determinations and court decision mentioned above.

While it is outside the scope of this particular legislative proposal, the most desirable approach to this problem would be effective action on the part of the agencies concerned and of the Civil Service Commission to open up other suitable civil service employment opportunities for such employees, elsewhere in Interior, HEW, or the government as a whole. There are a variety of affirmative-type placement actions that have been developed to meet problems of displaced career employees that could be adapted to the situation of employees not actually dis-

placed but suddenly faced with an unforeseen barrier to future career advancement in their current organizations. Nevertheless, early retirement provisions are needed where appropriate out-placement or other actions do not wholly solve the problem.

In the interest of fairness and justice, we urge the Congress to enact H.R. 4153 in order to provide certain needed assistance to adversely affected employees. This bill would provide to specified employees of the Bureau of Indian Affairs and the Indian Health Service improved retirement provisions which would partially compensate for their loss of equal consideration for promotions and transfers.

Under this legislation, certain non-preference employees of the BIA and the IHS would be authorized to retire on an immediate annuity before December 31, 1989, as long as he or she has either completed 25 years of service or, after becoming 50 years of age, has completed 20 years of service before December 31, 1989. To be eligible, such employees must have been continuously employed in the Bureau of Indian Affairs or the Indian Health Service since June 17, 1974, and must not otherwise be entitled to retirement benefits. The annuity computation formula provides that such employees shall receive $2\frac{1}{2}$ percent of his or her "high three" average pay for each of the first 20 years of service and 2 percent for each year of service thereafter.

AFGE appreciates the interest of this Subcommittee in attempting to do justice to the non-preference employees of the BIA and IHS.

GOVERNMENT RELATIONS,
NATIONAL EDUCATION ASSOCIATION,
Washington, D.C., September 12, 1977.

Hon. GLADYS N. SPELLMAN,
Chairwoman, Subcommittee on Compensation and Employee Benefits, Longworth House Office Building, Washington, D.C.

DEAR MRS. SPELLMAN: The National Education Association and the National Council of Bureau of Indian Affairs Educators want to express our joint support for H.R. 4153, now under consideration by your Subcommittee on Compensation and Employee Benefits.

H.R. 4153 represents the most logical approach to a problem that has plagued the implementation of the Indian preference section established by the Wheeler Howard Act of 1934. As introduced H.R. 4153 reaffirms Congressional concern in this area and allows the best possible protection for those of our members who would be affected, as well as presenting the opportunity for the career mobility of Indian people.

We urge prompt passage of this legislation.

Sincerely,

STANLEY J. MCFARLAND,
Director of Government Relations.

JULY 18, 1977.

Hon. JOHN J. RHODES,
*Congress of the United States, House of Representatives,
Washington, D.C.*

DEAR MR. RHODES: Your prompt response to my letter concerning non-Indian employees of Indian Health Service and the Bureau of Indian Affairs is greatly appreciated. Your letter requested testimony for the hearing scheduled later this month; I would like to offer the following:

I am a non-Indian Federal employee with over 21 years of service; twenty years being with the Indian Health Service. I am a GS-9 Contract Specialist. All my specialized experience has been in the field of Procurement and Contracting. Under the Indian Preference Law—which requires that Indians be given absolute preference in initial hiring, promotions, reassignments, and training—it is virtually impossible for a non-Indian to have any hope whatsoever of furthering his or her career. I presently face working another 16 years until retirement with my career plans at a standstill. This is a very very demoralizing prospect.

The Public Health Service has initiated a Program called "Placement Assistant Program" (PAP), supposedly to help non-Indians in IHS relocate. This pro-

gram has proven to be a farce and a Joke. A team from our Headquarters Office recently conducted an on-site survey, after receiving many protests and complaints by the non-Indian employees, and they had to admit the PAP Program simply is not working.

It appears the only fair and equitable approach to the problem is early retirement for those employees whose careers have been irreparably damaged by the application of the Indian Preference Law. The Indian applicants are being exempted from Civil Service examinations, do not have to compete for promotions with other races, and their job opportunities and career development prospects are unlimited. On the other hand, the non-Indian must successfully pass a Civil Service test and must compete for promotion, however, competition between Indians and non-Indians does not apply as absolute preference must be given Indian applicants, who incidentally must only be "minimally qualified", and the non-Indian applicants are not even considered. The non-Indian employee's opportunities for training and career development are non-existent. This is not true of employees in other Federal agencies. They are at least able to compete on reasonably the same level.

The non-Indian employee's morale is currently at an all-time low. Careers are at a virtual standstill, but we must work beside and train Indian employees whose career potential is unlimited. The non-Indian is being penalized for his race! Regardless of how the Supreme Court interprets it, this can only be defined as discrimination.

I came to the Indian Health Service in 1956 with the hope and plans for a full and rewarding career. In the past few years, since the Indian Preference Laws have been strictly applied, my hopes and plans have been severely altered. I urge you to support H.R. 4153. It is most important and vital legislation to the many IHS and BIA non-Indian employees.

I hope the above information will be of value to you in the coming weeks. I will sincerely appreciate and effort you put forth in helping to resolve a most unfortunate situation.

Sincerely,

MRS. LEAH J. CAMPOY.

FORREST GERARD & ASSOCIATES, INC.,
Washington, D.C., July 15, 1977.

HON. GLADYS NOON SPELLMAN,
Chairwoman, Subcommittee on Compensation and Employee Benefits, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR CHAIRWOMAN SPELLMAN: One of my firm's clients, the All Indian Pueblo Council, has directed that I make known to the Subcommittee AIPC's position on H.R. 4153, a bill relating to non-Indian employees of the Bureau of Indian Affairs and the Indian Health Service.

Attached are 10 copies of an AIPC resolution in support of the bill. Please make arrangements to have the resolution inserted in the hearing record.

Thank you for your consideration.

Sincerely,

FORREST J. GERARD.

ALL INDIAN PUEBLO COUNCIL, INC. OFFICE OF THE CHAIRMAN

1977 RESOLUTION No. 6

Whereas the 19 Pueblo Tribes strongly support the concept and implementation of Indian self-determination; and,

Whereas 19 Pueblo Tribes recognize the need for the utilization of Indian employees in the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) in order to insure a stronger and quicker advancement toward Indian self-determination; and,

Whereas S. 666, H.R. 4153, and H.R. 4216 would help insure quicker advancement of Indian employees into positions within the Bureau of Indian Affairs by providing early retirement of BIA and IHS employees, thus, aiding Indian self-determination: Now, therefore, be it

Resolved, That the 19 Pueblo Governments do strongly support the passage of Senate Bill 666, H.R. 4153, and H.R. 4216.

CERTIFICATION

I, the undersigned, as Chairman of the All Indian Pueblo Council, do hereby certify that the foregoing Resolution was passed at a duly called meeting of the All Indian Pueblo Council, held on the 24th day of March, 1977, at which time a quorum was present, with 19 voting for, and 0 voting against, and 0 abstaining.

DELFIN J. LOVATO,

Chairman, All Indian Pueblo Council, Inc.

Attest:

FRANK TENORIO,
Secretary-Treasurer.

DENVER, COLO., July 18, 1977.

HON. GLADYS NOON SPELLMAN,
Chairwoman, Subcommittee on Compensation and Employee Benefits, Committee on Post Office and Civil Service, House of Representatives, Longworth Building, Washington, D.C.

DEAR CHAIRWOMAN SPELLMAN: It is my understanding that your subcommittee is holding hearings in the near future on H.R. 4153, which is a counterpart to S. 666, designed to extend Federal employment retirement benefits to non-Indian employees of the Bureau of Indian Affairs and of the Indian Health Service.

I cannot appear before your subcommittee for personal testimony, but I request that your subcommittee be advised of a strong current of feeling against this bill in the Indian community, unless certain amendments are made.

The enclosed petitions contain approximately 800 signatures from Indians who oppose this bill unless: (1) Indian employees of the Bureau of Indian Affairs and the Indian Health Service are included to benefit from early retirement with an amendment to S. 666 with this provision; (2) the Supreme Court decision on Indian preference is implemented in IHS and BIA; (3) training is provided for Indian employees in IHS and BIA to qualify for promotions; and (4) a GAO audit is ordered to examine the hiring, promotion, and training practices of BIA and IHS personnel in relation to the Supreme Court decision (*Mancari v. Morton*) of 1974.

