

have no bar or no restriction on age of waitresses. There are those who would either find other jobs or offer other types of employment to take them away from the job of waiting on tables. Some airlines have an age clause that automatically eliminates stewardesses from certain duties in the air service.

Others have never had any restriction whatsoever. In looking at the stock market they all seem to be doing pretty good whether there is an economic problem or not in that field. In that area you wonder whether or not you can maintain an arbitrary age limit. We are finding ourselves in this legislation in the area of things the employer has complained about.

Mr. PESTILLO. I think your arbitrary age limit would result in finding an attempted solution to the problem which you can handle. By holding to a fixed age limit you have an area you can attack and deal with.

Going beyond that it would probably require a more ambitious investigation.

Mr. DENT. There is always the fear of creating a requirement that becomes physically impossible to administer. It causes us sometimes to put restrictive and arbitrary covenants in legislation that we find later on have been a hindrance, to the proper administration of the act and the achievement of the goals.

As you well know, for many years we operated under the theory that the so-called commerce clause had to be adhered to in the enactment of minimum wage and fair labor standards legislation.

As you know, this committee took a contrary view last year and we wiped out the so-called dollar volume test in five areas of employment. We find now that the employers of these five areas of employment, if they can be said to be happy with any legislation, are happier with that type of legislation than they were prior thereto because the whole concept of what minimum wages were intended to do was negated when you set a limit on the employers' income or gross business. We are not passing a minimum wage for an employer; we are passing it for the employee. If there is a need for the employee, whether he works under wages or what, it does not remove the need for that employee.

It is going to make it easier by setting an age limitation of 45, 40, or whatever, I can see the limit of 55, even an old horse has to be put out to pasture.

Mr. PUCINSKI. Maybe a retired Congressman?

Mr. DENT. I think one of the major problems is that we may be setting a precedent in Federal legislation and in many instances our age limits in this legislation are out of line with the rest of the States that have 40 years as their base for age-discrimination legislation.

I do believe that that is one of the problems. We are not satisfied that 45 is a fixed figure, very frankly.

Mr. PESTILLO. I agree, the committee has to consider where the problem exists. I don't think I would go to 32 to get at the airline stewardess situation.

Again there is not a big enough problem below 40 or 45, I am not taking a position on what age, to justify going all the way down and encompassing too low a level. Every time you set an arbitrary limit there is abuse, someone will be discriminated against by being age 44, and there is no remedy. But I think that is a risk and we have to confine ourselves to reasonable limits.