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RAILROAD RETIREMENT SYSTEM

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HEARING

BEFORE THE

SUBCOMMITTEE ON

TRANSPORTATION AND COMMERCE

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 7793

BILL TO AMEND THE RAILROAD RETIREMENT ACT OF 1974
AND THE INTERNAL REVENUE CODE OF 1954 TO ASSURE SUFFICIENT
RESOURCES TO PAY CURRENT AND FUTURE BENEFITS AND TO EXTEND
CERTAIN COST-OF-LIVING INCREASES

AND

H.R. 4855

A BILL TO AMEND THE RAILROAD RETIREMENT ACT OF 1974
TO ELIMINATE THE REDUCTION OF RAILROAD RETIREMENT
ANNUITIES BY AMOUNTS PAYABLE AS SOCIAL SECURITY
BENEFITS IN CASES OF CERTAIN PERSONS

SEPTEMBER 4, 1980

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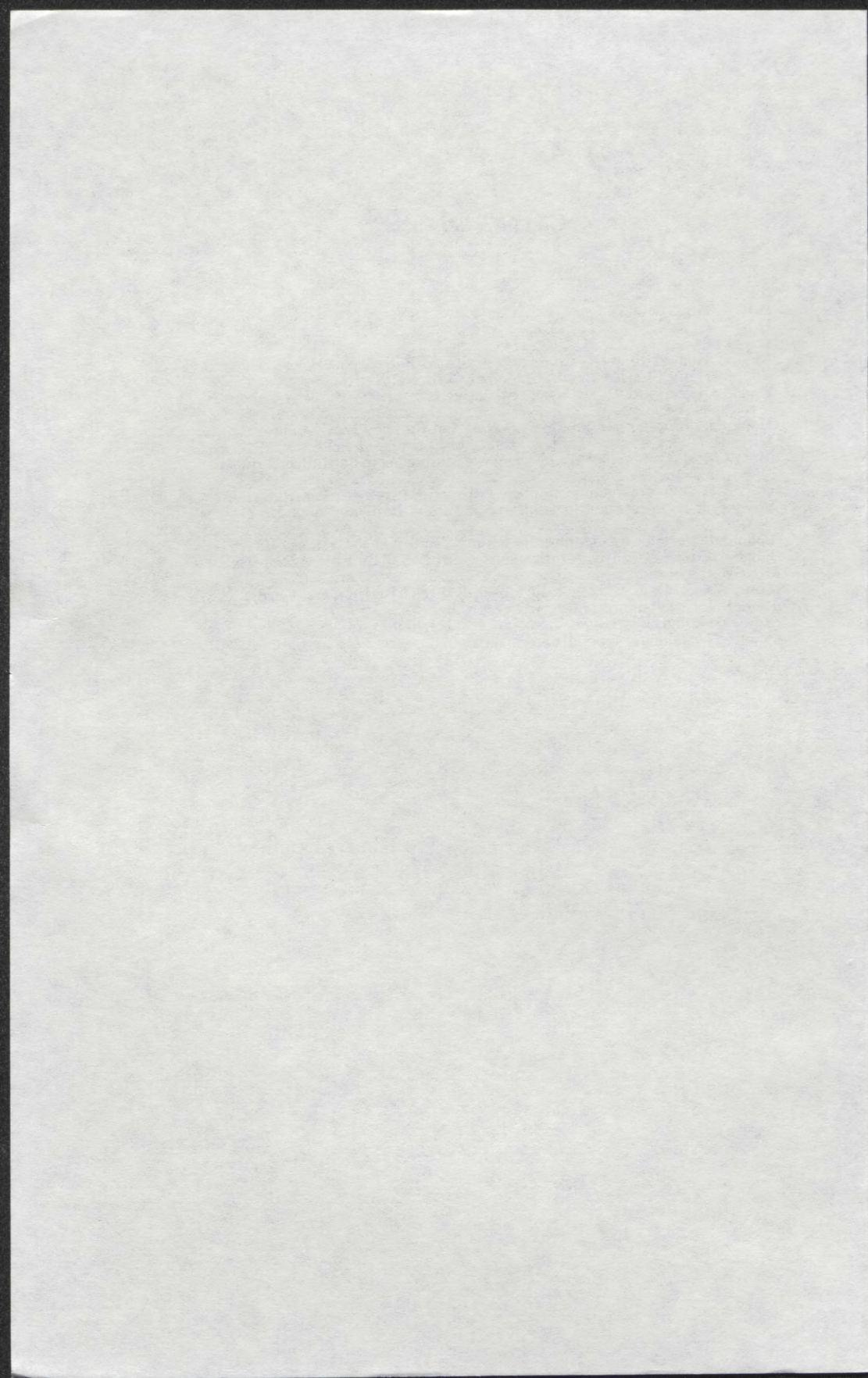
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RAILROAD RETIREMENT SYSTEM

THURSDAY, SEPTEMBER 4, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2123, Rayburn House Office Building, Hon. James J. Florio, chairman, presiding.

Mr. FLORIO. Ladies and gentlemen, the hearing will come to order.

We will be hearing today about the serious financial problems besetting the railroad retirement system and one possible solution.

The railroad retirement system is the source of retirement income for over 1 million railroad retirees and the future source of retirement livelihood for over 500,000 current railroad employees. But this important system is in financial trouble. It is running at a deficit and will run out of money sometime between 1982 and 1984, according to the information this committee has.

There are a number of reasons for this serious situation, such as the numerical imbalance between current railroad workers and retirees and the failure of the Federal Government to adequately fund the phaseout of dual benefits, as provided for in the 1974 Railroad Retirement Act.

Today we will consider one possible solution to the problems of the system, H.R. 7793. The subcommittee will want to know about the merits of this bill as a possible solution, about alternative solutions that we hope to hear from our witnesses, and about the status of ongoing negotiations between rail labor and management to come up with a joint railroad retirement proposal.

Whatever the possible solutions, however, one thing is clear, and that is this Congress feels a definite commitment to the retirement system.

Without objection, the text of H.R. 7793 and H.R. 4855 will be printed at this point in the record.

[Testimony resumes on p. 13.]

[The text of H.R. 7793 and H.R. 4855 follows:]

[H.R. 7793, introduced by Mr. Staggers (for himself, Mr. Florio, and Mr. Madigan) on July 22, 1980,

Cosponsored on August 18, 1980, by:

Mr. Perkins;

Cosponsored on August 21, 1980, by:

Mr. Fish;

Cosponsored on August 22, 1980, by:

Mr. Murphy of New York;

Cosponsored on August 25, 1980, by:

Mr. Lederer, Mr. Nolan, and Mr. Weaver;

Cosponsored on September 3, 1980, by:

Mr. Glickman and Mr. McKay;

Cosponsored on September 4, 1980, by:

Mr. Kildee and Mr. Atkinson;

is as follows:]

A BILL

To amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 That (a) section 3(b)(2) of the Railroad Retirement Act of
 4 1974 is amended by striking out "1981" and inserting in lieu
 5 thereof "1986".

6 (b) Section 3(d)(4) of such Act is amended—

1 (1) by striking out "1981" and inserting in lieu
2 thereof "1986"; and

3 (2) by striking out "1980" each place it appears
4 and inserting in lieu thereof "1985".

5 (c) Section 3(g) of such Act is amended—

6 (1) by striking out "and" where it appears imme-
7 diately preceding clause (D) in the first sentence
8 thereof;

9 (2) by inserting immediately before the period at
10 the end of the first sentence thereof the following: "
11 (E) the unadjusted Consumer Price Index for the cal-
12 endar quarter ending March 31, 1981, with such index
13 for the calendar quarter ending March 31, 1980, (F)
14 the unadjusted Consumer Price Index for the calendar
15 quarter ending March 31, 1982, with the higher of (i)
16 such index for the calendar quarter ending March 31,
17 1981, or (ii) such index for the calendar quarter ending
18 March 31, 1980, (G) the unadjusted Consumer Price
19 Index for the calendar quarter ending March 31, 1983,
20 with the highest of (i) such index for the calendar quar-
21 ter ending March 31, 1982, (ii) such index for the cal-
22 endar quarter ending March 31, 1981, or (iii) such
23 index for the calendar quarter ending March 31, 1980,
24 (H) the unadjusted Consumer Price Index for the cal-
25 endar quarter ending March 31, 1984, with the highest

1 of (i) such index for calendar quarter ending March 31,
2 1983, (ii) such index for calendar quarter ending March
3 31, 1982, (iii) such index for calendar quarter ending
4 March 31, 1981, or (iv) such index for calendar quarter
5 ending March 31, 1980, and (I) the unadjusted Con-
6 sumer Price Index for calendar quarter ending March
7 31, 1985, with the highest of (i) such index for calen-
8 dar quarter ending March 31, 1984, (ii) such index for
9 calendar quarter ending March 31, 1983, (iii) such
10 index for calendar quarter ending March 31, 1982, (iv)
11 such index for the calendar quarter ending March 31,
12 1981, or (v) such index for the calendar quarter ending
13 March 31, 1980”;

14 (3) by striking out “and (D)” in the last sentence
15 and inserting in lieu thereof “(D), (E), (F), (G), (H),
16 and (I)”;

17 (4) by striking out “and June 1, 1980,” in the
18 last sentence and inserting in lieu thereof “June 1,
19 1980, June 1, 1981, June 1, 1982, June 1, 1983,
20 June 1, 1984, and June 1, 1985”.

21 SEC. 2. Subsection (a) of section 3221 of the Internal
22 Revenue Code of 1954 is amended—

23 (1) by inserting “(1)” immediately after “(a)” at
24 the beginning thereof;

1 (2) by striking out "9.5 percent" and inserting in
2 lieu thereof "the percentage determined for a particular
3 calendar year pursuant to paragraph (2)"; and

4 (3) by adding at the end thereof the following new
5 paragraphs:

6 "(2) For purposes of paragraph (1), the percentage ap-
7 plicable for calendar year 1981 shall be 12.5 percent and the
8 percentage applicable for any calendar year after 1981 shall
9 be determined as follows, but shall not be less than 9.5 per-
10 cent for any calendar year before 1986:

11 "(A) If the account balance-benefit ratio for a cal-
12 endar year is less than 0.7 and is not greater than
13 such ratio for the preceding calendar year, the percent-
14 age applicable for that calendar year shall be equal to
15 the percentage applicable for the preceding calendar
16 year plus the percentage which is numerically equal to
17 100 times the greater of (i) one-tenth of the amount by
18 which 0.7 exceeds such ratio for the calendar year,
19 with the amount computed after multiplying by one-
20 tenth being rounded to the next higher 0.005, or (ii)
21 one-tenth of the amount by which such ratio for the
22 preceding calendar year exceeds such ratio for the cal-
23 endar year, with the amount computed after multiply-
24 ing by one-tenth being rounded to the nearest 0.005.

1 “(B) If the account balance-benefit ratio for a cal-
2 endar year is less than 0.7 but is greater than such
3 ratio for the preceding calendar year, the percentage
4 applicable for that calendar year shall be equal to the
5 percentage applicable for the preceding calendar year
6 less the percentage which is numerically equal to 100
7 times one-tenth of the amount by which such ratio for
8 the calendar year exceeds such ratio for the preceding
9 calendar year, with the amount computed after multi-
10 plying by one-tenth being rounded to the nearest
11 0.005.

12 “(C) If the account balance-benefit ratio for a cal-
13 endar year is at least 0.7 but is not greater than such
14 ratio for the preceding calendar year, the percentage
15 applicable for that calendar year shall be equal to the
16 percentage applicable for the preceding calendar year
17 plus the percentage which is numerically equal to 100
18 times one-tenth of the amount by which such ratio for
19 the preceding calendar year exceeds such ratio for the
20 calendar year, with the amount computed after multi-
21 plying by one-tenth being rounded to the nearest
22 0.005.

23 “(D) If the account balance-benefit ratio for a cal-
24 endar year is at least 0.7 and is greater than such
25 ratio for the preceding calendar year, the percentage

1 applicable for that calendar year shall be equal to the
2 percentage applicable for the preceding calendar year
3 less the percentage which is numerically equal to 100
4 times the greater of (i) one-tenth of the amount by
5 which such ratio for the calendar year exceeds 0.7,
6 with the amount computed after multiplying by one-
7 tenth being rounded to the next higher 0.005, or (ii)
8 one-tenth of the amount by which such ratio for the
9 calendar year exceeds such ratio for the preceding cal-
10 endar year, with the amount computed after multiply-
11 ing by one-tenth being rounded to the nearest 0.005.
12 “(3) For purposes of this subsection:

13 “(A) The ‘account balance-benefit ratio’ for a cal-
14 endar year shall be the ratio of (i) the adjusted cash
15 balance of the Railroad Retirement Account as of the
16 close of business on September 30 of the preceding cal-
17 endar year, to (ii) the net benefit payments made from
18 such account during the 12 consecutive calendar month
19 period ending September 30 of the preceding calendar
20 year.

21 “(B) The term ‘adjusted cash balance’ means the
22 excess of (i) the sum of the cash balance of the Rail-
23 road Retirement Account (as certified to the Railroad
24 Retirement Board by the Secretary and as verified by
25 such Board), plus tax and interest income due and

1 owing under the Railroad Retirement Tax Act which
2 the Railroad Retirement Board believes will be paid
3 before December 31 of the calendar year in which the
4 particular determination of the account balance-benefit
5 ratio is being made, and plus amounts of overpaid
6 benefits from the Railroad Retirement Account which
7 such Board expects to recover, over (ii) the total
8 amount of benefits which the Railroad Retirement
9 Board has determined are due from the Railroad Re-
10 tirement Account but which have not been paid as of
11 the close of business on September 30 of the calendar
12 year in which the particular determination of the ac-
13 count balance-benefit ratio is being made.

14 “(C) The term ‘net benefit payments’ means the
15 excess of (i) the sum of all amounts expended from the
16 Railroad Retirement Account during the 12 consecu-
17 tive calendar month period ending September 30 of the
18 calendar year in which the particular determination of
19 the account balance-benefit ratio is being made, includ-
20 ing amounts expended in loans during such period
21 either to the Railroad Retirement Supplemental Ac-
22 count pursuant to section 15(d) of the Railroad Retire-
23 ment Act or to the railroad unemployment insurance
24 account pursuant to section 10(b) of the Railroad Un-
25 employment Insurance Act, plus the total amount of

1 benefits which the Railroad Retirement Board has de-
2 termined are due from the Railroad Retirement Ac-
3 count but which have not been paid as of the close of
4 business on September 30 of the calendar year in
5 which the particular determination of the account bal-
6 ance-benefit ratio is being made, over (ii) the total
7 amount of benefits which the Railroad Retirement
8 Board had determined were due but were unpaid from
9 the Railroad Retirement Account as of the close of
10 business on September 30 of the calendar year preced-
11 ing the calendar year in which the particular determi-
12 nation of the account balance-benefit ratio is being
13 made.

14 “(D) The Railroad Retirement Board is author-
15 ized to use estimated amounts for the purpose of
16 making the determinations required by this paragraph.

17 “(4) Not later than 30 days before the beginning of a
18 calendar year, the Railroad Retirement Board shall deter-
19 mine the account balance-benefit ratio for such calendar year.
20 As soon as practicable after the date of such determination,
21 the Railroad Retirement Board shall publish a notice in the
22 Federal Register, and shall advise all employers, employee
23 representatives, and the Secretary, of the ratio so determined
24 and of the tax rate applicable under paragraph (1) for the
25 calendar year for which such ratio was determined.”.

1 SEC. 3. The amendments made by this Act shall take
2 effect January 1, 1981.

96TH CONGRESS
1ST SESSION

H. R. 4855

To amend the Railroad Retirement Act of 1974 to eliminate the reduction of railroad retirement annuities by amounts payable as social security benefits in cases of certain persons.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 1979

Mr. YATRON introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Railroad Retirement Act of 1974 to eliminate the reduction of railroad retirement annuities by amounts payable as social security benefits in cases of certain persons.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That subsection (m) of section 3 of the Railroad Retirement
4 Act of 1974 is amended—

5 (1) by striking out “The annuity” and inserting in
6 lieu thereof the following: “(1) Except as provided in
7 paragraph (2), the annuity”; and

8 (2) by adding at the end the following:

1 “(2) This subsection shall not apply with respect to any
2 annuity of an individual who as of January 1, 1975—

3 “(A) had a current connection with the railroad
4 industry;

5 “(B) had not less than seven years of service;

6 “(C) had attained the age of sixty-seven years;

7 “(D) had acquired legal rights to social security
8 benefits through jobs unrelated to railroads; and

9 “(E) had not retired from the service of the last
10 employer by whom such individual was employed.”.