We take this view because we believe the Indian preference laws have not been enforced in the Bureau of Indian Affairs. Further, the Indian Health Service never conceded it was bound by Indian Preference until a lawsuit brought in early 1977. It took a protracted legal struggle to force the Bureau of Indian Affairs to face its responsibilities in this area, and the first reaction to the Supreme Court's 1974 decision is this bill for relief of non-Indian employees.

Therefore, we find it difficult to support a bill which proposes a remedy for a problem created by the Bureau's own failure to enforce the Indian Preference laws, and we cannot support it unless the Bureau of Indian Affairs and the Indian Health Service genuinely enforce the Indian Preference laws, and Indian employees of the two agencies are included in its benefits.

Please make these petitions part of the formal record of your hearings to reflect our views, and please take those views into consideration in your deliberations.

Sincerely,

TILLIE WALKER,

*Member of Mandan Tribe, Ft. Berthoult Reservation, North Dakota, and
Chairperson, National Center for Indian Preference.*

FEDERAL EMPLOYMENT PREFERENCE FOR CERTAIN NON-INDIAN EMPLOYEES

WEDNESDAY, SEPTEMBER 7, 1977

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

The subcommittee met at 9:30 a.m., in room 304, Cannon House Office Building, Hon. Gladys Noon Spellman presiding.

Mrs. SPELLMAN. The subcommittee will come to order.

This is one of those days when everybody has a great deal of catching up to do, and so I suspect that other members will be coming in when they get their business squared away.

This subcommittee is reconvened this morning to continue consideration of H.R. 4153, a bill to provide certain benefits to employees within the Bureau of Indian Affairs and the Indian Health Service who have been adversely affected by the application of Indian preference statutes.

In June of 1974, the Supreme Court decision in the case of *Morton v. Mancari* upheld the legality of Indian preference in the Bureau of Indian Affairs and the Indian Health Service.

The Court found that Indian preference did not violate equal opportunity statutes but rather was a proper way to achieve Indian self-government.

The Court further ruled that Indian preference does not constitute racial discrimination, but is more in the nature of a legitimate political discrimination based on the quasi-sovereignty of the Indian tribes.

Now, prior to the early 1970's, most Indians had received preference at the time of initial hire into the two agencies but not in subsequent personnel actions. Once hired, Indians and non-Indians competed equally for advancement. We know *Morton v. Mancari* has changed that situation.

The decision has created a great deal a concern among employees who don't have Indian preference. Many of them believe that their careers suddenly have become truncated and that they will now be unable to achieve the promotions that otherwise would have been theirs.

These lost promotions not only will affect them, meaning lower salaries today, but eventually, lower retirement benefits as well.

The subcommittee has received a great deal of mail from non-preference employees, and you can imagine the frustration, hopelessness, anxiety and even bitterness which they express.

It is evident that there may be some very serious morale problems among this group of employees. We want to learn the extent of the

problem, if it is affecting the agency's mission and what steps are being taken or may be taken to improve the morale.

I believe that this morning we really need to get into the question of good-faith dealings with employees. Most of the non-Indian employees who are affected today by Indian preference apparently were hired when their agencies were publicizing and promoting advancement policies of merit promotion and equal opportunity.

These employees went to work for the Government with certain assurances of what to expect in years to come and now they have discovered that those assurances, however sincerely made at the time, are not being carried through.

Now, a factor other than merit may decide who gets the job.

Today we will be discussing various ways in which the Government might act in order to continue to deal in good faith with this group of employees.

You are aware, I'm sure, that the subcommittee acted on similar legislation during the 94th Congress which passed both Houses and then ultimately was vetoed. We have better luck in this administration with the bills we get through. Actually, sometimes it makes it a little harder to get them through, knowing that at the other end they are going to be signed.

During the course of the hearing in the 94th Congress, it was brought to the subcommittee's attention that neither the BIA nor the IHS was adequately informing all of the new employees of the effects of the Indian Preference Act. Subsequent to those hearings, the subcommittee made a suggestion that a written notice be read and signed by all new employees, Indian and non-Indian alike. We will be interested to know what, if anything, has been done to implement this suggestion and how it appears to be working.

Also, we would like to know if the outplacement programs allegedly implemented by the agencies are working.

We start this morning with witnesses who will be appearing on a panel. They will be the Deputy Assistant Secretary, Richard Hite, Department of the Interior; Mr. Rupert Moure, Department of Health, Education, and Welfare; and Mr. Thomas Tinsley, the Director of the Bureau of Retirement, Insurance and Occupational Health of the Civil Service Commission, will be joining the panel later.

Gentlemen, will you come up, please? We are delighted to hear from you.

STATEMENT OF RICHARD R. HITE, ASSISTANT SECRETARY, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY THOMAS TINSLEY, DIRECTOR, BUREAU OF RETIREMENT, INSURANCE AND OCCUPATIONAL HEALTH, CIVIL SERVICE COMMISSION; AND DR. EMORY JOHNSON, DIRECTOR, INDIAN HEALTH SERVICE

Mr. JOHNSON. Madam Chairman, I would like to point out that Mr. Moure, the Executive Officer of Public Health Service is ill this morning. I am taking his place. I am Dr. Emory Johnson, the Director of the Indian Health Service.

Mrs. SPELLMAN. Secretary Hite, you may lead off.

Mr. HITE. Thank you, Madam Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to testify today in favor of enactment of H.R. 4153, with certain amendments which are attached to this statement and which I will discuss in a moment and certain other amendments which the Civil Service Commission is proposing today.

H.R. 4153 provides special retirement benefits for certain non-Indian civil service and wage board employees of the Bureau of Indian Affairs and of the Indian Health Service who were employed by those agencies on June 17, 1974, the date of the unanimous U.S. Supreme Court decision upholding Indian preference in BIA and IHS employment. That decision, together with an April 25, 1974 U.S. court of appeals decision in another Indian preference case, has the effect of requiring the selection of qualified Indian candidates for positions in Bureau of Indian Affairs whenever they are available and regardless of the existence of non-Indian candidates of equal or higher qualifications. Other cases have similarly dealt with Indian preference in the Indian Health Service. In effect, it has been judicially determined that Indian preference had been improperly administered since enactment of the authorizing provision in the Indian Reorganization Act of 1934.

Since those decisions, the non-Indian employees who were employed in the Bureau of Indian Affairs on June 17, 1974 have had their opportunity for advancement or reassignment significantly restricted and in some cases totally prevented. The disadvantage of these non-Indians will increase as we continue to successfully recruit, train, and place qualified Indians in the BIA. We are strongly committed to the achievement of the objectives of the Indian preference law which is the maximum possible utilization of qualified Indians in staffing the Bureau of Indian Affairs.

As this subcommittee is aware, the Interior Department has undertaken with only limited success a program of outplacement assistance for those BIA non-Indian employees who do not wish to remain because of the restrictions on their careers imposed by absolute Indian preference. We believe that such outplacements will continue to be the choice of some non-Indian employees. However, we have concluded that an outplacement effort alone is not an adequate solution to the problem of the non-Indian employees. Neither does it aid in expediting the filling of positions in the BIA and IHS with qualified Indians, nor does it make any contribution to our ability to provide services to Indian people.

I should also mention the policy and requirements of the Indian Self-Determination Act (Public Law 93-638) to the effect that Indian tribes have the right to assume the operation of BIA and IHS services and activities serving their members. As time progresses, we expect an increasing displacement of Federal employees (Indian and non-Indian alike) with tribal employees as the result of the successful implementation of that act. The situation of the non-Indian employees of the BIA and the IHS will generally worsen as such contracting increases. Indeed, where the functions of a non-Indian's position are taken over by a tribal organization, the current Indian preference requirements may block any reassignment of the non-Indian to another

position within the BIA or the IHS. Certain Indian employees may also be adversely affected through displacement or relocation, but their chances of reassignment within the BIA are not inhibited by Indian preference.

We believe that enactment of H.R. 4153, with our amendments and those of the Civil Service Commission, will provide significant assistance to the affected non-Indian employees, facilitate the administration of Indian preference, and provide uniform treatment of all remaining non-Indian employees on the rolls as of June 17, 1974, without the inequities contained in the bill as introduced. All the amendments were developed in consultation among HEW, the Civil Service Commission, and the Interior Department. We are deferring to the Commission as to the cost of the bill and of the amendments and for the discussion of their amendments.

