## THE JOB MOBILITY OF OLDER WORKERS

Although the older worker has often been praised for stability, this desirable trait may be accompanied by a diminished job mobility, either geographic or occupational.

Migratory patterns among a sample group of men 18 to 64 were studied recently by the Bureau of Labor Statistics, during the period from March 1962 to March 1963.1/ The study found that men aged 45 and older were only half as likely to move across a county line, or further, as the general average for the group. Married men were less willing to move than the others whether or not they had children, probably because of family ties, home ownership, or the job of the wife.

Other general findings of the study applied generally to both older and younger workers. For instance, professional and technical workers were more apt to move than the others. Some with skills in nationwide demand were more likely to get job offers from a distant location or to be transferred by their company. Having high incomes and better employment prospects, they were financially able to make major geographic moves.

Half the group moved either to take a job, to look for one, or to make a job transfer. Unemployed workers were more likely to migrate than the employed, and in general did better than those who did not move. About 72 percent of those unemployed in March 1962, who migrated during the next year, were employed in the following March, compared to only 55 percent of those who stayed at home. It would appear that the older workers' reluctance to move seriously impeded their chances of re-employment.

Most migrants remained in the same occupational group, no matter where they moved, except for nonfarm laborers. Of the laborers in the sample, only 35 percent were still laborers in March 1963, while 30 percent had become operatives, eight percent were craftsmen, and 18 percent had become white-collar workers.

The older worker's lack of occupational mobility was noted in a study by the United States Department of Labor in seven labor market areas2/ which showed the pattern of job stability increasing after age 45, and most sharply at age 65. In areas where manufacturing employment was important, holders of one job became more numerous with advancing age than elsewhere. The average duration of jobs also increased with

1/ Saben, Samuel, "Geographic Mobility and Employment Status, March 1962 - March 1963," Monthly Labor Review, August 1964, Pages 873 - 881. (This article is also summarized in Business Week for October 3, 1963.)

2/ U. S. Department of Labor, Bureau of Employment Security, Older Worker Adjustment to Labor Market Practices: An Analysis of Experience in Seven Major Labor Markets. BES No. R151, Washington, D. C., 1956.



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age. In a group of unemployed older workers, one-third aged 45 to 54 had held their jobs on an average for four or more years during the past 15-year work period, as had three-fourths of those 65 and over. Almost half of the older group had had an average job duration of 12 years or more during the 15-year period. About two out of three had held jobs in only one locality during the previous fifteen years.

Most of the older job seekers showed attachment to the industry in which they had held their longest job in the preceding fifteen years. The workers in this study showed no strong pattern of job changes by industry, when they did change.

Older women made fewer job changes than younger ones. Although women move in and out of the labor force more frequently than men, there were relatively fewer job shifts among the women in the BES study. Older women had more trouble finding a job, when they became unemployed, than did the older men, and were typically employed for shorter periods and unemployed for longer periods, though not unemployed as often.

Three out of four job seekers aged 45 and over in the seven-area study had most recently worked in an occupation similar to their longest job in the past fifteen years. Four out of five applicants in the 45 and over group whose most recent job was professional, managerial, or skilled, had worked longest at a similar type of job.

However, only half those formerly in professional and managerial work had their last jobs in similar occupations. According to the BLS, "These figures suggest that workers over age 45 have considerable difficulty in holding to professional or managerial functions if once separated from them. They move into all other occupational fields but most noticeably into clerical and service jobs - over one in five had their last jobs in these areas of work. One in ten moved over into a skilled manual trade, and as many moved down to semiskilled and unskilled jobs." 3/

3/ Ibid.

Mr. HAWKINS. No witness before this committee had denied that age discrimination does exist and everyone seems to be weeping tears about it but there are some in opposition to this approach on the basis that nonstatutory means do exist through education or through proliferating the problem into other agencies. For example, the Wage and Hour Division of the Labor Department has been suggested as an agency that might handle the subject, and so on.

Some have suggested the Equal Employment Opportunity Commission as the agency. Everyone differing with this proposal seems to suggest another agency, not always the same one. Out of your experience would you conclude that these methods are rather fruitless and that we should enact a statute of this type which deals directly with this problem which has some law enforcement provision which does have some meaning to it?

Mr. BECHILL. Absolutely.

Mr. PUCINSKI. Will the chairman yield?

Mr. HAWKINS. Yes.

Mr. PUCINSKI. I would hope to get this information together and give consideration to the proposal I introduced in Congress to eliminate the economic factor from this problem. I would like to amend the Civil Rights Act, as we attempted to do the last time it was before the House, and include age as a bar to discrimination along with race, religion, sex, and national origin.

As you recall, Commissioner, the last time the civil rights bill was before the Congress—there was substantial debate to include age in that category and I personally believe that is where it belongs.

I think the law needs teeth such as the civil rights law has and as we have in FEPC to enforce that act.

My own feeling is we have had enough studies. These proponents of more studies should do what I did a couple of years ago. While on a visit home I put on a sports shirt and slacks and went out with a lot of other people and got in line at a factory. The personnel man took a look at my grey hair and he did not even give me the courtesy of asking my name or ability. His first question was how old are you? When I said 47, he said I am sorry, the company policy is we don't hire anyone past 40.

You don't need a study to know this. Every middle-aged American in this country knows the problem he is having. The chamber of commerce has reports showing that when a man past 40 loses his job, his chances are 6–1 against getting another job. I say we know the problem and it seems to me what we need is firm, positive action to bar discrimination on the basis of age in hiring practices.

I would like to ask, Commissioner, that you undertake the study that we have discussed on the economic factor as quickly as possible so we can go before Congress and say let's remove the economic factor and then add to the Civil Rights Act to bar this discrimination against a man who has reached the calendar age of 40 or more.

I can walk through my district and talk to a middle-aged person and he will tell you the problem. A man past 40, 45, 47, or 50 tightens up every year. He knows better than anyone else if he loses that job his chances of getting another are practically nil.

Here is a man in the autumn of his life who enters into a period of great fear, great emotional strain because he is fearful of what will happen to him if for some reason or another he loses a job.

Companies move, companies merge. There are all kinds of reasons why people are laid off and the chances of those people getting another job under present circumstances are very slight unless they have a highly specialized skill.

Mr. BECHILL. I think the bill before you is a strong and effective bill and will attack the kind of problem that you are describing. It embraces an educational effort and a research effort. One study will not identify all the aspects of this problem.

Mr. PUCINSKI. Just so we understand each other, I have no objection to this bill but I tell you now for the man on the street looking for a job who has been severed from his present job for reasons beyond his control and having nothing to do with his ability the future is frightening. I have a company moving down to Georgia from my district, a lot of people will be unemployed, it is not their fault.

Those people want action, they don't want a study. They want an amendment to the civil rights bill which states it shall be against the law to discriminate against a person by refusing work because of his age.

I am supporting this legislation but let's not kid people into thinking somehow or other we are going to take care of their problems.

We would take care of their problem if we barred discrimination because of age.

Mr. HAWKINS. The Equal Employment Opportunity Commission is not seeking this amendment to the act and there are many individuals who disagree with including age in that particular act for various reasons, some of which have been placed before this committee.

It seems the gentleman from Illinois is saying we have played around too long and should do something immediately. It seems we should perhaps study the economic costs before we go into it. I am sure it was not intended to be a debate on whether we were going to put this in the Civil Rights Act.

They are now burdened down in the Commission with sex discrimination cases and I am afraid this problem would be submerged with other problems. It seems what the gentleman is suggesting is somewhat contradictory to what I know his intent to be which I know is to do something about this problem as soon as possible.

Mr. PUCINSKI. What I am saying is that we should move this legislation as soon as possible. If the gentleman will recall when we had debate on the civil rights bill last year, various people told us we did not know enough about it.

They did not come out against it; they tried to give us more time. Then the gentleman will recall that some of those really supporting the age discrimination amendment to the bill gave us strange support. If you will recall, some wanted to clutter the bill to kill the bill.

They were not interested in helping the older people of this country. They wanted to tack on many amendments and hope somehow to kill the bill. I say this and have said this for 5 years.

I see the gentleman from the Eagles over here. They know my position. We lost approximately 16 months only because agencies drag their feet. We ought to have someone taking care of those economic factors and then move as speedily as possible to bar discrimination against age.

It is incredible to me that an American citizen should be denied the

right of a livelihood simply because he has reached an age some personnel officer arbitrarily says is too old.

We know the Metropolitan Life Insurance Co. will sell me a pension policy; they will sell me a package for my employees at a set rate for each employee up to the age of 40. Then when they reach 40 the premiums begin escalating with every additional year of their age.

This is why I say it seems to me if we are going to bring meaningful help to the aging in this country who want to work and earn a livelihood, who want to be good decent citizens—they don't want a public dole; they want to carry their load—I say we ought to get the figures on the economic factors as quickly as possible and then eliminate discrimination because of age.

Mr. HAWKINS. My comments were not intended to reflect on my colleague's intent; I just wanted some clarification on your particular proposal.

Mr. Dellenback?

Mr. DELLENBACK. No questions, Mr. Chairman.

Mr. HAWKINS. Thank you, Mr. Bechill.

Mr. HAWKINS. Our next witness is Mr. Charles Rowan, chairman of the "Jobs After Forty Committee" of the Fraternal Order of the Eagles.

Mr. ROWAN. I wonder if you could first hear the statement of the national president of the Fraternal Order of the Eagles, Mr. William McCawley, of Illinois.

This matter is so important we brought our grand national president of the Fraternal Order of Eagles.

Mr. MCCAWLEY. It is a privilege for me to be here before you and your fine committee. Being a member of the Iron Workers Local 392 in East St. Louis for 25 years and a member of the Eagles for 25 years and through a hurried change in schedule yesterday I prepared a little short statement here I would like to present to you and your fine committee.

My name is William A. "Red" McCawley and I have recently been elected grand worthy president of the million-member-strong Fraternal Order of Eagles.

I come from Belleville, Ill., and mention with pride that our Governor Otto Kerner, 2 weeks ago signed the Eagle-sponsored legislative bill that will ban job bias in the State of Illinois.

The bill had twice before been defeated but mindful of the emblem of our fraternity and of our great country—the bald eagle, symbolizing strength and courage—and mindful too of that ever-growing number of worried insecure though skilled men and women who are denied jobs or lose them not because of incompetence of indifference but only because of advancing birthdays (as low as 40 years in some cases)—these are the realities that kept us going.

For over a dozen years the Eagles have appointed themselves the spokesmen for these men and women who have been the backbone of our productivity in this country.

Our methods have not been sophisticated. We have worked on a people-to-people level. Signatures by the thousands have been obtained. As a matter of fact a million of these signatures were brought here to Washington by the Eagles some years ago with a plea that Federal legislation outlawing job age bias be enacted.

The Eagles have been more fortunate on the State level and we shall continue the fight until every State in these United States has such legislation on its books.

Were Federal legislation passed, those States not having this type legislation, would quickly follow suit.

This is humanitarian legislation. It is practical legislation. These people represent experience, skills, and above all, pride in their jobs. They want no handouts and no special privileges. They want the dignity of labor, to be a part of the work force until such an age as they are entitled to receive social security or retire on pension.

Thank you, gentlemen.

I am very sorry this was a hurried schedule and I don't have a copy of the "Jobs After Forty Program" that was passed in Illinois to bring along. I don't know whether Charlie has one or not but if you would like one, I am sure Charlie can get it and send it to you.

Again I would like to say thanks to you for hearing just a working man and letting him appear here.

Mr. HAWKINS. Thank you, sir.

Mr. Pucinski?

Mr. PUCINSKI. I want to congratulate the gentleman on the many hard years the Eagles have put in on their efforts. It is comforting to know there is such a study on this problem.

The Eagles have worked very hard to cure this American dilemma. I am familiar with the bill the gentleman sponsored in Illinois and I share his enthusiasm that the Governor has signed that bill into law.

I am glad that at the State level we are cognizant of the problems of these senior citizens and I think it is important to point out that this is where I think we miss the boat—I myself do this and I should not, we again talk of this problem in terms of senior citizens when it is not really senior citizens we are talking about.

We are talking about people reaching the age of 40 where as far as job opportunities are concerned a man passing the age of 40 is an old man in this country. That is a sad indictment of our whole economic system where the people can't find jobs at 40, 45, or 47. Many of them have young families and many of them have growing children and need employment.

I welcome your testimony before this committee and would like to take this opportunity of congratulating you and every single member of your organization for the work you have done. The Fraternal Order of Eagles has been in the forefront of this job.

When you speak of the Eagles you associate them in the forefront of workers seeking to solve the problem of work for older people. I want to congratulate you in your stubborness in sticking to this problem.

Mr. MCCAWLEY. I want to thank you for your kind remarks and I can see you have studied the various programs the Fraternal Order of Eagles has.

Mr. HAWKINS. Mr. Dellenback?

Mr. DELLENBACK. I would just say, following the line of the gentleman from Illinois, I commend the Eagles. I think when you find organizations of this type making it their business to be deeply concerned about problems like this we have the real justification for this type of an organization and here we are talking about one particular organiation, namely, the Eagles.

I think you are dealing with a problem of real concern and instead of just devoting the energies of your people to lodge work or the type of thing which an organization like this could concern itself with, you have turned a good portion of your energies to constructive involvement with the problems that face the people of America.

I think it is in organizations like the Eagles and other similar organizations that we have a great deal of the strength of America. I commend you for taking time to come here; I know it is not easy for you to just knock off and come this far. We are grateful to you and your organization through you for helping us.

Mr. HAWKINS. Mrs. Mink.

Mrs. MINK. I would just like to join my colleagues on the committee in welcoming you to this hearing and also to say that based upon your great interest in the field of age discrimination affecting senior citizens, you have done this committee a great honor by coming here as the president of your organization.

Mr. MCCAWLEY. Thank you and when I get to Hawaii I will try to look you up; I am looking forward to that trip.

Mr. HAWKINS. Thank you and I can only echo what has been said. Mr. Charles Rowan, would you like to proceed now, sir?

Mr. ROWAN. Yes, sir.

Mr. HAWKINS. Your statement will be made a part of the record and you may summarize it or read from it as you see fit.

Mr. ROWAN. I am Charles Rowan. I regret that Mr. Pucinski could not get a job because he was 47 but I would like nothing better than being 47 again.

I would like, as I have done in my statement, to point out that the Eagles were organized in the State of Washington in 1899 and quickly became an organization of working people, laboring men, small businessmen, and farmers.

We started early in working for needed legislation at a time when it was unpopular to favor such legislation. Among the laws we worked for were the early workmen's compensation act.

In the 1920's the Eagles started their big crusade for old-age pension laws. It was a very difficult time because these were considered to be socialistic, sort of a handout or dole and we were bitterly attacked.

In fact in 1926 in the Milwaukee Journal there appeared a quote from a crusty old county judge from northern Wisconsin to the effect the only people in favor of the old-age pension were a bunch of dirty old rum-soaked bar flies.

We knew who he meant at the time because we were the only ones for the old-age pension laws. We persevered in our efforts and saw the day when every State had these old-age pensions laws.

We have pens in our archives from the Governors of all States for our efforts in getting these laws passed.

We Eagles then turned our attention to getting a national old-age pension law adopted. When the act was finally presented and signed President Roosevelt asked our officers to be present at the signing and presented us with the pen he used for our archives.

Having crusaded for decades to help our senior citizens, our folks 65 and older, we then found that we had forgotten the most neglected people in the world today, the worker who between 40 and 65 is too young to retire on social security but too old to find a job. Here is the man too old to work but too young to die.

Today's world, with its adulation of and undue emphasis on youth, its feeling that the mental quickness and adaptability of youth and the new educational processes are the only key to success in business, has imposed the requirement that only job applicants in the twenties or younger should be considered.

"Get them right out of the cradle and educate and train them," has become the motto of many large business organizations. This has imposed an unbearable heartache upon a society in which 40 percent of our total work force is 45 years old or older.

A man does not reach the prime of life until he reaches 40 or 45. Yet when he should have the most reason to be entitled to security, when his standard of living and financial obligations have reached their highest point, as long as he continues to hold his job he is considered to be a very valuable employee because of his experience and good judgment but let him lose his job and he will have a very difficult time to find another one.

This causes the people in the forties and fifties who are unemployed considerable distress because a group of longtime unemployed are developing there, people who never again may be able to work.

It causes even the people in those age brackets who have jobs to live under the shadow of the constant fear that if they lose that job they won't be able to find another.

Since the turn of the century the life expectancy of the average American has increased 20 years. Yet the hiring policies of many employers are rooted in the past prejudices and practices.

How irrational is a society which with one hand does everything possible to extend the lifespan of man but with the other hand throws him on the industrial scrapheap as unusable because of his chronological age. Man's true age lies in the lifespan ahead of him, not the span behind him.

There is a growing group of longtime unemployed developing among these older workers. As the unemployment period lengthens, the worker's self-confidence weakens.

The man becomes depressed and bitter. Eventually he may stop applying for work, despite his great need for means of support for himself and his family. It is for these disadvantaged, downhearted, discouraged, sometimes desperate, and always discriminated against older workers that the Fraternal Order of Eagles appears before you today.

There is nothing new about unfair discrimination in the hiring of employees. Seventy years ago there could be found in New York and Boston newspapers help wanted ads, stating "Irish need not apply" or "Protestants only."

The term "Gentiles only" appeared frequently. All of these, thank the Lord, have disappeared. More recently ads have stated "whites only" and something has been done about it. Then there were employers who refused to hire men who belonged to labor unions and something has been done about that. But the cruel, senseless discrimination against older people in employment goes on unchecked.

A dozen years ago the Fraternal Order of Eagles started its "Jobs After Forty" program for the purpose of striking down age discrimination in employment. And it presented to Congress petitions signed by over a million people, asking that Congress pass a law prohibiting

discrimination in employment against persons who happen to be between the ages of 40 and 65.

Unfortunately the bill died in committee, but it is heartening to note that many of our friends who helped us back in that day are supporting the "Jobs After Forty" bill of today.

I would like to say to this committee we are very happy to have these bills considered; we are for them 100 percent. We would like to see them passed and we appreciate the job the subcommittee is doing on conducting these hearings.

(Mr. Rowan's prepared statement follows:)

STATEMENT OF CHARLES ROWAN, CHAIRMAN, JOBS AFTER 40 COMMITTEE, FRATERNAL ORDER OF EAGLES

The Fraternal Order of Eagles is one of America's great fraternal orders and has 700,000 members and local lodges located in 1,600 cities throughout this country. Founded in 1899 by a group of unemployed actors who met in a shipyard in Seattle, Washington, the Eagles soon became a workingman's organization composed of the laboring man, the farmer, the lower paid white collar workers and the small merchant or businessman and as such began early to work for the enactment of badly needed social and economic legislation at a time when this was a very unpopular position to take. We worked for workman's compensation legislation in a day when this was considered to be a very revolutionary and dangerous proposal.

