

part of the job which can be dealt with in education, there is another part which has to do with an economic basis. The compensation is higher, it has a direct effect on health, welfare, and pensions.

What, if any, cognizance should we take of that economic fact of life?

Secretary WIRTZ. To condone the differentiation on the basis of age?

Mr. BURTON. There is a difference, employers are affected differently in payroll terms when they hire older workers. Do we say that is tough, this is our policy?

Secretary WIRTZ. To whatever extent there is that unavoidable difference, this bill would not prohibit the differentiation.

Mr. BURTON. You mean to tell me if your pension payments are higher, you could then avoid the provisions of this bill?

Secretary WIRTZ. No, I did not mean that and it should be made quite clear that that would not be permitted under the bill.

I think it would be less than frank to disregard the impact of a bill of this kind on some established thinking about pension and welfare plans, even about seniority plans. I suppose the facts of the matter are that some of our thinking about pension plans and seniority has not kept up with the facts either.

Mr. BURTON. Would you suggest the provisions of this law override a collective bargaining agreement with reference to seniority?

Secretary WIRTZ. No, I would not. But I think I could react better to that problem in terms of specifics, which don't occur to me at the moment.

If a seniority clause were so constructed or a retirement clause were so constructed that it unfairly attached significance to age, my answer would be "Yes" to your question.

Mr. BURTON. Who would judge that?

Secretary WIRTZ. The Secretary of Labor.

Mr. BURTON. By what standards?

Secretary WIRTZ. By the standards of whether there is differentiation on the basis of age which the facts do not warrant.

Mr. BURTON. I gather then your response to my immediate preceding question was whether or not the hiring of older workers results in increased workmen's compensation or health, welfare, and pension payments by the employer, you don't suggest that we have any fiscal arrangement that would deal with that?

Secretary WIRTZ. No, nor subsidy to take care of that. You are administering in this bill an area affected by plans that have been established and by collective bargaining agreement provisions. That area is the hardest to deal with. No question about it. And I think it should be made clear that the bill does recognize on the one hand those plans, specifically recognizes those plans that are worked out for rational reasons, so long as they do not result in differentiation just on the basis of age itself where there is not justification in fact.

I know it is hard to state because it is a hard line to follow. I think both tactics have to be recognized.

Mr. BURTON. Must the complaint be verified or under oath of the older person? Can the complaint be brought by an organization in behalf of the complaining individual?