Our first proposed new section for H.R. 4153 would amend the Indian Self-Determination Act to provide that non-Indian employees who leave BIA or IHS employment for employment by a tribal organization, and who retain civil service retirement coverage pursuant to the act, shall be considered to be BIA or IHS employees for the purposes of the special retirement provisions of the bill. Such a provision is needed to avoid penalizing those BIA and IHS non-Indians who transfer to tribal employment and retain their retirement benefits pursuant to the authorizing of the Indian Self-Determination Act. In addition to being unfair to the employees involved, to not so extend the benefits could discourage such non-Indians from accepting employment offered by tribal organizations and perhaps delay or prevent assumption of an activity by a tribal organization.

Our proposed second new section for the bill would amend the current Indian preference provision of the Indian Reorganization Act of 1934. Four changes would be made by the amendment, two of which are intended to authorize the continuation of certain procedures involved in the application of Indian preference during the course of a reduction in force.

It has been the administrative practice of the BIA to apply Indian preference in the establishment of subgroups on retention registers for use in reductions in force. This practice has had the approval of the Civil Service Commission, but its legality has recently been questioned. We believe that Indian preference should continue to be so applied, and our amendment would clearly provide such authority. Failure to utilize Indian preference in reductions in force could result in Indian employees being subject to separation ahead of non-Indian employees in the same subgroup who have more years of Federal Service. Such a result would tend to thwart the objective of Indian preference in hiring, promotions, and reassignments.

A second administrative practice which has recently been called into legal question is that of filling vacancies with non-Indian employees whose positions are impacted during a reduction in force. This practice has avoided situations where a non-Indian employee might otherwise bump an Indian employee in a lower retention subgroup. The practice also can avoid separating qualified non-Indians in other situations where their retention is deemed in the best interest of the agency and achievement of its mission. Our proposed amendment would provide clear authority to continue this practice.

A third change included in our second proposed amendment would permit the reassignment of qualified non-Indian BIA and IHS employees to vacancies within those agencies without regard to Indian preference in certain specific situations. As with such reassignments during a reduction in force, all such reassignments would have to be at the same or at a lower grade—no promotion could be involved. Such reassignments would be authorized when necessary for the health or safety of the employees or their families, or when failure to so reassign an employee would seriously impair the provision of a necessary service to Indian people or jeopardize the effectiveness of the operation in which the employee is engaged. Our lack of assignment flexibility, even to positions of lower grade, has contributed materially to the morale and utilization problems of the non-Indian employees.

The last change incorporated in our second amendment is to require the Secretaries of Interior and HEW to submit an annual report to the Congress on their activities to recruit and train Indians so they may qualify for positions in the BIA and IHS. We believe that such a requirement will better enable the Congress to determine how effectively the objectives of Indian preference are being achieved with respect to employment in the BIA and IHS.

In summary, the Civil Service Commission's amendments together with ours will provide opportunities for non-Indian employees whose careers are impeded to retire early at somewhat improved benefits. On the other hand, the amendments will not instigate a mass departure of employees who are needed in order for us to maintain adequate services for the Indian people. The amendments provide non-Indian employees with incentives, choices, and latitudes which they do not presently have. Finally, our amendments address the question of equitable treatment for all groups of BIA employees—the non-Indians with present retirement eligibility, the non-Indians earlier in their careers, and our Indian employees.

This concludes my prepared statement, and I will be pleased to respond to any questions the subcommittee may have.

Add the following two new sections to the bill:

Section 105(e)(2) of the Indian Self-Determination Act (88 Stat. 2209; 25 U.S.C. 450i(a)(2)) is amended by adding the following new sentence at the end thereof:

"An employee who leaves Bureau of Indian Affairs or Indian Health Service employment to be employed by a tribal organization subsequent to January 4, 1975, and who retains his retirement coverage, rights, and benefits pursuant to this paragraph, shall be considered to be an employee of such agency for purposes of sections 8336(h) and 8339(n) of title 5, United States Code during such employment and retention. In the case of such an employee, the governing body of the tribal organization is authorized to exercise the authority granted to the Secretaries of the Interior and of Health, Education, and Welfare under section 8345(i) of said title 5."

Section 12 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 472) is amended by deleting the last sentence thereof and inserting in lieu thereof the following:

"Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions and to placement within subgroups on retention registers in reductions-in-force: *Provided*, that any such vacancies may be filled without regard to such preference (whether pursuant to this or any other Act providing employment preference for Indians) by the reassignment, without promotion or with reduction in grade, of qualified non-Indian employees (a) when necessary for the health or safety of such employees or their families, (b) in the course of a reduction-in-force, or (c) if failure to reassign an employee

would seriously impair the provision of a necessary service to Indian people or would jeopardize the effective operation of the service or activity in which said employee is employed. The Secretaries of the Interior and Health, Education, and Welfare shall each submit a report following the close of each fiscal year on their respective activities to recruit and train Indians so they may qualify for positions which are subject to Indian preference."

Mrs. SPELLMAN. Thank you very much.

Mr. Secretary, on page 1 of your testimony you state that the 1974 Supreme Court decision has the effect of requiring the selection of qualified Indian candidates for positions in the "Bureau of Indian Affairs."

As I read the decision and the Reorganization Act of 1934, I note references only to the Bureau of Indian Affairs.

Is that right?

Mr. HITE. That is my understanding, Madam Chairman.

Mrs. SPELLMAN. Well, then, would you explain why the Department of the Interior is taking the position that Indian preference laws follow a function when it is transferred out of BIA to another agency within or without the Department of Interior.

Mr. HITE. Madam Chairman, the one specific that I can quickly call to mind in this instance is the Fort Simcoe Job Corps camp which was previously under the cognizance of the Bureau of Indian Affairs.

When this was transferred to the cognizance of the Secretary's office for reasons of a better management grasp, our solicitor advised that the Indian preference law should follow the employees, formerly members of the BIA.

As a nonlegal type, it seems logical to me that this happened, inasmuch as those employees did start their careers and were members of the Bureau of Indian Affairs, and therefore, it would seem that the act should cover them.

However, we are open on this situation, Madam Chairman. We follow advice of counsel. If the statute were to stipulate otherwise, why, I would see no management problem.

Mrs. SPELLMAN. I think we want to be very sure that we clarify the situation so that a few years from now we don't have people looking back and saying that they have been wrong.

I do want to greet my colleague, Mr. Leach. After recess, you don't look the least bit rested. I thought the Republicans really take these recesses as vacations? [Laughter.]

Mr. LEACH. No, I think from a partisan point of view, there are more statesmen that are Democrats. [Laughter.]

Mrs. SPELLMAN. I do want to introduce Mr. Leach who has joined us. We are delighted to have you here with us this morning.

Mr. Secretary, I commend the Department of Interior on its statement that it is committed to the maximum possible utilization of qualified Indians in staffing the Bureau of Indian Affairs. But I am just a little bit perplexed by the fact that, as I understand, the Bureau of Surface Mining within the Department has 202 openings for employees. Furthermore, I understand that it could have utilized many of the skills of non-Indian employees within the BIA. Yet they were not used within the placement program.

Would you be good enough to comment on that situation?

Mr. HITE. First let me say that there has been no final placement action taken in the Surface Mining Agency as yet, for the reason that we have no money. The Office of Surface Mining has announced 47 vacancies, most of which are in technical and scientific fields, and 15 outplacement eligibles have been identified as basically qualified for some of these positions and have been referred to DSM for special consideration under the outplacement program.

It has been our policy to place a hold on all vacancies within the Department of Interior for which a non-Indian who has made himself available to the outplacement program, is eligible.

Now the problem that we face in many instances, Madam Chairman, is that we just don't have the skill mix in other areas of the Department that can satiate the demand.

A predominance of the people who are eligible for outplacement and want outplacement are educational people, teachers. And we have no large segment of the Department devoted to these types of skills, with the possible exception of the Mining Enforcement and Safety Administration.

To be quite candid, Madam Chairman, the other problem is that most these placements are forced placements. And under the competitive civil service system, quite properly in my view, the selecting officer after a panel is impaneled to select the best qualified, does have the latitude to make a selection.

We don't come to you with a great deal of pride on the success of the outplacement program. But we have tried very hard. We show some success. I have talked informally to Chairman Campbell of the Commission with respect to a broadening of the program to place, if you will, the imprimatur of the Civil Service Commission on the program and assist us in finding extra-departmental opportunities for some of these people whose skills just do not apply elsewhere in the Department.