In the 1920's the Eagles started their great crusade for old age pension laws. These laws were attacked as being a dole, a handout, bread and circuses for the Roman mob, ruinously expensive and flagrantly violative of the American way of life. We were pretty lonely people in those days with only a few groups supporting us and the opposition bitterly hostile. While the old age pension bill was being debated in the Wisconsin Legislature, a crusty old county judge from Northern Wisconsin was quoted in the Milwaukee Journal as saying that the only persons in favor of the old age pension were "a bunch of dirty old, rum-soaked bar flies." And we Eagles in Wisconsin knew who he meant, because at the time we were just about the only ones for the bill.

But we persevered and lived to see the day when every state adopted old age pension laws. In our archives are the pens used by the governors of all states in signing these laws, given to us in acknowledgement of the part we played in getting these laws passed.

We Eagles then turned our attention to getting a national old age pension law adopted, and we worked hard and long for the enactment of the Social Security Act. When Congress passed this Act, President Franklin Roosevelt, who was a member of the Eagles (as were also Theodore Roosevelt, Warren Harding, Harry S. Truman and John F. Kennedy) summoned our national officers to his office to witness the signing of the bill and then presented them with the pen he used for our archives.

Having crusaded for decades to help our senior citizens, our folks 65 and older, we then found that we had forgotten the most neglected people in the world today, the worker who, between 40 and 65, is too young to retire on Social Security but too old to find a job. Here is the man too old to work but too young to die.

Today's world with its adulation of and undue emphasis on youth, its feeling that the mental quickness and adaptability of youth and the new educational processes, are the only key to success in business, have imposed the requirement that only job applicants in the twenties or younger should be considered. "Get them right out of the cradle and educate and train them", has become the motto of many large business organizations. This has imposed an unbearable heartache upon a society in which 40% of our total work force is 45 years old or older.

A man does not reach the prime of life until he reaches 40 or 45. Yet when he should have the most reason to be entitled to security, when his standard of living and financial obligations have reached their highest point, many employers consider him unemployable, causing severe distress to persons in the 40s and 50s who are unemployed and causing the employed persons in that age bracket to live under the constant fear that, if they lose their jobs, they will not be able to find another one. Not only is a great loss to our economy involved,

but think of the enormous loss of self respect, agony, humiliation, worry and fear needlessly suffered by one-third of our people.

Since the turn of the century the life expectancy of the average American has increased 20 years. Yet the hiring policies of many employers are rooted in past prejudices and practices. How irrational is a society which with one hand does everything possible to extend the life span of man but with the other hand throws him on the industrial scrapheap as unusable because of his chronological age! Man's true age lies in the life span ahead of him, not the span behind him.

There is a growing group of long time unemployed developing among these older workers. As the unemployment period lengthens, the worker's self confidence weakens. The man becomes depressed and bitter. Eventually he may stop applying for work, despite his great need for means of support for himself and his family. It is for these disadvantaged, down-hearted, discouraged, sometimes desperate and always discriminated against older workers that the Fraternal Order of Eagles appears before you today.

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A dozen years ago The Fraternal Order of Eagles started its "Jobs After 40" program for the purpose of striking down age discrimination in employment. It presented to Congress petitions signed by over a million people, asking that Congress pass a law prohibiting discrimination in employment against persons who happen to be between the ages of 40 and 65. Unfortunately the bill died in committee, but it is heartening to note that many of our friends who helped us back in that day are supporting the "Jobs After 40" bills of today.

Having been blocked in Congress in our attempts to get a federal law passed, the Eagles concentrated on the states, and I am pleased to report that anti-age discrimination laws have now been enacted in 25 states. The latest in the State of Illinois. It was during our National Convention at Kansas City that the distinguished Governor of Illinois, Otto Koerner, a member of the Eagles, delighted the delegates assembled there by signing the Illinois "Jobs After 40" bill into law.

I am Charles Rowan, of Milwaukee, Wisconsin, Chairman of the Eagles National "Jobs After 40" Committee. On behalf of the Eagles I would like to express complete support of bills H.R. 3651, H.R. 4221 and H.R. 3768. This humanitarian legislation is entirely desirable and will be of great help in dealing with a vexatious problem. The Secretary of Labor, Willard Wirtz, has reported that it is the concensus of opinion of the state authorities charged with the enforcement of state anti-age-discrimination laws, that a federal law on the subject is needed. He has also reported that in states which have actively enforced age discrimination laws have far less discrimination against older workers than other states which do not have these laws.

H.R. 4221 uses a reasonable approach to the difficulty. First the Secretary of Labor is to conduct research and attempt to educate employers that it is good business for them to hire older workers. Second, the bill prohibits employers, labor unions and employment agencies from discriminating against individuals because they are between the ages of 45 and 65. Since the business community is inherently law abiding, the mere adoption of this bill will cause most businessmen to respect and observe it. Employers' organizations may oppose the adoption of it, but, once it is passed, these organizations will become government's most powerful allies in inducing compliance by their members. That has been our experience in Wisconsin and other states.

When the Secretary of Labor believes that a violation is being committed, he shall endeavor to eliminate any such practice by informal methods of conference, conciliation and persuasion. Our experience in Wisconsin indicates that right here you will dispose of almost all violations, by voluntary compliance.

In the very occasional case where these methods are ineffective an administrative proceeding can be commenced, a cease and desist order issued, an enforcement order obtained from the U.S. Court of Appeals, and even a criminal penalty imposed. Cases of this kind will be rare, but the government should have these enforcement powers to make its orders respected by everyone.

These bills will apply to all employers with 25 or more employees, and through state laws the employers with fewer employees can be regulated. The bills cover individuals between 45 and 65, and the Secretary may adjust this upward or downward. While we hope that he will lower the minimum age to 40, we are completely satisfied with these bills as they now read and do not request any change.

We passed this type of law in Wisconsin in 1959. The National Manufacturers Association took the lead in acquainting its members with the requirements of the new law and urging its members to comply with it. The large daily newspapers quickly did their part by instructing their ad takers not to accept help wanted ads which specified an age limitation. The Wisconsin Industrial Commission sent out several letters and pamphlets to all employers, employment agencies and labor unions, advising them of what the law prohibits and what it permits.

Compliance has been very satisfactory considering the small amount of personnel enforcing it. Almost all cases have been settled by conciliation, that is, by voluntary compliance by the employer. In the case of some complaints the employer has been exonerated.

Virginia Huebner, Director of the Equal Opportunities Division of the Industrial Commission, informs me that only seven complaints involving age discrimination have been received during the past year. One involved a 61 year old custodial worker who had been discriminated against because of age in denying him permanent status and the privileges which accompany it. After conciliation, he was granted permanent status and reimbursed for his financial loss (full wages, vacation pay, etc.).

Another involved a woman who wished to hire a "young" employee. When the ad takers for the newspapers refused to take her ad, she went to an employment agency which refused to service her and reported the matter to the Industrial Commission.

A third involved a 51-year-old domestic science teacher in a small up-state high school. The school board refused to renew her contract and instead signed a contract with a young girl who had just graduated from college, apparently because they wanted a prettier, more glamorous domestic science teacher. The Industrial Commission thought since when is a 51 year old woman too old to teach kids how to cook and bluntly ordered the school board to renew the teacher's contract and figure out for itself what to do with two domestic science teachers.

The Wisconsin Industrial Commission is presently focusing attention on the age requirements which have for so long been prevailing in the field of training to determine what changes may practically be effected.

Mr. HAWKINS. Thank you, Mr. Rowan.

Mr. PUCINSKI. I would like to thank Mr. Rowan along with Mr. McCawley and would like to repeat I am impressed with the work the Eagles have done in this field.

You have really crossed the country with your understanding of this problem. I wonder if you would comment on the point I made that it is going to continue to be difficult to get meaningful effective legislation barring age discrimination unless we face up to the economic factors involved.

As you know, I have introduced legislation to give an employer a tax credit for hiring older workers. In other words, if he determines it would cost him $x$ amount of dollars more to hire a person age 48 or 50 as against a person age 25 he now claims that difference. But, as you know, in our present structure that corporation recovers only a relatively small percent of his investment.

What I again want to do is give him a full tax credit for that difference if indeed it should cost a hundred dollars or more or $200 more.

I recall research I did on the subject a couple of years ago. As an example, it cost a steel manufacturer, an employer, because of the pension plan, fringe benefits, and other things, it cost him $265 a year more to hire a man aged 55 as against the man aged 25.

Now, if those figures were true, and I don't know if they are, I don't want to invent figures and I don't know if they are correct, but if it is true such a figure exists, under my proposal that steel company would claim that $265 as a complete tax credit so that you would eliminate totally the economic factor.

You would remove the economic factor as a burden on the employer. He would then, of course, put all workers on a parity where only their experience, their ability to do the job, their reliability and other factors would come into play.

It is my judgment once we remove that economic factor we can then quickly move to add age to the civil rights bill which now bars discrimination against hiring people because of sex, race, or national origin.

Is there any merit to this kind of thing?

Mr. ROWAN. We are in favor of this because our job as far as the States are concerned is only half done. In the State of Illinois this bill was passed by one house at the session before the last session but it was blocked in the senate because of the fear it would create a climate unfavorable for new business to come to Illinois.

That did not pass in the previous session but happily did in the last session. States are reluctant to do anything that might make it unfavorable for new business to come in.

If you gave them this kind of reduction it would make our task of getting the laws passed in the other 25 States much easier.

In all justice to employers they should have the benefit of that kind of protection.

As far as the Civil Rights Act is concerned, it was our hope we would be included in there, but when the bill came out covering color, creed, religion, and sex, age was not mentioned. We thought that, after a study was made, age might be added to the bill but then we learned it was the thinking of Congress that it did not want to disturb the civil rights bill and preferred to handle the problem of age discrimination separately.

Now it comes in the form of separate legislation, an act to be administered not by the Equal Opportunities Commission, but by the Secretary of Labor.

We want a bill of this kind whether administered by the Secretary of Labor or by the Commission and we are heartily in favor of this bill. Whether it proves to be a better thing before long to change it to the civil rights bill, all well and good.

But you have the problem that, where you have a long enumeration of different types of discrimination, one type might easily be forgotten. Right now in discrimination you have more complaints on sex discrimination than you have on anything else, even race discrimination. So if the personnel is not adequate that is provided to enforce these laws, the danger exists that age discrimination might be neglected.

Here you have a law dealing only with age discrimination and it does have that one advantage, I think. Another thing, while we are in favor of getting a national law, if we have a national law and can point out that 25 States have them, certainly the other 25 States would drop their opposition and come along because half of their employers would be under an age discrimination statute and half not under one.

We do need State legislation in all States to reach the employer with 25 or less employees.

Mr. PUCINSKI. If I read this legislation correctly, which I do, there is strong opposition to age discrimination in this bill. If I understand correctly, section 4(a) does specifically bar discrimination because of age, or perhaps there is something in there we are not aware of that would give the discriminators an out:

> It shall be unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.

This I take it is as clear language as we can get to make sure this bill, if enacted into law would become effective in all 50 States and territories and would bar discrimination in hiring practices because of age.

Mr. ROWAN. I would think so. On my job of working with the various States to pass these laws, which have in many cases passed them, I have seen their laws and it seems to me this language is quite similar to a number of our State laws, including the Wisconsin law where I have had opportunity to work almost daily with the lady in charge of enforcement.

It is much the same language and we have not run into any problems that everything was not covered and there were loopholes left open.

Mr. PUCINSKI. Are you satisfied with the Illinois law, when you take into consideration all the exemptions, it still carries enough teeth to bar discrimination because of age?

Mr. ROWAN. I can't comment on the Illinois law because I have not seen it. I have been down there in the past years before the labor committees in the House and Senate but the bills were different. In the bills the States usually exclude hazardous occupations, firefighting, police work, linemen working for electric companies, and there usually also is something in there that an employer is not required to hire or retain a person who can't do the job because of physical, mental reasons, or other factors that are involved.

There are usually exceptions in the State laws that the law does not affect any retirement policy of any pension plan which is not a subterfuge.

In our Wisconsin law we even have this exemption which I thought would not probably hamstring enforcement, but it has not, and which says nothing in the subsection, shall prevent the exercise of age discrimination with respect to employment of persons in capacities in which knowledge and experience to be gained might aid in the development of capabilities for advancement to future managers or executives.

That was provided so these firms hiring boys out of high school, paying for their college education, and giving them a high degree of technical training, may still do so.

The Wisconsin law does not interfere with that. If there is not such a training course then it does not apply.

When you get to apprenticeship that is a troublesome question. Where will you cut them off from starting? Again it is a matter of administrative interpretation which is later reviewed by the courts.

Mr. PUCINSKI. We have been talking about this bill and the Civil Rights Act; actually as we study this bill we find this provisions does provide much more meaningful enforcement procedures than even the Fair Employment Practices Commission at the Federal level.

I don't recall that we did enact the additional legislation sought by the Commission.

Mr. HAWKINS. The cease-and-desist order?

Mr. PUCINSKI. Yes.

Mr. HAWKINS. No, we did not.

Mr. PUCINSKI. It was before this committee.

Mr. HAWKINS. I don't know whether counsel will agree but this would be a much stronger bill than the existing title 7.

Mr. PUCINSKI. I think the gentleman from California is entirely correct.

Mr. Rowan, are you satisfied with the language in this bill, which does give the Secretary a right to get a court of appeals order to enforce some of the Secretary's decisions? Would you believe, Mr. Rowan, that this is sufficiently strong language at least to move forward on the subject?

Mr. ROWAN. I think it is. It could be strengthened by having the same provision the Federal Trade Commission Act has, that once a cease-and-desist order is issued, if the respondent fails to petition the court of appeals for review within 60 days, the order becomes final, the same as the final judgment of a court of law and becomes enforceable and violations will bring about grounds for a penalty suit.

There is another factor. A case went up to the Massachusetts Supreme Court under this law where the worker sued for a large sum as damages, claiming he was wrongfully discharged and asking he be reimbursed for the money he had lost because of his discharge, which was based on his age.

The Massachusetts Supreme Court upheld the validity of the law, the Constitutionality, but said the law merely provided a fine of $100 but did not provide a remedy under which the wronged individual might sue in a court of law and recover what he lost.

Mr. PUCINSKI. It is obvious, as you study the enforcement procedures in this act and study the enforcement procedures in the Civil Rights Act, Title 7, the fact is these are hard cases to prove. These are tedious cases and we need this law, no question about it.

We need this law because of the problem that you and other witnesses have brought before this committee. I feel very strongly if we can get the ways and means committee to adopt legislation to permit a tax credit on these additional costs many of these problems would be resolved between the employer and employee without the need of interference from any other third party, including the procedures spelled out here.

So while I intend to support this legislation, vote for it and do everything I can to get it enacted, I also intend to do everything I can to get my own bill on the tax credit enacted.

I feel that in the final analysis the voluntary agreement between the employer and employee is still the best and fastest way of solving the problem.

For those employers who won't do it, you need the machinery spelled out in this act and for that reason I will support this act.

I will add I think you gentlemen ought to give some consideration to contacting the Ways and Means Committee, perhaps you should have a meeting with Chairman Mills and spell out the extent of the problem as you so well know it.

I don't know of any better authority in this country than the Fraternal Order of Eagles because of your very close association with the problem over the years.

I think you have probably done more research and have more information nad practical knowledge in your lodges across the country than any single agency in Government.

I would suggest you should arrange with Mr. Mills to sit down with him and talk on a dual front. Your testimony here will help immeasurably in getting this legislation approved but I think you ought to move on the other front to get the other legislation approved.

Mr. ROWAN. Has that presently been offered?

Mr. PUCINSKI. Yes.

Mr. ROWAN. I am sure the grand worthy president here and the other national officers will want to take action on it because one bill implemented another and your bill will overcome some of the objections that have made it so difficult for us to get the legislation passed in various States.

I would also like to say this on the difficulty of enforcing this law; we found first of all the bill will knock these ads out of the newspaper saying, "Man wanted, 18 to 25 years old."

In other words, it lets a man apply for a job. Then at the employment office it gets him the right to fill out an application for employment, and they can't say he is too old. It gets him the right to fill out an application, to be interviewed, and considered.

The question came up whether it permits an employer to ask the applicant to specify his age in the application form. The Attorney General ruled it did not prohibit him, the employer, from asking the applicant for this information but then when you get beyond this then your problem arises.

How are you going to say whether the employment manager turned the man down because of his age or because of something he did not like about him?

You can turn a man down because you don't like the way a man parts his hair or because he has no hair at all but where the employer hires no older workers a pattern is established. If over a period of years he hires no men over the age of 35 years and you can show qualified men have applied, then you are establishing a violation, and you can get at it.

It is a difficult problem and enforcement will depend on the experience developed and the expertise that the Secretary of Labor and his staff will develop over the years.

We Eagles are all very highly encouraged that you are considering this legislation.

Mr. PUCINSKI. Thank you very much.

Mr. HAWKINS. Thank you, Mr. Rowan and Mr. McCawley. Your presentation here today has been most helpful to the committee. We are very appreciative of the work you are doing and the contribution you have made in these hearings.

The meeting is adjourned until tomorrow morning at 10 when the committee will convene and hear various witnesses at that time.

(Whereupon, at 11:50 a.m., the hearing recessed, to reconvene at 10 a.m., Thursday, August 17, 1967.)

# AGE DISCRIMINATION IN EMPLOYMENT

THURSDAY, AUGUST 17, 1967

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON EDUCATION AND LABOR,
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Pucinski, Daniels, Hawkins, Albert, Ford, and Scherle.

Mr. DENT. The General Subcommittee on Labor will now come to order for the purpose of holding hearings on H.R. 3651 and other related bills. Due to the fact that the House of Representatives has called for an early session this morning, we will start proceedings although certain Members of Congress who are listed as witnesses are not here.

Since they may come in at any time during the morning, I shall allow the Members to present their briefs, if they have one, by interrupting the testimony of the witness speaking at that particular time.

The first witness today is a well-known representative of labor on this Hill who has for many years been testifying on legislation dealing with the welfare of the working men and women of this country. I welcome to the hearing this morning Ken Meiklejohn, legislative representative of the AFL–CIO.

## STATEMENT OF KENNETH A. MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE, AFL–CIO

Mr. MEIKLEJOHN. Thank you, Mr. Chairman, your remarks are most generous.

My name is Kenneth A. Meiklejohn. I am legislative representative of the American Federation of Labor and Congress of Industrial Organizations, and I appear here on behalf of that organization.

I would like to ask that my full statement be included in the record and I will summarize my statement.

Mr. DENT. Without objection, the statement will be made part of the record at the conclusion of your remarks.

Mr. MEIKLEJOHN. Mr. Chairman, I do want to say that I think both you and Representative Carl Perkins, chairman of the House Education and Labor Committee, deserve the thanks and appreciation of all American workers, and especially those who have reached or are about to reach the age of 45, for sponsoring the bills, H.R. 4221 and H.R.