11 SEC. 2. The amendments made by this Act shall take
12 effect with respect to all annuities payable after December
13 31, 1974.

Mr. FLORIO. I would like to welcome our first presentation by the members of the Railroad Retirement Board, Mr. William Adams, the chairman, Mr. Chuck J. Chamberlain, the labor member; and Mr. Earl Oliver, the management member.

Mr. Adams, for the record, would you introduce your colleagues?

STATEMENTS OF HON. WILLIAM P. ADAMS, CHAIRMAN, RAILROAD RETIREMENT BOARD; CHARLES J. CHAMBERLAIN, LABOR MEMBER; AND EARL OLIVER, MANAGEMENT MEMBER, ACCOMPANIED BY ROBERT E. LARSON, CHIEF ACTUARY; NORMAN SOLOMON, ASSISTANT CHIEF ACTUARY; DALE G. ZIMMERMAN, GENERAL COUNSEL

Mr. ADAMS. Thank you, Mr. Chairman.

My name is William P. Adams, chairman of the Railroad Retirement Board.

On my right is Mr. Chuck Chamberlain, the labor member. On my left is Mr. Earl Oliver, the management member, and on Mr. Chamberlain's right is Mr. Dale Zimmerman, our general counsel.

On Mr. Oliver's left is Mr. Robert Larson, our chief actuary, and his assistant, Mr. Norman Solomon.

We appreciate the opportunity to appear before the subcommittee today to testify on the bill H.R. 7793.

With your permission, I would like to summarize my written statement, call on each of my colleagues for any comments and submit to any questions.

Mr. FLORIO. Without objections, all statements will be entered into the record in their entirety.

You may proceed.

Mr. ADAMS. The first section of H.R. 7793 extends for 5 years the cost of living increases in tier II of our railroad retirement program.

The second section of the bill provides for a variable tax rate to assure adequate funds in the account to fund the benefits. This section refers to an account balance ratio in which, in the first year, the tax rate on tier II would go from 9.5 percent to 12.5 percent, and thereafter it would be adjusted on a variable rate, depending on the account balance ratio at the end of the fiscal year.

The account balance ratio is determined by how much benefits were paid out during the fiscal year, and what the dollar amount left in the account is as of the end of the fiscal year.

The relationship of that ratio, for example, on September 30, 1981, and the previous fiscal year, would determine the tax rate for the calendar year 1982.

The third section of the bill provides that the amendments take effect on January 1, 1981.

Mr. Chairman, I do believe that amendments to the Railroad Retirement Act must be made in the very near future in order to place the railroad retirement system on an actuarially sound basis and avoid our most pressing problem, which is an immediate cash flow problem.

The board's actuary has estimated the system could run out of money as early as 1982. Providing a remedy for this pressing problem is, of course, the first order of business at this time.

The bill does provide a solution to this most pressing concern of providing adequate funding by virtue of this fluctuating tax rate on employers. Changes such as those proposed in the bill are usually made based on negotiations and agreement between representatives of railroad, labor, and management.

Of course, it would be beneficial in my view if the problems of the system could be resolved by negotiations and legislation supported by all the parties. It is my understanding that negotiations are presently in progress. However, as you pointed out in your opening statement, it is imperative that Congress take some action in the near future to put the railroad retirement system on a sound financial basis.

Mr. FLORIO. What happens if the Congress takes no action this year?

Mr. ADAMS. Well, under our current projections, if the worst case occurs and we do run out of money in 1982, it would seem that something would have to be done before the end of calendar year 1981 to avoid that possibility.

Mr. FLORIO. During the quarter calendar year 1981?

Mr. ADAMS. Yes, sir, it should be effective for calendar 1981 to avoid the possibility of a 1982 cash flow problem, and the longer we wait to take any corrective action, the more severe the problem gets and, assuming for the moment that this is going to result in some kind of tax rate increase to alleviate that problem, the tax rate increase could be more severe than it is today. The longer we wait, the larger the tax increase necessary to fund the system.

As I have already stated, the actuary has estimated we could run out as early as 1982.

With your permission, Mr. Chairman, I would like to yield for any comments that my colleague, Mr. Chamberlain, might have on the bill.

[Mr. Adams' prepared statement follows:]

STATEMENT OF WILLIAM P. ADAMS,
CHAIRMAN OF THE RAILROAD RETIREMENT BOARD
ON H.R. 7793,
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION
AND COMMERCE OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE U. S. HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Committee, my name is William P. Adams, Chairman of the Railroad Retirement Board. Accompanying me is Mr. Charles J. Chamberlain, the Labor Member of the Board, and Mr. Earl Oliver, the Management Member of the Board. We appreciate the opportunity to appear before the Subcommittee today to testify on the bill H.R. 7793. We have each submitted a written statement on H.R. 7793 and with your permission we will highlight our written statements and then answer your questions.

The first section of H.R. 7793 amends section 3 of the Railroad Retirement Act of 1974 to provide five additional pre-retirement cost-of-living increases which would occur on January 1 of each of the years 1982 through 1986. In addition, section 3 of the Retirement Act is amended to add five additional post-retirement cost-of-living adjustments which would occur on June 1 of each of the years 1981 through 1985.

Section 2 of the bill amends section 3221(a) of the Internal Revenue Code of 1954 (the Railroad Retirement Tax Act) to increase the rate of tax imposed upon covered employers from 9.5 percent to 12.5 percent in calendar year 1981 and to automatically adjust the rate of tax each year thereafter based upon changes in the relationship between the adjusted cash balance of the Railroad Retirement Account as of the end of each

fiscal year and the amount of benefits paid from the Account during the fiscal year. This relationship is referred to in the bill as the "account balance-benefit ratio". The account balance-benefit ratio as of the end of a fiscal year (September 30), and the relationship of that ratio to the ratio at the end of the previous fiscal year, would determine the employer tax rate for the following calendar year. Thus, for example, the account balance-benefit ratio as of September 30, 1981, would be the ratio for calendar year 1982 and would determine the rate of tax imposed on employers for compensation paid in 1982.

Section 3 of the bill provides that the amendments made to the Retirement Act by the bill will take effect January 1, 1981. I believe that amendments to the Railroad Retirement Act must be made in the very near future to place the railroad retirement system on an actuarially sound basis and to avoid an immediate cash flow problem. The Board's Chief Actuary has estimated that on the basis of certain assumptions the railroad retirement system could run out of funds as early as 1982. Providing a remedy to these serious problems is obviously the first order of business at this time.

H.R. 7793 provides a solution to the most pressing concern of the railroad retirement system of providing adequate funding for current and future benefits by providing for a fluctuating tax rate on employers. Changes, such as those proposed in H.R. 7793, to the railroad retirement system are usually made based on

negotiation and agreement between representatives of railroad labor and management, and, in my view, it would be beneficial if the problems of the system could be resolved by negotiations and legislation supported by both parties. It is my understanding that such negotiations are presently in progress; however, it is imperative that Congress act to put the railroad retirement system on a sound financial basis effective in calendar year 1981. Unless this is done, the Board's Chief Actuary has, as I have stated, estimated that the system may be without funds in 1982.

STATEMENT OF CHARLES J. CHAMBERLAIN

Mr. CHAMBERLAIN. Thank you, Mr. Chairman.

I am pleased to appear before you today to express my support for the bill, H.R. 7793.

As the chairman pointed out, the railroad retirement system is currently operating with a long-term actuarial deficit and faces extremely serious short-term cash flow problems.

H.R. 7793 addresses this problem by amending the Railroad Retirement Tax Act to assure adequate financing of the system. This would be accomplished through a fluctuating employer tax rate patterned after the highly successful and efficient system found in the Railroad Unemployment Insurance Act. This fluctuating tax rate is designed to permanently resolve the cash flow problems of the system.

The significance to current beneficiaries and future retirees of a financing mechanism, such as is provided by this bill, cannot be overemphasized. Obviously, the people covered by the railroad retirement system, or any other retirement system, desire assurance that money will be available to pay the retirement benefits which they have earned during their working lifetimes.

Yet during the past decade serious doubts have arisen on two separate occasions as to whether the financial security which railroad employees and their dependents have worked for and relied upon will be available when it is needed.

You will recall in 1970 questions were raised as to whether the benefits provided by the railroad retirement system were adequately financed.

Because of these concerns, Congress established a Commission on Railroad Retirement to study the system and its financing for the purpose of making recommendations as to the measures necessary to provide adequate levels of benefits on a financially sound basis.

In its report which was submitted in 1972, the Commission found that if corrective measures were not taken the system would run out of money with which to pay benefits sometime in the mideighties.

After receiving this report, Congress instructed representatives of railroad labor and management to enter into negotiations that would take into consideration the specific recommendations of the Commission on Railroad Retirement, and to submit their joint recommendations for restructuring the railroad retirement system in a manner which would insure its solvency.

In June 1974 a bill was introduced to implement the recommendations made by the representatives of labor and management in accordance with the congressional directive, and that bill was later enacted, with amendments, to provide the Railroad Retirement Act of 1974.

With the enactment of that legislation, the representatives of railroad labor, the representatives of railroad management and the Congress all believed that the financial problems of the railroad retirement system had been resolved. Sadly, that did not prove to be true.

In 1974, no one predicted, or could have reasonably predicted, the current historically high inflation rates which have caused benefits

to rise to unexpectedly high levels merely to keep pace with increases in the cost of living.

In 1974, no one predicted that the costs of paying dual benefit windfall amounts would increase to such an extent that the full-cost appropriations authorized by statute to fund these payments would not be made.

In 1980, only 6 years after the enactment of the legislation designed to insure the system's solvency, the railroad retirement system is again faced with predictions that the fund will run out of money in the mid-eighties if corrective measures are not taken.

Enactment of the variable tax rate provisions contained in H.R. 7793 would provide the corrective measures needed. Furthermore, a variable tax rate, and only a variable tax rate, can provide the assurance that the system will not at some time in the future again face a financial crisis requiring corrective action.

With a variable tax rate, the system's solvency does not depend on the accuracy of predictions as to future economic conditions or future employment levels or numbers of future beneficiaries. Indeed, with the variable tax rate the fund will always be in actuarial balance and the concept of actuarial deficiency or surplus will not be applicable.

Objections have been raised to the variable tax rate by representatives of railroad management, largely because of the substantially higher tax rates which might result. Those representatives have urged that alternative methods of financing the system should be explored before tax increases are imposed, with the possible reduction of future benefits being one of the alternatives to be considered.

Enactment of H.R. 7793 would not, of course, preclude continuing consideration of changes in the current benefit structure. In fact, enactment of a variable tax rate would, by eliminating the imminent threat to the benefits due current beneficiaries, provide the time needed to permit negotiations between the representatives of railroad labor and management on a comprehensive agreement as to the future financing and structure of benefits for the railroad retirement system.

Furthermore, it must be clearly recognized that reductions in the benefits payable to future retirees and their dependents cannot prevent the fund from running out of money. The system's cash problem is too immediate for such a solution.

Unless the financial interchange between the railroad retirement system and the social security system is put on a current basis, or unless Federal subsidies are provided, a tax increase is essential to prevent a disruption of the benefit payments due people who depend on such benefits for their livelihoods.

In addition to resolving the system's serious financial problems, H.R. 7793 provides for the continuation of cost-of-living increases to the tier II component of railroad retirement annuities. In inflationary times such as we are experiencing at present, retired individuals, like all other individuals, need assurances that their incomes will keep abreast of increases in the cost of living.

While H.R. 7793 would not protect railroad retirement beneficiaries to the same degree as is true of social security beneficiaries, it does provide them the continuation of the current

cost-of-living protections which would end without passage of such legislation.

In closing, I would like to again emphasize that it is imperative that some action be taken effective in calendar year 1981 if the system is to continue to pay benefits to the over 1 million retirees, dependents, and survivors currently on the rolls.

Delaying any tax increase until 1982 would undoubtedly mean that additional measures such as placing the financial interchange current or providing Federal subsidies would be necessary to keep the fund from running out of money. Tax increases alone, if delayed until 1982, would not be an acceptable solution because the tax rates would probably have to be so high that the industry could not afford them.

The problem is serious and the problem is immediate.

H.R. 7793 provides the solution. I strongly urge its enactment.

Mr. FLORIO. Thank you very much.

Mr. ADAMS. Mr. Oliver?

STATEMENT OF EARL OLIVER

Mr. OLIVER. Mr. Chairman, I am that person the Railroad Retirement Act describes as the member who shall be appointed from recommendations made by representatives of the employers.

Charles I. Hopkins, chairman of the National Railway Labor Conference, will testify at length later in these proceedings. I have read his prepared statement and support it fully, and I suggest you save for him any questions you may have regarding the employers' position.

There is one point I should like to make, however, and that is that there is no need for a tax increase at this time. To enact H.R. 7793 would subvert the collective bargaining process now going on.

The board's best estimate is that the retirement fund will not reach a negative position prior to April 1983. Even under worst case assumptions which OMB requires us to use, the trouble is 1½ years away; but it now appears that those worst case assumptions will not come to pass.

Management and labor are bargaining earnestly to resolve this and other railroad retirement problems, and have set for themselves a target date of December 31, 1980. There is every reason to believe they can arrive at a negotiated solution unless the Congress disturbs the bargaining process by passing this bill.

Thank you.

Mr. FLORIO. Thank you very much.

Mr. Oliver, in response to your last point, I think it has to be noted that this committee played something of a role in trying to induce people to start bargaining sooner rather than later.

At one point, there was the suggestion that negotiations would start next year, and this committee felt that this was inappropriate. Even under the guidelines that you have talked about it is going to fall upon this committee to review that agreement if the traditional approach, which is to have the Congress in some way enact into law the agreement, is going to be done.

I say that without any indication on my part, and I cannot speak for the rest of the committee, that there will be any automatic enactment into law of whatever the agreement is. Unfortunately,

that has been the policy in the past which has caused some of the problems that we are faced with today. There will be an independent review, a very extensive independent review of anything that management and labor agrees to, and they can certainly agree to anything they want to in terms of their own collective bargaining process, but if the thought is that the agreement will automatically be enacted into law, given the protection of the Federal Government, that is not going to happen in an automatic way, so there is a need to have that agreement come forward to us for review as rapidly as possible.

I would hope that that message could be carried back by all of the principals here today. We are going to need some time to look into whatever is agreed to.

Mr. OLIVER. I would quite agree, Mr. Chairman.

Mr. FLORIO. Are any of you familiar with the proposal that is going to be put forth by Mr. Staggers and myself and the other members of this committee this afternoon as part of the new reconciliation process?

Under the new budget law, this committee is charged with the responsibility of cutting back on some of the entitlement programs of the Commerce Committee, and the only two entitlement programs that we have responsibility over were the medicaid program and the railroad retirement program.

Accordingly, we were charged and have fulfilled our responsibility, though reluctantly, and I am reserving my rights to oppose the reconciliation bill in toto, and we are going to be putting forth a proposal this afternoon that is going to call for a net savings to the Federal Government of some \$51.8 million.

As I say, I want to emphasize this is not something that is voluntarily being done, but a responsibility that the Budget Committee has charged us with doing. The sanction, of course, is if this committee does not do it, the Budget Committee would do it in a much less thoughtful way than we have presented it.

The proposal and the way that savings would occur under this particular suggestion is the reduction in spending by way of benefit modifications of \$24.3 million and a small increase in the tax on railroads of \$27.5 million, a percentage increase goes from 9.5 to 9.75 percent.

The modification is in the benefit program being largely in the area of the tier I section making the benefits that flow to railroad retirees virtually identical in terms of the requirements to the social security benefit recipients.

Is this something anyone has had any opportunity to review and, if so, I would like your thoughts as to whether the enactment of this proposal will go toward alleviating the immediate problem that some seem to feel, although some feel there is no immediate problem.

Mr. Adams?

Mr. ADAMS. I have not specifically reviewed the reconciliation legislation. However, I am familiar with what was proposed. I think, but I would have to ask the actuary, that the \$50 million savings is for 1 year only.

Mr. FLORIO. That is correct.