Mrs. SPELLMAN. How do you go about assessing and matching the skills of non-Indians who might be used in such transfers.

Mr. HITE. Well, we have a data bank, if you will, in our departmental personnel office which would list all available vacancies in the Department. Those people who apply for outplacement are generally categorized in two general sections; those who are physically in danger—and there are some problems in this area—or who have a compelling need to relocate immediately, and those who find themselves more generally blocked in their career progression.

As I indicated earlier, when we find a match, let's say a more general skill such as a budget officer—I used to be a budget officer—position vacant in the Bureau of Mines at the appropriate grade level where we can make a lateral reassignment, we approach the Bureau of Mines through their personnel office and place a hold on the position until that candidate is at least considered.

I think it would be a violation of civil service regulations to actually force an individual into that position, but to the maximum extent possible, he will receive consideration as a qualified candidate.

Mrs. SPELLMAN. No; I think it would be wrong to be putting people into slots which they aren't able to fill properly. I have seen this

done in some agencies and the public suffers, and the employees ultimately do, too. That would not be the way to go about it. I agree with you on that.

On page 3 of your statement you list your first proposed new section. Would you clarify your statement on this section and would it apply to those employees hired because of contracting out?

Mr. HITE. Yes. As understand the problem here, Madam Chairman, when a tribe takes over a function on contract with the Bureau of Indian Affairs and thereby gets money to operate the program, as contract money instead of direct hire money, they then hire employees for work for the tribe. And the question seems to be: Under what definition does that tribal employee fall? Is he now not a Government employee? Is he now not a Bureau of Indian Affairs employee? And, therefore, is he extricated from the Indian preference laws?

We are suggesting that this increased retirement benefit and increased coverage for non-Indians apply to such non-Indian people as would be employed by the tribes under contract as opposed to a direct hire situation in the BIA. This is a moot point at this time.

I don't know if that is any more lucid than the prepared statement was.

Mrs. SPELLMAN. I know we do have some concerns about that. I will ask Mr. McCluskey to proceed.

Mr. McCLUSKEY. You are talking then about a tribe contracting for an individual?

Mr. HITE. That's correct.

Mr. McCLUSKEY. Has this individual left the BIA in your example?

Mr. HITE. In my example, he would have. I am going to get some skilled advice here.

Mr. LANE. My name is Larry Lane.

Mrs. SPELLMAN. Would you like to come and join the panel?

Mr. LANE. Yes.

Mr. HITE. Mr. Lane is acting director of personnel.

Mr. LANE. The intent of the section is merely to incur the same benefit for the BIA employee who is taken up by an Indian tribe under contract.

We have a group of non-Indian employees, for example, who are running schools, and the tribe decides it wants to take that school and operate it under contract. The tribe may then select the staff for its school. Some of the staff they select may be current employees of the Bureau of Indian Affairs.

As those employees are then taken on by the tribe directly from their prior Federal employment, the Indian self-determination legislation provides that they will retain certain Federal benefits.

Our intent here is to make sure that the benefit they retain is the same as the benefit as the employee who stays behind with the BIA will hold onto.

Mrs. SPELLMAN. It does two things, as I see it.

One, it enables movement of people who otherwise are stymied in their position. Two, it allows them to make that move without losing benefits they would otherwise have had.

It does another thing also; it keeps us from losing their skills, so that Indian tribes can take advantage of them.

Mr. LANE. That's right.

Mrs. SPELLMAN. This section may answer one of the complaints that we have about the legislation, which says that by allowing early retirement, we are ultimately going to be hurting the progress of the Indian community by removing all of this talent.

I know you still have some problems with it.

Mr. McCLUSKEY. I would just like to follow up, Mr. Lane. Let's consider that you have somebody that the Indian tribe has contracted for.

Mr. LANE. Right.

Mr. McCLUSKEY. Are we still defining them as Federal employees?

Mr. LANE. Not precisely; no. He still retains certain benefits of Federal employment, but he becomes an employee of the tribe.

Mr. McCLUSKEY. He is not listed on the rolls of the BIA; is he?

Mr. LANE. No.

Mr. McCLUSKEY. He is no longer a Federal employee. Is he on the civil service retirement rolls?

Mr. LANE. Yes; that's what he retains.

Mr. LEACH. Are there analogies elsewhere on that?

Mrs. SPELLMAN. Is this being done in any other situation? We might ask Mr. Tinsley about that.

Mr. TINSLEY. I don't know whether it is done exactly like this in other situations, certainly not when they become a contract employee with separation.

But there are certain individuals who are in effect detailed or carry their rights under various Government programs where they move from Federal employment for a short period of time to employment with another entity. For example, I believe with some of the tribal organizations now, some Federal employees who are in effect detailed or on loan, carry their benefits.

Certain Federal employees who under various pieces of legislation move into State and local governments for short periods of time, 1 year or 2 years, carry their benefits with them.

Certain employees who move with international organizations directly from employment with the United States, do carry for specified periods of time their benefits with them.

Now there are those types of analogies.

Mr. McCLUSKEY. But aren't these people more or less detailed, though, on leave of absences, and so forth?

Mr. TINSLEY. In most instances they are carried on the rolls of the agency. Unless some legislation is enacted, these people would technically be separated and become contract employees of the Indian agency.

But the intent of this amendment is to permit that to happen, but at the same time while they may technically be separated, to consider them an employee of the Bureau of the Indian Affairs for the purposes of this legislation, to carry their benefits.

Mr. McCLUSKEY. You have taken a person from the Bureau and then the Indian tribe decides to hire five more people outside, other teachers. And then I see legislation coming forward to the committee saying: We work side-by-side with these people—

Mrs. SPELLMAN. We have been there before.

Mr. McCLUSKEY. We are presently undergoing that with overseas teachers. I just express this as something that I see.

Thank you, Madam Chairwoman.

Mrs. SPELLMAN. Thank you.

I was initially going to ask the question about cost, whether it has been computed and then, Mr. Secretary, you stated you weren't going into the cost. However, a little later on you said that you had been a budget officer and, therefore, I am not going to be so hesitant about asking you.

Mr. HITE. That's why I decided not to go into it.

[Laughter.]

Mrs. SPELLMAN. You will cover that topic, Mr. Tinsley?

Mr. TINSLEY. Yes; the cost figures in terms of the retirement aspects.

Mrs. SPELLMAN. Good, then it will be covered.

It was suggested by certain members of the Education and Labor Committee that this bill should be amended to include an amendment to the Indian preference laws whereby they would not be applicable to any personnel action, including hiring, if the appropriate tribal organization grants in writing a waiver of the application of such laws.

We are told that there are some tribes who feel that they want to keep some of the non-Indian employees on board. If we were to require a waiver in writing by them, do you think that it might be well to amend this bill to permit that?

Mr. HITE. We would support that, Madam Chairman.

From my own experience, there have been many tribal leaders to whom I have spoken, who are disenchanted with the act on that very basis. They are not getting the services to their people.

I think that it would still be in the interest of equity to make such a waiver, provided there were agreement on both sides, from both parties?

Mrs. SPELLMAN. It makes very good sense to me. I have seen situation where we worked to help a handful of people. And in the long run, we have hurt the very cause which they are attempting to serve for a large number of people.

One more question: Do I understand correctly that the Department of the Interior actually started to implement Indian preference as early as 1970 and that by the time the *Freeman* case was decided in 1972, the Department of the Interior's policy of implementing Indian preference laws was in full swing?

Mr. HITE. At least 1971, Madam Chairman, we implemented Indian preference under Secretary Morton.

Mrs. SPELLMAN. Thank you very much for your testimony. I turn to my colleague.

Mr. LEACH. One question: Since this Supreme Court decision in 1974, what has been your percentage of hiring Indians versus non-Indians in the BIA?

Mr. HITE. The percentage of Indians, of direct Indian hires has risen to something on the order of 80 percent, I believe.

This paper, which I would be glad to submit for the record, covers the period June 17, 1974 to August of this year. We have hired 5,763 Indian persons and 1,338 non-Indians.

Mr. LEACH. Do you have any goal to make the BIA 100 percent Indian employees?

Mr. HITE. As I indicated somewhere in the prepared statement, we feel that the optimum is to fill every possible position with qualified Indian personnel.