85-376—67——27

3651, which you now have before you for consideration in this subcommittee.

In light of the fact that the Senate Labor Subcommittee has already completed hearings on this subject, and its bill is now before the full Senate Labor Committee for approval, your decision to go forward at this time gives real cause for confidence that legislation to prohibit age discrimination in employment can and will be enacted at an early date.

I have summarized on the next few pages of this statement some of the basic economic data which we believe warrant and justify, and, indeed, indicate the imperative need for, this legislation. I won't read this to the committee but I do ask the committee members to pay close attention to it.

We have also summarized in our statement some of the actions taken by the AFL–CIO, the administration and the various States to deal with this problem of age discrimination in employment. The data which we have provided here, we believe, provide a very strong basis of support for this legislation. They demonstrate that the recognition of the need for this legislation is significant and widespread.

We have seen legislation passed in the last few years to prohibit discrimination in employment based on color and sex. It is now time to take the further step of outlawing discrimination because of age as well.

At this point, I should like to discuss some of the specific provisions of the age discrimination bills you and your subcommittee have before you. They have the objective of making it unlawful for employers, employment agencies, or unions to engage in certain specified employment practices which have the effect of discriminating against employees or applicants for employment because of age. They impose responsibility for administering and enforcing the legislation on the Secretary of Labor, with authority to delegate his functions in such manner "as he deems necessary to assist him in performance of his functions under this act." In general, we believe, the legislation is well designed to carry out its objective.

Among other things, Mr. Chairman, the bills prohibit employment practices based on age engaged in by labor unions, as well as by employers and employment agencies. The labor movement, through its international and local unions, has consistently been in the forefront of efforts to deal with the problems of older workers. In collective bargaining agreements we have endeavored to deal with some of the problems of age discrimination in employment, and in convention resolutions we have called attention to the need for legislation, at both the State and Federal levels, to prevent such discrimination.

It is important to make clear, we believe, that employers who are paying wage rate differentials to older workers in violation of the bills shall not, in order to comply with the legislation, be permitted to reduce the wage rate of any employee. The Equal Pay Act of 1963 contained such a provision, and we believe it would be appropriate and necessary that such a provision be included in this legislation.

We see no good reason, Mr. Chairman, for the provisions that exempt small firms employing fewer than a specified number of employees. Such provisions have the effect, of course, of leaving large numbers of employees outside the protection of the legislation and fly in the face

of facts that make clear that the older worker in the small plant or business has just as much, and maybe more, need of protection as the older worker in the large plant or business.

We are long past the day, it seems to us, if, indeed, there ever was such a day, when it could justifiably be argued that it may be all right to require a large employer to observe fair employment practices or labor standards, but all wrong to require his small competitor to do so.

We likewise do not see any reason why the legislation should, as is provided in section 4(f)(2) of the bills, permit involuntary retirement of employees under 65. We do not believe that the safeguard which this provision purports to contain restricting this possibility to cases where it is done "under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this act," is adequate to prevent serious abuse.

In this connection, it should be observed that there is no age cutoff in this provision. Involuntary retirement could be forced, regardless of the age of the employee, subject only to the limitation that the retirement policy or system in effect may not be merely a subterfuge to evade the act.

On the other hand, section 4(f) might well be strengthened in another respect. There is nothing in this section now which protects the operation of bona fide nondiscriminatory seniority systems. We urge that this section be amended to protect such systems.

The enforcement provisions contained in section 7 of the bills are a mixture, based in various parts on the Civil Rights Act of 1964, the National Labor Relations Act and the Fair Labor Standards Act. We believe that it would be preferable to utilize the enforcement machinery of one of these acts rather than to establish still another enforcement system.

The staff and experience of the agency administering that act would be of benefit to those charged with the responsibility of enforcing the prohibitions against age discrimination in employment.

When Congress passed the Equal Pay Act in 1963, it decided to utilize the staff and expertise of the Wage and Hour Division in the U.S. Department of Labor to administer and enforce that act. As far as we have been able to determine, this approach to the problem of nforcing the act's prohibition against discrimination in wage pay- ents based on sex has worked well.

We suggest that the subcommittee should give serious consideration o simply utilizing the enforcement machinery and procedures of the Vage and Hour Division to enforce the proscriptions against dis- riminatory employment practices based on age which are contained n the bill.

Finally, the bills provide in section 13 that their application is imited to individuals who are between the ages of 45 and 65. There is proviso added to this section which gives the Secretary of Labor uthority by rule or regulation to "provide for appropriate adjust- ents, either upward or downward, in the maximum and minimum ge limits provided in this section."

This subcommittee is aware, I feel sure, of the practice of some irline companies which refuse to permit stewardesses to work as such eyond the ages of 35 in some cases and 32 in others. You will be hear- ng after me testimony from spokesmen for the Transport Workers nion of America, AFL–CIO, on this subject.

I want to make it clear we are in sympathy with their views on the need for relief for their members from the present discriminatory age limits with respect to their employment as stewardesses which the airlines are imposing on them.

It seems to us that the proviso which is included in section 13 is hardly adequate to provide the protection which they need. We believe that there is a substantial question whether the proviso permitting "appropriate adjustments, either upward or downward" can be stretched far enough to include workers 35 or 32 years of age under the protection of the bill. Indeed, we see no real basis for either upper or lower age limits in the bill, and we suggest, therefore, that section 13 be eliminated.

I have pointed out in the concluding section of our statement that we regard as of particular importance the provisions of the bills which call upon the Secretary of Labor to undertake studies and provide information "concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy." This legislation, we are convinced, as I am sure you are convinced, deals with only one part of the problems of the older worker and the older citizen, and it needs to be kept in that context in order to understand and deal with these problems.

In conclusion, Mr. Chairman, I would like to say only that it is our hope that the Congress will act speedily to put legislation along the lines of H.R. 4221 and H.R. 3651, with the changes we have suggested, on the statute books. The need for it is great and, so far as I am aware, virtually unchallenged. The problem which the legislation is designed to meet, far from getting less important, only grows larger, as time goes on. Early passage of the legislation can make a substantial contribution to achieving a better life for all Americans.

I would like to add, if I may, Mr. Chairman, that in response to requests by members of the Senate Labor Subcommittee, we proposed certain amendments to carry out the suggestions for amendments to the bills made in our statement. Those suggestions are contained in the record of the hearings before the Senate subcommittee, and I would just simply like to call the attention of this subcommittee to those amendments which appear on page 100 of the printed Senate hearings.

Mr. DENT. The staff has already noted all of the advisory amendments offered in the Senate and we have made a review of them. In the executive committee we intend to discuss them with the view of accepting what we can of those which appear to be in the best interests of all concerned.

Mr. MEIKLEJOHN. With respect to the matter of enforcement, thi has been the subject of discussion between ourselves and staff representatives of the Senate Labor Subcommittee and the Department o Labor. At this point we would prefer to see amendments along th lines of those included in the draft of the bill prepared by the Senat Labor Subcommittee rather than those appearing in the printed recor of the Senate hearing.

Mr. DENT. I might state, as far as the Chair is concerned, the deter mination to put it under the Fair Labor Standards Act has alread been made. The Department of Labor is best qualified by experience manpower, and training.

Mr. MEIKLEJOHN. We would want to say, Mr. Chairman, that if the enforcement responsibility is put in the Wage and Hour Division, then adequate funds to enforce the act become of critical importance. We are now confronted with the problem of persuading Congress to appropriate sufficient funds to adminster the new wage and hour amendments passed last year and have encountered reluctance at some points to providing adequate funds for this purpose.

The more responsibilities are placed in that Division the more critical becomes the need to provide the funds to do the inspection job that Congress requires to be done.

Mr. DENT. I believe we have the logical argument in requesting more funds for that particular bureau because in the end it must cost less than setting up a separate bureau to administer a new act.

Mr. MEIKLEJOHN. That is correct. The only thing we want to point out is that this makes it all the more urgent that the inspection job be effectively carried out and this will require additional personnel at that level to do so.

(The prepared statement of Mr. Meiklejohn follows:)

STATEMENT OF KENNETH A. MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Chairman, my name is Kenneth A. Meiklejohn. I am Legislative Representative of the American Federation of Labor and Congress of Industrial Organizations, and I appear here on behalf of that organization.

I

Mr. Chairman, these hearings on proposed legislation to prohibit discrimination in employment on account of age are of great importance. Secretary of Labor W. Willard Wirtz has described the problems of the older worker as "far and away the largest unrecognized need, both in terms of problem and potential, in the country today as far as the development of national policy is concerned." The AFL–CIO agrees with this assessment, and few, we believe, can dispute it.

Mr. Chairman, both you and Representative Carl Perkins, Chairman of the House Education and Labor Committee, deserve the thanks and appreciation of all American workers, and especially those who have reached or are about to reach the age of 45, for sponsoring the bills, H.R. 4221 and H.R. 3651, which you now have before you for consideration in this Subcommittee. In light of the fact that the Senate Labor Subcommittee has already completed hearings on this subject, and its bill is now before the full Senate Labor Committee for approval, your decision to go forward at this time gives real cause for confidence that legislation to prohibit age discrimination in employment can and will be enacted at an early date.

II

Both H.R. 4221 an H.R. 3651 would prohibit discrimination in employment on account of age. The approach is direct and forthright, and this, we believe, is essential if the problem of age discrimination in employment is to be dealt with in an eeffctive and meaningful way.

I shall have more to say about particular provisions of H.R. 4221 and H.R. 3651 later in my statement. First, however, some general observations about the need for, and the importance of, this legislation are in order.

Secretary Wirtz has pointed out that the 45–65 age group with which the legislation deals today includes some 39 millions people and will by 1975 include up to 44 million people. Yet about half of all the job openings in this country are in effect closed to people over 55 years of age; workers over 45 find that a quarter of the jobs in the country are closed to them.

Only a very small portion of newly hired workers today are older workers. According to the report entitled "The Older American Worker", prepared by the U.S. Department of Labor under section 715 of the Civil Rights Act of

1964, fewer than 5 percent of the new hires by employers surveyed in the study were 45 years of age or over.

One fifth of all the employers surveyed hired no workers over 45. Of all new hires by these employers only 8.6 percent were workers who were 45 years of age or over.

Unfortunately, the overall unemployment rates for workers 45 years of age and over tend to conceal more than they reveal. For the last couple of years, the rates for this age group have ranged from about 2–3 percent for white workers to about 4–5½ percent for non-white workers. Hidden behind these figures, however, are some very serious job problems for older workers which can be attributed, directly or indirectly, to the discriminatory practices with which the legislation before this Committee seeks to deal.

For example, according to data compiled by the Bureau of Labor Statistics, the labor force participation rate in 1966 among white males between the ages of 45 and 54 was 95.8 percent. A decade ago it was 96.8 percent. Since few workers in this age group retire, this decilne of one full percentage point must be explained by other developments. Among these developments, we submit, has been a tendency of older workers to withdraw from the labor force. The inadequate number of job opportunities, in relation to the available manpower supply, enables the employer to follow certain preconceived notions about the employment of older wokers. Too often, they are placed at the end of the line. As a result, many of these workers become discouraged and they simply stop looking for work. But the official unemployment rates do not reflect this fact.

What is true of white workers is even more true of non-white workers. Thus, among non-white males, 45 to 54 years of age, the labor force participation rate, which exceeded 95 percent in the early 1950's was down to 90.7 percent in 1966.

Beyond this problem of an undercount of the extent of unemployment, the overall unemployment rates tend to camouflage some of the other harsh treatment to which many older workers are subjected in the job market. For example, workers 45 years of age and older made up 24 percent of the total unemployed in 1966. But they comprised 39 percent of the long-term (15 weeks or longer) unemployed during that year.

Moreover, the older workers are not only more prone to long-term joblessness, they are also the victims of more frequent bouts with unemployment. Thus, in 1964, of all those unemployed during the year less than 20 percent had three or more separate spells of joblessness. However, among workers 45 years of age and older who suffered unemployment during the year, over 25 percent had three or more separate bouts of joblessness. And so far as non-white males between 45 and 64 years of age are concerned, 43 percent of those who were unemployed in 1964 were jobless on three or more occasions in the course of the year.

In addition to all of this is the fact that a substantial number of older workers are forced into part-time employment. And this, too, is hidden if we look only at the unemployment rates. In 1966, 36 percent of the 1.7 million workers who were employed part-time in non-agricultural industries for economic reasons—that is, because they could not find full time jobs—were workers who were 45 years of age and older.

These conditions do not come about because older workers are not able to perform satisfactorily and efficiently the tasks required by their jobs. Medical research shows that there is no factual support for restrictive age limits in employment.

The employment problems of the older worker come about primarily as a result of employer attitudes, conditioned in no small measure by some of the very employment benefits which have been achieved for workers, such as seniority, pension plans, promotion-from-within policies and early retirement. Some of these attitudes may be justified in connection with particular occupations, but overall they have little justification in fact in present-day industry and business.

In saying this, Mr. Chairman, I do not wish to be misconstrued as expressing any serious skepticism about the importance and value of these aspects of modern employment relationships. The role they play in conditioning employment attitudes does, however, need to be kept in mind. The employer too often tends to think of the older worker as a less efficient and more costly worker. Thus, he is slower to hire him and quicker to fire him.

The result of the demonstrated failure of our economy to use fully the capabilities of older workers for productive purposes is a tremendous loss to the Nation's economy that has been estimated to run into the billions of dollars. Of equal, if not more, importance is the human loss in terms of the undermining of personal dignity and confidence that can afflict all too many workers, especially those with

little or no skills, as they approach the age of 45 and begin to realize that if they lose their jobs, it is going to be terribly hard for them to find other jobs.

In our view, this is a situation that urgently calls for correction. It is this aspect of the problems of the older worker that H.R. 4221 and H.R. 3651 are designed to meet.

Of course, the prohibition of discrimination in employment on account of age would mark only a beginning in dealing with the problems of the older worker. Other programs need to be developed to assure continued usefulness and dignity for workers and others as they grow old. Enactment of the legislation this Subcommittee is now considering would, however, be a most significant beginning, and we urge the Congress to undertake this step without delay.

The problems of the older worker have engaged the attention of the delegates to the last two AFL–CIO Constitution Conventions. In 1963, the AFL–CIO Convention resolved unanimously to support legislative and administrative action to aid the aging and called for "vigorous enforcement of laws against discrimination in hiring older workers and an investigation of rigid systems of forced retirement of older workers who retain their full productive capacity."

In 1965, our support for legislation prohibiting discrimination in employment on account of age was reaffirmed and strengthened in a Convention resolution which states: "We urge the enactment of legislation which will effectively curtail discrimination on account of age. While a number of programs have been developed to meet the needs of youth, and to eliminate discrimination based on color, sex, and national origin, little has been done to provide protection to older workers. This is a waste of human resources which should not be tolerated in any society seeking full employment and a rational manpower policy."

Nor are we alone in recognizing that there is a serious employment problem for older workers that urgently requires attention. Twenty-three States and the Commonwealth of Puerto Rico have enacted laws banning discrimination in employment on account of age. These laws, of course, are of varying effectiveness, and nearly all of them suffer through lack of adequate appropriations to enable them to become truly effective in carrying out their purpose. They do, however, constitute widespread acknowledgment of the need to take action in this field and of the appropriateness of legislation to prohibt age discrimination in employment.

The Federal Government, too, has taken some steps to deal with the problem. In March 1963 President Kennedy issued a memorandum to the Executive Branch of the Government reaffirming the policy of hiring and promoting employees on the basis of merit alone and emphasizing the need to make sure that older people are not discriminated against because of their age and receive full and fair consideration for employment and advancement in Federal employment. This was followed by a recommendation by the President's Council on Aging in December 1963 that an Executive Order be issued banning discrimination in employment on the basis of age by Federal contractors and subcontractors.

Executive Order 11141, issued by President Johnson on February 11, 1964, carried out this recommendation by establishing as a policy of the Federal Government that Government contractors and subcontractors should not discriminate in connection with the employment or terms of employment of persons employed by them because of their age. The order also directed that they should not in advertising for employees to work on Government contracts specify maximum age limits for such employment. Exceptions could be made under the order, however, upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement. Unfortunately, the order made no special provision for administration, carried no penalties, and only required the several Federal departments and agencies to "take appropriate action to enunciate this policy". Clearly, to be reasonably effective, it needs to be strengthened and implemented.

In his "Message on Older Americans," which was sent to the Congress on January 23, 1967, President Johnson called for enactment of a Federal law prohibiting "arbitrary and unjust discrimination in employment because of a person's age". On January 23, 1967, too, Secretary Wirtz forwarded to the Congress draft legislation to carry out the President's recommendation. This legislation is contained in H.R. 4221 and H.R. 3651 which you, Mr. Chairman, and Chariman Perkins have introduced.

I cite these expressions of support for enactment of Federal legislation to prohibit age discrimination in employment because they demonstrate that recognition of the need for such legislation is significant and widespread. We

have seen legislation passed in the last few years to prohibit discriminatory employment practices based on color and sex. It is time now to take the further step of outlawing discrimination because of age as well.

I should like now, Mr. Chairman to discuss some of the provisions of the age discrimination bills which you and your subcommittee have before you. These bills have the objective of making it unlawful for employers, employment agencies, or unions to engage in certain specified employment practices which have the effect of discriminating against employees or applicants for employment because of age. They impose responsibility for administering and enforcing the legislation on the Secretary of Labor, with authority to delegate his functions in such manner "as he deems necessary to assist him in the performance of his functions under this Act". In general, we believe, the legislation is well designed to carry out its objective.

Among other things, Mr. Chairman, the bills prohibit employment practices based on age engaged in by labor unions as well as by employers and employment agencies. The labor movement, through its international and local unions, has consistently been in the forefront of efforts to deal with the problems of older workers. In collective bargaining agreements we have endeavored to deal with some of the problems of age discrimination in employment, and in Convention resolutions we have called attention to the need for legislation, at both the state and Federal levels, to prevent such discrimination.

It is important to make clear, we believe, that employers who are paying wage rate differentials to older workers in violation of the bills shall not, in order to comply with the legislation, be permitted to reduce the wage rate of any employee. The Equal Pay Act of 1963 contained such a provision, and we believe it would be appropriate and necessary that such a provision be included in this legislation.

We see no good reason, Mr. Chairman, for the provisions that exempt small firms employing fewer than a specified number of employees. Such provisions have the effect, of course, of leaving large numbers of employees outside the protection of the legislation and fly in the face of facts that make clear that the older worker in the small plant or business has just as much, and maybe more, need of protection as the older worker in the large plant or business. We are long past the day, it seems to us, if, indeed, there ever was such a day, when it could justifiably be argued that it may be all right to require a large employer to observe fair employment practices or labor standards, but all wrong to require his small competitor to do so.