Mr. ADAMS. That is in the reconciliation, of course, in the long run it would not solve the problem facing the system in the next 5 years. I do not think the \$50 million would solve it in 1 year, and this is confirmed by our actuary.

Mr. FLORIO. How about the administration's proposal? Periodically we get something sent over to us that represents the administration's proposal on this subject.

One of those proposals included limiting the windfall to \$350 million per year, and realining windfall payments to conform to this amount. Over and above that, there was proposed a 2-percent tax cut plus a 2-percent revenue increase to eliminate the deficit.

The revenue increase would be achieved by taking the limit off the tier II tax base and changing the program to an annual rather than monthly program for tax benefits.

Have you had an opportunity to review that proposal?

Mr. ADAMS. Yes, Mr. Chairman. That was that originated at least 2 years ago, and as it stands right now it does not in the long run solve the problem it was designed to solve when it was initially conceived. There just is not enough generated by the proposal to solve the problem in the long run.

It was designed, and I might say when the administration sent that up there was also a statement in the President's budget inviting both labor and management to negotiate a long-term solution, based upon a 4-percent deficit at that point to solve that long-term deficit, by increasing taxes and decreasing benefits by 2 percent.

Those provisions, as they stand right now, would have to be revised or at least reexamined, because the economic conditions have changed sufficiently just since they were initiated.

Mr. FLORIO. Have you heard anything from the administration by way of anything that even constitutes a semiofficial proposal recently?

Mr. ADAMS. The most recent, which you have already referred to, is the ceiling on the windfall benefits. That does not help the fund's problems. That is a public policy position based on the fact that originally the windfall was estimated to cost \$250 million a year for 25 years. It went to \$350 million. The current estimate is roughly \$500 million, and the administration has said there shouldn't be more than \$350 million coming out of the Federal Treasury for that purpose. This proposal places a cap on it.

The administration invited labor and management to negotiate the restructuring of windfall benefits.

Mr. FLORIO. Are all present recipients, and we have spent some time on the subject and I really feel no less enlightened now than I did at the beginning of the process, are all of the present beneficiaries of the retirement system recipients of the windfall profits tax section and, if not, what percentage of the recipients receive windfall tax benefits?

Mr. ADAMS. Mr. Chairman, not all of them are in receipt of it. I will try to give the actuary an opportunity to come up with an estimate on the percentage. The windfall benefit is a substitute for what people prior to 1974 could draw as so-called dual benefits. Prior to the 1974 legislation, railroad employees who established eligibility for railroad retirement could also establish eligibility for social security and receive both benefits.

That caused some problems in the fund because since 1950 or 1951 there has been a financial interchange between social security and railroad retirement; and when they began to draw social security benefits, social security would deduct the amount of social security benefits that were paid directly to those people from amounts otherwise payable to the Board under the financial interchange arrangement. That can be referred to as lost reimbursement to the Board. If they were not drawing those benefits we would have received that money.

By 1974, this lost reimbursement was amounting to around \$450 million a year, and if it had not been stopped, the estimate was that by 1981 the fund would have been bankrupt, so the dual benefits were stopped. No longer is it possible for railroad retirees to draw uncoordinated social security and railroad retirement. The fund was restructured in 1974 into our two-tier system, and in tier I we take into account railroad service and social security employment and they get one benefit.

That benefit is computed in accordance with the Social Security Act and the Railroad Retirement Board pays that tier I minus any direct benefit they may receive from social security. People who up to the 1974 legislation had earned those dual benefits or had become qualified for them, having 10 years or 40 quarters vested under both systems, were, when the legislation was enacted saying we must stop the dual benefits, were in essence grandfathered in.

That is the so-called windfall benefit. That windfall benefit, prior to the time an individual retires, is subject to the preretirement cost-of-living increases, but once they begin drawing an annuity there is no further post-retirement cost-of-living increase in the windfall benefit.

The actuary says he is guessing that roughly 35 percent of our current beneficiaries are drawing windfall.

Mr. FLORIO. Mr. Adams, or any of the members of the panel, in reviewing the proposed legislation that has been put forth, there is something in it that I am confused about.

It talks about expending the cost-of-living increases in the tier II component for 5 years through the years from now to 1985. Those increases would be calculated the same as under current law with separate calculations of 65 percent of cost of the Consumer Price Index increase.

Will preretirement and 32.9 percent of the CPI increase post-retirement; I am confused as to how anyone prior to retirement is getting any payments at all.

Mr. ADAMS. Without trying to get too technical, and if we do I will have to yield to the technicians, too, the reason, as I understand it, for the so-called preretirement cost-of-living increase is that part of this is based on the fact that under the Railroad Retirement Act, your computations are based on a career average as opposed to civil service retirement where your computations are based on a high 3. In effect you may have been working, for example in 1950, 30 years ago, even on the Hill, at a top staff salary of around \$10,000, \$11,000, whereas today it is considerably different. Civil service computations take into account all the wage increases that have occurred over this intervening period by using the highest 3 years. Under railroad retirement, the annuity compu-

tation is based on a career average, including wages paid 30 years ago. The railroad retirement preretirement cost-of-living increase is to make sure that our computations at least are based on what approximates the current value of those wages.

Mr. FLORIO. It does not in any way indicate that someone who has not yet retired is getting payment? What it really is talking about is the cost-of-living increase will be determined in accordance with the formula which will provide 65 percent of the cost-of-living increase calculated for those years that an employee worked and that 32 percent of the cost-of-living increase will be calculated for the period of time the employee has already been retired.

Mr. ADAMS. 32½ percent for postretirement is right.

Mr. FLORIO. On a separate matter, Mr. Adams or any of the other gentlemen, I have provided to you, and I think staff has provided to you, a statement offered to us from a witness that we are going to hear from later in the day, the chairman of the Brotherhood of Railroad Retirement Workers. In that statement the case is made that there is a classification of workers who somehow are inappropriately left out of the retirement scale or its retirement scheme.

I wonder if someone might briefly address the merits of the points that are being raised and what the implications would be if legislation were to include that.

Mr. ADAMS. With your permission, I would like to yield to the general counsel.

I did ask him to look at this statement while we were testifying to be prepared to answer any questions you may have on it.

Mr. Zimmerman?

Mr. ZIMMERMAN. Essentially, this bill covers a certain number of people who, I believe, had attained age 67 by the end of 1974 when the Railroad Retirement Act of 1974 became effective.

It would provide those people tier I, or social security level, benefits under the Railroad Retirement Act, which are, as the chairman has mentioned, computed on the basis of combined social security and railroad retirement earnings, without any reduction, due to the concurrent receipt of a social security benefit. The point being made is that those people feel that they had earned their complete dual benefits and ought to continue to receive them.

One of the flaws in this type of approach would be that many of the people, in fact probably the majority of them, who would be affected by this bill are already receiving, or would be entitled to receive, the windfall benefits which have been referred to.

The windfall benefit is intended to compensate people for the reduction in their tier I due to the receipt of the social security benefit.

The way the bill is set up, the persons would be eligible for a tier I railroad retirement annuity based on combined social security and railroad retirement, and they would also be entitled to a social security benefit based on their social security earnings, and in addition they would be entitled to a windfall benefit, which is intended to compensate for a reduction in the tier I, but in those cases the windfall would be payable even though there was no such reduction.

Mr. FLORIO. So you are saying those individuals already are collecting social security and collecting tier I.

Mr. ZIMMERMAN. The majority of them would be collecting a significant amount more than they would have received under the old Retirement Act prior to its amendment in 1974.

Mr. FLORIO. Do you have any idea as to what the number of the class of people that we are talking about?

Mr. ZIMMERMAN. About 1,700 people in total would be affected.

Mr. FLORIO. We had some differences of opinion on the legislation, particularly from the labor representative and the management representative as to the desirability of the increase in the tax.

To a large extent, if I sense the committee's feeling when we have discussed this matter, there is a feeling that since we were on the verge of a new and hopefully improved regulatory situation in the railroad industry, that to a large extent the health of the industry will determine to what degree we should call upon the industry to contribute a lesser or a greater amount to the fund for its employees. The feeling is, if I determine it correctly, that there will probably be no time, in all candor, to pass a major piece of legislation in this session of the Congress, inasmuch as we would like to get the results of the agreement that is being discussed now.

That agreement will not be made available to us at the outset until the end of this year. The Congress is inclined to want to see that agreement, start to get some feel as to how deregulation is working, and then early in the spring of next year come forward with hopefully a major overhaul that will provide for the financial integrity of the fund.

If I am correct in what the committee is inclined to want to do and what the Congress is inclined to want to do, is that something that you feel is a workable approach that will preserve the fund intact until you get to the point, which apparently you have stated is 1982, when you expect to experience serious problems.

Mr. ADAMS. As I understand it, the worst case scenario is 1982. The management member, Mr. Oliver, pointed out the best guess of the actuary is possibly 1983, which would allow a few extra months.

Mr. FLORIO. Well, the committee feels so strongly about it and feels such a commitment to insure that the employees in no way become jeopardized, that we are looking to the worst case scenario and want to be prepared for the worst.

Mr. ADAMS. Yes, I think something should be done effective in 1981.

I am not prepared to pick a month to say it must be January or it must be April, but as soon as possible.

Mr. FLORIO. The Congress imposes some deadlines on itself, and if we are talking about authorizing legislation, it has got to be done by the 15th of May, so we have got some deadlines imposed upon ourselves.

Mr. ADAMS. I did make the statement earlier, of course, the longer we wait the more drastic the tax increase may have to be to obviate a short-term problem.

Mr. FLORIO. Well, the feeling is, however, that the railroad industry is going to be doing much better as a result of some legislation

that we think we will be asking for what might be regarded as an onerous tax burden today, so the railroad will not be regarded as adversely in your future.

Mr. ADAMS. We hope that to be true.

Mr. FLORIO. Sir?

Mr. OLIVER. I would think the parties will be in a position to recommend to the Congress legislation in 1981 for your committee's consideration.

I would point out, however, in connection with the 1982 versus 1983 question, that if the fund should run into trouble in 1982, it would be in April and only for a month or so. In June there is a financial interchange and the health of the fund would be restored, so that serious trouble in any event, even in the worst case scenario, would not arise until 1983.

There should be some methods to get over the 1- or 2-month hump in 1982.

Mr. FLORIO. To address that particular point, there have been some suggestions that the financial interchange basis and payment system needs some modification.

Mr. OLIVER. It certainly does, and that would take care of that particular problem.

Also, windfall needs some modification. The intent of the 1974 legislation should be carried out. The general fund should pick up the entire amount of the windfall. And it was the intent of the Congress at that time, of course, in having the Board review every 3 years what the windfall amount should be, or what the reimbursement should be, it was the intent of the Congress to pick up that entire amount.

Under the administration's proposal, it would not do so.

Mr. FLORIO. Gentlemen, thank you very much. We appreciate it.

As our next witness, we are pleased to welcome the chairman of the Legislative Committee of the Railway Labor Executives Association, Mr. James Snyder.

Welcome to the committee. Will you introduce your colleagues, and your statement will be made a part of the record in its entirety.

STATEMENT OF J. R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES ASSOCIATION, ACCOMPANIED BY EDWARD UNGER, RAILROAD RETIREMENT CONSULTANT, AND EDWARD D. FRIEDMAN, COUNSEL, LEGISLATIVE COMMITTEE

Mr. SNYDER. Thank you, Mr. Chairman and good morning, members of the committee.

I am pleased to have accompanying me this morning on my right Mr. Edward Friedman, who is counsel for the Railway Labor Executives Association's Legislative Committee and the Subcommittee on Railroad Retirement.

On my left is Mr. Edward Unger, the committee's consultant on Railroad Retirement.

We would like the entire statement to be inserted into the record. [See p. 30.]

Mr. FLORIO. Without objection.

Mr. SNYDER. We have prepared a brief summary of the statement which I will present now.

As the members of this subcommittee know, the RLEA is an association of 21 standard and international labor organizations representing the classes and crafts of all of the employees employed by the class 1 railroads in the United States.

The RLEA was organized more than 50 years ago for the purpose of promoting the common interests and the welfare of railroad workers and their families, both active and retired, and nowhere in its history has it dealt with a matter of more importance to these people than the subject matter of this bill.

What is at stake here is the life or death of the railroad retirement program.

The program is going broke. This is the view of the more than 2 million railroad people for whom the railroad retirement program promises the reward for a lifetime of hard and often dangerous work.

The simple facts are that the current tier II retirement tax of 9.5 percent will not produce enough funds to keep the system in the black through 1982 or 1983. Each additional month aggravates the problem, puts the system deeper in the hole, and increases the risk of insolvency before the end of the next Congress.

The experts have warned that if something is not done now in this Congress the fund will fall so far behind that the 3 percent tax increase such as provided in H.R. 7793 will not be sufficient to ward off the crisis.

The leadtime, and I underscore leadtime, required to build up the account sufficiently beyond the insolvency point with a moderate tax rate will have been lost. If we wait until next year, what will be needed is an immediate infusion of heavy dollars over a very short period of time.

You will no doubt hear a different version when the carriers' representatives testify. They will say that the system is not in its eleventh hour, that there is time to complete negotiations.

We say no. This is not the case. Further delay will mean that the industry will be forced to hold out its hand to the Federal Government for some form of subsidy.

We cannot allow this to happen. We must act now while there is time to produce enough cash to build up the railroad retirement reserves.

This bill will do this.

It provides for an adjustable tax rate designed to produce enough funds to avoid a system collapse. The variable tax rate will go up no further than is necessary to maintain a reserve in the railroad retirement account of not less than 25 percent of the annual payout. Anything less would continue the danger of insolvency.

At no time in its long record of appearances before this committee has the RLEA pressed for enactment of a bill more vital to the interest of railroad workers than H.R. 7793.

This bill follows more than 2 years of frustrating negotiations with the National Labor Railway Conference. Despite the clear urgency for prompt action on this subject, the carriers' representatives have been dragging their feet during the larger part of this period.

They listened to our proposals but had few comments and no suggestions, much less counterproposals. The RLEA set a deadline of March 1979 for agreement.

The NLRC, nonetheless, remained unresponsive.

But it was not until the chairman of this subcommittee scheduled hearings on H.R. 5144 early this year that we finally caught the attention of the carriers.

Since that time, the RLEA has tried to work out a legislative program which would reverse the downward spiral of the railroad retirement account. With each passing day, it becomes more and more apparent that a point of no return will be reached if the Congress did not act on an emergency bill in this session to avoid a collapse.

The railroad retirement worked well enough during its early years. It began having financial problems in the 1950's and 1960's. Most of this erosion resulted from the payment of windfall dual benefits.

The Railroad Retirement Act of 1974 modified the program into a two-tier system. Tier I represents a social security amount. Tier II represents the staff benefit amount.

The financing of tier I is the same as social security. The tier I tax rate is the same as social security. Tier I benefits are based upon social security indexing to adjust for inflation. A 100-percent cost-of-living increase is applied automatically each year to tier I as in social security.

The tier II benefit resembles a private pension benefit. It is noncontributory. The carrier pays the full amount of the tax.

The existing law provides for preretirement indexing based on 65 percent of the percentage increase in the Consumer Price Index.

Current law also provides for a once each year postretirement cost of living adjustment throughout the same period equal to 32.5 percent of the rise in the Consumer Price Index.

To my knowledge, there is no disagreement on the unqualified need for some form of indexing. H.R. 7793 simply continues existing policy in this respect.

The total cost of operating the railroad retirement system for the last fiscal year was about \$4½ million.

Receipts to cover these expenditures have been short over the past decade. This shortfall is evidenced by the deterioration in the balance of the railroad retirement account, as shown by the table in my prepared statement.

The Railroad Retirement Board's Chief Actuary estimates that the balance in the account will drop to a low of \$657 million before May of 1981, if economic conditions continue to be unfavorable.

Even if economic conditions show some improvement and railroad employment holds reasonably steady, the estimated level for April 1981 will drop to about \$1 billion and in 1982 will fall to a shocking \$192 million.

This means even if economic conditions improve somewhat over the next few months, the account will drop to the danger point of \$1 billion representing 2½ months of benefit payments and will fall well below that point in 1982.

The reason for this steady deterioration is that for too long more dollars are going out than are coming in. H.R. 7793 would check

this downward spiral at the earliest point and would stabilize the system within a few years.