To my mind, that will never reach 100 percent.

This little factsheet, Mr. Leach, also covers promotions, on the order of 4,300 Indian promotions and 1,200 non-Indian.

I won't belabor you with the whole sheet, but the next item is important, I think. We have had transferred to other Federal agencies on this order; 162 Indians and 327 non-Indians. That is some measure of the effectiveness of the outplacement program. We are talking about a significant number of non-Indians who have applied for outplacement and we have transferred 327.

Mr. LEACH. Does the Civil Service Commission give priority to these outplacements?

Mr. TINSLEY. No; not in any extensive manner. The Commission encourages outplacement, and it has only recently begun a concerted effort on outplacement.

Mr. LEACH. Can you tell me: Of the top political appointments in the BIA, and the Department of the Interior, how many have been non-Indian and how many Indian?

Mr. HITE. Of the top three designees, we have upgraded the Commissioner's position to an Assistant Secretary, a designee will be heard for confirmation this week. Mr. Gerard is an Indian. Of his two deputy designees, one is an Indian.

I believe only three of the next five positions are filled, two Indians and one non-Indian, to my knowledge.

Mr. LEACH. How about the rest of Interior, per se?

Mr. HITE. With respect to Indian employment, it is negligible. I can't think of a person of Indian extraction in a top political slot at this point outside of the Bureau of Indian Affairs.

Mr. HITE. Madam Chairman, I will submit this for the record, if I may, in answer to Mr. Leach's question on accessions, promotions.

Mrs. SPELLMAN. Without objection, it will be entered into the record. [The tabulation follows:]

PERSONNEL ACTIONS—JUNE 17, 1974, TO AUG. 1, 1977

	Indian	Non-Indian
Accessions.....	5,763	1,338
Promotion.....	4,304	1,248
Transferred to other Federal agencies.....	162	327
Reassignment within BIA.....	1,964	929
Reassigned within Interior.....	4	80
Resignations.....	2,178	907
RIF.....	154	121

Mrs. SPELLMAN. We thank you very much for your testimony.

Dr. Johnson, we will turn to you for your statement.

Dr. JOHNSON. Thank you, Madam Chairman.

I would like to, if I may, just submit Mr. Moure's written statement for the record and then summarize it very briefly.

Mrs. SPELLMAN. We would have been pleased to have him, and now we are delighted to have you.

Without objection, the statement of Mr. Moure will be entered into the record.

[The statement follows:]

PREPARED STATEMENT OF RUPERT MOURE, EXECUTIVE OFFICER OF THE PUBLIC HEALTH SERVICE

Mr. Chairman and members of the committee, I am pleased to appear before you today to testify on H.R. 4153 and seven similar bills. These bills provide early retirement benefits to certain non-Indian employees in the Bureau of Indian Affairs (BIA), Department of the Interior, and the Indian Health Service (IHS) of the Department of Health, Education, and Welfare.

The background information which led to this proposed legislation is as follows:

The Wheeler-Howard Act of 1934 stated that qualified Indians shall have preference of appointment to vacancies in any such positions which provide, or result in the administration of, functions or services affecting any Indian tribe. As a result, IHS granted preference to Indians for initial appointment into the Federal service. Later court actions noted that preference in promotions was designed to bring more Indians into positions of responsibility and, in that regard, appeared to be a logical extension of the 1934 congressional intent. In the 1974 *Freeman v. Morton* case, the court held that the law requires that Indian preference be applied to initial hiring, promotions, lateral transfers and reassignments.

That decision has caused severe curtailment of the career opportunities for the non-Indian employee in IHS. In fact, that decision effectively removed management's right to move a non-Indian employee to any vacant position, for any reason, without first determining whether an Indian is qualified and available for that position. If a qualified Indian is available, the non-Indian may not be moved. The non-Indian employee who entered these agencies before 1974 could expect career opportunities comparable to those available in any other Federal agency. The stricter interpretation of the Indian Preference Act has seriously restricted those opportunities. To alleviate the situation in which these employees find themselves, through no fault of their own, H.R. 4153 and similar bills have been introduced. These bills would revise retirement eligibility requirements and liberalize retirement benefits to compensate these employees. In addition, retirement of the non-Indian would permit additional employment opportunities for Indians, which is in concert with the original intent of the Wheeler-Howard Act.

Specifically, H.R. 4153 would allow non-Indian employees of BIA and IHS who wish to retire before December 31, 1989, to do so, provided they meet the following criteria:

The employee must:

- (1) not be an Indian; (2) have completed 25 years of service (without age restriction), or have completed 20 years of service and be at least 50 years old; (3) have been continuously employed by BIA or IHS since June 17, 1974; and (4) not be otherwise entitled to full retirement benefits.

This Department agrees with the Department of the Interior (DOI) and the Civil Service Commission (CSC) in recommending favorable consideration of H.R. 4153 with a number of amendments that the DOI and the CSC will present to you.

Inclusion of those amendments will enable the Indian Health Service to continue to deliver quality health care to the Indians, provide greater employment opportunity for Indians, as well as redress inequities to the non-Indian employees.

I appreciate this opportunity to appear and will be pleased to answer any questions you may have.

Dr. JOHNSON [continuing]. I think, Madam Chairwoman, you and Secretary Hite have adequately covered the background of the problem.

The Snider Act, and of course, the 1934 Howard-Wheeler Act, are substantive parts of our basic legislation, and that's how we get transferred into using Indian preference, although we are not in fact a part of the Bureau of Indian Affairs.

We agree with the Department of the Interior position and the Civil Service Commission in recommending enactment of this legislation and we support the amendments that they are proposing.

We do believe that this legislation and the amendments will assist us in managing the program and will assist in the Indian people's assumption of their responsibilities for the operation of the health programs, and in all respects will facilitate carrying out the mission of the programs.

I would be pleased to answer any questions that you may have.

Mrs. SPELLMAN. Thank you.

I would like to ask how you feel about the amendment we discussed which would enable the tribes to, in effect, sign off?

Dr. JOHNSON. There is a semantic problem sometimes, and I have heard this from a number of tribal leaders. They say that Indian preference ought to also include the tribe's preference. And sometimes the tribe prefers not to hire the Indian that appears on the panel and would prefer someone else. And they say in a sense that absolute Indian preference in fact goes against the tribal self-government or tribal preference.

So on that basis, Madam Chairman, I would support that amendment.

Mrs. SPELLMAN. Mr. McCluskey.

Mr. McCLUSKEY. Dr. Johnson, in your opinion, since you have worked with the Department of Interior and CSC on this, and reviewed the statements, is the Interior Department and CSC amendments attractive enough to move non-Indians out of the Bureau and provide jobs for Indians?

I guess I kind of put you on the spot.

Dr. JOHNSON. Yes.

I think there are a number of elements in the document, in the proposal, that are attractive, certainly to someone who is completing a 20-year tour of duty, who may very well be interested in another career. This happens particularly with professional staff. This goes on all the time. And so I think, in a sense, that a 20- or 25-year voluntary retirement, which is what this is, will be attractive to a certain number of people.

I do think that the rather low annuity interest, for example, just including from 1974 on, limits to some degree the attractiveness of this and will to some degree blunt the stimulus for early retirement for a number of people.

And the answer I guess is yes and no.

Mr. McCLUSKEY. Mr. Tinsley, is this 20-year retirement that you are offering, or is it normal retirement with 2.5 percent after 1974?

Mr. TINSLEY. The 25 years, 50-20.

Mr. McCLUSKEY. So they can early-out under RIF procedures?

Mr. TINSLEY. With no reduction.

Mr. McCLUSKEY. But if they reach the normal retirement, they have 1 year to take advantage?

Mr. TINSLEY. They have 1 year from 50-20 or the 25 to take advantage of the additional 2.5 percent.

Mr. McCLUSKEY. If they just have 1 year from 50-20, I can see how that sort of emasculates the whole bill.

Mr. TINSLEY. One of the things that we discussed; it does require for move-out to open jobs for Indians. Our proposed amendments also permit the Secretary of Interior to extend that for 1 year intervals up to a maximum of 5 years, so the 2.5 percent does provide some compensation for the individual who stays. Now he is free to stay, but he just loses the 2.5 percent if he stays.

Mr. McCLUSKEY. Thank you.

Mrs. SPELLMAN. Thank you very much.

Mr. Tinsley?

Mr. TINSLEY. Thank you, Madam Chairwoman.