We likewise do not see any reason why the legislaion should, as is provided in section 4(f)(2) of the bills, permit involuntary retirement of employees under 65. We do not believe that the safeguard which this provision purports to contain restricting this possibility to cases where it is done "under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this Act", is adequate to prevent serious abuse. In this connection, it should be observed that there is no age cut-off in this provision. Involuntary retirement could be forced, regardless of the age of the employee, subject only to the limitation that the retirement policy or system in effect may not be merely a subterfuge to evade the Act.

On the other hand, section 4(f) might well be strentgthened in another respect. There is nothing in this section now which protects the operation of *bona fide* non-discriminatory seniority systems. We urge that this section be amended to protect such systems.

The enforcement provisions contained in section 7 of the bills are a mixture, based in various parts on the Civil Rights Act of 1964, the National Labor Relations Act and the Fair Labor Standards Act. We believe that it would be preferable to utilize the enforcement machinery of one of these Acts rather than to establish still another enforcement system. The staff and experience of the agency administering that Act would be of benefit to those charged with the responsibility of enforcing the prohibitions against age discrimination in employment.

When Congress passed the Equal Pay Act in 1963, it decided to utilize the staff and expertise of the Wage and Hour Division in the U.S. Department of Labor to administer and enforce that Act. As far as we have been able to determine, this approach to the problem of enforcing the Act's prohibition against discriminaiton in wage payments based on sex has worked well.

We suggest that the Subcommittee should give serious consideration to simply utilizing the enforcement machinery and procedures of the Wage and

Hour Division to enforce the proscriptions against discriminatory employment practices based on age which are contained in the bill.

Finally, the bills provide in section 13 that their application is limited to individuals who are between the ages of 45 and 65. There is a proviso added to this section which gives the Secretary of Labor authority by rule or regulation to "provide for appropriate adjustments, either upward or downward, in the maximum and minimum age limits provided in this section."

This Subcommittee is aware, I feel sure, of the practice of some airline companies which refuse to permit stewardesses to work as such beyond the ages of 35 in some cases and 32 in others. You will be hearing after me testimony from spokesmen for the Transport Workers Union of America, AFL–CIO, on this subject. I want to make it clear we are in sympathy with their views on the need for relief for their members from the present discriminatory age limits with respect to their employment as stewardesses which the airlines are imposing on them.

It seems to us that the proviso which is included in section 13 is hardly adequate to provide the protection which they need. We believe that there is a substantial question whether the proviso permitting "appropriate adjustments, either upward or downward" can be stretched far enough to include workers 35 or 32 years of age under the protection of the bill. Indeed, we see no real basis for either upper or lower age limits in the bill, and we suggest, therefore, that section 13 be eliminated.

III

Before I conclude, Mr. Chairman, I should like to say a word about the provisions H.R. 4221 and H.R. 3651 which call upon the Secretary of Labor to undertake studies and provide information "concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy."

The Secretary would also be directed to carry on a "continuing program" of education and information designed to (a) reduce barriers to the employment of older persons, (b) publish and otherwise make available findings and materials for the promotion of employment of older workers, (c) foster the development of public and private facilities for expanding the opportunities and potentials of older persons, and (d) sponsor and assist State and community informational and educational programs. Since one of the biggest needs in eliminating age discrimination in employment is getting rid of attitudes about older workers which are not substantiated by the facts and making employers and other persons understand the productive capabilities of older workers, these provisions are of great importance in aiding and supplementing the substantive provisions of the bills. We are glad to see them in the bills, and we trust the Congress will approve them and will back up the legislation with the necessary funds to make it truly effective.

In conclusion, Mr. Chairman, I would like to say only that it is our hope that the Congress will act speedily to put legislation along the lines of H.R. 4221 and H.R. 3651, with the changes we have suggested, on the statute books. The need for it is great and, so far as I am aware, virtualy unchallenged. The problem which the legislation is designed to meet, far from getting less important, only grows larger, as time goes on. Early passage of the legislation can make a substantial contribution to achieving a better life for all Americans.

IV

Thank you, Mr. Chairman, for this opportunity to present to you and to the members of this Subcommittee the views of the AFL–CIO on this important legislation.

Mr. DENT. I just want to make this observation on your testimony, you have touched on the three critical situations in the entire field of age legislation:

No. 1, the question of whether or not the size of the employment agency, or the employer, should be a criterion. It develops many times we pass legislation using a false benchmark, as we have for so many years in the fair labor standards law. This chairman has tried to wipe out so-called commerce clauses and other restrictions on Congress.

If we are discussing the matter of discrimination on age, how can we justify limiting protection to a prospective employee who is going to work for an employer with 25 or more employees? Are we passing legislation dealing with the employee or employer status? I think your remarks in that regard are well taken.

I also want to commend you for your discussion of the section dealing with the upper and lower age limits. We may have a difference of opinion on the question of the upper levels, because I believe in early retirements, but not at 32. If so, I have missed a couple of years.

In the lower restriction as established here at 45 years of age, I see no difference in discrimination at age 23, 24, age 35 or 37 than to age 45. I believe the committee will have to consider very seriously the question of whether or not there ought to be any lower limit other than that prescribed by statutory law on the books dealing with child labor, or safety, occupational hazards, and so forth.

It seems to me that particular part of your testimony ought to be given very serious consideration by the House at least; we know the Senate ignored it.

We also believe the position taken by your AFL–CIO testimony this morning relating to the involuntary retirement of employees and so-called prehiring contracts where age is the only factor and the factor is not directly related to the job potential merits further discussion. The committee, I am sure, will take that into consideration.

I want to personally thank you for coming here and helping us with your very wise testimony this morning.

Mr. Hawkins.

Mr. HAWKINS. I want to commend you for an excellent statement; however, I am not clearly convinced on your recommendation that enforcement provisions should be through the Wage and Hour Division. I wonder whether or not this is a strong recomemndation or if you are suggesting that instead of combining the enforcement provisions of several acts, it would be better to use one already accepted, or whether the Equal Opportunities Commission has been rejected. Have you given consideration to that and to whether other factors have been considered due to the fact we have had a long struggle to get all the problems of aging in one single division, not only enforcement but data collection, and so forth? Have you given consideration to these factors as well?

Mr. MEIKLEJOHN. Our main concern here, Congressman Hawkins, is to utilize a procedure, the procedure set forth in the Fair Labor Standards Act rather than saying the responsibility for administering that procedure should be located in any particular department of the Bureau. The bill places responsibility for enforcement and administration with the Secretary of Labor and permits him to delegate that responsibility as seems to him best within the framework of the Department.

The bill in its present form contains provisions which in part are derived from various other statutes. It provides for cease-and-desist orders and adjudications by the Secretary of Labor, which we think are somewhat inappropriate for combining with administration by a single individual. There is some question, it seems to us, whether such quasi-judicial powers should be vested in an individual with administrative powers as well. What we are primarily concerned with here is

to utilize the procedures of court action, individual suits, and injunction proceedings which are provided for in the Fair Labor Standards Act.

This, I think, is what we have in mind. It is not to set up a new enforcement procedure.

Mr. HAWKINS. What particular expertise does the staff of the Wage and Hour Division have in this particular field as distinguished from its other duties?

Mr. MEIKLEJOHN. It has knowledge of the scope and coverage of, and enforcement problems in connection with, the Federal labor standards laws. It has also acquired considerable expertise in administering the Equal Pay Act.

Mr. HAWKINS. Are these necessarily sympathetic to the older worker or rather in some respects in conflict with the problems of aging?

Mr. MEIKLEJOHN. The problem of older workers is a problem of interest to all workers and a problem which is of concern to those who are administering the Wage and Hour Act, as well as those administering the Equal Pay Act. We don't believe there is any conflict there.

Mr. HAWKINS. I don't think there should be but often there is.

Mr. MEIKLEJOHN. In any case, if it were necessary, the Secretary of Labor under this legislation could establish a separate bureau or division to deal with problems of this kind, as we see it.

Mr. HAWKINS. Whether or not this provision or recommendation is accepted, you would still support the bill, would you not?

Mr. MEIKLEJOHN. Yes, I think we would. I don't think we regard this as of critical importance. This is a matter where I believe Congress would have to exercise its best judgment. It is our view that utilizing the enforcement procedures of the Fair Labor Standards Act, which are tried and tested, would be the most useful way of going about it.

Mr. HAWKINS. Thank you.

Mr. DENT. At this time, we have in the room the Honorable Claude Pepper, Representative in Congress from the State of Florida.

## STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. PEPPER. Thank you, Mr. Chairman.

Mr. Chairman, yesterday, I presented a bill in which I have three approaches to this problem of employment for senior citizens and, if it would be agreeable, I would like the bill to be incorporated in the hearing since it is customary, I think, when a bill is the subject of testimony here, for the bill to appear in the testimony, is it not?

Mr. DENT. The bill was introduced yesterday. We have said all identical bills.

Mr. PEPPER. It is not identical. I have made some changes from the other bill.

Mr. DENT. Identical in purpose is what we mean by that.

Mr. PEPPER. Yes, the purpose is identical or similar.

Mr. DENT. I shall be happy to have the staff get the legislation and we will look it over before our next meeting and see if we can get from it new phases of legislation that we can incorporate.

Mr. PEPPER. I would like to thank the members of the excellent House General Subcommittee on Labor for giving me this opportunity to testify as to the need to provide greater working opportunities for older workers. I would also like to commend this committee for the excellent job of investigation it has been doing and, I am sure, will continue to do on this matter of vital importance to our Nation.

The problems facing our senior citizens have been receiving increased attention in the past several years, both in the executive and legislative branches of the Federal Government. All of the investigations and studies made so far point to the inescapable conclusion that something must be done to solve the employment problems of older workers, yet very few substantive programs have resulted from these reports and hearings.

We must provide meaningful opportunities for employment to the thousands of workers 45 and over who are well qualified but nevertheless denied jobs which they may desparately need because someone has arbitrarily decided that they are too old.

Although statistics show that as a nation we are growing younger, the absolute number of older persons in the society continues to increase. By 1975, it is estimated that almost 65 million persons will be 45 and over. Today, the worker aged 45 or over comprises 27 percent of all unemployed and 40 percent of the long-term unemployed, and these workers receive more than three-fourths of a billion dollars in unemployment insurance each year.

In 1965, the Secretary of Labor reported to the Congress that approximately half of all private job openings were barred to applicants over 55, a quarter to those over 45; and almost all to those over 65.

At the same time that the older workers are being forced by new technological advances to retire earlier, medical science is discovering ways to enable them to live longer. We are thus faced with the serious prospect of privation and poverty for a great number of this expanding population who will be involuntarily retired in the years ahead.

There are, of course, many areas of study which should be pursued in order to solve this dilemma, but the most important single thing which we can do is to provide older workers with the opportunity to work and to support themselves as they have been doing all their lives.

Not only is employment important to the economic well-being of our older population, it is also important to their mental and physical health. In a recent position statement on the employment of older people the American Medical Association stated:

> It is difficult to prove that physical or mental illnes can be directly caused by denial of employment opportunities. However, few physicians deny that such a relationship exists.

Many older persons, educated to the pioneer concept of work as a good in itself and leisure time as wasted time, are unable or unwilling to adapt to the creative use of their leisure time. They need to feel that they are in some ways performing a contribution to society.

The bill which I introduced yesterday—"The Older Workers Employment Act of 1967"—attempts to attack this problem facing the older American on several fronts, combining all the best features of several earlier bills I introduced, including H.R. 9207 and H.R. 9893. It not only prohibits arbitrary discrimination against hiring older

workers, but also offers meaningful job opportunities to many who could not otherwise find employment, provides for the construction of senior citizens centers, and provides for the study and investigation of possible alternative answers to the problems now confronting us.

I am primarily concerned with emphasizing that the problem of the older worker is one of the greatest importance. Considered purely from the psychological point of view, if the involuntary unemployment of the older worker continues to increase, we shall have on our hands a great problem in the reeducation of these people so that they may face the prospect of 20 to 25 years of retirement without anxiety and depression. Economic aspects of involuntary unemployment—or early retirement—are of even more serious consequence, for the importance of earned income in the budget of many of the elderly is paramount.

The bill which I have introduced is aimed at these problems. It will operate by "providing these age groups with opportunities for useful work, part time and full time, paid and volunteer, will bring them needed income, will benefit their physical and mental health; and will be a means of providing services needed by all age groups which are not now being provided."

Older workers often find it very difficult to surmount the assumption that they are unable physically or mentally to handle any new work because of their age. Title II of my bill would attempt to fight this discrimination by making it unlawful for employers, employment agencies, or labor organizations to discriminate against any individual solely because of age, except in cases where age is a bona fide occupational qualification.

Violation of these prohibitions would be punishable by civil penalties. Administration of the bill would be in the Wage and Hour Division of the Department of Labor, with the Secretary of Labor empowered to carry on a continuing program of education and information.

The elimination of age discrimination in employment will be a major step toward the goal of a better life for older citizens, but while it insures that available jobs will not be refused to qualified applicants, it does not insure a job for every older worker who wants one.

In this day of rapidly improving technology, many older workers find their skills outmoded and their jobs abolished as new and more efficient methods of production are adopted. In order to combat the tightening job market, it will be necessary to provide work opportunities for older persons. Title III of my bill will help to increase the availability of work by anticipating jobs on federally supported programs and authorizing the Secretary of Labor to provide training for older workers to fill these jobs.

To create further job openings, the Older Americans Act of 1965 will be amended to provide for a Senior Service Corps. The Secretary of Health, Education, and Welfare will be authorized to supply part-time paid jobs in community service programs to workers aged 60 and over who are unable to secure full-time employment or to those who need to supplement an inadequate retirement income.

Such jobs would provide a viable solution to the problem facing the worker who has exhausted his other means of support, but has not as

yet found suitable employment. Those senior citizens who do not need jobs, but desire to work in community service programs on a volunteer basis, would be encouraged to work in the Senior Service Corps, and they would be eligible to receive out-of-pocket expenses from the program.

The act would be further amended to provide the authorization of a special grant program to provide for the construction and operation of senior citizen activity centers. Some of these have been operated by pioneering communities for a number of years and represent the most significant and promising new instrumentality yet devised to meet the many and varied needs of older people.

A center facility, adequately staffed and effectively operated, permits older people to develop programs which explore their interests and provide new opportunities for self-improvement. Centers can provide intellectual and recreational stimulation, offer private and personal counseling, provide referral services, and offer information about other services available to the elderly in their communities.

Many communities which are anxious to begin such a program, do not have the available funds. My bill would provide "seed money" to enable communities to begin developing these programs.

In order to open the way to constructive and satisfying roles in employment and retirement, a great deal of further study is needed. Therefore, the Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized under title IV of my bill to conduct and support research programs in such areas as early or flexible retirement plans, continuing education and retraining programs for workers who are employed in order to prepare them for new jobs, and advance planning of manpower requirements.

In addition, there is authorized, to be appointed by the President, a Commission on Lifetime Adult Education. This Commission may hold hearings and study the aforementioned proposals in order to make legislative recommendations on these problems, and shall cease to exist after its report has been filed.

Finally, the Secretary of Labor is directed to study the feasibility and desirability of a transitional allowance system for older workers between the ages of 55 and 65 who are unemployed and have exhausted their unemployment compensation. Within 2 years of the Secretary's report, the President will be directed to submit a report to Congress on the means to eliminate the gaps and inadequacies in workmen's compensation and disability insurance systems, particularly as they adversely affect the employment of older workers.

Mr. Chairman, the problems which plague the older worker today are indeed serious. As the longevity of our population increases, we shall probably move into an era where the periods of education, work, and retirement in a man's lifetime will assume equal importance. By acting now to give each man the opportunity to work as long as he chooses and to enter retirement willingly, we will have taken a great step toward insuring a happy and satisfying working life culminating in a constructive and useful retirement. But we must act now, for today's older worker has no time to wait.

I urge the members of this excellent subcommittee to recommend an expanded program to solve the employment problems of the older worker and the senior citizen, so that they may be able to increase their

standard of living, while at the same time aid in decreasing the growing poverty which has ensnarled so much of our Nation.

I beseech of your committee the consideration of these proposals.

Mr. DENT. Thank you, Congressman. I might say, as just an offhand position, you covered quite a lot we have already covered in this legislation before us but you are making new proposals that should perhaps be given more in-depth study. It might be the committee may decide to have your bill up for special hearings because of the departure into the areas of unemployment compensation, workmen's compensation, and disability insurance.

While they have the very definite bearing on limitation of workers, it might be better for this legislation at this time to postpone consideration of these other areas which your bill covers. We are hoping to get this legislation a ruling next week in order that there will be opportunity to vote on it this year.

Mr. PEPPER. The job discrimination provisions of my bill incorporate the five amendments offered by Senator Javits so as to bring this section up to date.

Mr. DENT. Mr. Hawkins.

Mr. HAWKINS. I wish to commend you for a very comprehensive bill. I would like to ask, since this bill goes beyond the question of prohibiting job discrimination, have you any estimate of cost that would be involved in this proposal?

Mr. PEPPER. No, I do not as of now. We are trying to get estimates of cost from the Departments of Labor and Health, Education, and Welfare.

Mr. DENT. Thank you.

I would say for the record the Fair Labor Standards Act in its original inception was chiefly the work and study of the gentleman from Florida, Congressman Pepper.

Mr. PEPPER. Thank you.

Mr. DENT. Our next witness is, I understand, going to present the case very bluntly. We have now Francis A. O'Connell, legislative director of the Transport Workers Union of America; Miss Colleen Boland, president of Local 550 of the Transport Workers Union; and Miss Barbara Erikkson, legislative representative, in Washington, D.C.

I will let you decide who wants to go first.

## STATEMENT OF FRANCIS O'CONNELL, LEGISLATIVE DIRECTOR, TRANSPORT WORKERS UNION, ACCOMPANIED BY MISS COLLEEN BOLAND, PRESIDENT, LOCAL 550, TRANSPORT WORKERS UNION; AND MISS BARBARA ERIKKSON, LEGISLATIVE REPRESENTATIVE

Mr. O'CONNELL. Thank you, Mr. Chairman. I would like to read my statement into the record and I have some exhibits I would like to have inserted in the record.

Mr. DENT. Without objection, it is so ordered.

Mr. O'CONNELL. My name is Francis A. O'Connell. I am legislative director of the Transport Workers Union of America, AFL–CIO, with offices at 100 Indiana Avenue NW., Washington, D.C.

Mr. DENT. Will the gentleman yield for a minute, I want to present a distinguished member of this committee, the majority leader, Mr. Carl Albert from Oklahoma.

Mr. O'CONNELL. On my right is Miss Colleen Boland, president, Local 550 of the Transport Workers Union, and on her right is Miss Barbara Erikkson, legislative representative of the stewardesses local.

I appreciate and thank you for this opportunity to speak on behalf of the 150,000 members of the Transport Workers Union, AFL–CIO.

We come here today to support the legislation now before you to prohibit discrimination in employment because of age. Our union, with its railroad division and its air transport division, represents a great number of workers serving both one of America's oldest and youngest transport industries. We seek here to direct your attention and ask your consideration of discrimination problems involving both youth and years.