H.R. 7793 would do this in two steps: The first step involves an increase of 3 percent in the tier II tax rate for the calendar year 1981.

The second step would be a variable tax rate covering the years thereafter.

Because the cash flow problem is so severe, the tax rate under H.R. 7793 will rise for a few years until balance is established and will fall to lower levels after that.

If action on H.R. 7793 is delayed until the next session of Congress, the effective date of the tax rate which the bill proposes will come too late to produce the dollars needed to avoid default.

In that event, the tax rates would have to be considerably higher than proposed in H.R. 7793 with the result that the carriers will come to the Federal Government for a subsidy of some sort. This should be avoided.

In closing, I should like to recall to the committee the testimony of the former Chairman of the National Railway Labor Conference in 1974, in which he assured this committee that:

That railroad industry is perfectly prepared to fund the railroad retirement system in every respect in which it bears a reasonable resemblance to any other private industry pension plan, and what that means is that if somehow these figures go askew and we run into difficulty in the future because we have not put enough money in with relation to the benefits that are being provided, we will fund that, we will take care of it, that is our responsibility.

We have been trying for more than 2 years to persuade the conference committee to take action with us to avoid the collapse of the program. As pointed out earlier, we began to make progress some months ago following the scheduling of hearings on H.R. 5144. Unfortunately, there is little chance that an agreement can be reached in time to permit legislation during this session of Congress.

Therefore, on behalf of the hundreds of thousands of retired and active workers, their dependents and survivors, we urge this committee to take prompt action on this bill within the few remaining weeks of this Congress. It is critical that a bill be passed by the Congress before the close of this session.

Thank you.

Mr. Chairman, I would like to point out that Mr. Ole Berge, who is president of the Maintenance of Way Employees and chairs the Subcommittee on Railroad Retirement, is the chairman of the committee that handles negotiations. Unfortunately, he could not be here. He sends his regrets.

However, Mr. Friedman and Mr. Unger are here. I have been in negotiations for about 18 months, and on railroad deregulation for this committee, and along with other things that address itself to this committee. As far as negotiations are concerned, these gentleman can certainly bring you up to date on that.

[Testimony resumes on p. 42.]

[Mr. Snyder's prepared statement and attachment follow:]

STATEMENT OF J. R. SNYDERON BEHALF OFTHE RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

My name is J. R. Snyder. I am appearing here today as Chairman of the Legislative Committee of the Railway Labor Executives' Association, to testify in support of H.R. 7793. Appearing with me are Robert Myers and Edward Unger, the Committee's consultants, and Edward D. Friedman, the Committee's counsel.

As the members of this subcommittee know, the RLEA is an association of 21 standard and international labor organizations representing the classes and crafts of all of the employees employed by the Class 1 railroads in the United States. I have attached a list of the names of these organizations to this statement as an Appendix.

The RLEA was organized more than 50 years ago for the purpose of promoting the common interests and the welfare of railroad workers and their families, both active and retired, and nowhere in its history has it dealt with a matter of more importance to these people than the subject matter of this bill.

What is at stake here is the life or death of the railroad retirement program.

The program is going broke. This is the view of the more than two million railroad people for whom the railroad retirement program promises the reward for a lifetime of hard and often dangerous work.

The simple facts are that the current Tier II retirement tax of 9.5% will not generate enough funds to keep the system in the black through 1982 or 1983. Each additional month aggravates the

problem--puts the system deeper in the hole--and increases the risk of insolvency before the end of the next Congress.

The experts have warned that if something is not done now in this Congress, the fund will fall so far behind that the 3% tax increase such as provided by H.R. 7793 will not be sufficient to ward off the crisis.

The lead time required to build up the account sufficiently beyond the insolvency point with a moderate tax rate will have been lost. If we wait until next year or the year after, what will be needed is an immediate infusion of heavy dollars over a very short period of time--too heavy to be absorbed by the railroad industry alone.

You will no doubt hear a different version when the carriers' representatives testify. They will say that the system is not in its eleventh hour; that there is time to complete negotiations begun more than two years ago; that there is and will be funds in the railroad retirement reserves, sufficient to pay all benefits month-to-month until a negotiated proposal for legislation on this subject is enacted by the 97th Congress either next year or the year after.

We say no. This is not the case. Further delay will mean that the industry, having waited too long, will, in fact, be forced to hold out its hand to the federal government for some form of subsidy in order to tide the program over its period of cashlessness.

We cannot allow this to happen. We must act now while there is still time to generate enough cash within the railroad industry to build up the railroad retirement reserves.

This bill will do this.

H.R. 7793 is a basic bill.

It provides for an automatically adjustable tax rate designed to produce enough funds to avoid a system collapse. The variable tax rate will go up no further than is necessary to maintain a reserve in the railroad retirement account of not less than 25% of the annual payout. Anything less would continue the danger of insolvency.

At no time in its long record of appearances before this Committee has the RLEA pressed for enactment of a bill, more vital to the interest of railroad workers, than H.R. 7793.

This bill follows more than two years of frustrating negotiations with the National Labor Railway Conference. Despite the clear urgency for prompt action on this subject, the carriers' representatives have been dragging their feet during the larger part of this period. At first the members of the NLRC appeared to be politely indifferent. They listened to our proposals, but had few comments and no suggestions, much less counterproposals. The RLEA, forestalled by their inattention to this emergency, set a deadline of March 1979 for agreement.

The NRLC nonetheless remained unresponsive.

H.R. 5144 was introduced in this branch of the Congress some months later. But it was not until the Chairman of this subcommittee scheduled hearings on H.R. 5144 early this year that we finally caught the attention of the carriers.

Since that time the RLEA has tried to work out a legislative program which would reverse the ever increasing downward spiral

of the railroad retirement account. As the months of this year wore on, it became more and more apparent that if the Congress did not act on an emergency bill in this session to avoid a collapse, a point of no return would likely be reached before the next Congress would be in a position to act.

Perhaps a brief review of the railroad retirement program and of the railroad retirement balance sheet will provide much needed perspective for consideration of this bill.

The railroad industry has one of the oldest pension systems in the country. The original pensions were established more than 100 years ago. However, the early promises of pensions were largely illusory. Although 75% of railroad workers were covered by pension plans by the mid 1920's, less than two out of every ten workers actually qualified for a pension upon becoming too old to work.

The benefits these few people were paid were small. About one-fourth of the 50,000 pensions in force in 1933 provided for payments of \$6.50 per week. The average was about \$14 per week. These meager amounts were drastically reduced during the period of the Great Depression when some railroads eliminated pensions altogether.

It was in this setting that the railroad retirement system was born in 1935 upon an understanding between labor and management that it would become the basic retirement system for the entire industry. Railroad employees have never been covered by the social security system.

While the railroad retirement worked well enough during its early years, it began having financial problems in the 1950's and 1960's, largely caused by declining railroad employment following the employment bulge of the war and the early postwar years. The words "actuarial deficit" began to surface with more and more frequency until finally in the early 1970's the program began to show alarming deficits in the range of 9%. Most of this erosion resulted from the payment of windfall dual benefit.

The result was the Railroad Retirement Act of 1974 which restructured the program into a two tier system of benefits.

Tier I represents the social security component computed under the social security benefit formula on the basis of the employee's combined railroad and non-railroad earnings.

Tier II represents the staff level component based on railroad services only.

The financing of Tier I is the same as social security. The Tier I tax rate is the same as the social security tax rate. It is levied on wages subject to a maximum taxable compensation ceiling identical to social security. The calculations of Tier I benefits are based upon social security indexing to adjust for inflation. A 100% cost of living increase is applied automatically each year to the Tier I benefit, as in social security.

The Tier II benefit, under the restructured system, resembles a private pension benefit. It is non-contributory. The carrier pays the full amount of the tax based on wages subject to a maximum taxable compensation ceiling which is lower than the social security ceiling.

The existing law provides for preretirement indexing of Tier II components which are based on lifetime earnings. The indexing is based on 65% of the percentage increase in the Consumer Price Index between September 1976 and the September preceding the year of retirement through 1980.

Current law also provides for a once each year post retirement cost of living adjustment throughout the same period equal to 32.5% of the rise in the Consumer Price Index between the first calendar quarter of a year and the corresponding quarter of a year earlier.

To my knowledge, there is no disagreement on the unqualified need for some form of indexing. H.R. 7793 simply continues existing policy in this respect.

The average Tier I benefit paid to one-half million railroad retirees after offset for a dual social security benefit, amounted to \$305 in the last fiscal year. The average Tier II benefit, including those who did not retire from railroading until after 1974, averaged \$129.

The average combined Tier I and II amount for this group was, therefore, \$434. To this must be added the supplementary annuity awards, which average about \$41 per month covering employees who retire before their 65th birthday. Also excluded from this description is the dual benefit windfall, now in the process of being phased out under the 1974 legislation.

To the foregoing must be included the spouse's annuity, covering almost a quarter of a million wives of railroad workers. Here the average is \$210 as of the end of the last fiscal year.

Finally, we should mention the 330,000 of the million survivor's annuities, averaging \$314 a month.

The total cost of operating this system for the last fiscal year was \$4.647 billion or \$331 million more than the previous fiscal year and \$828 million more than in fiscal year 1977.

Receipts to cover these expenditures have been persistently short over the past decade.

This shortfall is evidence by the accelerating deterioration in the balance of the railroad retirement account, as shown by the following comparison of the balances in the account on April 30, 1971, with April levels in recent years as follows:

1971	\$4.092 billion
1975	\$3.063 billion
1978	\$2.021 billion
1979	\$1.801 billion

It is estimated by the Railroad Retirement Board's Chief Actuary that the balance in the account will drop to a low of \$657 million before May 1981, if economic conditions continue to be unfavorable.

Even if economic conditions show some improvement and railroad employment holds reasonably steady, the estimated level for April 1981 will drop to \$1.102 billion and in 1982 will fall to a shocking \$192 million.

This means even if economic conditions improve somewhat over the next few months, the account will drop to the danger point of one billion dollars representing two and one half months of benefit payments and will fall well below that point in 1982.

The reason for this steady deterioration is that for too long more dollars are going out than are coming in.

The bulk of funds paid into the railroad retirement account comes from receipt of payroll taxes and from the financial interchange.

Each percentage point of the payroll tax levied on taxable wages produces about \$100 million dollars. The combined Tier I and Tier II taxes produced 2.29 billion dollars in the last fiscal year.

The second major source of funds paid into the account comes from the financial interchange. This is a form of reinsurance in which railroad employees and their families are reinsured under social security. Interchange transfers between the two systems are made annually to place the social security trust funds in the same position they would have been in, had railroad employees been covered by social security rather than by railroad retirement.

The tax dollars that the social security trust funds would have received each year if social security coverage included railroad employees is compared with the additional benefit dollars that social security would have paid to railroad employees, their spouses, or survivors. The difference in the two amounts is transferred to railroad retirement if the benefit amount is higher or to social security if the tax amount is greater. This calculation takes place in October of each year. The interchange of dollars owing to either system is made during the following June. There is, thus, an average of a 15-month delay on reimbursement.

The balance thus far has favored the railroad retirement program. The financial interchange accounted for 1.477 billion dollars of railroad retirement receipts in the last fiscal year.

The railroad retirement balance sheet may be broken down as follows:

Payroll	\$2.290 billion
Financial Interchange	\$1.477 billion
Advances for payments of social security benefits	\$ 265 million
Dual Benefit Transfer	\$ 313 million
Interest on Investment	\$ 186 million
Total	<u>\$4.532 billion</u>

As shown above, ^{the fact that} the short fall between railroad retirement revenues and expenses has increased each year is evidenced by the declining balance in the reserve from \$4.092 billion in April 1971, to \$1.801 billion in April 1980. This represents an erosion of \$2.2 billion over the past decade with a further projected erosion of another \$800 million as of April 1981 and another \$1.7 billion as of April 1982, even on the basis of intermediate economic assumptions.

H.R. 7793 would check this downward spiral at the earliest point and would stabilize the system within a few years.

H.R. 7793 would do this in two steps.

The first step involves an increase of 3% in the Tier II tax rate for the calendar year 1981.

The second step would be the imposition of a variable tax rate covering the years thereafter. This variable rate will go up or down as the railroad retirement reserve account rises or falls.

The rate is a sliding rate designed to insure that the balance in the account will not drop below 25% of the annual benefit payment. Since the annual benefit payment runs in the neighborhood of four billion dollars, the minimum account balance under this proposal would be about one billion dollars, equal to two and one-half months of benefit payments. This level would be reached in April of each year prior to the receipt of the financial interchange payment.

Any increase or decrease in the tax rate would be triggered by the up or down movement in the account at the end of each fiscal year.

If the account balance divided by the account payout for one calendar year is lower than it was for the previous year, the railroad retirement tax rate would go up.

If this ratio between account balance and account payout for a given calendar year is higher than it was for the previous year, then the tax rate will do down.

The adjustment factor is aimed at keeping the account balance-benefit ratio at about 70% as of the end of the fiscal year. If the balance is held at 70% in October, it will drop to about 25% in April.

We are told that if the account balance-benefit ratio were to be pegged at some point less than 70%, for instance, 60%, the account balance would drop below 25% at its low point in April which the actuaries regard as insufficient.

Because the cash flow problem is so severe that the tax rate under H.R. 7793 will rise for a few years until equilibrium is

established and will fall to lower levels thereafter. It is estimated that the Tier II tax rate may rise to 16% in 1982, and, perhaps, to 20% in 1983.

If action on H.R. 7793 is delayed until the next session of Congress, the effective date of the tax rate which the bill proposes will come too late to generate the dollars needed to avoid default. In that event, the tax rates would have to be considerably higher than those proposed in H.R. 7793 with the result that the carriers will come to the federal government for a subsidy of some sort. This should be avoided.

In closing, I should like to recall to the Committee the testimony of the former Chairman of the National Railway Labor Conference in which he assured this Committee that:

"That railroad industry is perfectly prepared to fund the railroad retirement system in every respect in which it bears a reasonable resemblance to any other private industry pension plan, and what that means is that if somehow these figures go askew and we run into difficulty in the future because we have not put enough money in with relation to the benefits that are being provided, we will fund that, we will take care of it--that is our responsibility.

We have been trying for more than two years to persuade the Conference Committee to take action with us to avoid the impending collapse of the program. As pointed out earlier, we began to make progress some months ago following the scheduling of hearings on H.R. 5144. Unfortunately, on the basis of our progress until now, it appears that an agreement will not be reached in time to permit legislative action during this session of Congress.

Therefore, on behalf of the hundreds of thousands of retired and active workers, their dependents and survivors, we urge this Committee to take prompt action on this bill within the few remaining weeks of this Congress.

It is imperative that a bill be enacted by the Congress before the close of this session.

Thank you.

APPENDIX

American Railway Supervisors Association
 American Train Dispatchers Association
 Brotherhood of Locomotive Engineers
 Brotherhood of Maintenance of Way Employes
 Brotherhood of Railroad Signalmen
 Brotherhood of Railway, Airline and
 Steamship Clerks
 Brotherhood Railway Carmen of the United
 States and Canada
 Hotel & Restaurant Employees & Bartenders
 International Union
 International Association of Machinists
 and Aerospace Workers
 International Brotherhood of Boilermakers
 and Blacksmiths
 International Brotherhood of Electrical Workers
 International Brotherhood of Firemen & Oilers
 International Longshoremen's Association
 International Organizations of Masters, Mates
 and Pilots
 National Marine Engineers Beneficial Association
 Railroad Yardmasters of America
 Railway Employees Department, AFL-CIO
 Sheet Metal Workers' International Association
 Seafarers International Union of North America
 Transport Workers Union of America
 United Transportation Union

Mr. FLORIO. Thank you very much.

It is appropriate to note for all here that railway labor has been very much in support of the railroad deregulation bill, in large measure because of its anticipation that the enactment of that bill will assist the railroad industry, management in particular, in improving the financial picture, the expectation being that the improvement of that financial picture of the railroad industry should yield great benefits not only to the Nation in the abstract but also should yield some benefits to the employees.

One of the places where those benefits should flow to would be to the railroad and retirement system, and it has always been this committee's expectation with some improved health on the part of the railroad industry as a result of being freed from the shackles of overregulation that the railroad industry as well as the members would start to pick up some of the responsibilities that the Government has had over the last number of years for the well-being of the railroad and the well-being of the railroad employees, so that as we move out of the Government being more involved, we will expect the slack to be picked up by management and labor.