I have a prepared statement which can be placed in the record.

Mrs. SPELLMAN. Without objection, it will be entered in the record.
[The statement follows:]

PREPARED STATEMENT OF THOMAS A. TINSLEY, DIRECTOR, BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH, U.S. CIVIL SERVICE COMMISSION

Madam Chairwoman and members of the subcommittee, I appreciate this opportunity to appear before the Subcommittee to discuss the Commission's views on H.R. 4153. With your permission, I should like to have the Commission's report on H.R. 4153 and identical bills, H.R. 4162, 4216, 5601, and 6927, placed in the record.

Since Mr. Hite has already discussed the adverse effects of Indian preference law on certain non-Indian employees of BIA and IHS, I won't reiterate that discussion in my testimony.

I want to emphasize that the Commission shares your concern about the future of those non-Indian employees of BIA and IHS who have been placed in this unique situation through no fault of their own. However, we do not believe that the present situation justifies liberalized retirement benefits to the extent proposed by H.R. 4153.

In general, H.R. 4153 provides for optional retirement after 25 years of service or after becoming age 50 and completing 20 years of service for those non-Indians of either BIA or IHS, who have been continuously employed by either agency since June 17, 1974 and who will have completed such years of service by December 31, 1989. The bill spells out a liberal formula for computing the annuity, namely $2\frac{1}{2}$ percent of average pay multiplied by the first 20 years of total service plus 2 percent of average pay multiplied by all years of service in excess of 20 years. Furthermore, unlike the ordinary discontinued service case, there would be no reduction in annuity for retiring before age 55. The liberalized annuity would not apply to those employees who already meet the age and service requirements for optional retirement—either age 55 with 30 years of service or age 60 with 20 years of service.

We do not believe that the bill would accomplish its intended purpose namely early retirement of certain non-Indian employees. The special liberalized computation formula would, in effect, be a reward for non-Indians who elect to remain employed by the IHS or BIA until December 31, 1989—the cutoff date in the bill. In our view, enactment of H.R. 4153 in its present form would not encourage BIA and IHS non-Indian employees to retire earlier than they otherwise would. Instead, it would encourage them to continue working to enhance their retirement annuity computation until such time as they voluntarily decide to retire.

However, we also recognize that this is a unique situation brought about by a Supreme Court decision regarding an Indian preference law and that a solution must be found. The Civil Service Commission, along with the Departments of Interior and Health, Education, and Welfare, has been exploring various alternatives or amendments which would present an equitable solution without awarding unjustified windfall benefits to a small number of employees.

In our opinion, the following suggested amendments to H.R. 4153, which represent the joint effort of all three agencies, would render the bill more equitable and would also eliminate some other problems relating to non-Indian employees of BIA and IHS. These recommendations are as follows:

- (1) Delete the December 31, 1989 cutoff date for application of benefits.
- (2) Delete paragraph 8336(h) (3) of the bill which would exclude employees "otherwise entitled to full retirement benefits" from the provisions of the bill.

(3) Require that, in order to be eligible for the liberalized provisions of the bill, an employee must retire within one year after: (a) the date of enactment of the bill; or (b) the date he first meets the age and service requirements for retirement under the bill—whichever is later. Any employee who does not elect to retire within the time limit (or who is not exempted by the Secretaries as provided in the bill) will become or remain eligible for retirement under other provisions of the retirement law on the same basis as Federal employees, generally.

(4) Amend the annuity computation formula provided in H.R. 4153 to apply the 2½ percent of average pay only to years of service not exceeding 20 years after June 17, 1974, the date of the Supreme Court decision.

(5) Amend section 4 of H.R. 4153 to provide that the Secretaries may delay or exempt for periods of 1 year at a time an employee's date of retirement without loss of eligibility under 8336(h) for total delays of not more than 5 years. The delays would have to be mutually agreeable to the employee and the Secretary and only when necessary for the continued effective operation of the service.

Elimination of the 1989 cutoff date and inclusion of those employees who are presently eligible for full retirement benefits will avoid penalizing any of the employees of BIA and IHS whose careers have been adversely affected by Indian preference laws. These amendments when combined with the requirement for retirement within 1 year after eligibility will, in our opinion, increase the number of retirements and, as a consequence, provide opportunities for Indians more rapidly than the current provisions of the bill.

On the other hand, the amendment limiting the 2½ percent computation to years after June 17, 1974 and the amendment authorizing the Secretaries to delay retirements authorized by the legislation will serve to preserve the effective operation of BIA and IHS. There is currently a massive expansion program underway to train Indian employees to take over the programs for their own people and much of the training will be completed within the next 5 years. However, over 1,000 non-Indian employees are now eligible for full retirement and many occupy key positions for which there are presently no qualified Indians. The provision for delay will prevent a mass exodus of employees, and will provide for an orderly turnover of programs and services to the Indians.

We have specifically recommended that the 2½ percent annuity computation formula apply only to IHS and BIA service performed after June 17, 1974, the date on which the Supreme Court decision mandated absolute Indian preference. We do not believe that sufficient justification is shown for applying the liberalized computation formula to service before that date. The existing annuity computation formula for employees generally, would apply to pre-June 17, 1974 Federal service performed by employees eligible for the special benefits proposed in this legislation.

Furthermore, the Commission recommends two additional amendments. The first would require agencies to cooperate with the Commission in efforts to place those non-Indian employees who wish to transfer to other agencies. The second amendment would clarify the effective date and applicability of the bill. Technical language to achieve these aims have been attached to our report on H.R. 4153.

We believe that the suggested amendments I have just cited, together with others to be submitted by the Department of the Interior, will resolve many problems which are not addressed in H.R. 4153.

If amended as recommended, we estimate that enactment of H.R. 4153 would increase the unfunded liability of the Fund by approximately \$62 million which would be amortized in 30 equal annual installments of \$3.8 million. If H.R. 4153 is enacted without amendment, the cost would be approximately \$173 million which would be amortized in 30 equal annual installments of \$10.7 million.

In conclusion, we believe that incorporation of the suggested amendments will render H.R. 4153 a reasonable and equitable solution to the problem and, if the bill is amended as recommended, we will not object to enactment.

I thank you for giving me the opportunity to present the views of the Civil Service Commission on this pending legislation. I will be glad to try to answer any questions you may have.

Mr. TINSLEY [continuing]. I will very briefly summarize and address myself to the proposed amendments to the bill relating to the retirement aspects of it.

Basically, we do not believe that the present situation justifies the liberalized retirement benefit to the extent proposed in H.R. 4153.

Therefore, after discussions and consultations with Interior and HEW, we would like to propose certain amendments to the bill, recognizing that what we have here is a unique situation brought about by a Supreme Court decision.

What we would recommend is to delete the September 31, 1989 cut-off date now contained in the bill. We do not believe, in view of our amendments, that such cut-off date or any cut-off date is necessary.

We would also recommend that paragraph 8336(h)(3) of the bill, which would exclude employees otherwise entitled to full retirement benefits from the provisions of the bill be deleted.

Mrs. SPELLMAN. What is the reason for that recommendation.

Mr. TINSLEY. The reason for that is it is somewhat inequitable and we can see no real basis as to why you should distinguish between people who happen to have 30 years of service and they are age 55 and someone who might be 1 year younger.

In addition to that, some of these people may be extremely valuable people in the continuation of service with BIA.

The third amendment would be to require that in order to be eligible for the liberalized provisions of the bill, an employee must retire within one year after the date of enactment of the bill, or the date he first meets the age and service requirements for retirement under the bill, which ever is later.

As I explained in response to Mr. McCluskey's question, any employee who does not elect to retire within that time limit or is not exempt by the Secretaries of HEW or Interior, will become or remain eligible for retirement under the other provisions of the retirement law on the same basis as any other Federal employee.

The fourth amendment we would like to suggest for the consideration of the committee is to amend the annuity computation formula provided in H.R. 4153 to apply the 2.5 percent of average pay only to years of service after June 17, 1974, and this would not exceed 20 years after that date.

The reason for that is that that was the date of the Supreme Court decision.

Now the fifth amendment would be to amend section 4 of the bill to provide that the Secretaries of Interior and HEW may delay or exempt for periods of 1 year at a time an employee's date of retirement without loss of eligibility under this law for total delays of not more than 5 years.

The delay naturally would have to be mutually agreeable to the employee and the Secretary, and only when necessary for the continued effective operation of the Indian service.