First, however, let me say the Transport Workers Union is in full agreement with the opening statements made before this subcommittee on August 1, 1967, by Secretary of Labor Willard Wirtz, that to prohibit age discrimination in employment is so plainly and unarguably right, that to belabor it is to dull it, that nobody defends such discrimination, and that there is general agreement that it ought to be stopped.

It not only ought to be stopped. It must be stopped. And we have been saying just that for years, first before the House Select Subcommittee on Labor in 1965; before the New York State Commission for Human Rights; before the Equal Employment Opportunities Commission here in Washington; before the Federal district court in Alexandria, Va.; before the Senate Labor Subcommittee of the Senate Labor and Public Welfare Committee; and again here today.

With its enforcement provisions, this bill could have been vital in helping reestablish the employment of some 2,200 members of our railroad division who have been laid off this year in Pennsylvania alone because of cutbacks in the use of some of the railway postal service cars.

Mr. Chairman, in a meeting with the chairman of the board of the Pennsylvania Railroad yesterday afternoon, he informed us that the Post Office Department has informed him of serious cutbacks in the Railway Postal Service effective September 6; the cars are on the New York to Washington run and the New York to Pittsburgh runs.

As you know, it follows, when the Postal Service cars are removed, the railroads immediately petition the ICC to disband their passenger trains and so we are faced on September 6 with further layoffs on the Pennsylvania Railroad.

These men have 15 or 20 years of seniority. They are well over 45 years of age and it is these people in the railroad division that really need this legislation. It is impossible to obtain jobs after you have reached the age of 40 or 45.

It is interesting to note this legislation pertains only to those between the ages of 45 and 65; however, the charts, graphs, figures produced by the Department of Labor usually begin with the figure 40. I don't know why it is 45 in this particular bill.

Discrimination in employment for any reason ought to be stopped. As Secretary Wirtz put it, to end discrimination in employment

because of age is so "unarguably right," it would be an absurd, unecessary waste of time to simply belabor it.

Except for one fact.

The legislation you are now considering to end age discrimination in employment contains an arbitrary, self-limiting section that in itself discriminates—by age—in extending the coverage of this bill.

Section 13 of the act limits the act, its intent and purpose, its enforcement provisions, all of it, to individuals who are at least 45 but less than 65 years of age.

And this is discrimination.

The Air Transport Division of the Transport Workers Union represents approximately 40,000 workers in the air transport industry. Nearly 15,000 of these are flight attendants—also known as stewardesses or hostesses. Age discrimination against airline flight attendants begins at the universally accepted youthful age of 32 to 35.

I admit that through our mass advertising, our communications media today, we are cultivating a myth of eternal youth. We are developing a youth cult in this country. Look young. Think young. Feel young. But don't get to be 32 or 35 if you're an airline stewardess.

The Transport Workers Union consistently has acknowledged that reasonable medical and physical standards can be imposed for all categories of workers, including airline stewardesses. But not a self-serving arbitrary age limit. Especially one that falls 13 years before the minimum age limit coverage of section 13.

Section 13 provides the Secretary of Labor with authority to make appropriate adjustments—either upward or downward—in the maximum and minimum age limits. But how far down can he go? Or how far up, for that matter?

The Secretary himself has indicated before this committee that he would like section 13 defined, spelled out more clearly in its intent. We ask it also. If Congress decides that discrimination against a worker at the age of 45 is against the best interests of the Nation, then surely Congress must abhor, at least as much, discrimination at the age of 32.

The Transport Workers Union is on record respectfully requesting that legislation be enacted prohibiting age discrimination in employment and that such legislation not be limited to people between the ages of 45 and 65.

We feel this could end the long, costly legal maneuvers and delays in seeking to find enforcement teeth for Executive Order 11141 in which President Johnson in 1964 declared a national policy against discrimination because of age.

We feel such legislation is the only answer to an industry which, while it boasts it is an equal-employment-opportunity employer in its help wanted ads, has studiously ignored Executive Order 11141 for 3 long years while steadily increasing its contracts in carrying men and supplies to the battlefields in Vietnam.

Although only one of the airlines, whose member-employees we represent, continues to enforce arbitrary age limitations today, it is clear that a final and binding decision on this matter, an industrywide decision, is necessary to head off future problems.

There must be firm and decisive language. This is an industry which received nearly half-a-billion dollars in military aircraft contracts this

fiscal year alone, but which has still not completely implemented Executive Order 11141. It must be shown the way.

Mr. Chairman, that half billion dollars of contracts awarded are the initial contracts. Last year for the fiscal year ending this past June 30, that figure was almost $700 million.

I sincerely urge this committee to delete section 13 and to adopt this bill for approval by the full House, or failing that, to amend it specifically to protect airline flight attendants.

In defense of both youth and years, I urge you to set no minimum or maximum age limits.

Mr. DENT. With the committee's permission, I would like to refrain from asking questions at this time until we hear the testimony of Miss Boland in order that we may ask questions related to the testimony of both witnesses.

Miss BOLAND. Mr. Chairman and members of this committee, my name is Colleen Boland. I am president of the Airline Stewards & Stewardesses, Local 550, of the Transport Workers Union of America, AFL–CIO.

This is a labor organization with offices at 205 West Wacker Drive, Chicago, Ill., representing over 10,000 men and women who earn their living as flight attendants on this country's commercial aircraft.

Since 1954, a portion of the airline industry has arbitrarily instituted a policy which prohibited continued employment of female flight attendants after they reached age 32 or 35.

Because the industry is young, no individual was actually affected until about 1963. In the past 4 years, however, many young women have found themselves without employment solely because of their age. During the past few years, we have strived here in Washington through support of legislation, through the EEOC, and through Presidential Executive Order 11141, to end this cruel and arbitrary discrimination.

We have pleaded our case before various State agencies and courts seeking relief which would provide us the ability to continue to work in a job we desire and are able to perform. We have met with violent opposition from the management of this industry, we have battled through innumerable legal maneuvers and delays, and spent thousands of dollars hoping to find a peaceful solution to our problem.

The New York State Commission on Human Rights ruled they found no evidence which warranted the establishment of an arbitrary chronological age policy for continued employment of an airline stewardess and, further, that evidence supported the position that termination as a stewardess should be predicated solely on the individual's ability to perform the duties of the position.

The commission went on to say that under New York law they found no support for a claim of a bona fide occupational qualification.

The Equal Employment Opportunities Commission, in issuing guidelines on discrimination provisions of the Civil Rights Act of 1964, stated that "the principle of nondiscrimination requires that individuals be considered on the basis of individual capacities."

Section 4(a) of H.R. 4221 proposes to make it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, condition or privileges or employment, because of such individuals age * * *."

We believe that such a provision is long overdue, but that such a provision, when made into law, should apply to all people and to all groups regardless of age.

For this reason we urge you to consider the elimination of any minimum or maximum age limitation in order to assure that the true intent and meaning of the act is not circumvented through misuse or misapplication of such restrictions. For instance, in hearings before the New York commission, counsel for the Air Transport Association and American Airlines presented lengthy testimony as to why they were not in violation of New York law.

They submitted the history of that law and pressed the point that the law applied only to people between the ages of 40 and 65. They argued that, if the lawmakers had been concerned with anyone under the age of 40, they would have said so and therefore, in the absence of specific attention to anyone under 40, the law should now be applied only to cases where discrimination took place between the ages of 40 and 65.

Because we are members of a strong and militant labor organization which commands the ability to withdraw our services and thereby cause an economic hardship upon the industry, we have been partially successful in our efforts to set aside this discriminatory age policy in the airline industry. Today we are able to state that only one airline on which we represent stewardesses continues to enforce termination because of age.

All other carriers with which we presently represent stewardesses have, in one form or another, set aside their policy to reject any woman over 33 years of age from the job of airline stewardess.

I believe a previous witness before this committee has submitted quite detailed and lengthy testimony and exhibits that we had in part previously presented to you and those do reflect the industry as a whole. We will not go into them since I am aware that they are all available to the committee at this time.

Mr. DENT. The committee appreciates that because it would only be repetitious and the committee has had those exhibits presented in the interest of the airline hostesses.

Miss BOLAND. Thank you.

H.R. 4221, if acted upon and passed, will permit many Americans to continue in a job of their choice and within their capabilities which may otherwise be denied them because of outdated, outmoded thinking. H.R. 4221 if passed without a minimum or maximum age limitation could eliminate forever discrimination because of age for us and for all Americans.

Mr. Chairman, I want to thank you and the subcommittee for allowing me this opportunity to appear before you today and to respectfully urge serious consideration of our proposed amendment.

Mr. DENT. Thank you, Miss Boland.

Mr. O'CONNELL. Before you start questioning, I would like to submit for the record a copy of Executive Order 11141; a Wall Street Journal article dated Friday, June 16, 1967, about airline contracts. Also a copy of a letter from Mr. Stanley H. Ruttenberg, Assistant Secretary and Manpower Administrator at the U.S. Department of

Labor, to Congressman James G. O'Hara and I would like to read part of it. [Reading:]

This is in further reply to your letter of March 7th concerning the Department of Labor plans for implementation of Executive Order 11141.

After careful review of the Executive Order by Department of Labor staff, we have concluded that the Order does not provide for enforcement procedures. As you know, the Order declares Federal policy against age discrimination on the part of Federal contractors. Under the Order, Federal departments and agencies are to "enunciate this policy," but no provision is made for action against contractors who do not comply. It is our feeling that in the case of the airline hostesses, the Department of Defense has already done as much as the Executive Order permits. There is no question that the policy has been enunciated, and certainly every effort has been made to bring the airlines voluntarily into compliance.

It is our expectation that passage of the Age Discrimination in Employment Act presently under consideration by the Congress will make it possible to implement the Federal policy on age discrimination. With the force of law behind the policy, regular procedures can be established to assure compliance by Federal contractors.

That letter was received on May 15. On March 15, Secretary of Labor Wirtz testified before the Senate Labor Committee and testified in answering a question that, if Congress thought that the problem of the hostesses was to be taken care of, it should be taken care of by specific language. This is one of the reasons we are here today.

We have been assured by Stanley Ruttenberg that this legislation will take care of us and take care of the problem of stewardesses and Secretary of Labor Wirtz before the Senate and your committee testified it should be done by specific language.

Mr. DENT. Without objection, the exhibits will be part of the record.

(The exhibits referred to follow:)

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
*Washington, D.C.*

HON. JAMES G. O'HARA,
*House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN O'HARA: This is in further reply to your letter of March 7, concerning the Department of Labor plans for implementation of Executive Order 11141.

After careful review of the Executive Order by Department of Labor staff, we have concluded that the Order does not provide for enforcement procedures. As you know, the Order declares Federal policy against age discrimination on the part of Federal contractors. Under the Order, Federal departments and agencies are to "enunciate this policy," but no provision is made for action against contractors who do not comply. It is our feeling that in the case of the airline hostesses, the Department of Defense has already done as much as the Executive Order permits. There is no question that the policy has been enunciated, and certainly every effort has been made to bring the airlines voluntarily into compliance.

It is our expectation that passage of the Age Discrimination in Employment Act presently under consideration by the Congress will make it possible to implement the Federal policy on age discrimination. With the force of law behind the policy, regular procedures can be established to assure compliance by Federal contractors.

STANLEY H. RUTTENBERG,
*Assistant Secretary and Manpower Administrator.*

EXECUTIVE ORDER 11141

The President on February 12, 1964, issued an Executive Order establishing a policy against discrimination in employment on the basis of age by Federal contractors and subcontractors.

This was the first time that the Federal Government had enunciated a clear-cut policy respecting age discrimination in private employment. The President's Council on Aging, in its Report to the President in December 1963, had recommended that such an order be issued.

The policy provides that contractors and subcontractors shall not discriminate on account of age in hiring, advancement, discharge, and terms, conditions or privileges of employment.

Proscribed also are maximum age limits in advertising or other solicitations for employment.

Exceptions to this policy are bona fide occupational qualifications, retirement plans, and statutory requirements.

The text of the Order follows:

EXECUTIVE ORDER 11141—DECLARING A PUBLIC POLICY AGAINST DISCRIMINATION ON THE BASIS OF AGE

Whereas the principle of equal employment opportunity is now an established policy of our Government and applies equally to all who wish to work and are capable of doing so; and

Whereas discrimination in employment because of age, except upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement, is inconsistent with that principle and with the social and economic objectives of our society; and

Whereas older workers are an indispensable source of productivity and experience which our Nation can ill afford to lose; and

Whereas President Kennedy, mindful that maximum national growth depends on the utilization of all manpower resources, issued a memorandum on March 14, 1963, reaffirming the policy of the Executive Branch of the Government of hiring and promoting employees on the basis of merit alone and emphasizing the need to assure that older people are not discriminated against because of their age and receive fair and full consideration for employment and advancement in Federal employment; and

Whereas, to encourage and hasten the acceptance of the principle of equal employment opportunity for older persons by all sectors of the economy, private and public, the Federal Government can and should provide maximum leadership in this regard by adopting that principle as an express policy of the Federal Government not only with respect to Federal employees but also with respect to persons employed by contractors and subcontractors engaged in the performance of Federal contracts:

Now, therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States and as President of the United States, I hereby declare that it is the policy of the Executive Branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement, and (2) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a *bona fide* occupational qualification, retirement plan, or statutory requirement. The head of each department and agency shall take appropriate action to enunciate this policy, and to this end the Federal Procurement Regulations and the Armed Services Procurement Regulation shall be amended by the insertion therein of a statement giving continuous notice of the existence of the policy declared by this order.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *February 12, 1964.*

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[From the Wall Street Journal, Friday, June 16, 1967]

U.S. AIRLINES GET $485 MILLION JOBS FROM THE MILITARY

WASHINGTON.—The Pentagon announced $485 million in contracts to U.S. airlines to carry military personnel and cargo in the year beginning July 1.

Commercial airlines currently carry about 35% of military cargo and 90% of the service personnel. Of the 22 airlines getting awards, 16 will fly to Southeast Asia, principally Vietnam.

Pan American World Airways received the largest award, $82,814,968.

Among other lines receiving contracts:

Continental Air Lines, $53,576,101; Braniff Airways, $30,252,957; Northwest Airlines, $37,317,212; Flying Tiger line, $36,876,464; Trans World Airlines, $32,271,604; World Airways, $26,648,889; Seaboard World Airlines, $24,202,334; Airlift International, $22,364,475.

Saturn Airways, $21,857,111; Universal Airlines, $19,492,413; American Airlines, $18,174,961; Trans International Airlines. $15,169,661; Eastern Airlines, $13,650,631; Trans Caribbean Airways, $10,130,155; Capital International Airways, $10,928,553; Overseas National Airways, $9,771,935, and Southern Air Transport, $7,608,571.

The awards are $144 million more than the total initially awarded for the current fiscal year, but supplemental contracts issued throughout fiscal 1967 are expected to push this fiscal year's total to more than $600 million.

In other defense contract actions, the Army awarded a $5,818,578 contract to Martin Marietta Corp. for production of Shillelagh missiles at Orlando, Fla.

International Telephone & Telegraph Corp. received a $5,642,300 Air Force contract to make airborne navigational sets and related equipment at Nutley, N.J.

Southwest Truck Body Co., St. Louis, was given a $3,467,800 Army contract for six-ton semi-trailer vans.

Mr. DENT. I would like to change the format of the questioning. You will please just remain at the witness table so the committee will have a longer period of questioning without delaying a Member of Congress with other duties to perform.

I would like to break in at this time although the testimony of the Member of Congress, Mr. Burke, shall appear in the record following all the questioning of these two witnesses.

Now, Mr. O'Connell, I would like to make a few observations.

I noticed you both touched on a subject matter in your testimony which I think is very pertinent and probably of great interest to this committee and it should be to the Congress of the United States. That is, once this committee and other committees have taken official notice of the problem of the airline stewardesses and hostesses, I am very much afraid that if we do not take some action on it it might be the go-ahead sign for some of the airlines who do not practice this discrimination to put it into effect.

As I noted the other day from testimony there is one of the major airlines which does not have this type of a contract proposal which is proposing it now in the face of the fact that most of the major airlines are eliminating this type of contract for employment. We are almost forced by the nature of our interest in the matter to consider the airline problem whether or not it was considered in the beginning of the legislation.

Miss Boland touched on it and you touched on it so that we find ourselves now locked into a position where at least some consideration, some comment, some provision must be made by the Congress at this time or we may open the door to a greater problem for the airline hostesses than they have had up to this moment.

Mr. O'CONNELL. We are afraid if you do not give consideration to the stewardesses' problem you will give license to the airlines to further institute these regulations.

Mr. DENT. Mr. Hawkins, do you have any question on this particular phase of the testimony?

Mr. HAWKINS. No, only I want to ask Mr. O'Connell whether or not during the litigation he has had with the airlines or any of the hearings before commissions or even in the courts, has any documentary evidence been submitted which sustains the airlines' contention, if there is a contention, that there are economic factors involved?

Mr. O'CONNELL. Not as far as economic factors are involved. I was interested in your question to Mr. Meiklejohn, on enforcement procedures. We filed the first case before the Equal Employment Opportunities Commission in August of 1965 and the Commission ruled after investigation that there was probable cause of discrimination because the young lady was discharged from Northwest Airlines because she had been married.

We filed the case with the Federal district court in Alexandria in January 1965 and in that case the carrier attorneys first objected that we were in the wrong court; they wanted to change venus on us.

The short of it is, is that that case is still pending in Alexandria district court and this is a year and a half later.

Every time we have gone into court or gone before the Commission, nothing about economics has been raised—it has been young and pretty females as a bona fide occupational qualification.

Mr. HAWKINS. Has anything been filed by patrons of the airlines that they prefer younger stewardesses? The testimony has charged that it has been purely arbitrary rather than actual findings.

Mr. O'CONNELL. To the contrary, the airlines club represents a large number of business travelers and they overwhelmingly preferred older stewardesses rather than the younger females. We supplied this in May 1966 to the Commission. After the Commission ruled there was probable cause for discrimination in the *Judy Evenson* case, the airline asked for a hearing for a bona fide occupation qualification and the Air Transport Association and the airlines appeared before the Commission as Miss Boland and our attorneys did. We had a hearing as to the bona fide qualifications of the stewardesses and the Commission was to rule in the middle of November 1966 when the ATA went into court here and got an injunction to keep the Commission from ruling.

We are going back before the EEOC September 12 for a new hearing as to whether sex or age 32 is a bona fide occupational qualification. We have been before the EEOC since 1965; 2 years and 3 months later we are still trying to get a ruling from the EEOC as to whether or not young and pretty females is a bona fide occupational qualification for the position of airline stewardess.

Mr. HAWKINS. I know the weight of the testimony before the New York Employment Commission seems to be that it is not the intent of the legislature that persons below the age of 40 would be covered. Is that the defense in that particular Commission case?