I think that is an appropriate place to do it, and I am hopeful that thought is in the back of the minds of those who are currently negotiating the agreement to deal with the retirement provision, and I fully expect, and I speak for the other members of the committee, that agreement will come back and have new and increased responsibility on the part of the participants to the agreement signaling a lessening of the governmental responsibilities toward the railroad retirement system. I am hopeful that that message is conveyed to those who are sitting down and hopefully in good faith negotiating the agreement that we will be happy to take a look at as soon as it is agreed to.

Mr. Snyder, or your associates, you have described and others have described tier II as essentially a private pension system. My experience has been that there are not too many private pension systems with cost-of-living adjustments in them.

Is this fact of the cost-of-living adjustment system built into the private pension portion of this program and has that contributed to the problems that we have found ourselves with?

Mr. FRIEDMAN. The answer to that is no, it has not. Of course, tier I is covered by 100 percent social security cost-of-living adjustments automatically. Social security is adjusted in an amount equal to 100 percent of the CPI, and tier I would also be adjusted since the formulas are the same.

Mr. FLORIO. Is it the exception or the rule that private pension systems have built-in cost-of-living adjustment provisions?

Mr. FRIEDMAN. There are probably some private systems that have cost-of-living adjustments. By and large, they would be negotiated from time to time as they were recently in Steel and UAW, and there are negotiations of adjustments in the amount of the annuity.

Mr. FLORIO. Without violating any confidences with regard to the integrity of the bargaining process, is anyone in a position to say as to whether one of the things that is on the table is continued cost-of-living adjustments for the tier II provisions?

Mr. FRIEDMAN. I think it is fair to say that we have been discussing the cost-of-living along the lines provided in this bill. The discussion has been in terms of the kind of formula which is to be applied and, of course, we are concentrating on tier II alone.

Tier II has an automatic adjustment of 32½ percent of the CPI, which represents less than one-third whereas under other systems, at least under the Federal system, it is 100 percent of the CPI.

The purchasing power of the railroad retirement annuitant is not all together protected, but only to one-third of the raise in the CPI. That is the actual annuity. The present retirement which is simply the indexing formula for determining the amount of the award or the amount of the benefit, that calculation is only made at the point when the man retires, that present indexing, adjusting that to equate with the inflation over the period of time during which he has worked since 1976, that is based on 65 percent of the CPI.

The discussions have centered on the latter point.

Mr. FLORIO. It is my understanding with regard to the tier II provision that it is totally noncontributory with regard to the employee. Is there any discussion as to modifying that so as to have it a contributory system?

Mr. FRIEDMAN. No.

Mr. UNGER. I would like to address the two technical parts of your original question.

The first is the largest problem and concerns the tier I portion of the system where we are having financing difficulties, as you mentioned earlier, dealing with the financial interchange, the windfall dual benefit payment and other parts of tier I.

Tier II, I was involved in the 1974 negotiations which produced the 1974 act, and at that time the railroad industry acknowledged that they were setting a precedent in establishing cost-of-living adjustment protection for tier II, and to this day I don't think they deny that it was built in as a unique component, and I don't think that they have ever thought about backing away from continuing the present structure.

Mr. FLORIO. Those cost of living adjustments for specifically named adjustment periods?

Mr. UNGER. Exactly.

Mr. FLORIO. Were they in the collective bargaining agreement and later ratified in the law?

Mr. UNGER. Yes, sir.

Mr. FRIEDMAN. No.

Mr. FLORIO. I am getting different answers.

Mr. FRIEDMAN. It depends upon what you mean by a collective bargaining agreement. The recommendation made to the Congress at that time included a recommendation on cost of living, but there was no collective bargaining agreement as such.

One of the points here is that pensions have never been subject to collective bargaining in the normal sense of the word. They are not a part of the bargaining agreement.

Mr. FLORIO. That is interesting. You are saying the negotiations that are going on right now are informal negotiations that will result in merely a recommendation to the Congress and do not

constitute any sort of collective bargaining agreement that would later be ratified by the Congress?

Mr. FRIEDMAN. That is correct.

Mr. FLORIO. So the proposal that may come to the Congress is going to be on an equal level with a proposal that may come to the Congress from the administration or the chamber of commerce or anybody else in the world. It really does not have any greater status than anybody else's proposal?

Mr. FRIEDMAN. It does historically. The pension system in the railroad retirement industry has been established through the auspices of the Federal Government in 1973. The pension system for the railroad industry is the railroad retirement program, and it has been since 1973. It is the accepted mode or form.

Mr. FLORIO. Just the historical precedence?

Mr. FRIEDMAN. And adjustments are made from time to time and have been made in the legislative program. It is a closed system. You said 51 percent of the appropriation would be saved. The dollars that are collected under the Railroad Retirement Act are paid into the railroad retirement account, and they are segregated from the general fund.

They are a part of the railroad retirement trust fund. In other words, the system operates as a closed system supported by the railroad industry.

Mr. FLORIO. Obviously not totally self-sufficient or we wouldn't be here today.

Mr. FRIEDMAN. Not in the sense we have been running into actuarial deficits. There has been a drain, a cash drain on account of the Government's failure to respect its commitments under the windfall dual benefits payment reimbursement.

Mr. FLORIO. In a sense the Government is a third party to the agreement. It is not a self-contained system free from governmental involvement?

Mr. FRIEDMAN. Only with respect to that one item which is the windfall, and the windfall is a peculiar consequence of the interplay between the social security system and the railroad retirement system and an aspect of the tier I component.

Mr. FLORIO. Could anybody succinctly state why the windfall benefits calculations were so far off from what was contemplated in 1974?

Mr. FRIEDMAN. They made the estimate in 1974 on the basis of a static model, and they meant a model which did not adjust for the anticipated inflation.

Mr. FLORIO. You say they; I assume——

Mr. FRIEDMAN. The actuaries. The railroad retirement actuaries. The calculation that was offered to the Congress in 1974, as I understand it, was made by the railroad retirement actuaries, and was made on the basis of the static model which did not allow for the kind of inflation that we had in 1975, 1976, and since that time.

Once that adjustment was made, well, in actual practice what happened the amount was low, the \$250 million estimate was low, and they were showing costs well in excess of that.

Mr. FLORIO. Thank you very much.

Ms. Mikulski, do you have any questions?

Ms. MIKULSKI. No, Mr. Chairman; I don't.

Mr. FLORIO. Gentlemen, thank you very much.

Mr. SNYDER. Could I make one last observation here?

Inasmuch as there are so many letters coming in from our very concerned railroad workers and retirees, survivors in all parts of the country to the various organizations and in our travels on the Hill, we find they are doing a pretty good job in communicating with their Congressmen and Senators on this.

We realize fully that this has been a very busy year for all of us, and we realize the time is short.

Railway Labor would urge this committee to at least correct some of these problems we have, particularly the tax rate base and the cost of living inasmuch as the cost of living expires the end of this year, and the cost of living is a great concern with the high inflation rate going on now to our retirees out there, so we would certainly ask the committee to take this into consideration.

We do appreciate your taking the time and arranging for these hearings here and to get this thing started.

Mr. FLORIO. We would like to go out of order for one particular witness who is here and has a short statement, and then we would like to conclude with some extensive questioning with our last distinguished witness, Mr. Hopkins.

I would like at this point to call Mr. Demetrios Mountanos, chairman of the Brotherhood of Railroad Retired Workers, Inc., who has been referred to us by the Honorable Congressman Yatron.

If you would take a seat; we have your statement. If you would like to briefly deliver your statement, the committee would be pleased to hear from you at this time.

**STATEMENT OF DEMETRIOS K. MOUNTANOS, CHAIRMAN,
BROTHERHOOD OF RAILROAD RETIRED WORKERS, INC.**

Mr. MOUNTANOS. Mr. Chairman and honorable members of this subcommittee, you have before you for consideration H.R. 4855.

This bill was introduced by a great humanitarian, Hon. Gus Yatron, Congressman from Pennsylvania, to correct an inadvertent injustice imposed on a small number of elderly railroad retirees by the 1974 railroad retirement law, Public Law 93-445. This 1974 law deprives these retirees of the pensions they are entitled to because of their long years of employment.

I am one of these unfortunate people and I come here today to speak on behalf of my fellow former railroad retired workers and myself. The restoration of our pension will not affect the economic condition of the railroad retirement system because the number of individuals covered under H.R. 4855 is small, and some are no longer with us.

I, myself, will be 73 years of age this December.

Many years before the 1974 law we were employed by the railroads and paid into the pension fund under the 1937 Railroad Retirement Act, having every confidence in our Government. But at our retirement, we were told that the 1974 law changed the rules in the middle of the game and we were denied our full pensions, the pensions we had paid for, counted on for retirement, and needed to survive.

When we asked the Railroad Retirement Board they answered that in order not to be paid two times for the same work they detract from our pensions an amount equal to our social security benefits, dollar for dollar.

When we write to them that we have acquired our right to social security benefits through jobs unrelated to the railroads, they answer that they are not the lawmakers, and they must enforce the law across the board. This matter is addressed in subsection D of H.R. 4855.

At our age it is impossible to build another source of income to cover the bare necessities, and our only hope is that H.R. 4855 becomes law. It is disappointing and heartbreaking to see American citizens deprived of their bread and butter by an inadvertent inequity in the law.

Those of us who were employed by the railroads before 1974 could have been grandfathered under the old law, eliminating all the unhappiness which has been created so far.

We feel neglected when we read in the newspapers of the billions of dollars our country spends to feed, clothe, and shelter people in other countries. The idea to rescue the railroad retirement system in 1974 by depriving railroad retirees of their pensions was wrong.

Our great country was developed by and continues to depend heavily on the railroads. Our economy, industry, farms, defense and many other areas of life need a strong railroad system; a railroad system which would not be possible without the years of labor and sacrifice of our railroad workers.

The railroad retirement system is facing bankruptcy, but this does not justify the continuation of the inhumane starvation imposed on a few elderly retirees and it is a moral obligation for our Government to correct it.

No doubt deregulation will give new life to the railroad industry, but this cannot be accomplished overnight. Unfortunately, we have no time left to wait.

Therefore, I appeal to your humanitarian feelings to help H.R. 4855 to become law before the cold weather arrives.

Believe me, Mr. Chairman, it is not good to be in the cold weather to buy what you need to survive. We need our pensions. We did pay for them in advance.

The citizens of our great Nation must recognize the importance of our railroads and the need to insure the retirement security of all railroad workers. I know that you are trying to accomplish this, and I hope and pray for your success.

We are not asking for charity or a handout. We only ask for the pensions for which we have paid according to the law.

Our last plea to you is please restore our pensions, restore the confidence of our citizens in our Government by eliminating the stigma of depriving unjustly our elderly citizens from their bread and butter.

In ending, I wish to express my gratitude to Hon. Chairman Florio for allowing me to testify before this distinguished subcommittee, and to bring to your consideration H.R. 4855.

Also, I wish to express my gratitude to every one of you for the attention you pay to this unhappy reality.

May God bless you and your families.

Thank you.

Mr. FLORIO. Mr. Mountanos, I want to thank you for your statement and for your concern and, for the record, to state that Mr. Gus Yatron, your Congressman, has been a very forceful advocate on your behalf.

In light of some of the testimony we have heard today on this subject, I am going to specifically request a representative from the Federal Railroad Retirement Board to make contact with Mr. Yatron to discuss this problem in greater detail in the hopes there might be some way to resolve the matter in the interest of all concerned. I wanted to let you know that Mr. Yatron has been very, very forceful in bringing your case before this committee.

He has introduced some legislation that is somewhat complex, but I am going to ask the railroad retirement people to talk with Mr. Yatron to see if something can be done to address your problem.

We thank you for your appearance here today.

Our next witness and our last witness is Mr. Charles Hopkins, chairman of the National Railway Labor Conference.

We welcome you to the committee. Your statement will be made a part of the record in its entirety, and you may proceed as you see fit. [See p. 58.]

STATEMENT OF CHARLES I. HOPKINS, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

Mr. HOPKINS. I am Charles I. Hopkins, chairman of the National Railway Labor Conference in which capacity I and our organization represent practically all of the Nation's railroads at the national level in collective bargaining and other national labor relations matters including in particular and apropos of the work of this subcommittee today negotiations with the railway labor organizations of railway retirement matters.

I have a compressed version of the prepared text which you have received in the record, Mr. Chairman, which I would like to present.

There were some inadvertently misleading statements made in response to some of your questions, and I would like to address those and I am happy to do that at the outset or after I have concluded the presentation.

It might be most constructive if I do that first while those points are fresh in your mind.

Mr. FLORIO. Fine.

Mr. HOPKINS. You raised the question as to whether or not the automatic CPI related adjustments that are in the existing law accounted for any part of the problem and whether or not provisions of that nature are common or unique on the collective bargaining scene.

As to the first part of that question, certainly they have contributed to the problem because they have obviously just by definition and reality increased the level of benefits and therefore increased the payouts from the railroad retirement account and therefore contributed to the depletion of that account.

However, I would quickly add to that we on behalf of the railroad industry have not and do not now propose a reduction in the

benefits, the benefit increases that have come about by reason of those CPI related adjustments in the act.

However, this is not to say that we favor, and in fact we do not, any extension of provisions of that kind. We have declared ourselves and I think are clearly understood on that point by those that we have been and are negotiating with.

The other aspect of your question as to whether or not these are common or unique provisions of this kind; the answer to that is clear. Obviously, I can't claim and don't claim that I have comprehensive knowledge as to all collective bargaining pension plans.

I can state with confidence that provisions of that kind for automatic CPI adjustments are virtually unknown in collectively bargained pension plans in this country, and I know of no such pension plan and certainly there is none in any major collective bargaining situation.

What happens in those collective bargaining situations typically is that the parties negotiate periodically from time to time the entire array of economic elements of their collective bargaining agreements, one of which is or may be, depending upon what the objectives of the parties may be in a particular season, pension increases, and from time to time they do renegotiate the pension benefits for retirees.

Mr. FLORIO. Something was said before, I guess I was so surprised I didn't respond the way I perhaps should have; I have been involved in negotiations generally in the public sector representing both sides of the table, and the idea that pension plans would not be part of negotiations in terms of wages, hours, conditions of employment comes as a surprise to me, and someone has suggested that today.

Is that your understanding as to the things that are on the table?

Mr. HOPKINS. I did intend to speak to that, too, because like you I am surprised by that, but not surprised in that this position has been expressed previously by the organizations to me and to others that I represent.

I think that there has been this effort to maintain what I would consider the fiction, that we bargain collectively on the array of economic elements, except we isolate railroad retirement and somehow in the collective bargaining process ignore the employment cost impact of railroad retirement.

That is in fact what the organizations have undertaken to do, but I think the record is clear and certainly the reality is clear that in the recent past at least, and I won't attempt to speak for earlier years when I was not personally a participant in these events, railroad retirement has been a subject of collective bargaining.

Now, one I suppose can adopt a narrow definition of collective bargaining, but in my view it can hardly be argued otherwise than that the 1974 amendments to the Railroad Retirement Act came about as the product of collective bargaining between the parties, which was consummated by enactment of an act of Congress that would honor in every respect and detail the collective bargain that had been struck between the parties.

In fact, the House and Senate reports at that time contained this quotation, that tier II constitutes "in essence, a company pension program" and accordingly contemplated, and again quoting,

"future changes in tier II benefits will arise out of collective bargaining between the railroads and the unions." So it is eminently clear apart from what my own view may be, it has been and presumably remains the view of the Congress that railroad retirement is and must be the subject of collective bargaining in the true sense between labor and management, and that is how we view it and that is how we are conducting ourselves.

Mr. FLORIO. If that negotiation goes forward and an understanding is arrived at between the parties to the negotiations and the Congress does nothing, when that agreement is entered into doesn't that provide the employees a remedy of suing on the contract to insure that the management lives up to the terms of the agreement?

Mr. HOPKINS. I would hope, sir, that we would be better draftsmen than that and would provide whatever agreement we struck would be subject to enactment by Congress. There is no question we do have in our bargaining equation, in this sole respect, the reality that whatever we may agree upon privately requires for implementation an act of Congress, and neither we nor the organizations have proposed a fundamental structural change that would exclude Congress.