Mrs. SPELLMAN. May I take you back to No. 4 for a moment, before you go on?

Since the Department of the Interior has admitted that the policy of Indian preference was in full swing by the time of the *Freeman* case in 1972, would the Civil Service Commission have any objection to moving that date back to 1972?

Mr. TINSLEY. I don't know how Interior or HEW would view that, but certainly, I don't think that would be enough to change our views on the overall bill, if it was moved back to that date.

Mrs. SPELLMAN. Thank you.

Mr. TINSLEY. One question earlier that you asked, Mrs. Chairwoman, and it is usually important to the members of the committee—the question of cost. The bill as it is currently written would create an unfunded liability of about \$173 million. That would have to be amortized in 30 equal annual installments of \$10.7 million.

With the amendments suggested to the retirement portion of the bill, the unfunded liability would be at most, \$62 million and result in 30-year equal annual installments of \$3.8 million.

Let me emphasize that we view that at the moment as the outside cost. It could be appreciably less.

There were two other amendments that the Commission would like to suggest for consideration. One I believe is a technical amendment. The other has to do with the clarifying the fact that the agency make clear that this does not apply to service prior to 1974.

And in addition to that, a provision that expresses the sense of the Congress in terms of outplacement cooperation by agencies with the Commission in an attempt to place individuals who wish to move into other positions in other Government agencies.

That, Mrs. Chairwoman, summarizes the views of the Commission's suggestions for change in the bill.

Mrs. SPELLMAN. Thank you, Mr. Tinsley. I was asking my questions as you went along.

I will ask the gentleman from Iowa if he has any questions.

Mr. LEACH. No.

Mrs. SPELLMAN. Do you have any questions, Mr. McCluskey?

Mr. McCLUSKEY. No.

Mr. TINSLEY. I appreciate that. [Laughter.]

Mrs. SPELLMAN. We do thank you very much.

We will be holding a markup on the bill September 12, which is a tentative date.

There is a great deal of juggling we have to do in order to get enough days to do what we have to do on this subcommittee.

We thank you very much for testifying before the subcommittee.

The subcommittee is adjourned.

[Whereupon, at 10:30 a.m., the subcommittee was adjourned.]

95TH CONGRESS
1ST SESSION

H. R. 4153

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1977

Mr. STEED introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To allow Federal employment preference to certain employees of the Bureau of Indian Affairs, and to certain employees of the Indian Health Service, who are not entitled to the benefits of, or who have been adversely affected by the application of, certain Federal laws allowing employment preference to Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 8336 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i) and inserting the following new subsection:

“(h) An employee is entitled to an annuity if he (1) is separated from the service after completing 25 years of service before December 31, 1989, or after becoming 50 years of age and completing 20 years of service before December 31, 1989, (2) was employed in the Bureau of Indian Affairs or the Indian Health Service continuously from June 17, 1974, to the date of his separation, (3) is not otherwise entitled to full retirement benefits, (4) is not an

Indian entitled to a preference under section 12 of the Act of June 18, 1934 (48 Stat. 986) or any other provision of law granting a preference to Indians in promotions and other personnel actions.”.

SEC. 2. Section 8339 of title 5, United States Code, is amended—

(1) by inserting in subsection (f), immediately after “subsections (a)–(e)”, the following: “and (n)”;

(2) by inserting in subsection (i), immediately after “subsections (a)–(h)”, the following: “and (n)”;

(3) by inserting in subsections (j) and (k) (1), immediately after “subsections (a)–(i)” each time it appears, the following: “and (n)”;

(4) by inserting in subsection (1), immediately after “subsections (a)–(k),” the following: “and (n)”;

(5) by inserting in subsection (n), immediately after “subsections (a)–(e)”, the following: “and (n)”;

and

(6) by adding at the end thereof the following:

“(n) The annuity of an employee retiring under section 8336 (h) of this title is—

“(A) $2\frac{1}{2}$ percent of his average pay multiplied by so much of his total service as does not exceed 20 years; plus

“(B) 2 percent of his average pay multiplied by as much of his total service as exceeds 20 years.”.

SEC. 3. (a) Section 8341 of title 5, United States Code, is amended—

(1) by inserting in subsection (b) (1), immediately after “section 8339 (a)–(i)”, the following: “and (n)”;

(2) by striking out of subsection (d) “section 8339 (a)–(f) and (i)” and inserting in lieu thereof the following: “section 8339 (a)–(f) and (n)”.

(b) Section 8344 (a) (A) of such title is amended by striking out “and (i)” and inserting in lieu thereof “(i), and (n)”.

SEC. 4. The Secretaries of Interior and Health, Education, and Welfare are each authorized to postpone, for not more than 12 months, the retirement of an employee of their Department under the provisions of this Act, if such postponement is found to be necessary for the provision of essential services to Indian people or to protect essential interests of the United States. Notwithstanding any other provision of this Act, an employee whose retirement is so postponed shall remain eligible for retirement under this Act.

SEC. 5. The amendments made by this Act shall take effect on and apply to employees retiring on or after the date of enactment of this Act.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 7 1971

Honorable Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service
Suite 309 Cannon House Office Building
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

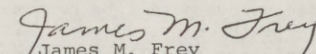
This is in reply to the Committee's request for the views of this Office on H.R. 4153, "To allow Federal employment preference to certain employees of the Bureau of Indian Affairs, and to certain employees of the Indian Health Service, who are not entitled to the benefits of, or who have been adversely affected by the application of, certain Federal laws allowing employment preference to Indians, and for other purposes."

The principal purpose of this bill is to grant early retirement benefits to certain non-Indian employees of the Bureau of Indian Affairs in the Department of the Interior and of the Indian Health Service in the Department of Health, Education, and Welfare, who are adversely affected by the operation of the Indian preference law.

In their reports and testimony, the Civil Service Commission and the Departments of Interior and Health, Education, and Welfare join in recommending certain amendments to H.R. 4153. These changes are designed (1) to provide uniform treatment for all non-Indian employees continuously employed in these Indian agencies on the date of the Mancari decision amplifying the scope of the preference law; (2) to limit application of the preferential formula to service after that date; (3) to permit greater flexibility in the timing of retirements under the bill, so as not to impair the provision of services to the Indian people; (4) to permit modification of absolute preference in certain reassignment situations involving protection of health and safety of employees; reduction in force, or unimpaired continuation of necessary services to Indians; and (5) to authorize appropriate outplacement assistance to the Indian agencies.

We concur in the views expressed by these agencies and, accordingly, would not object to enactment of H.R. 4153 provided it is amended as indicated above.

Sincerely,


James M. Frey
Assistant Director for
Legislative Reference

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

September 7, 1977

Honorable Robert N.C. Nix
 Chairman, Committee on Post Office
 and Civil Service
 House of Representatives

Dear Mr. Chairman:

This is in further reply to your request for the Commission's views on H.R. 4153, a bill "To allow Federal employment preference to certain employees of the Bureau of Indian Affairs, and to certain employees of the Indian Health Service, who are not entitled to the benefits of, or who have been adversely affected by the application of, certain Federal laws allowing employment preference to Indians, and for other purposes", and on identical bills, H.R. 4162, 4216, 5601, 5603, and 6927.

On June 17, 1974 (in Morton v. Mancari, 42 U.S.L.W. 4933 (U.S. June 17, 1974)), the Supreme Court held that the Indian preference provision (Section 12) of the Indian Reorganization Act of 1934 (Wheeler-Howard Act) was not repealed by the Equal Employment Opportunity Act of 1972 and does not violate the Due Process Clause of the Fifth Amendment. With regard to the applicability of Indian preference to promotions, the Court did not express an opinion, but noted "The Commissioner's extension of the preference in 1972 to promotions within the BIA was designed to bring more Indians into positions of responsibility and, in that regard, appears to be a logical extension of the Congressional intent." 42 U.S.L.W. at 4936. However, in Freeman v. Morton, 499 F. 2d 494 (D.C. Cir. 1974), the court held that the law requires that Indian preference be applied to initial hiring, promotions, lateral transfers and reassignments. As a result of that decision, it would appear that certain non-Indian employees of BIA (now BIA and the Indian Health Service (IHS)) would not receive any further promotions if qualified Indians applied for the positions involved.