Mr. O'CONNELL. Miss Boland should answer that question.

Miss BOLAND. The airline arguments at that hearing were that in fact even airline stewardesses had been discussed and taken under consideration at the time the original law was written because, as I understand it, the law was originally 45 to 65 and was later lowered to age 40. In one of the cases or examples brought up there, as we have brought before you here, was the case of airline stewardesses in New York State at that time who were permitted an age limitation of 32.

The law passed amending it only to age 40 and so, as I recall and as I believe the transcript will show the airlines argued, in specific at that time it was American Airlines, that if the law had been meant to apply to any discrimination under age 40 there would not have been a minimum age limitation spelled out in the legislation.

Mr. HAWKINS. The point I am trying to develop is, as the chairman has said, the possibility that this proposal in its present form will not be of much help in your situation. Further, since we have taken cognizance of the problem in these public hearings, I am afraid it might actually encourage restrictive regulations by some of the airlines, as indicated.

It seems to me it does argue for some action, Mr. Chairman, as you have indicated.

Mr. DENT. Will the gentleman yield? We must go to the floor for 15 or 20 minutes to answer a call from the floor.

Congressman Scherle has stated he has a couple of questions and Congressman Matsunaga has indicated he wants to present his testimony.

Would it be too much of an inconvenience to ask you to wait for us?

Mr. O'CONNELL. We will be happy to wait for you.

Mr. DENT. All right, we will return as quickly as we can.

(Whereupon, a brief recess was taken.)

Mr. DENT. While we are waiting for two other members, I would like to ask Miss Boland a question or two.

Miss Boland, are there male employees in the industry performing the same duties as the stewardesses and hostesses?

Miss BOLAND. Yes.

Mr. DENT. They have no such restrictive clauses in your contracts?

Miss BOLAND. No.

Mr. DENT. Mr. O'Connell, has there been any attempts on your part or the TWU in behalf of hostesses to take this matter up under the sex discrimination clause?

Mr. O'CONNELL. Yes, that is the case I referred to earlier.

Mr. DENT. Based on that assumption?

Mr. O'CONNELL. Yes sir.

Mr. DENT. As you stated, there was an injunction issued against the Commission from making a decision on that matter?

Mr. O'CONNELL. That is right.

Miss BOLAND. I believe we filed our first complaint under the Civil Rights Act as a matter of days after the law went into effect. We have no ruling to this date.

Mr. DENT. No indication of the decision?

Miss BOLAND. Except the one, as Mr. O'Connell said, that we have taken to court but there was no decision there.

Mr. DENT. I noted in the discussioin this morning the gentleman from California, asked a question concerning the *New York Fair Employment Commission* decision and the case before it when the airlines made the premise that the qualification in this particular line of employment was young and beautiful, or young and pretty. Do they have the same qualification for the men?

You know it is astounding in this testimony there has been no opposition to this proposal that I know of.

Mr. O'CONNELL. There is a representative of the Air Transport Association sitting in the back of the room and I know they knew we were going to testify this morning, I am sure, if they had a case they could defend, they would be here testifying.

Mr. DENT. I did understand in the beginning they were going to present testimony but as of today we have not received any testimony whatsoever. I am sure they know the record will be open for 10 days, and if there is any testimony to be presented, it can be presented by any interested party.

The Secretary of Labor, in his testimony before the Senate committee, specifically intimated that insofar as his problem is concerned he would desire that the question be clarified by congressional action. Is that your understanding of his testimony?

Mr. O'CONNELL. Yes, it is. If it were the intent of Congress to do something about this problem it should direct its attention to it specifically.

Mr. DENT. That, in line with our thinking as we have expressed it before on the question, puts us in a very crowded corner because if the question never came up it would have no bearing on what subsequent action may be obtained by the union or the employer. But since it has been brought before the Congress by testimony publicly given, it becomes imperative that some expression be made, in my humble opinion, one way or the other by Congress, otherwise we may find ourselves in the position of having done a disservice to either the employer or employee by remaining silent on the question at this point.

Mr. O'CONNELL. When the legislation was first introduced we were under the impression that the proviso contained in section 13 which gave the Secretary of Labor the authority to raise or lower the age limits in cases where he found probable cause of discrimination, we though this gave to the Secretary of Labor the right to take up and intervene in our particular case but the Secretary of Labor in testimony before the Senate committee was not loud and clear on this; in fact he was just the opposite, he didn't think he could reach down to 32.

He suggested to the Congress that if Congress intended to do something in this area that it should direct itself specifically to our problem.

Mr. DENT. It was his testimony on this point that caused the situation to become a public matter before the committee. The proposal gives him discretionary authority to adjust the age limitations upward or downward, but he threw the ball right back, if you will, to Congress by stating if we were going to have any action in this particular area we should provide for it in the legislation. Therefore, we find ourselves hoping to get testimony from both sides because I have always believed there are two sides to every question.

Where we have only one side we have to act accordingly. If we have no opposition to it then the only thing we can do is act on the testimony presented to us. Therefore, it is a matter of serious consideration since the Senate has not seen fit to follow the advice or suggestion of the Secretary of Labor, the full burden for making the determination appears to fall on the shoulders of the House committee.

Mr. O'CONNELL. The full committee has not met on that bill over

there and our problem of the stewardesses will be taken up by the full committee. The bill has been considered by the subcommittee but not by the full committee.

Mr. DENT. I might say at this point I want to correct the record. My staff just informed me the transport association sent in a brief. It is impossible for us to take up briefs while having public hearings because we are sufficiently occupied with the witnesses coming before us but we will review the brief brought in by the ATA and it will be given full consideration by the committee.

The brief to be submitted by the Air Transport Association will appear at the end of this day's proceedings.

At this time, I would like to turn the hearing over to the members for any questions they might have, especially to the gentleman from Michigan who has long been interested in this area of discrimination and has asked for permission to sit with us. He is a member of the full committee and wanted a part in the determination here.

Mr. Ford?

Mr. FORD. Thank you, Mr. Chairman. I am sorry I couldn't be here for the beginning of your testimony but we are in the process of now marking up the famous postal rates bill. I did want to be over here when Miss Boland was testifying because I know how hard her organization has been working on this legislation. I have heard about it almost from the time I came to Congress. Of course, Frank O'Connell is certainly not new to anybody on this committee and we are pleased to have Miss Boland and Miss Erikkson before the committee.

Miss Erikkson has been very helpful to my office as a kind of funnel for information to be supplied to other members of the committee.

I am concerned with what you said about the Secretary of Labor. I have discussed this with him on one or two occasions and I know that the opinion prior to this most recent consideration was that section 13 would allow him to reach down and take care of this problem. If discretion has been left to the committee, I think we should make certain that we specifically cover this particular problem.

Most Members of Congress who have introduced or are supporting this legislation first approached the problem of automation from the viewpoint of those people who at age 45 must start over in the industrial picture.

Your story has been a particularly good illustration of how far this kind of discrimination has been permitted to go in the past and I would like to ask if it is now the position of the management organizations that they do not want legislation in this field?

Miss BOLAND. The airline industry, or the managements of the industry insofar as those we represent, have never taken any specific position that I know of aside from the fact there is no legislation prohibiting such a determination, such an arbitrary rule. I think their record speaks for itself and proves our case because for many years there have been many people flying, men and women as flight attendants well past the age of 35, well past 45, and the very fact in recent months that some of the companies and some of the managements which were most adamant about retaining an age they considered necessary, or a qualification, have changed their policy and have now recalled the very people who a few months or even a year ago were terminated as an absolute must.

I can't help but feel that this proves our point. It could not be a legitimate qualification if management's mind can be changed and those people can be recalled and fulfill the job as they have done in the past.

Mr. FORD. Since the committee took up this matter just a little over a year ago in the Holland committee, have you reduced the number of airlines who still maintain arbitrary age rulings?

Miss BOLAND. I think since the last time I saw you we are very happy to report that even within the matter of the last few weeks we now represent only one carrier who continues to maintain arbitrary age rulings. On American Airlines girls are still being terminated because of age at 33, but on the other carriers, their competitors and those not completely their competitors, they have resigned the age policy in effect less than a year ago.

Mr. FORD. Is American one of the airlines that maintains its own school for flight attendants and stewardesses?

Miss BOLAND. Yes.

Mr. FORD. Is that school operated on a permanent basis or is it contracted out to some educational institution?

Miss BOLAND. No, it is operated strictly by American Airlines in Texas and is called American Airlines Stewardess College.

Mr. FORD. What is the size?

Miss BOLAND. Well, they train, I would estimate, roughly better than a thousand girls a year.

Mr. FORD. Do they operate it 12 months out of the year?

Miss BOLAND. Up until the last few years they usually closed in the winter because of the slack period of the airline business. I believe last year and plans for the coming year are to operate year round with classes continually being graduated.

Mr. FORD. I have the brief of the Air Transport Association here with a cover letter and, of course, the cover letter makes the central point that there has never been arbitrary discrimination on the part of the airlines they represented. Do you know whether or not they represent American Airlines?

Miss BOLAND. The Air Transport Association?

Mr. FORD. Yes.

Miss BOLAND. I have never heard anything to the contrary.

Mr. FORD. Has there been any action on the part of anyone to bury that rule or does it apply to everyone?

Miss BOLAND. No, it does not apply to everyone, only to those hired after 1953, so there are girls—there are girls hired prior to that time who continue to fly, continue to do the job but if they were hired after that point——

Mr. FORD. These girls hired prior to 1953, do they perform the same kind of flight attendant duties that younger girls are performing?

Miss BOLAND. Identical, they could be working side by side on the same flight.

Mr. FORD. They could be working with younger girls on the same flight?

Miss BOLAND. Yes.

Mr. FORD. To what extent does a flight attendant have the right to pick her run?

Miss BOLAND. It depends on her length of service as a flight attendant, seniority and preference gives her a choice.

Mr. FORD. Do girls with seniority tend to prefer the overseas runs?

Miss BOLAND. In general. American, of course, does not at the present time have any overseas runs, all of theirs are in the United States and Mexico.

Mr. FORD. So the girls who were with American prior to 1953 would probably be on premium runs of that kind?

Miss BOLAND. Actually under that particular airline they are all identical. The only difference would be their salary would be different according to seniority, preference to flights or bases depends on preference according to individual seniority.

Mr. FORD. How many years does it take a flight attendant with American Airlines to reach maximum salary?

Miss BOLAND. The ninth year is the top year.

Mr. FORD. So if she starts in her early twenties she just might make it to top salary about the time she stops flying?

Miss BOLAND. She has just about comfortably reached the top pay bracket and top choice of flights at the time she is required to leave.

Mr. FORD. It is fair to assume since the policy was instituted in 1953 the average wage of stewardnesses on that airline, that is, weighing the top salary people against people at the bottom, does that have any effect on that?

Miss BOLAND. I am not sure I understand your question.

Mr. FORD. When you look at the work force of any business that has a lot of people with a similar classification, for example, the Post Office Department's letter carriers, the only difference between one letter carrier's salary and that of another is his length of time with the Post Office.

Miss BOLAND. First of all, it is a job where many girls leave after a few years of service and I would say three-fourths of the girls are in the early years. When they face termination after such a short period of time they do not normally stay as long as they might where you could look forward to retirement or continuing out your work span years.

I would say three-fourths of the people are 3 years or less and less than a fourth from the 3 years up to 9 years. American, I believe, has something like five or eight in the very top years, that would be 15 years that are actually flying because most have been terminated for the age that reached that period of time.

Attrition has taken care of many of the people hired prior to that time. In comparing it with someone like Eastern Air Lines who did not have an age retirement you would find hundreds well over that length of service.

Mr. FORD. Thank you very much and my thanks to your organization for continued support of this legislation. My particular district does not have many of your members in it but it does have a great many auto workers who are deeply interested in the success of this legislation.

Mr. O'CONNELL. I would like to say, as you have made some generous remarks about Miss Erikkson, she is our exhibit No. 1. Tomorrow is her 33d birthday and she can no longer work for American Airlines.

Mr. FORD. It was nice of you to bring such a nice exhibit.

Mr. O'CONNELL. I would like to read from the transcript of the hearings before the Senate on March 15, 1967, an exchange between Sen-

ator Randolph of West Virginia and the Secretary of Labor. [Reading]:

Senator RANDOLPH. Let us say there are other groups who have, for medical or competitive reasons, been discharged. What is the problem?
Senator YARBOROUGH. You are speaking of airline stewardesses?
Senator RANDOLPH. I said medical or competitive reasons.
Secretary WIRTZ. I have the same reaction. There would be serious doubt raised about the authority of the Secretary of Labor to make the extension in that situation, enough doubts if the inspection is to cover those situations I would think a different form from the one of section 13 would be preferable.

Meaning by this he thought he would be challenged in court as to whether he could reach down to age 32.

Mr. DENT. I agree with that assumption.

Thank you, Mr. Ford.

Mr. Scherle?

Mr. SCHERLE. Thank you, Mr. Chairman.

Perhaps this question has been asked previously, I am not sure. However, my interest prevails around the arbitrary figure of 33 or 35. Why has the airlines established this figure for retirement; why isn't it 23 or 45?

Miss BOLAND. I know of no particular reason. I have been unable to discover why it was picked. There has not been a definite statement by management except that some carried 32—it was in the course of negotiations moved to 33 on American, giving them an additional year, whereas, other airlines started with an age 35 rule.

Mr. SCHERLE. Does it not seem strange that as successful as the airlines have been, growing more successful every day that their policy in hiring practices should not be respected? You have been a stewardess in the past.

Miss BOLAND. Yes.

Mr. SCHERLE. How many years' experience?

Miss BOLAND. I started with Trans World 15 years ago.

Mr. SCHERLE. In this entire 15-year period has anyone ever given you any reason why this figure for retirement was set at 33 or 35?

Miss BOLAND. The only possible allusion to it I can recall has been they felt at that age you were still able to get other work.

Mr. SCHERLE. That is the only reason you know of that the airlines would offer for setting an arbitrary figure for retirement?

Miss BOLAND. It's the only reason that I have heard.

Mr. SCHERLE. I am not really satisfied with that answer.

Miss BOLAND. I am not either.

Mr. O'CONNELL. Back when the older worker was age 40, they probably gave the girl 8 years to go out and find new employment. Had they known they were going to consider age 45 to 65 they might have let them work to age 37.

Mr. SCHERLE. I might disagree with that, too.

Mr. O'CONNELL. In the *Judy Evenson* case, which was marriage, it is on record in the transcript that Northwest Airlines determined that the age was 32 after a 20-minute phone call with a doctor at Mayo Clinic. That is the only thing in the record to show how they chose age 32 as the age limit.

Mr. SCHERLE. Are you the attorney?

Mr. O'CONNELL. No, I am not. It is not fair to leave the record standing that way because Northwest Airlines has recently eliminated any

age limitations or marriage limitations in a contract we negotiated with them.

Mr. SCHERLE. Mr. Chairman, do we have anything on file as to why the basis has been set at 33 or 35, for termination of service?

Mr. DENT. We have only the testimony from the management association which was presented on the 15th. I received it in the last 3 minutes. I know there are three recommendations made, the Air Transport Association makes three recommendations in line with all the thinking to this moment of the committee itself in their discussions.

They recommend preemption by the Federal Government so crossing State lines does not present a problem.

Mr. SCHERLE. If I may I would like to have permission from the committee to write a letter or two to the various airlines and enter their reply as a matter of record.

Mr. FORD. Will the gentleman yield?

Mr. SCHERLE. Yes.

Mr. FORD. I believe there is a body of correspondence. Our colleague, Mrs. Green, had some interesting correspondence with, I believe it was, United Air Lines, which got some publicity just before election last year. I think when this committee held previous hearings that correspondence was put into the record.

Mr. DENT. The staff has taken advantage of that. However, I might say to the gentleman you certainly have the privilege and right to correspond and the committee will be happy to receive your correspondence as part of the official record.

Mr. SCHERLE. An additional question: Even if age is not acknowledged in the contract or in the hiring procedure, the airlines could still use age as a discriminatory measure for termination of service, and they would not have to acknowledge this as such. What control would you have over this procedure?

Miss BOLAND. I think we have said in our statements and also have recognized that the job has physical qualifications, physical requirements to perform the job properly. At any time any flight attendant whether it be male or female, if that person is unable to perform that job, this would be because age has contributed to slow down their physical ability or whether some other factor is a part of it.

But the airlines have this right and do continually use such a right to terminate the employment and if it is for good cause and good reason, it is upheld. I would like to point out in exactly this line that we have pursers, or men; as an example, TWA employs some 200 pursers, four of those pursers have had heart attacks and are disqualified physically from flying, not one woman of their 3,000 has had a heart attack.

Mr. SCHERLE. I think perhaps my question was not clear. Let us say age is completely obliterated from the hiring practice, let us say that since the airlines tentatively set a figure of 33 or 35 for termination of service, they could still resort to this figure if in their own minds they feel this is the age when retirement should be in force. They could still use this arbitrary figure for discontinuance of service without telling you as much. They could give you a multitude of reasons for stating you are no longer needed in this occupation, couldn't they?

My question is: How could you be sure this is not still age discrimination although it is not so implied?

Mr. O'CONNELL. I think the answer to that is that every girl when she reaches the age of 32 is fired. On a case-by-case she would have to give a different reason.

Mr. SCHERLE. Of course, they would even if they felt 33 or 35 was the termination point.

Mr. O'CONNELL. Then we have the procedure, the grievance procedure under each contract to test each case.

Mr. SCHERLE. This would be hard to prove and enforce?

Mr. O'CONNELL. We are administering it every day.

Mr. SCHERLE. Is American Airlines the only carrier with a discriminatory practice on age?

Mr. O'CONNELL. That we represent. Northwest had it and it was negotiated out of the contract in May. Southern Airways had 35, it was negotiated out in June. TWA had 35 and it was negotiated out last week.

Mr. SCHERLE. It is being discontinued?

Mr. O'CONNELL. Yes, sir.

Mr. SCHERLE. Yours is a matter of time, isn't it?

Mr. O'CONNELL. Yes, sir; but why should we suffer this cruel arbitrary denial of jobs until we can reach contract agreements?

Mr. SCHERLE. This is what I would like to find out from management. My other question is this: When you are hired with the understanding that your service is to be terminated at age 33 or 35, what are the retirement benefits accrued during that time?

Miss BOLAND. There are none.

Mr. SCHERLE. When you are fired you are through?

Miss BOLAND. That is correct, that is the end.

Mr. SCHERLE. Is there a program provided for employees, for those retired?

Miss BOLAND. Yes, but the plan is usually age 65.

Mr. SCHERLE. There are no special benefits even when application is made for short-term employment?

Miss BOLAND. The retirement plans of all management is geared to 65, in some cases 60 as for pilots.

Mr. SCHERLE. What is the percent of turnover prior to mandatory retirement? How many really serve until they are fired?

Miss BOLAND. I would say approxamately 10 percent or possibly even less than 10 percent.