The history is long and plays an important part in where we are and where we hope that we will be in the future. So to that extent, yes, this is different from collective bargaining that goes on outside of the railroad industry where they don't have either the organization or the managements don't have another place to go, a government to go to, but don't require it either.

Once they make their bargain they live with it and implement it.

You asked also, Mr. Chairman, whether the Consumer Price Index-related features were on the table in our current bargaining, and I think the indication was given to you that that is the case and, moreover, that the railroads have not had any difficulty or resisted a continuation of CPI indexing of that kind; and that is incorrect on both counts.

The fact is, and I don't want to go beyond what is fair and circumspect in talking about the bargaining, but I think it is fair and appropriate in view of what has been asked and what has been said to make the point that the organizations have at no point in our negotiations advanced a proposal that there be a continuation of the CPI feature, either one as is present in the existing law or a different one.

The only proposal of that kind of which I am aware is this bill of the organizations that is pending before the Congress before your committee and that we are testifying about today.

Mr. FLORIO. You mean the CPI. Are you talking about the specifics of the CPI not being discussed or the more generic question of indexing perhaps through something other than the use of CPI?

Mr. HOPKINS. Both.

Mr. FLORIO. You are saying there is no discussion at this point with regard to periodic adjustments to take into account changing economic circumstances or whatever else?

Mr. HOPKINS. To flesh that out so there is a proper and a fair context for it, we have discussed and are discussing, without of course at this point any commitments on the part of anybody,

benefit changes that relate future benefits in some way to wage progress, not the Consumer Price Index.

Mr. FLORIO. Wage progress?

Mr. HOPKINS. Yes; and that may sound like a distinction without a difference, but it surely is not to those of us, for better or worse, who have responsibilities in these areas.

This, I think, typically, whether in our industry or others, is what one looks to in trying to make a judgment as to the adequacy or inadequacy of a pension benefit. How does it relate to the person's standard of living or income level before retirement, and that is the type of thing we are talking about now.

I am sure you would assume this to be the case. It is quite true that we come at it from somewhat different standpoints and with different views, but that is the area that has been the subject of discussion, and the organizations have made suggestions in that area as have we, and they are under live consideration right now.

You also asked whether or not there had been any discussion of the fact that the tier II is currently noncontributory and as to whether or not that might be changed.

The indication was that that is not the case. The fact is, we, that is I on behalf of the managements, have made the point that in our reexamination of where we are and where we must go with railroad retirement in tier II, we need to examine all of the options, including the benefits and whether those require some readjustment, the methods of financing, including the allocation of the cost of the program, and I specifically pointed to the recent precedent in the steel industry whereby they devoted 33 cents of what would otherwise have been a cost-of-living adjustment to help finance the pension program in the steel industry.

So the message we have been trying to convey to the unions is that this cannot be a truncated negotiation where we go into it with blinders. We have got to look at the total problem and all the opportunities for dealing with it and include in that the consideration of the allocation or reallocation of the cost of the program. So it is on the table, as far as I am concerned.

One other point—

Ms. MIKULSKI. Mr. Hopkins, may I ask you a basic question?

When we talk about the collective bargaining contracts between railroads and their employees, what is the duration of those contracts? Are they done on a yearly basis, 2 years, 3 years?

Mr. HOPKINS. That varies widely in looking at it historically.

The current agreement became effective as of January 1, 1978. The parties are free to serve proposals January 1, 1981, not to become effective before April 1, 1981, so in a strict sense those current agreements under which we are now operating were for a period of 39 months.

The agreement that immediately preceded it was for a period of 36 months, but over the years there have been agreements for 18 months, 3 years, 2 years.

Ms. MIKULSKI. But a fairly standard procedure now is for a 3-year negotiation?

Mr. HOPKINS. I would like to think 3 years or longer, but I am in no position to speak for the organizations on that point. I don't

know what their aims will be in the next round but I do think it is fair to say that 3-year agreements or longer are what we look at.

Ms. MIKULSKI. Thank you.

Mr. FLORIO. Please proceed.

Mr. HOPKINS. One other point before I go to my summary of the prepared text; you spoke of deregulation and of course I think all of us who are concerned with the railroad industry, and I would hope the entire Nation would devoutly look to the time when the railroads have greater freedoms to compete effectively in the marketplace, and that having effectively competed as we would hope and expect to do that the fortunes of the industry, which have been in a state of secular decline, would take a decided turn for the better.

I don't think any of us, even in our fondest hopes, expect that there will be a turnaround within a matter of days, weeks, or months. What I think is being done is setting the stage, laying the ground work for resurgence of this fundamental industry that vitally concerns all of us. But in that context you said that you would charge the negotiators on the side of labor and management with a consideration of a lessening of Government involvement in the railroad retirement system.

The reason I make a point of it and want to mention it is that there really is little or minimal Government involvement now in the railroad retirement program, except in two respects and here, labor and management are in total agreement.

We think it is imperative, and it certainly is imperative to the health of the program, that Congress fulfill its commitment to fund fully the dual benefit phaseout, the so-called windfall. That is what was declared by Congress to be its commitment when it was decided not to eliminate the dual benefit and that has been repeated from time to time by Congress. But, nevertheless, there has been a shortfall in that commitment from that point forward almost.

Mr. FLORIO. The testimony this morning measure was a result of miscalculations by those who provided information to the Congress and the Congress, in reliance upon that miscalculation, agreed to fund a fund under a certain set of numbers, so the equities are sort of mixed, whose responsibilities are whose?

Mr. HOPKINS. The shortfall is due to a shortfall in the appropriation to comport with the commitment that Congress made.

Now, it is quite true that the projections that Congress was looking at and that the Congress was looking at in 1973 and 1974, understated what has turned out to be the cost of that phaseout because, as Ed Friedman mentioned, the use of static assumptions assumed there would be no more inflation.

Mr. FLORIO. I would like to ask you one last question, then I have to run, Ms. Mikulski will reconvene the hearing; and as soon as I can come back I will.

Have you had the opportunity to hear about proposals that are floating around that talk about accelerated early retirement programs and an interrelationship between title V program and the railroad retirement system in some way accelerating retirement so as to ease the burden on the title V program which, of course, would increase the burden on the railroad retirement program, if people are retiring early.

Is this something that you are aware of?

Mr. HOPKINS. Yes; though what I have heard are sort of intimations, nothing specific. I don't have any full explanation and I am not in a position to speak on behalf of anybody but myself. But based on what I have heard I could venture some comments if they would be of interest.

This, of course, presupposes that what I have heard, little, though it may be, is reasonably accurate, and if that is so—

Mr. FLORIO. If I could ask you to submit to the subcommittee in writing your thoughts on that subject, and that invitation goes to anyone in the audience as to that general concept.

I realize that is very generalized at this point, but it is something that some are talking about fairly seriously. We would like anyone's information and their views on that subject, so if you would be in a position to do that, we would appreciate it.

Mr. HOPKINS. Yes, sir. In order to do that, in what I would hope would be an intelligent way, we would need to know—

Mr. FLORIO. I will formulate some questions to submit to all of the members of the panels this morning.

We will stand in recess for a few minutes.

[Brief recess.]

Ms. MIKULSKI [presiding]. The committee will now reconvene.

Mr. Hopkins, of any of your suggestions and concerns you feel could best be handled through the collective bargaining mechanism, and that is one reason why I asked about the traditional length of the contract.

In the course of the negotiations that you have conducted in the past, have pension plans been a subject of contractual negotiations in the sense that what was agreed to, and I am just making up some dates, say, what was agreed to in 1977 could be changed in 1980 and then could be changed in 1983?

For example, I know that when we negotiate health benefits in a package, we usually are talking about current employee status so that perhaps you would negotiate a different type of Blue Cross or health insurance package. However, my question is that when your negotiations take place and No. 1, do they affect pension plans and, No. 2, can you change the rules of the game and the people who are in that system every couple of years with a collective-bargaining agreement?

Mr. HOPKINS. I hope this will be responsive.

We can or could, during the negotiations of the kind to which you are referring, deal with or negotiate railroad retirement. We have not; that is, we did not in the 1977-78 round.

The railroads proposed that we do so. We had a proposal that we advanced to open up the subject, and it was politely noted by the organizations but promptly dismissed, and we got nowhere with it and it dropped out of the picture.

However, the changes that have come about in the railroad retirement program have in recent years been the product of what I call collective bargaining.

Now, there could be a technical argument as to whether or not that is in a strict sense collective bargaining; but for all practical purposes it has been, and I consider what we are engaged in now to be collective bargaining. But another point that is implicit, at least

in your question, is whether or not there would be some bar from negotiating or renegotiating railroad retirement because of the term of the existing collective-bargaining agreement, and the answer to that is no.

Now, again some technical position might be advanced by one party or another, but that has not occurred and I foresee no likelihood of it occurring, and so the fact is on this, all of us concerned would agree, we have and are very actively negotiating with a view toward reaching a result which would be a joint recommendation, a labor management recommendation for an act of Congress which would make changes in the Railroad Retirement Act.

Whether one calls that collective bargaining in a pure sense, to me it is collective bargaining in a real sense.

Ms. MIKULSKI. Well, the reason I ask that is that one, I represent a considerable number of railroad workers coming from the Port of Baltimore and I represent a tremendous number of retired railroad workers. Rail was such a major part of the Baltimore economy. I am getting a tremendous amount of mail from people who are just panic stricken right now about the solvency and future of the railroad retirement system.

As we set about trying to assure them, I don't want to engage in pacifying people when we really don't have solid ground on which we are working, but I have a couple of principles that I would like to follow, which are, one, that we really don't change the rules of the game of people who have really counted on the system because you and I and other responsible adults who make retirement plans take a look at what we are getting into, whether it is social security, Federal, then supplement that with private insurance; but we tend to say if I get into it now when I am 22 or 35, what is it going to look like 30 years from now.

I know it is difficult to project and it is of enormous concern to me, we could change the rules of the game every 3 years and make it difficult for people to plan for their own financial futures, and panic for the people that are in the system.

The second point is many people feel if we do discuss this every 3 to 6 years, No. 1, it would be very difficult politically and from the standpoint of justice and equity to decrease benefits. Usually the history of pension plans has been, this is the framework, and you usually expand it maybe to include a health system, but these are the principles many of the members of the committee subscribe to.

Mr. HOPKINS. As to the first point, this goes to the very core of the plea that labor and management together have made repeatedly, that the Congress fulfill its commitment to the people who have a vested interest in this dual benefit or so-called windfall benefit.

If that is not done, then obviously there has been a failure to fulfill a commitment, not to labor and management so much, but to people, the real people who have had that as a part of what they assumed to be benefits accruing to them during their active working lives.

Congress could have written that out of existence in 1974. It shouldn't have done so and it did not; it made the commitment that it would be funded fully, and it never has been since. We come back every chance we get.

Ms. MIKULSKI. Well, Mr. Hopkins, I am concerned about the role of the Congress in meeting its responsibility, but I would like to ask a couple of questions directed to you about your faith in us really.

You suggested borrowing from the general Treasury as one example of helping with this problem. How would you guarantee that those funds would be paid back as we move into the general Treasury?

Mr. HOPKINS. I understand the question, and I have no pat answer to it except to say I am confident that the people I represent would be prepared to structure that kind of borrowing authority in such a way that it would not be transitioned from a borrowing authority to a request for a grant.

In other words, when we say we want the ability to borrow the money to tide the program over temporarily from cash shortfalls, that is what we mean, and that is all we mean. And whatever it took in order to provide your committee or the Congress or the Government the assurance that it would be no more than temporary borrowing authority, we would certainly be prepared to provide.

Ms. MIKULSKI. This cash flow problem seems to be a significant one as you have outlined in your testimony.

It could be as much as an 18-month delay from our standpoint, and you suggest putting the financial interchange on a current basis. Considering the cash flow problems with social security, is that idea really practical and feasible?

Mr. HOPKINS. Yes; I am convinced it is. Obviously, I don't look at it from the standpoint of social security people, but the realities, I think, make it very clear. To us, to the railroad retirement account, putting the interchange on a current basis makes a difference of between 1 and 2 years. In other words, it staves off significantly the imminent cash flow problems, so I would call it an imperative from our standpoint.

On the other side of the coin, social security, the enormity of that fund compared to the railroad retirement account is such that putting the interchange on a current basis would mean no more than a difference of a day or two, an insignificant difference to social security.

To us it is almost a life or death matter, and to them it would be indiscernible and have no bearing, in my judgment, on the problems of social security. Those problems are there and they are serious, but they are not going to be made any worse by doing that, and it is a case of simple justice.

Why should this railroad retirement account, in the trouble it is in, be in the position of a creditor of social security for 15 months every year?

Ms. MIKULSKI. Mr. Hopkins, I am sure one of the things that both labor and management would agree upon is that the Social Security Administration has been really faulty in its response.

Have you all met with them on this cash flow matter, No. 1, and what has been their response?

Mr. HOPKINS. I try to be very careful, maybe excessively so, in trying to interpret other people's positions.

I would like to think that they are receptive in that they recognize the enormity of the problem for us and the fact that it means so little for them, but I cannot say that anyone representing social security has said yes, let's do that, but the sense of the situation—

Ms. MIKULSKI. Why did they tell you they can't be more prompt? What was their rationale for their lack of promptness?

Mr. HOPKINS. Excuse me; this is the way the law is structured, so they are living up to the law.

We have no fault to find with them in that respect, but obviously, getting the change that would be necessary to make it current, so we are not in a creditor's situation always, would require a change in the law. And it would be helpful to have a hospitable point of view on that score on the part of the social security people, just as you suggest.

Ms. MIKULSKI. Really, when we talk about legislation or possible legislation, that in addition to tier I, tier II and a variety of other complicated formulae funding systems, you are suggesting that something as simple and straightforward as shortening that time period of interchange would be of enormous help to you?

Mr. HOPKINS. Enormous; that is exactly the right word for it.

Ms. MIKULSKI. Thank you. It seems when Congress passes legislation we often do not see the impact, possible negative impact of our legislation; and while we are going to take this responsibility for this Railroad Retirement Act, you said the 1974 Act created some costly inequities.

While you are here, would you outline those for the committee and for the record, so we could have them as part of our record as we pursue legislative reform?

Mr. HOPKINS. I want to be responsive, and I will be.

I do not, however, want to prejudice the bargaining process. I think I should preface whatever I say here with emphasis on the fact that I am expressing my viewpoint. I don't speak for labor obviously. I am speaking of points that are, at least in management's view, in the midst of this process of bargaining, and are in some respects or in others somewhat controversial, but having said that—

Ms. MIKULSKI. Before you go on, let me say it is hard for the committee to redress inequities if we don't know what they are.

Mr. HOPKINS. Well, I think not, if you accept our premise. Whether you do or not, of course, I don't know, but our premise is that the parties should negotiate a joint resolution, a joint labor management bill on railroad retirement, and present it to you. And if we do the sensible and intelligent job I expect we will, we will hope to persuade you in every respect what we have agreed on should be enacted.

Ms. MIKULSKI. I don't subscribe to that. I would hope that, No. 1, labor and management could present us with a proposal for us to consider through the legislative process.

Mr. HOPKINS. That is what I am suggesting.

Ms. MIKULSKI. However, I have always been concerned when only two parties are locked in a room in a collective bargaining in an adversarial way, their recommendations are not always the most creative, and they would have certain limits on them.

My concern is even as you talk to each other you might not ask the right questions so your questions determine your answers. That is why you have a Congress that hopefully takes a little bit of a broader view.

I mean, even in a treaty process, when the Senate gives advice and consent, it can be amended and discussed and sometimes some refreshing changes occur.

We are looking at some initial enormous implications here, and I don't have to tell you about those. It has been your life-long work. I don't mean to in any way minimize the discussions that are going on, but I would hope that maybe, not maybe, I would hope that as we come together on this that we could be willing to take a look at the process through the next round of hearings, funding, coverage, a variety of other things.

This country is going through an enormous transitional period. It is the end of the petroleum age and the end of the world as we know it, and I am not saying it is all bad news, but I am not going to vote on something where two people got in the room saying there are a lot of mistakes but we are not going to tell you what they are, and this is the way we fixed it up.

Do you understand?

Mr. HOPKINS. I do understand, but I am not sure I am understood.

I would not expect the Congress to buy a pig in a poke, so to speak, and whatever we might come up with we would be prepared for a full-scale scrutiny by this committee or any other element of Congress before it is considered seriously for adoption.