H.R. 4153 or any of these bills, if enacted, would provide optional retirement after 25 years of service (not necessarily with BIA or IHS) or after attainment of age 50 and completion of 20 years of service for those non-Indian employees of BIA and IHS who have been continuously employed by that agency since June 17, 1974, and who will complete such years of service before December 31, 1989. The bills provide that the annuities of these employees will be computed at 2 1/2 percent of average pay multiplied by the first 20 years of total service plus 2 percent of average pay multiplied by all years of service in excess of 20 years (with no reduction for age.)

The liberalized annuity computation formula would not apply to those employees who already meet the age and service requirements - age 55/30 years or age 60/20 years - for full retirement benefits; however, sec-

tion 4 of the bills would authorize the Secretaries of Interior and Health Education and Welfare to postpone for not more than 12 months, the retirement of an employee of their Department under certain conditions. An employee whose retirement is so postponed would still be entitled to the liberalized formula even though he had, in the meantime, become eligible for full retirement benefits.

The Commission does not believe the present situation justifies granting such liberalized retirement benefits to non-Indian employees of BIA and IHS. The special 2 1/2-2% computation formula would, in effect, be a reward for non-Indians who elect to remain employed by the IHS or BIA until December 31, 1989 --- the cutoff date in the bill. In our view, enactment of H.R. 4153 in its present form would not encourage BIA and IHS non-Indian employees to retire earlier than they otherwise would but would, instead, encourage them to continue working to enhance their retirement annuity computation at such time as they voluntarily decide to retire.

The Commission does, however, recognize that this is a unique situation brought about by the Supreme Court decision, and that a solution must be found. We, along with the Departments of Interior and HEW, have been exploring various alternatives or amendments which would present an equitable solution without awarding unjustified windfall benefits to a small number of employees.

In our opinion the following recommended amendments to H.R. 4153 would render the bill more equitable in addition to eliminating some of the other problems relating to non-Indian employees of BIA and IHS.

- 1) Delete the December 31, 1989 cutoff date for application of benefits.
- 2) Delete section 8336(h)(3) of the bill which would exclude employees "otherwise entitled to full retirement benefits" from the provisions of the bill.
- 3) Require that, in order to be eligible for the liberalized provisions of the bill, an employee must retire within one year after (a) - the date of enactment of the bill or (b) the date he first meets the age and service requirements for retirement under the bill - whichever is later. Any employee who does not elect to retire within the time limit (or who is not exempted by the Secretaries as provided in the bill) will become or remain eligible for retirement under other provisions of the retirement law on the same basis as Federal employees, generally.
- 4) Amend the annuity computation formula provided in H.R. 4153 to apply the 2 1/2% of average pay only to years of service not exceeding 20 years after June 17, 1974, the date of the Supreme Court decision.
- 5) Amend section 4 of H.R. 4153 to provide that the Secretaries may delay or exempt for periods of 1 year at a time an employee's date of retirement without loss of eligibility under 8336(h) for total delays of not more than 5 years. The delays would have to be mutually agreeable to the employee and the Secretary and only when necessary for the continued effective operation of the service.

The first five recommended amendments are interrelated. Elimination of the 1989 cutoff date and inclusion of those employees who are presently eligible for full retirement benefits will avoid penalizing any of the employees of BIA and IHS whose careers have been adversely affected by Indian preference laws. These amendments when combined with the requirement for retirement within 1 year after eligibility will, in our opinion,

increase the number of retirements and, as a consequence, provide opportunities for Indians more rapidly than the current provisions of the bill.

On the other hand, the amendment limiting the 2 1/2% computation to years after June 17, 1974 and the amendment authorizing the Secretaries to delay retirements authorized by the legislation will serve to preserve the effective operation of BIA and IHS. There is currently a massive expanding program underway to train Indian employees to take over the programs for their own people and much of the training will be completed within the next 5 years. However, over 1,000 non-Indian employees are currently eligible for full retirement and many occupy key positions for which there are presently no qualified Indians. The provision for delays will prevent a mass exodus of employees to the detriment of the service, and will provide for an orderly turnover of programs and services to the Indians.

We have specifically recommended that the 2 1/2% annuity computation formula apply only to IHS and BIA service performed after June 17, 1974, the date on which the Supreme Court decision mandated absolute Indian preference. We do not believe that sufficient justification is shown for applying the liberalized computation formula to service before that date. The existing annuity computation formula for employees generally, would apply to pre-June 17, 1974 Federal service performed by employees eligible for the special benefits proposed in this legislation.

In addition, we recommend two other amendments which would:

- 1) Provide for the Commission to render appropriate assistance in placing those non-Indian employees who wish to transfer to other agencies; and
- 2) Clarify the effective date and applicability of the bill.

The Commission believes the amendments discussed above, along with those to be submitted by Interior, will resolve many of the problems which are not addressed in H.R. 4153. If amended as recommended we estimate that enactment of H.R. 4153 would increase the unfunded liability of the Fund by approximately \$62.0 million which would be amortized in 30 equal annual installments of \$3.8 million. These figures are based on an approximate number of 5600 employees who could be affected by the bill. The cost could be even lower if substantial numbers of employees transfer to other agencies or do not elect to retire under the provisions of the bill.

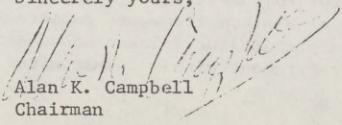
If H.R. 4153 is enacted without amendment it will affect approximately 3550 employees and the cost would be approximately \$173 million which would be amortized in 30 equal annual installments of \$10.7 million.

If H.R. 4153 is amended as recommended above, the Commission would not object to enactment. Technical language to accomplish those amendments relating to retirement and placement are attached to this report. The Department of Interior will submit amendments to the Indian Preference Act and the Indian Self Determination Act.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,


Alan K. Campbell
Chairman

Recommended Amendments to H.R. 4153

- 1.) Amend clause (1) of section 1 on page 2 by deleting the phrase "before December 31, 1989" both times it appears.
- 2.) Strike out all of clause (3) of section 1 and substitute in lieu thereof "(3) elects to retire within one year after (a) the date of enactment of this Act or (b) the date he first meets the age and service requirements for retirement under this section - whichever is later".
- 3.) Amend section 2, subparagraph (5) on page 2, line 24 by deleting "subsection (n)" and substituting in lieu thereof "subsection (m)".
[This is strictly a technical correction relating to unused sick leave.]
- 4.) Amend section 2, subparagraph (b) on page 3, lines 4 through 10 to read as follows:

"(n) The annuity of an employee retiring under section 8336(h) of this title is computed under subsection (a) of this section with respect to service prior to June 17, 1974. The annuity of such employee with respect to service after June 17, 1974 is -

(A) 2 1/2 percent of his average pay multiplied by so much of such service as does not exceed 20 years; plus

(B) 2 percent of his average pay multiplied by so much of such service as exceeds 20 years.
- 5.) Delete section 4 beginning on line 22 of page 3 and substitute the following new section 4 in lieu thereof:

"Sec. 4. Section 8345 of title 5, United States Code is amended by adding the following new subsection (i) at the end thereof:

"(i) Notwithstanding section 8336(h)(3) of this title, the Secretaries of Interior and of Health, Education, and Welfare are each authorized to delay or exempt for up to 1 year at a time the effective date of an election to retire under section 8336(h) for any of their respective employees if said Secretary determines in writing that the continued service of such an employee is in the national interest or is necessary (1) in order to recruit or train a replacement for said employee and (2) an earlier separation of said employee would seriously impair the provision of a necessary service to Indian people or would jeopardize the effective operation of the service, activity, or installation in which said employee is employed. Each such delay or exemption shall be with the approval of the employee and the employee shall remain eligible for retirement under section 8336(h) during each such delay or exemption. Such delays or exemptions may not exceed an aggregate of 5 years with respect to any employee."

- 6.) Delete section 5 and add the following new sections 5 and 6 as recommended amendments number (6) and (7).

"Sec. 5. The Civil Service Commission shall provide all appropriate assistance to the Bureau of Indian Affairs and the Indian Health Service in placing non-Indian employees of such agencies in other Federal positions. All other Federal agencies shall cooperate to the fullest extent possible in such placement efforts."

- 7.) "Sec. 6. The amendments and provisions made by this Act shall be effective upon enactment. None of the amendments or provisions of this Act shall apply in the case of persons retired or otherwise separated prior to the effective date of this Act and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments and provisions had not been enacted."