Mr. SCHERLE. No more questions, Mr. Chairman.

Mr. DENT. Thank you, Mr. Scherle.

The gentleman from Illinois, Mr. Pucinski.

Mr. PUCINSKI. Thank you, Mr. Chairman.

I was interested in your observation that two stewards had suffered heart attacks while none of your women had suffered any heart attacks. What you are saying is women are more durable?

Miss BOLAND. I didn't intend to imply that. I just wanted to point out if there was a thorough medical concern that was a bona fide reason for age limitation, it could not be limited to women.

Mr. PUCINSKI. I wish you would attempt to imply that. I think women are stronger than men, more durable than men. I see the girls running up and down those aisles every day on the planes we travel. I think in many respects women can take it much more than men can except that there are very few that want to admit it.

I was happy to hear you make that admission. Having said this, I was interested in the question by Mr. Scherle.

Mr. Chairman, I wish we would get before the committee a rationale of the industry in picking the figure 32. You have in American Airlines now a rather significant number of women who are working as stewardesses beyond the age of 32 who came into the program prior to 1953, right?

Miss BOLAND. There are very few left because, these people having the age policy the longest of any airline and having had the earliest age limitation, have forced the termination from the stewardess crops of most of the people over 32.

Mr. PUCINSKI. I think Mr. O'Connell made the point, both you and Mr. O'Connell, if we are to challenge the validity of the arbitrary cutoff for stewardesses at age 32, we then obviously have to challenge the validity of the automatic cutoff in this bill. I was wondering, Mr. Chairman, if we should have some information here as to the rationale of making this bill applicable to only those between the ages of 45 and 65.

As Mr. O'Connell points out, if you are going to have a bill dealing with age discrimination it would seem to me you should have it across the board. What was the rationale?

Mr. DENT. The gentleman asks a very good question. This legislation, of course, came down to the chairman from the administration and for their own reasons they decided age 45 would be the bottom level, the benchmark. However, in all the reports from the Department of Labor that I have seen, age in aging problems with respect to employment are cataloged on the basis of 40 years of age. I was rather surprised to see the age 45 in the legislation.

This member takes a dim view of the age limit of 45 in the legislation.

Mr. PUCINSKI. I am glad to hear the chairman say this because I would be hard pressed to justify that kind of arbitrary discrimination in the bill and then on the other hand turn around and say to American Airlines, we will have to go along with your rationale on age 32. It seems to me if you are going to have a bill dealing with a ban on age discrimination you ought to have it across the board and let everybody adapt to it.

Isn't that the suggestion you are making, Mr. O'Connell?

Mr. O'CONNELL. Yes, sir; that is our suggestion.

Mr. PUCINSKI. I think the Air Transport Association indicates the same thing. They are perfectly agreeable to it.

Mr. DENT. Will the gentleman yield?

Mr. PUCINSKI. Yes.

When the chairman asked me to yield, I believe Mr. Ford wanted to explain how this 45 figure got in the bill.

Mr. FORD. I think the main reason it is here is that the pressure for this legislation started actually with some of the industrial loaders who are confronted with an arbitrary rule which has hovered around the 45-year age for employment of factory workers. Again it sprang up as a real problem that was recognized for the first time on a broad scale in the late fifties when the automation problem hit industries like steel, automobile industries, and banks. One of the immediate reactions of labor to this has been to push at State level as well as in Washington for legislation.

Their attention has been focused on fellows in their forties with maybe 20 years in a plant; a machine comes along and takes his position in the plant. They give all kinds of reasons.

Mr. PUCINSKI. I do think, while I certainly appreciate the explanation, it is still an arbitrary decision and I would be hard pressed to try to justify that kind of arbitrary approach.

Miss Boland, it is my recollection that the first stewardesses, when the whole system of stewardesses was started by airlines in this country, were substantially older ladies than 32. If my memory serves me, I believe the first stewardesses were actually nurses?

Miss BOLAND. Yes, and because of the nurses training required I don't believe anyone started much younger than 24 or 25, many at age 29. I think it is interesting to note that United Air Lines claimed the first for having stewardesses in the sky, those registered nurses and yet as late as 1965 they suddenly decided they need to have a compulsory age limitation.

Mr. PUCINSKI. You see, I am afraid young ladies are becoming victims of a so-called jet-set syndrome that is setting into America. People like this young lady, who will be 33 years old tomorrow, are becoming forgotten citizens. Take a look at all the commercials on television, all the commercials in the newspapers, take the Pepsi-Cola set, Coca-Cola set, the cigarette ads, everything today is being geared to create the impression that the young mass are the only part of generations of Americans.

The fact of the matter is half of the population of this country or a substantial part of the population in this country is substantially older than 35, and they don't go surfboard riding, don't go around in hotrod cars, and it seems to me this emphasis on the young does put people beyond 32 and 35 into a difficult position.

Mr. O'CONNELL. If I might answer one of your questions on the 45-to-65 age issue, I think the attention of the administration and the Secretary of Labor, the Labor Department was directed not so much toward our problem of terminating services but to the problem of employing those people who are between these ages who just cannot get a job. This is the reason for the 45-to-65 limit. Our problem is we are on the job, are working and are no longer able to perform this service at the age of 32 or 35.

Mr. PUCINSKI. I suggest what you have to offer would be very much appreciated. Miss Boland, you reach 33 tomorrow?

Miss BOLAND. Miss Erikkson will be 33 tomorrow; I passed 33 many years ago.

Mr. PUCINSKI. You will never get a man in public office to admit you are beyond 32.

Nevertheless, it is my understanding that a company, in this case American Airlines, does find these young ladies other jobs. The problem I think this committee would be confronted with is that they really are not serving their employment.

The company advises us that they find these young ladies jobs with comparable pay or better pay and they do various other things to retain the employee. Is that correct?

Miss BOLAND. There are alternatives given to the stewardesses of American. They have one alternative of flying to age 33 and leaving or

the alternative of taking other work with the company. This is true, with a minimum guaranteed wage. But regardless of this, we still feel this discrimination.

Mr. PUCINSKI. I agree with you but in trying to write this bill I am trying—I will appreciate any suggestions that you or Mr. O'Connell may want to make—in trying to write this bill, how do we write in the law a provision that there shall be no discrimination because of age and job classification. The bill here is directed at a company that refuses to hire you for no other reason than because you are 45 years of age. I hope we are going to remove that 45 limitation so the bill will provide, I hope, that it shall be an unfair labor practice for an employer to say to you, Miss Boland, "You meet all the qualifications of my company except you are too old and, therefore, we don't hire you."

We want to have legislation which says he can't use that as a bar to hiring. That is for the initial hiring. He hires you for his company. Now the question we are really confronted with—if you have suggestions I would appreciate it—how do we go beyond that and say, "Well, you can't discriminate because of age in classification"?

Maybe Mr. O'Connell may have a suggestion.

Mr. O'CONNELL. In Executive Order 11141, issued by President Johnson, the policy provides that contractors and subcontractors shall not discriminate on account of age in hiring, advancement, discharge, terms, conditions or privileges of employment. When they say that a girl——

Mr. PUCINSKI. He is talking about employment. Here is an airline that says "We are not cutting these girls off; we are giving them another job."

Miss BOLAND. This is a condition of employment.

Mr. PUCINSKI. I don't think you have met the question I have asked in trying to draft this legislation. Here is a company that says, "We are not firing this girl, she can stay with us as long as she wants, the only thing is she can't be a stewardess." I am trying to find out how we can write in this legislation—if you have suggestions I want them—how can we guarantee this young lady the right to continue being a stewardess?

If you are going to bar discrimination on the classification of a job, do you then propose to extend it across the board to every job? Does that apply to pilots? Suppose a company feels this pilot is no longer capable of flying the plane but would make an excellent employee in another department.

I hope you get my point. We have already established we do not believe a company should be permitted to refuse to hire a worker because of age. I think we are in agreement on that. Now, the question this committee is going to be confronted with is can we extend this to the next echelon and write in some limitations as to the classification of the job within that company?

Miss BOLAND. I would feel this comes under the meaning of "terms and conditions of employment." A condition of employment has to be the classification or type of work that you can continue in that job and the terms of employment would have to cover this particular situation.

Mr. DENT. Will the gentleman yield?

Mr. PUCINSKI. Yes, just let me make this observation.

I want to help you but I want to say I can't really justify in my opinion an arbitrary cutoff. A person may be an excellent worker, a stewardess. I fly American a great deal, and some of the young ladies that you spoke of who came in prior to 1953, are excellent stewardesses. I could care no less as a steady passenger of American Airlines whether a girl is 25, 28, 30, 32, or 45.

They give us excellent service and wonderful service on American Airlines and we are very pleased with it. As I say I want to help you ladies.

Mr. DENT. I have been leafing through the ATA testimony and they ask a rather important question in line with exactly what you are talking about. I would like to call attention to it at this point in the record. They say it should be drafted, to accomplish the Government's objectives of employment of older workers, without involving the Government in guaranteeing the job preference of employees unwilling to accept proper retraining and reassignment to other jobs with comparable pay.

To state the national interest of older workers requires legislation and they are asking that it be a nationwide policy so they don't have the problem of crossing State lines. But it is a very deliberate and important part of their testimony that this committee will have to study and carefully examine their question as to just how far it can go in determining job preferences of employees or the question of what is considered an older worker.

Job preference for a worker 55 years of age working in the iron industry or the steel industry might be a different question altogether than that of a person 32 years or older in work that is not considered heavy duties. With regard to the airlines, we have a question to consider as to whether there are offerings of retraining for other jobs.

Do they establish for the girl who becomes 32 a set plan where that girl is offered a job of some other duties in the industry with comparable pay? Is there a selection allowed to the employees being severed from the job or are they automatically severed from the job at age 32? These are questions to which we would like the answer.

Miss BOLAND. I would say in the case of American Airlines this is slightly different than the average because this is one that has been a subject of negotiations and did result in having alternatives for the girl. We have another alternative; we can force a shutdown to come about December of this year to correct the problem ourselves but there is not just American Airlines. I would like to point out we have said of those we represent American is the only one maintaining this age policy. They are not the only airlines.

Mr. PUCINSKI. You said foreign airlines don't have this?

Mr. DENT. You said American. Are there other airlines?

Miss BOLAND. Other airlines in this country have an age policy or ruling that do not offer alternatives but they are not represented by us. I think we may have confused the record in the fact that American is the only one we represent that still maintains an age policy. This has been modified with some alternatives or Barbara would not have been here a year ago.

Our concern, as I believe your bill and what you have under consideration, is that there should not be discrimination based solely on age. Why should I be required to terminate a job I am capable of

and that I like, that I have the ability to perform, solely because the calendar says I am now 45, should anyone else be forced to give up a job that they desire and can qualify for?

What, in line with ATA's position, I would assume then that as long as Congress could pass a law requiring offering babysitting to every woman over 60, this means there are jobs for everyone.

Mr. PUCINSKI. I think you have made an excellent statement and an excellent contribution in clearing up one thing, that is the totally illogic and completely indefensible position of having this legislation crank in at age 45 and crank out age 65. I think you have made a valid point here in that this legislation ought to apply across the board. If you are going to have a bar to discrimination because of age that bar should apply as much to a 30-year-old worker, as to a 45-year-old worker.

You made that point clearly. If that is all you are asking for before the committee I don't think you will have any problems. The question I raise is the next plateau; that is, the question that confronts you in American Airlines. They tell you you can be a stewardess up to the age of 32, but then they try to get you some other job with the company.

If this is agreeable to the young ladies, if they are happy to make that switch over, or they feel they can work that out with the companies through normal collective-bargaining processes, then we have no problem. But if they are asking Congress to legislate this field, then I would say, please give us some suggested language.

Miss BOLAND. I would say, and I think Frank will agree, if Congress passed a law prohibiting discrimination of age, any age, then our side problems we can take care of.

Mr. PUCINSKI. I think we have had a helpful and productive session this morning. It clarifies your position and I think gives the committee something firm to work with.

Mr. DENT. Thank you, Mr. Pucinski.

I have no further questions.

Mr. PUCINSKI. I just wanted the record to show, Mr. Chairman, that one of my best secretaries is a former stewardess and the young lady learned a great deal as a stewardess, went to school and learned stenography, shorthand, and typing, and today runs my Chicago office. She is one of the finest secretaries in the city.

Mr. DENT. I just want to put into the record excerpts which I will give to the reporter later, in a letter from a former Member of Congress who was defeated at the last election. The problem is one related to the subject matter before this committee. Inasmuch as he has 14 years in Congress having come to Congress at age 38 and is now 52 and was severed from his job involuntarily, it brings up a serious problem of where does he go from there since the doors are closed to practically all persons.

Insofar as his law profession is concerned, he lost contact with all his clients; he lost touch with the practical knowledge of law. He is very much in favor of this legislation because it crosses all lines of endeavor and is not restricted to those who work in manual jobs. It reaches over to the executive-type, professional-type and the trained worker, inasmuch as their problem becomes even more acute since they are denied opportunity for employment strictly on the basis of age,

although they have the experience and the training that makes them important to industry.

This is a very important letter that shows to what extent this problem has become a major issue in the country today.

Mr. PUCINSKI. I am delighted to see this legislation moving. I have been working for a bar to age discrimination for 9 years. One of the first bills I introduced as a freshman Congressman dealt with age discrimination and I got nothing but a cold shoulder from the Labor Department. Everyone said how impossible it was to think of such legislation.

I would like to say I have received a great deal of personal satisfaction from the fact this legislation is moving. I remember as late as a couple of years ago, when we tried to get this legislation through, we ran into all kinds of obstacles from industry, the administration and other sources.

There is no question this is one of the most pressing problems in America today. As the young lady before us pointed out, nothing is more cruel than to say that an American citizen, male or female, should be denied the opportunity to earn a livelihood simply because he or she has reached a chronological age of 33 or 35, 40, 45 or 47.

Many of these people at the age of 45 and 47 still have young families. It is a real tragedy in America. A man at age 45 or 47 with two or three or four children, aged 4, 5, 6, 8, through there, and here is a man told he is too old to work, I can't think of any greater contribution this Congress can make than to pass this legislation as quickly as possible. I want to congratulate you Miss Boland.

How many stewardesses are there in America?

Miss BOLAND. Better than 15,000, I would say.

Mr. PUCINSKI. I often wondered how the airlines recruit these young ladies because I have yet to meet a bad stewardess. They are tremendously capable young women and I don't know of any other industry with such high standards as the airlines. Some day, I will call and ask how they do it, I would like to learn a lesson from them.

Mr. O'CONNELL. On that question you asked Miss Boland, would you ask it again?

Mr. PUCINSKI. How many stewardesses are there in America?

Mr. O'CONNELL. Over 20,000, we represent over 15,000.

Mr. PUCINSKI. It has been a pleasure to have you young ladies here and you have made a point in your testimony.

## STATEMENT OF HON. JAMES A. BURKE, A REPRESENTATIVE IN CONGRESS, FROM THE STATE OF MASSACHUSETTS

Mr. BURKE. I am happy to be here. I wish to endorse the statements made by the previous speakers as far as these airline stewardesses are concerned. This is a subject matter with which I have had a great deal of interest over the years.

In addition to the problems of the airline stewardesses, which they face along with other people, the economy is faced with a real problem, these are the people between 45 and 65 years of age who happen to lose their jobs. These people find it very difficult to even secure an interview for a job because of the bare years and the lines that have beeen set up barring them from employment because of the

thinking of employers who apparently feel that a person out of work over 45 years of age doesn't deserve much consideration.

Today, throughout this Nation we have many, many well-qualified persons, able-bodied, intelligent, experienced people who could fill almost any job within the realm of employment and they just can't get an interview. This is a serious problem.

Of course, today we have higher employment in the country and our unemployment figures are a little low right now, but over the long haul these people between the ages of 45 and 65 find it most difficult and practically imposible to secure a position.

I am very grateful for the opportunity to appear before you today to testify in behalf of this legislation that I have sponsored for many years in the U.S. Congress to prevent age discrimination in employment opportunities. It pleases me to see that the administration has finally taken action on this measure.

The middle-aged worker in the United States is chronologically sandwiched between the beginner and the retiree. And, although we rarely realize it, he is feeling the pressure of both groups in his effort to maintain his place in the labor force. The young are crowding in from behind, and the trend toward rigid retirement standards is mandatorily limiting his work span—this in spite of the fact that he can look forward to longer and healthier later years than his grandfather or his father.

The problem usually does not arise unless the older worker—generally considered to be age 40 and up—suddenly finds himself without a job. It is one of the cruel paradoxes of our time that older workers holding jobs are considered invaluable because of their experience and stability. But, let that same worker become unemployed, and he is considered "too old" to be hired. Yet, once employed, the older worker can look forward to longer stretches between jobs.

This problem is already severe and it is growing more so. The older worker who becomes unemployed, even though he many have a spotless and distinguished record of achievement and competence, is assailed by all kinds of slings and arrows of bad fortune.

For one, longrun occupational shifts work against the older worker. The jobs which are growing in importance today are concentrated more in white collar and highly technical occupations; they impose requirements that the older worker is less likely to possess than a younger competitor. This is especially true when the worker has become unemployed because of his job—even perhaps the first and only job he ever held—has become obsolete.

Another reason is the effect of the growth of private pension plans. This device to protect the worker against need and worry in old age has, paradoxically enough, brought on wider use of age restrictions. Because it is often not possible to earn enough credits for a pension and because often there is resentment against older entrant into these plans to earn enough credits for a pension, and because often there is resentment against an older entrant for reaping the benefits that have been created by years of contributions by longtime employees, many employers refuse to hire such workers. Furthermore, pensions have encouraged the practices of automatic retirement at a fixed age, usually 65.

I might point out these young ladies are forced to retire at a very early age and they are confronted with a very real problem in being

forced to retire at an unusually young age. Most people are forced to retire at age 65, but airline stewardesses don't even enjoy that privilege.

These, at least, are practical problems. But there is one problem confronting the older worker that is even more painful, more widespread than either of those previously mentioned. That is discrimination.

Age discrimination is not the same as the insidious discrimination based on race or creed prejudices and bigotry. Racial or religious discrimination results in nonemployment because of feelings about a person entirely unrelated to his ability to do a job. This is hardly a problem for the older job seeker.

Discrimination arises for him because of assumptions that are made about the effects of age on performance. One would not hire a 45-year-old woman to model teenage clothes. One probably would not hire an older man to work on placing girders in rising skyscrapers.

But, as a general rule, ability is ageless. A young man with capacities does not lose them with age, unless his capacities are dependent upon his physical characteristics or the speed of his reactions. In many instances, rather, a worker's skills are honed and sharpened by experience.

Studies have shown in fact, that older workers bring qualities to a job that tend to make them very desirable employees indeed. For one, they rate high in dependability—they have a much lower rate of absenteeism than their young coworkers. They also have a high rate of job stability—they are less likely to move around from office to office, from place to place. And their rate of work injuries is lower than that of younger groups.