What I am saying is that negotiation, particularly on an enormously complicated subject such as this, has its inherent difficulties and those difficulties become compounded to an insurmountable degree if we try to engage in them through the Congress, or subcommittee of Congress, but we don't have any secrets particularly.

I have none, but I want the people to know with whom we negotiate that it is not my intention to try to gain an inch in our bargaining by something that is said here.

Ms. MIKULSKI. I understand that, and the committee certainly would not want to prejudice any activity either. If and when this joint recommendation comes before us, will we at least know what were some of the inequities discussed in the course of those negotiations?

Mr. HOPKINS. I would have no reservations whatsoever in responding to that.

Ms. MIKULSKI. In order to arrive at really a good legislative package, we want to know what you consider the inequities, you and your association, the inequities. And I might have some concerns about inequities myself, the coverage of a widow's benefits, how women are treated in railroad retirement packages, they are a source of great interest to me.

I am not so sure the widows get a pretty good deal out of this, when we look at what you consider the inequities, both sides, and how they are addressed, then I think we can have a better idea if your suggestions meet that test.

Mr. HOPKINS. You said something earlier on about your concern and what you consider to be the concern generally, of the committee about our not retrogressing, that is to say, negotiating reductions in benefits, and I don't see that in the picture.

Now, in my view there are in some respects, we call them inequities, but there are respects in which we think that some elements of the benefit structure need to be reordered or refined or brought more in keeping with what the original intention of the parties was. But in the sense in which you meant it, those negotiations that are underway are not directed toward reducing benefits.

There are proposals around that would reduce benefits and some of them are ours, but those are more refinements. The administration bill, of course, on a very simplistic basis, reduces benefits 2 percent, increase the tax 2 percent, and 2 and 2 makes 4, and that takes care of the deficit.

That would be detrimental and exactly contrary to what we should be engaged in in our collective bargaining.

Ms. MIKULSKI. That gives me a great deal of assurance. I don't support the administration's proposal on this.

Mr. HOPKINS. I guess you could tell we don't either.

Ms. MIKULSKI. Could you give me a rough timetable for when, if possible, when you think we might have some recommendations coming forth from this joint negotiation committee?

Mr. HOPKINS. I think somewhat better than rough. While the unions have not accepted or subscribed to this, they have not rejected it either. We have said to them repeatedly, going back, the first time was almost 1 year ago, September of 1979, that we were prepared to set a deadline by which we would expect to have a joint labor management bill, the end of this year, 1980. And we have told them that as recently as 2 or 3 weeks ago that this is our intention.

As I say, despite our efforts to negotiate, and theirs too, and despite their desire to go it alone and see what Congress might do, nevertheless we think the subject is too important to do otherwise than to keep going forward, regardless of what efforts the organizations may be making on other fronts, to try to reach an agreement by the end of the year, and that is what we are aiming for.

Ms. MIKULSKI. Well, thank you very much for that optimistic note.

I have no further questions this time.

I would like to thank you for your testimony before the committee, and we look forward to working with all parties involved in stabilizing this railroad retirement system.

[Testimony concludes on p. 80.]

[Mr. Hopkins' prepared statement follows:]

9/4/80

STATEMENT ON H.R. 7793

by

CHARLES I. HOPKINS, JR.
CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

I am the Chairman of the National Railway Labor Conference, a position that I have held since April 1, 1977. The Conference represents almost all of the nation's railroads in national collective bargaining with the unions representing their employees and in regard to other matters concerning labor-management relations in the railroad industry, including negotiations with the unions upon recommendations for proposed changes in the railroad retirement system. I am making this Statement on behalf of the railroads in opposition to H.R. 7793 because enactment of that bill, in our judgment, would undermine the integrity of the collective bargaining process in regard to railroad retirement issues, would drastically increase the very high employment taxes already imposed upon the railroads under the Railroad Retirement Tax Act, and would provide increases in railroad retirement benefits that cannot now be justified.

I understand that H.R. 7793 has been introduced at the request of and is supported by the Railway Labor Executives' Association, which is comprised of the leaders of most of the unions representing railroad employees. It proposes to increase the rate of the Tier II tax imposed upon the railroads alone from 9.5% of taxable payroll to 12.5% for calendar year 1981 and to provide for automatic further adjustments in subsequent years in amounts to be determined by a formula. It also would require pre-retirement and post-retirement cost-of-living increases in the Tier II benefits payable

for five additional years. The railroads strongly object to both of those proposals in and of themselves for reasons that I summarize below. I will discuss first, however, a more fundamental objection which goes to the bill in its entirety. In attempting to persuade the Congress to enact H.R. 7793, the unions would have the Congress subvert the collective bargaining process which the Congress, in enacting the Railroad Retirement Act of 1974 (P.L. 93-445), intended to give rise to future recommendations for changes in the railroad retirement system.

A. Enactment of H.R. 7793 Would Undermine
Collective Bargaining on Railroad Retirement Issues

The Railroad Retirement Act of 1974 (the "1974 Act") amended, and in effect replaced, the Railroad Retirement Act of 1937, so as to provide a restructured railroad retirement system on a sound financial basis. Following a Report by a Commission on Railroad Retirement, established by the Congress to study the railroad retirement system (P.L. 91-377), the Congress in 1973 (P.L. 93-69) directed the railroads and the unions representing their employees to establish a joint committee for the purpose of negotiating and agreeing upon "joint recommendations for restructuring the railroad retirement system in a manner which will assure the long-term actuarial soundness of such system, which recommendations shall take into account the specific recommendations of the Commission on Railroad Retirement." The Congress also directed that those joint recommendations by the railroads and unions "shall be specific and shall be presented in the form of a draft bill." The railroads and unions did establish a joint negotiating committee

and, after long and arduous negotiations necessitated by the highly complex and difficult issues involved, they did reach agreement upon joint recommendations which, in 1974, were submitted to the Congress in the form of a draft bill. The 1974 Act resulted from the enactment of that bill without any significant substantive changes. See H. Rept. No. 93-1345, at 27-28; S. Rept. No. 93-1163, at 26-27.

A fundamental aspect of the restructured railroad retirement system, which was thus agreed upon by the railroads and unions and enacted by the Congress, is a "two tier" system of taxes and benefits: one of which (Tier I) generally provides for taxes and benefits equivalent to those imposed or afforded by the social security system (including the automatic application of legislative changes therein), and the second of which (Tier II) constitutes in essence a company pension plan for railroad employees, over and above the social-security level and based solely on railroad employment and compensation. As the congressional committees which recommended enactment of the 1974 Act recognized, Tier II thus constitutes "in essence, a company pension program administered, for historical reasons, by the Federal Government," and those committees accordingly contemplated that "[f]uture changes in Tier II benefits will arise out of collective bargaining between the railroads and the unions." H. Rept. No. 93-1345, at 16-17; S. Rept. No. 93-1163, at 16-17.

This reflects the view, with which I fully concur, that Tier II of the railroad retirement system not only involves issues that in all other industries are wholly settled through collective bargaining, but also that the long-term integrity and solvency of the railroad retirement system can

best be protected by the collective bargaining process. If the Congress should enact changes in Tier II benefits and taxes at the behest of one of the parties, such as the unions are now proposing in H.R. 7793, without awaiting joint recommendations arrived at through collective bargaining, railroad retirement once again will become a political football. The Congress will be buffeted by conflicting political pressures to make changes that have not been subjected to the discipline and control of collective bargaining.

Our concern in this regard is enhanced by the fact that such retirement benefits in essence are, like other fringe benefits, simply a part of the total cost to the railroads, and of the total compensation to their employees, for labor. The current national agreements between the railroads and railroad unions, which cover the years 1978, 1979, 1980 and the first quarter of 1981, in themselves increased the wages and other contractual benefits paid by the railroad by some 35 to 40%. That very expensive settlement would be grossly distorted if the Congress, at the behest of the unions, should enact H.R. 7793 so as to almost immediately increase the Tier II taxes paid by the railroads in an amount approximating 3% of their total payroll.

Moreover, when such railroad retirement issues are dealt with in collective bargaining as part of a total package, concessions on one side in regard to a railroad retirement issue often can be justified by concessions on the other side in regard to another issue or issues, so that an overall agreement can be reached by both sides with due consideration of all aspects of the total situation. A recent example of how this may work

is provided by the latest agreements between the steel manufacturers and the United Steel Workers which, as I am informed, converted 33 cents per hour that otherwise would have been added to basic wages under a cost-of-living provision to use in funding certain increases in pension benefits. As I also am informed, that amount is the equivalent of some 3% of total wages under the agreements, and thus is similar in that regard to the percentage by which the railroads' payroll costs would be increased under the bill proposed by the unions. That sort of give and take will be much more difficult in railroad labor negotiations, if not impossible, if Tier II retirement benefits and taxes are made a political issue to be decided by the Congress.

The railroads recognize that some changes need to be made in the railroad retirement system, and we hope to reach agreement upon recommendations to the Congress for such changes by the end of this year in negotiations which are now in progress with the unions.

Experience with the interpretation and application of the 1974 Act by the Railroad Retirement Board has revealed some costly inequities that were not contemplated when that statute was recommended by the railroads and unions and enacted by the Congress. They do not necessarily threaten the financial solvency of the system on a long-term basis, since the latest triennial valuation of the railroad retirement account -- the Fourteenth Valuation published in September of 1979 with regard to the status of the account as of the end of 1977 -- estimated an actuarial surplus of 2.08% of taxable payroll on the basis of assumptions that included no changes in

the existing law. However, four other actuarial estimates based on other sets of assumptions predicted actuarial deficits ranging from 0.65% to 4.61% of taxable payroll. I believe that it is fair to say that, under any realistic assumptions as to future inflation, there is no long-term actuarial deficit if the existing law is not changed. A more immediate problem, and a more important one on a short-term basis, is the cash flow or balance in the railroad retirement account. The Fourteenth Valuation predicted a negative balance at some time between 1987 and 1991 on all but the most favorable set of assumptions, and I understand that more recent estimates by the staff of the Railroad Retirement Board suggest that a negative balance may occur as early as for some months in 1982 or 1983 although that is by no means certain.

Because of their recognition that some changes are needed, the railroads proposed to the unions that railroad retirement be included in the issues to be considered and resolved in the national negotiations which resulted in the current national agreements. We had some discussions apart from those national negotiations and indeed seemed to be in tentative agreement upon recommendations for a number of changes in the 1974 Act, but the unions never were willing to dispose of the railroad retirement issues in connection with that round of national negotiations and the agreements reached in 1978 and 1979 did not cover those issues. Since then, the railroads from time to time have continued to urge the unions to commence serious negotiations about railroad retirement with the intent and purpose of reaching agreement by the end of this year upon recommendations to the Congress for comprehensive changes that should dispose of the matter for at least some years to come. In the spring of this year, the unions agreed to commence such negotiations

and they have since been underway and, it seems to me, to be making substantial progress. At this very time, a technical committee (composed of technical consultants to the railroads and unions with the assistance of the technical staff of the Railroad Retirement Board) is studying various suggested alternatives so as to determine their costs and other effects. When that committee reports around the end of this month, it is my hope and expectation that progress towards agreement will be even more substantial and I continue to believe that there is a good prospect of an agreement by the end of this year. That continues to be the goal of the railroads and if the unions will join with us in further good faith bargaining it should be realized with little or no slippage. It is discouraging, however, that the unions are now urging the Congress to enact H.R. 7793, despite our negotiations, as that approach is antithetical to a negotiated agreement.

I do not propose at this time to go into the details of those negotiations, particularly since neither side has yet asserted final positions with regard to many matters. I think it fair to say, however, that the approaches which have seriously been urged by the unions, much less those suggested by the railroads, have little resemblance to what is proposed in H.R. 7793 either as to taxes or as to cost-of-living increases. It is my considered judgment that enactment of H.R. 7793 would disrupt the ongoing negotiations and make it much more difficult, if not impossible, for the parties to reach agreement upon the comprehensive changes in railroad retirement that should be enacted by the Congress.

To afford some notion of the kind of problems that are being tackled in the negotiations, but are entirely ignored by H.R. 7793, I will briefly mention one of the most serious insofar as long-term costs and

thus any potential actuarial deficit in the railroad retirement account are concerned. Under the 1974 Act, an employee with 30 or more years of railroad service may retire at age 60 with full retirement benefits, including a Tier I benefit equivalent to what social security would pay if he retired at age 65. Since the earliest retirement age under the Social Security Act is 62 and even then the benefit payable is reduced 20% from what would be payable if the beneficiary had retired at 65, the financial interchange with the social security system does not recompense the railroad retirement system for any part of the Tier I benefit paid between ages 60 and 62 or for 20% of the Tier I benefit paid after age 62. Thus, that cost plus the entire cost of the Tier II portion of the benefit is borne by the railroad retirement account without any recompense through the financial interchange.

The cost of this provision has been enhanced by an unanticipated result when, as interpreted by the Railroad Retirement Board, the Tier I benefit is calculated on the assumption that the employee is in fact age 65, with the result that his Tier I portion is higher than that of an employee with identical years of service and compensation who in fact retires at age 65, and by a 1977 amendment to the Social Security Act which can have the effect of increasing the amount of the Tier I benefit that is not recompensed. Moreover, the Tier I portion, including the unrecompensed 20%, is subject to cost-of-living increases measured by 100% of the change in the CPI, with the result that the unrecompensed Tier I benefit, and thus its cost, in time may exceed the full Tier II benefit and the cost thereof. For these and perhaps other reasons, the rate of early retirement and the cost of that provision to the railroad retirement account has been far

greater than was estimated when the 1974 Act was under consideration, and it has become increasingly obvious that the provision must be examined in our negotiations.

That is only one, even if one of the most important, of many provisions of the 1974 Act with respect to which either substantive or technical revisions need be considered by the negotiators. Some of them are controversial, others appear to be readily acceptable to both the railroads and the unions, but all of them take time and serious good faith negotiations to work out in detail and fit into an overall package upon which both sides can agree.

I want to emphasize that the negotiators are not neglecting the cash flow problem, and I believe it is fair to state that the railroads and unions already fundamentally agree as to the most appropriate means of resolving that problem. Indeed, an earlier bill introduced at the behest of the unions (H.R. 5144) contains provisions that the railroads are willing to accept which would remedy any problem in that regard. Immediate relief would be provided by placing the financial interchange and windfall appropriations on a current basis. Permanent relief would be provided by authorizing temporary borrowings from the General Treasury, when necessary, with the amounts thus borrowed to be repaid with interest when the necessary funds become available.

Under the existing law, there is a lag of as much as 18 months in the payment by the social security trust funds to the railroad retirement account of the amounts owing to that account under the financial interchange.

While interest is paid so that the delay does not significantly affect the long-term financial condition of the railroad retirement account, the delay is a very important factor in the cash-flow problem. It has been estimated that placing the financial interchange on a current basis would postpone the incidence of any shortages in the railroad retirement account by between one and two years. On the other hand, the amounts involved would not significantly affect the cash flow of the much larger social security trust funds. Furthermore, as the Actuarial Advisory Committee pointed out, in its July 26, 1979 Statement to the Railroad Retirement Board in connection with the Fourteenth Actuarial Valuation of the Railroad Retirement Account: "It is manifestly unfair to require the Railroad Retirement System to, in effect, lend funds to Social Security." Placing the financial interchange on a current basis would terminate that unfairness as well as significantly alleviating the cash-flow problem facing the railroad retirement account.

In enacting the 1974 Act, the Congress recognized that the cost of phasing out windfall dual benefits should be paid out of the General Treasury. Section 15(d) of that Act authorizes the appropriation, each year over the 25-year period beginning with fiscal year 1976 and ending with fiscal year 2000, of "such sums as the Board determines to be necessary on a level basis" to pay those phaseout costs as reduced by certain interest earnings of the railroad retirement account. The Railroad Retirement Board was directed to "re-evaluate" its estimates as to the amounts needed to pay such costs every three years in connection with the actuarial

valuations of the railroad retirement account. Both the General Accounting Office and the Railroad Retirement Board have recommended that this method should be replaced by a "pay-as-you-go plan" under which the appropriations to cover the costs of the phaseout windfall benefits would be kept reasonably current with the payment of such benefits. Appropriation of those costs on a current basis would avoid the uncertainties inherent in the actuarial estimates that must be made under the existing procedure. More importantly for present purposes, the existing procedure has exacerbated the present cash-flow problem of the railroad retirement account since, during the early years when the windfall payments are reaching a peak, the costs are greater than the estimated amounts to be appropriated, and the consequent adverse effect upon the cash balance of the railroad retirement account has been enhanced by the failure of the Congress thus far to appropriate the full estimated amounts.

Thus, for the period between January 1, 1975 and December 31, 1979, the amount appropriated by the Congress to fund the payment of windfall benefits was more than \$600 million less than the amount actually paid. This is attributable in part to the failure of the Congress to appropriate the full amount called for by the 1974 Act, but even if that had been done there would have been a shortfall of about \$300 million. I note that OMB, in recommending the reduced appropriations, has justified such recommendations on the grounds that the Administration was proposing legislation to similarly reduce the windfall benefits payable, but insofar as I am aware such legislation never has been seriously considered and certainly it has

not been enacted by the Congress. The railroads believe that the Congress should fulfill the obligation it assumed when it enacted the 1974 Act to fund the windfall benefits provided for therein out of the General Treasury, but if the Congress is not willing to do so it should eliminate or reduce those benefits accordingly.

The committee reports on the 1974 Act explained at length why it would be unfair to impose the cost of phasing out windfall benefits upon either the railroads or present employees. H. Rep. No. 93-1345, at 2-9; S. Rep. No. 93-1163, at 2-9. *Moreover, prior to the 1974 Act, the payment of windfall benefits cost the railroad retirement account over \$4 billion, none of which has been reimbursed to that account from the General Treasury or the financial interchange, and investment of funds in the railroad retirement account was restricted to government obligations paying interest much less than otherwise could be obtained through prudent investment policies. And, while the 1974 Act changed those investment restrictions, the increased interest income resulting therefrom is utilized under the Act to reduce the amounts which otherwise are to be appropriated out of the General Treasury for payment of the costs of phasing out windfall benefits. In view of these circumstances, it seems both just and reasonable to ask that the cost of phasing out windfall benefits be fully funded out of the General Treasury on a current basis.

While placing the financial interchange and the windfall appropriations on a current basis certainly would substantially delay the occurrence of any cash shortage in the railroad retirement account, that might not be sufficient to avoid the problem altogether. The underlying difficulty is that there has been a "bulge" in the relative number of beneficiaries as

compared to active employees which is expected to peak in the 1980s before gradually subsiding. That is why the system may incur temporary cash shortages even though it is financially sound over the long term. Neither increased taxes nor reduced benefits is a fair or appropriate means of dealing with such a temporary and unusual problem. If any amounts that may be necessary to avoid such temporary shortages can be borrowed from the General Treasury and then repaid with interest, artificial distortions in taxes and benefits can be avoided without any significant long-term cost to the General Treasury.

Finally, there is no emergency which requires immediate legislation. It is debatable whether the railroad retirement system is in a deficit position at all on a long-term basis, and the most pessimistic predictions as to when the cash flow problem will first result in a negative balance in the railroad retirement account do not place that occurrence before some time in 1982. Thus, action by the Congress next year clearly would be in time to avoid such an occurrence. As I have stated, the railroads intend to exert every reasonable effort to reach an agreement with the unions by the end of this year upon joint recommendations to the Congress, and it is my belief that that can be done if the unions also exert such an effort. Certainly, such an agreement should be reached or the negotiations have reached a point where it has become plain that the collective bargaining process has failed in ample time for the Congress in its next session fully to consider what should be done and to enact appropriate legislation. In the meantime, the collective bargaining process should be given an opportunity

to work without being frustrated through enactment by the Congress of legislation such as H.R. 7793 which is supported only by the unions and is completely one-sided.

B. The Provisions of H.R. 7793 Are
Objectionable Even Apart from the Effect of
the Bill's Enactment upon Collective Bargaining

While the effect of the enactment of H.R. 7793 upon collective bargaining with respect to railroad retirement issues is sufficient reason in itself for a quick burial of the legislation, there are other compelling reasons why the railroads object both to the tax increases and to the benefit increases which the bill would impose.

1. The proposed tax increases. The provisions of the bill (section 2) increasing the Tier II employment taxes payable by the railroads are truly shocking, and it is hard to believe that they seriously can be intended. Substantial concern has been expressed in the Congress and in the country at large about the increases in social security taxes effective under existing law on January 1, 1981, when the tax rate on both employers and employees will increase by 0.52% of taxable compensation. Those increases in social security taxes will automatically be reflected under existing law in similar increases on January 1, 1981 in the Tier I railroad retirement taxes payable by both the railroads and their employees. Yet, the bill proposes to increase the tax rate of the Tier II railroad retirement taxes payable by the railroads alone by 3% of taxable payroll effective January 1, 1980, and would establish a formula under which further adjustments in that Tier II tax automatically would be imposed in subsequent years. An employment tax burden

that already is crushing would become catastrophic with respect to a railroad industry that already is in deep financial trouble and at a time when the railroads, like much of the rest of the economy, are suffering from the effects of depressed economic conditions.

Employment taxes are imposed upon the railroads and their employees by the Railroad Retirement Tax Act, which is Chapter 22 of the Internal Revenue Code, 26 U.S.C. §§ 3201-3233. Those taxes already have reached the point where they are almost unbearable insofar as the railroads are concerned.

The social security tax rate applicable at any particular time to employees (26 U.S.C. § 3101) and to employers (26 U.S.C. § 3111) in other industries automatically is applicable to the railroads (26 U.S.C. § 3221(b)) and to their employees (26 U.S.C. § 3201), and those provisions also automatically apply a monthly maximum on taxable compensation that is 1/12th of social security's annual maximum. That tax rate presently is 6.13% of taxable compensation with respect to both employers and employees, is scheduled under existing law to increase in 1981 to 6.65%, and further increases are now scheduled for 1982, 1985, 1986 and 1990 when the tax rate will become 7.65%. Social security's annual maximum on taxable compensation is the same as the "contribution and benefit base" (26 U.S.C. § 3121(a)) under Section 230 of the Social Security Act, 42 U.S.C. § 430. That base and thus the annual maximum generally has been increased annually pursuant to an indexing formula (based upon increases in annual taxable wages) in Section 230, but a 1977 amendment (P.L. 95-216) mandated a series of arbitrary increases (expected to be larger than the formula would provide) for the years 1978-1981 after

which the formula will again apply. Those arbitrary amounts are \$25,900 for 1980 and \$29,700 for 1981, which result in monthly maximums for these Tier I railroad retirement taxes of about \$2158 for 1980 and of \$2475 for 1981. Since the maximums on taxable compensation are also the maximums on creditable compensation for purposes of determining social security benefits and the Tier I portion of railroad retirement benefits, increases in taxable compensation also increase the amount of those benefits insofar as based upon an employee's creditable compensation.

In addition to those Tier I taxes, the railroads alone pay a Tier II tax which is fixed at 9.5% of monthly taxable compensation (26 U.S.C. § 3221(a)). While the monthly maximum on such taxable compensation also generally is 1/12th of social security's annual maximum, when the Congress in 1977 amended Section 230 of the Social Security Act to provide the arbitrary increases referred to above, it declined to make those increases applicable to the maximum taxable and creditable compensation for purposes of Tier II of the railroad retirement system. Rather, the Congress provided in the last sentence of the amended Section 230(c) that such maximums should continue to be increased in accordance to the formula without regard to the arbitrary increases. Thus, the current monthly maximum for this Tier II tax is \$1700, which is equivalent to an annual maximum of \$20,400. That maximum will be further increased under the formula on January 1, 1981 and (assuming continued wage inflation) on January 1 of subsequent years.

Furthermore, the railroads alone also pay a supplemental tax at a rate applicable to man-hours of compensated work which is fixed quarterly

by the Railroad Retirement Board at a level intended to make "available sufficient funds . . . to pay supplemental annuities" (26 U.S.C. § 3221(c)). That rate currently is 12.5 cents for each such man hour. While the employment taxes thus payable by the railroads cannot simply be added to reach a total, because of the differences in the tax bases, in all they result in the railroads paying employment taxes which this year amount to about 15% of Tier I taxable compensation as compared to the 6.13% paid by employers in other industries.

Despite that crushing burden imposed by existing law, the bill would increase the Tier II tax rate imposed upon the railroads from 9.5% to 12.5% effective January 1, 1981. If that increase should be enacted, the employment taxes payable by the railroads will be increased by some \$300 million in 1981 even apart from the increase of some \$100 million which will result from the scheduled increase in the Tier I tax and an additional increase of about \$70 million which will result from the scheduled increase in the Tier II maximum on taxable compensation. The magnitude of such tax increases and their shattering impact upon the railroads can perhaps to some extent be realized when contrasted with the fact that the net operating income of all railroads for 1979 was slightly less than \$800 million, which was the most favorable for any year since 1966. Hence, the increased tax burden in 1981 could virtually eliminate potential profits, forcing even more railroads into bankruptcy and necessitating reductions in maintenance and service by most, if not all, railroads. The railroads' rate of return on net investment in 1979 was only 2.68%, that rate has not exceeded 3% since 1966, and often has been under 2% in recent years. The Interstate

Commerce Commission regards a 11% rate as being necessary to afford the railroads an adequate return on capital investment under current conditions.

But that is not all even though in itself it should be sufficient to demonstrate the utter unreality of the bill's tax provisions. For the years after 1981, the Tier II tax rate imposed upon the railroads alone would automatically be adjusted as of the commencement of the year in accordance with the balance-benefit ratio of the railroad retirement account as of the preceding September 30th, except that the rate could not be adjusted below 9.5% before 1986. While that "floor" affords another demonstration of the completely one-sided nature of the proposed legislation, I doubt if it is significant as the formula can be expected to generate further tax increases rather than decreases for years to come. Indeed, the Railway Labor Executives' Association has been quoted as estimating that the Tier II tax rate imposed upon the railroads may be increased to as much as 20.5% by 1983 requiring the payment of "very close to \$2 billion total for that year" in Tier II taxes, an increase of about \$1 billion over what existing law requires. If that should occur, it is doubtful whether there would be much of a railroad industry left to pay such taxes.

Any such automatic formula for increasing the rate of employment taxes payable by the railroads alone is virtually certain to be self-destructive. The Congress is aware of the perilous financial conditions of much of the railroad industry, including the bankruptcy in recent years of the Penn Central, the Rock Island, the Milwaukee and a number of smaller railroads. Such drastic increases in the employment tax burden, which would

not be shared by the trucking industry and other competitors of the railroads, almost certainly would push others over the line into bankruptcy, and necessitate reductions in maintenance, service, mileage operated and thus in employment by even those railroads that are in relatively healthy condition. Such decreases in employment and thus in taxable payroll would generate ever higher increases in the tax rate in an effort to support the benefits payable from an ever-decreasing employment base, even if the benefits payable remained static. And, a statutory scheme under which the railroads automatically would be assessed whatever additional taxes are necessary to pay for benefit increases would encourage the unions, the employees they represent and existing beneficiaries to pressure the Congress in the future for ever greater increases in benefits. In short, the adoption by the Congress of such an amendment would be disastrous to the railroads and to the public interest in adequate and efficient rail transportation, and in the long run also to railroad employees whose employment opportunities would be reduced and to retirees whose benefits would be placed in jeopardy.

That the unions themselves recognize the excessive burden that would result from the tax provisions of the bill is evidenced by the fact that they have not proposed a similar amendment in regard to the taxes imposed upon employee representatives by 26 U.S.C. § 3211. Those union officials heretofore have paid a tax that in effect combines the taxes paid by employees and the railroads, including the Tier II tax that is now fixed at 9.5%. That tax rate would continue to be fixed at 9.5% with regard to the employee representatives, although immediately increased to 12.5% and made adjustable to even higher levels with regard to the railroads.

To summarize, the railroads oppose as strongly as they can the proposed increases in Tier II taxes. Even apart from the principle that changes in Tier II taxes and benefits should be based upon joint recommendations arrived at through collective bargaining, the railroads simply cannot afford the increased taxes which would result from enactment of the unions' bill.

2. The proposed benefit increases. Under the 1974 Act, a portion of the Tier II benefit amounts automatically are increased by 65% of the change in the CPI between September 1976 and the September preceding the employee's year of retirement or calendar year 1981, whichever is earlier; and after retirement, a portion of the Tier II benefit amounts automatically were increased on June 1 of 1977, 1978, 1979 and 1980 by 32.5% of the increase in the CPI during the preceding year ending on March 31. Section 1 of H.R. 7793 would extend those automatic pre-retirement increases for five more years through 1985 and would extend those automatic post-retirement increases for five additional years on June 1 of 1981, 1982, 1983, 1984 and 1985. The railroads also are opposed to that proposal even apart from the effect of enactment of the bill upon collective bargaining.

When the 1974 Act was being considered in negotiations with the unions, the railroads readily agreed to cost-of-living increases in the Tier I or social-security portion of railroad retirement benefits that are equivalent in time and amount to such increases in social security benefits (measured by 100% of the increase in the CPI), and the 1974 Act so provides, so that railroad retirees are assured the protection against cost-of-living increases

that generally is available to retirees from other industries. The railroads were very reluctant to agree to any automatic cost-of-living increases in the Tier II portion of railroad retirement benefits, however, particularly since most private pension plans in other industries did not provide for such increases. Nonetheless, a few major pension plans had recently included provisions for limited automatic cost-of-living increases and it was thought that this might represent the beginning of a trend, so the railroads finally agreed in 1974 that the 1974 Act should include the provisions for Tier II cost-of-living increases described above, in view of the limitations upon both the extent and the times of such increases.

In fact, the anticipated trend to include such provisions in private pension plans did not develop, and I understand that provisions for automatic cost-of-living increases in such plans are as rare or even rarer than in 1974. I am informed that no major industry has a collectively-bargained pension plan that provides for automatic cost-of-living increases in benefits. To mandate such increases for five more years in addition to the four years which the railroads and unions agreed upon as a limited feature of the 1974 Act would tend to rivet those provisions into the law on a permanent basis however unjustified they otherwise might be. This is a matter with respect to which the railroads are prepared to negotiate with the unions, and in fact one that is being considered in the ongoing negotiations although the unions, as well as the railroads, have suggested approaches that differ substantially from the one proposed in the bill. But regardless of what eventually may be worked out in that regard, it is worth repeating

that railroad retirement beneficiaries are assured of the same cost-of-living increases that are afforded to social security beneficiaries, with respect to the Tier I portion of their benefits, so that they have as much protection against inflation as is provided by the social security system even if the 1974 Act never is amended.

C. Conclusion

For these reasons, the railroads adamantly oppose the enactment of H.R. 7793. It would impose an immediate increase of almost one-third in the Tier II taxes imposed upon the railroads alone, even though the employment taxes imposed on the railroads already are between two and three times as much as the employment taxes imposed on employers in other industries and thus have reached any reasonable limit. By providing for automatic future increases in the Tier II taxes payable by the railroads alone, the intolerable burden which the bill would thus impose would continue to increase without further resort to collective bargaining or to the Congress. And, this burden would be further enhanced by additional pre-retirement and post-retirement cost-of-living increases in Tier II benefits which have few, if any, counterparts in the pension plans through which other industries supplement social security benefits. This would be done even though the economy as a whole is in the midst of a recession and even though the financial problems of the railroads are more severe than those of industry generally and for many years their earnings have been abnormally low even in the best of times.

Even more fundamentally, as I stated at the outset, the bill as a whole represents an effort by the unions to have the Congress enact railroad retirement legislation at their unilateral request, and thus would subvert

the intention of the Congress in enacting the 1974 Act to have future changes brought about through its action upon recommendations jointly negotiated by railroad labor and management. Its enactment would upset ongoing negotiations which I firmly believe otherwise will result in joint recommendations, if the parties exert the same good faith effort that they have in recent months, that will provide a comprehensive solution to the problems of the railroad retirement system for years to come that will be acceptable to all concerned in time to be considered and acted upon by the Congress next year.

I appreciate this opportunity to present the view of the railroads that I represent in opposition to H.R. 7793, particularly since it involves matters of large importance to the railroads in regard both to the principles which would be adversely affected and to the costs that would ensue if that bill should be enacted.

Ms. MIKULSKI. I would like to thank all of you who participated. We all want to protect the railroads.

With that, the committee hearing stands adjourned, and thank you all very much.

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