These qualities, which are prized by any employer, are the fruits of experience—experience gained through years in the labor force.

The Federal Government sets a good example by its policy banning age discrimination. It backs up its stated policy to protect the older worker against unfair elimination from job searches through efforts of the U.S. Employment Service. This agency was one of the first, public or private, to recognize the special position of the unemployed worker, and it actively seeks to place older workers by supporting and counseling the workers in their search for employment and by trying to encourage prospective employers to look more kindly on the older job applicant.

These are still small, if essential efforts. This country needs to have its private industries and businesses follow the Federal example in their attitudes toward the older worker. The advantages are manifold. Not only would business and industry gain skills, wisdom, and experience accumulated during long working years, but they would be doing the workers themselves a service by showing that they have not outlived their productivity when they are merely on the threshold of middle age.

It is an old saying that "life begins at 40." It can be just as true that new work can begin at 40 as well.

I would like to conclude by pointing out to the committee that this problem with the aging worker, you take some of these people between the ages of 50 and 60, as soon as they give their age the door is shut to them and they cannot get an interview. If they could just go in and talk to the personnel man and just discuss their experience and what they could do for that firm, there might be some opportunity for them. But

throughout this Nation today, this is true in most of our large corporations, our utility companies, our banks, our insurance companies, and many of these white-collar jobs. These people just have a very difficult time to secure a job.

You read a lot of items in the paper about men dyeing their hair, using toupees, wigs and everything else, doing everything else to cover up the fact they are reaching that period when retirement is close at hand. They don't do this because of their pride or the fact they are trying to attract a younger woman or something like that; they do it because they are trying to maintain and hold their jobs.

This is true throughout the country. It is amazing, if you just checked into it, how many men today go down to these hair stylists and get themselves fitted up when they go out to apply for a job. It is no laughing matter; these men are confronted with an economic problem. Women are the same way because as soon as a prospective employer hears they are over 45 years of age the bars are up and they are just not interviewed.

This is one of the most serious problems in the country and I know your able chairman here, Mr. Dent, a man I have great faith in, he is a great fighter. I know you will look into this problem in a good serious way and come forth with legislation that will be productive and try to eliminate and relieve this real problem that faces the American people. I know you are certainly going to help out these airline stewardesses because certainly the young age at which they are required to retire is unfair and inequitable.

Thank you.

Mr. DENT. Thank you, Congressman Burke. I might say we appreciate very much your not only practical but very philosophical presentation here this morning. You touched into that realm of thinking that is seldom given to a committee by a witness. You dug down and probed the depths of this problem. The very serious aspect of this particular problem is the great danger to the individual who has a growing family and at the age of 40 or over finds the door is closed to him, not only for the opportunity to work but even the opportunity of making an application for work.

So many times, as you have said, when the age is upon the application, that application doesn't get the benefit of seeing the light of day. It is immediately discarded because many of the large industrial corporations of this country have a policy that no worker over 40 is to be considered.

In some instances this discrimination results due to the reasons you have stated and in some instances due to the inroads on pension plans, and insurance policies. These practices have been allowed to pass unnoticed, as it were, over the years. I am glad to get before this committee Members of Congress like yourself.

I want to present Congressman Scherle from the State of Iowa.

Do you have any questions?

Mr. SCHERLE. No, I have no questions.

Mr. BURKE. Thank you for allowing me to appear here this morning.

Mr. DENT. Thank you, Mr. Pucinski, for you help here.

I want to thank the witnesses for coming here this morning, and I am sure the record is complete and I doubt if the committee will hold any more hearings. However, we will give to those who have

appeared before us an opportunity to supplement the record if any further thoughts come to them.

Mr. PUCINSKI. Do you contemplate inviting the carriers?

Mr. DENT. They were invited. We have the ATA presentation which was given to the committee and the committee will accept that as the position of the carriers.

Before leaving I have one question. Did I hear you make the statement TWA has an age requirement in their present contract?

Miss BOLAND. We signed a new agreement in August and in that agreement they set aside their age policy and are recalling those girls terminated since December 1, 1964.

Mr. DENT. Recalling them?

Miss BOLAND. Yes.

Mr. DENT. That sort of answers the problem so far as this committee is concerned. There is a saying that as General Motors goes, so goes the United States. As TWA goes, so goes United.

Mr. PUCINSKI. Mr. Chairman, if I may make this observation in concluding these hearings, this legislations is very important. I not only cosponsor it but also support it. A lot of this discussion, I think in the next 4 or 5 years as the economy of this country goes up to a trillion dollars, we are going to need so much manpower, so many bodies in all aspects of our industrial and economic structure that I don't think the industry will be able to afford this business of discrimination for this or that reason.

I think this legislation is needed to make sure it doesn't. If Mr. Johnson's projections are correct, and I think they are, by 1970 there is going to be such a labor shortage that a lot of these problems are going to be so big we are going to be looking for lots of people.

Mr. DENT. I have spent a lifetime in legislation and I have always heard that prediction and we have always had unemployment.

Mr. PUCINSKI. I think by the early 1970's, when the economy hits a trillion dollars, we won't be able to afford unemployment; we will need all the people we can get and more so.

Mr. DENT. I hope you are right, I sincerely do, but I look at it with a jaundiced eye.

Thank you for coming here today and we appreciate your staying a little longer than the time normally required to hold these hearings.

This appears to be the one part of this legislation we are not yet completely in accord on and we hope by having as broad a discussion as we could get we might resolve our differences in committee and have a unanimity of opinion.

Thank you.

Mr. DENT. We will now hear from our distinguished colleague from Hawaii, Congressman Matsunaga.

## STATEMENT OF HON. SPARK M. MATSUNAGA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Mr. MATSUNAGA. Thank you for the privilege of appearing before the committee and I would like permission to revise and extend my remarks.

Mr. DENT. That will be done and we will appreciate receiving your testimony.

Mr. PUCINSKI. I think the record should show Mr. Matsunaga has prepared an excellent statement on this legislation and merely reflects again his long interest in this legislation. I am pleased that this Member would take time to come to this hearing to give testimony before this committee.

This is where the legislation begins and the Congressman from Hawaii is fulfilling his responsibility in being here to present testimony. I want to thank you.

Mr. DENT. The Congressman's testimony will appear in the record at this point as well as any additional remarks.

Mr. MATSUNAGA. Thank you.

(The statement referred to follows:)

STATEMENT OF HON. SPARK M. MATSUNAGA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Mr. Chairman and members of the Subcommittee, I thank you for this opportunity to testify in support of H.R. 8125, the Age Discrimination in Employment Act of 1967.

My bill is identical with H.R. 4221, which was introduced by the distinguished chairman of this Subcommittee, and with H.R. 3651, which was introduced by the distinguished chairman of the House Committee on Education and Labor, Mr. Perkins.

The legislation now before this Subcommittee is designed to aid some 850,000 Americans, age 45 and over, who are employable but not employed. Most of them are skilled, experienced, competent, and in good health, but because they are also over 45, they cannot find a suitable job—in many cases, any job.

Title VI of the 1964 Civil Rights Act outlaws discrimination in employment practices on the basis of race, religion, color, or national origin. However, it does not encompass the important area of age, and it is vital that Federal legislation now be enacted to correct the wide-spread discriminatory employment practices found in this area. Twenty five States have already passed legislation making it unlawful to discriminate merely on the basis of age, but most of these laws are inadequate to bring about effective compliance.

A survey conducted by the Secretary of Labor showed that in 1964 there were about 3½ million workers, age 45 or over, who were involuntarily unemployed at one time or another. This means that 27 percent of all who were unemployed that year were older workers. Only 8.6 percent of all new workers hired by the surveyed establishments were over 45—less than one-third of this age group's proportion among the unemployed.

Aside from the dispiriting effect caused by long periods of unemployment, older workers who are unemployed generally face problems which are very serious. Their family expenses are greatest at this time. Their children need more clothes and incur substantial school expenses, especially if they are going to college.

Employers generally advance several reasons to justify their practice of not hiring older workers. One of these is the insupportable assumption that most of the workers over 45 have health problems which would detrimentally affect their efficiency and work attendance. Studies have shown, however, that the job performance of the older worker at many tasks does not decrease significantly with age. Even after 55, the older worker is usually able to keep up with the pace set by his younger co-workers. These studies also reflect an absence of any apreciable difference in the work attendanc between the age groups.

The additional expense of short-term pension plans for older workers is advanced as another reason by some employers who fail to hire them. However, other companies have found that any additional pension cost is more than offset by the skill and experience the older worker brings to the job. The cost of training an older worker is less, and any savings effected could be used to meet the extra pension cost.

I mentioned earlier that although age discrimination in employment laws are found in about one-half of our States, such laws generally are not considered to be effective. There are, of course, some notable exceptions. Whatever other reasons may be attributed to this lack of success, the principal reason seems to be the absence of uniformity in these laws throughout the country. I recently received a letter from a friend discussing the maximum age restriction applicable to airline stewardesses. It would be difficult for an airline with interstate air

routes to determine what its hiring policy should be if every State in which its aircraft landed had its own set of regulations governing hiring practices relating to older workers. A uniform code is needed throughout the country to avoid confusion and to produce the desired nationwide result.

Admittedly, it will take a great deal of education to convince employers that older workers are in every way as fit as younger workers for most jobs. There is also the consideration that appropriate assistance must be given to older workers in their quest for jobs. They must be informed of the places where they should apply for jobs, and how they should conduct themselves in an employment interview. It has been demonstrated by the States which have embarked upon a successful program to eliminate age discrimination policies and to place older workers in jobs formerly barred to them that counseling and job placement agencies have been the most valuable part of their program.

These employment aids have been included in the proposed national program and may be found in Section 3 of H.R. 8125. This section adds an important dimension to the bill. It provides the machinery for the guidance of older workers and their placement in suitable jobs.

In summary, the proposed legislation found in H.R. 8125 is designed to achieve a two-fold purpose: First, it would end discriminatory hiring practices against older workers, and, secondly, it would aid older workers in finding meaningful and profitable work, work for which years of experience have provided adequate preparation. This leegislation would provide older workers the chance to be judged on the basis of their individual performance, and not on their age.

For these reasons, I ask for early favorable consideration of this important legislation.

Thank you very much.

Mr. DENT. At this time we will call upon the Honorable James G. O'Hara, of the State of Michigan, who will present testimony on this legislation. Mr. O'Hara, we welcome you here.

## STATEMENT OF HON. JAMES G. O'HARA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. O'HARA. Mr. Chairman, my colleagues, my thanks for the opportunity to testify on H.R. 4221. The overall impact of this bill has been eloquently and convincingly stated by the Secretary of Labor. I concur fully with his statement, and particularly with the distinction he makes between the two types of age discrimination. The Secretary pointed out that there is discrimination based on misunderstanding, on what I would call well-meaning but mistaken concepts of what a worker can do in his mature years, and there is discrimination which is arbitrary and deliberate.

Both of these kinds of age discrimination are damaging to the worker who suffers from them, and both are hurtful to the economy. Both should be dealt with. But it is to the latter, and to a particularly disgraceful case of the latter, that I want to direct the sub-committee's attention.

In 1965, the Select Subcommittee on Labor conducted several days of hearings on employment problems of older workers. In these hearings, we covered a wide area, but one of the most interesting aspects of the problem was the evidence which was discovered of age discrimination at the incredible age of 32. At the advanced age of 32, we were told, healthy, competent, well-trained Americans were arbitrarily told they were too old to work. The job involved was that of airline stewardess. And the evidence clearly pointed to the fact that the age limit had nothing to do with competence, with ability, with reflexes, with stamina, or with any other bona fide occupational quali-

fication, unless, as one of our colleagues remarked, you assume that a commercial airplane is "a flying bunny club."

Mr. Chairman, this kind of discrimination is not only age discrimination, but sex discrimination as well. Airlines have male stewards or pursers who perform precisely the same functions as the stewardesses, but who are not required to retire, nor to sign so-called prehire contracts to resign at age 32.

The record of our 1965 hearings, copies of which I have here for all the members of the subcommittee, are filled with examples of stewardesses on airlines without this restrictive policy performing the standard stewardess duties, and what is even more impressive, performing hazardous duties, such as evacuating passengers from ditched or crashed planes even though they were older than the age which the discriminating airlines consider too old. One particularly intriguing case arose in an airline which has a discriminatory policy. A stewardess reached the retirement age, according to their firm policy. This was, remember, the age limit which they considered a bona fide occupational qualification for the performance of her duties. Yet, in spite of the onset of this calendar senility, the stewardess was ordered by the same company to continue to perform her duties because they didn't have another stewardess available. Gentlemen, I submit that in this particular case, the airline in question admitted openly and unmistakably by its own demand that the employee continue her services, that the age limit which it sets for stewardesses is, in fact, an example of arbitrary age discrimination.

The committee should take notice, I think, of the fact that the New York State Commission for Human Rights did find that the discrimination against stewardesses on the basis of their age was not in fact based on a bona fide occupational qualification.

In conclusion, Mr. Chairman, let me say a word about the argument that this type of discrimination is not real discrimination because it is based on prehire contracts and the young women involved know what they are getting when they take such a job. Prehire contracts, Mr. Chairman, are an old and long dishonored phenomenon in labor relations. In unhappier years, workingmen had to sign contracts that they would not join in a labor union or that they would quit a labor union before they could get a job in some industries. These contracts were called yellow-dog contracts and they have long since been held to be illegal. I submit that the device of the prehire contract by which a person seeking a job must waive her rights before she can be hired is just another form of the old yellow-dog contract. And it deserves the same kind of treatment by the Congress that such contracts got when they were outlawed by the Norris-La Guardia Act.

Mr. Chairman, your subcommittee has already done a magnificent job in updating the Fair Labor Standards Act. The legislation to ban age discrimination is in good hands. I urge the passage of this legislation, with whatever amendments you think are needed to prevent discrimination of the kind I have been talking about today.

Mr. DENT. Thank you. I am sure that you have made a fine contribution to the deliberation of this committee.

We will now hear the statement of our colleague, the Honorable Ogden R. Reid of the State of New York.

## STATEMENT OF HON. OGDEN R. REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. REID. Mr. Chairman, I am pleased to have the opportunity to indicate my strong support for legislation to prohibit arbitrary discrimination in employment on account of age.

Americans over 45 comprise some 27 percent of the unemployed. Their talents and experience can be put to productive use in our communities. Many of our ablest citizens are in their senior years, and they have yet to make some of their most valuable contributions in meaningful jobs and in service to their country. In my judgment, we must—and we are not now fully—do everything possible as a nation to forget the word "aged," to recognize that chronological age has very little to do with the capacity to make a useful, indeed frequently a more important, contribution in many areas. Legislation such as this is an important corollary to the Older Americans Act amendments, passed earlier this year; it has the potential to make real the job opportunities that that act is designed to encourage.

In February of this year, I introduced legislation, H.R. 6389, cosponsored by Senator Javits in the other body, which amends the Fair Labor Standards Act to prohibit employers with more than 50 employees, employment agencies, placement services, and labor organizations from discriminating against persons age 45 or older "when such an age distinction is not a bona fide occupational quailfication reasonably necessary to the normal operation of that particular business or enterprise."

This bill is much the same as H.R. 3651, the principal measure on which these hearings are based. Both bills bar age discrimination against those over 45; they both allow an exemption for cases involving a "bona fide occupational qualification"; they both provide for conciliation, and, if necessary, enforcement by court order.

However, there are three significant differences between the administration bill and my bill and I would hope that the committee, in its wisdom, would consider these points carefully.

First, H.R. 6389 places responsibility for enforcement with the Wage and Hour Division of the Department of Labor. The administration bill specifies only the Department of Labor and fails to recognize that the Wage and Hour Division already has the staff and expertise necessary to carry out the duties mandated by this legislation. In fact, this Division presently supervises the age provisions concerning child labor.

Second, while the administration bill provides for an administrative hearing followed by enforcement in the courts, if necessary, my bill permits the Secretary of Labor to move directly to the U.S. district courts, following such informal conciliation procedures as it may be appropriate to employ. This is the system presently in use under the Fair Labor Standards Act and it has worked well.

Third, the Javits-Reid bill provides only civil remedies, in contrast to the administration bill which also makes provision for criminal penalties. Criminal sanctions would require a higher burden of proof and give rise to the possibility of witnesses in age discrimination cases refusing to testify under fifth amendment privileges. It would seem

that the desired objectives could be achieved without this added difficulty.

In my judgment, these distinctions between the two bills are important but the overriding need is that we pass effective legislation which prohibits discrimination in employment on account of age. I am hopeful that the committee and the Congress will act promptly on this matter, to supplement and shore up the 20 State laws now banning discrimination because of age, but hampered because of lack of funds and staff. Indeed, the New York State law against discrimination contains specific prohibitions against discrimination of this sort and between the years 1945 and 1965 the State commission for human rights received 698 complaints under these sections. Clearly, assistance by means of a parallel Federal statute would permit the commission, and similar agencies in other States, to proceed more effectively in this important area.

Mr. DENT. Congressman Reid, it has been a pleasure to hear your testimony. Thank you for appearing here today.

Our next witness is the Honorable Edna F. Kelly of New York.

Mrs. Kelly, will you have a seat at the witness table.

## STATEMENT OF HON. EDNA F. KELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mrs. KELLY. Mr. Chairman and distinguished members of this committee, I address you today to urge that favorable action be taken on the Age Discrimination in Employment Act of 1967 (H.R. 3651) and my companion bill, H.R. 8535.

Throughout the history of mankind, we have looked upon our senior citizens as people of experience and, at times, of infinite wisdom. We have looked to them for guidance and teaching based upon their varied experiences in life. We have recognized that they have, in their fields of endeavor, acquired knowledge, wisdom, and experience which can only be gained by living through the vicissitudes of life.

However, in this era of advanced technology and automation, many segments of the business community, as well as others, have stressed the virtues of youth far beyond reasonable bounds. We hear time and time again of situations where persons over 45 or 50 years of age cannot obtain employment because of their age, despite their abilities and experiences.

As of the 1960 census, there were 29 million persons in the United States between the ages of 45 and 60. There are millions more between the ages of 60 and 65 years. What do these people face? As our society becomes more technically oriented, will these people be deprived of employment or forced out of their employment at early ages? Will they be relegated to idleness during prime and productive years? Will they be forced to accept the humiliation of employment as office boys and messengers durings their later years?

High living costs have made it almost impossible for working people to accumulate sufficient reserves to insure adequate investment income in later years. What does a man of 55 years do if he finds himself out of work? How many employers will hire him—no matter what his talents or capabilities?

Mr. Chairman, it would seem that industry is no longer utilizing the criteria of ability in hiring employees. It is instead imposing arbitrary age limitations. Today, a person of the highest ability may not be able to find employment in his chosen occupation only because he or she chronologically exceeds a given age. That such person is capable of better performing the required tasks than a younger person becomes immaterial.

These conditions have created still another social problem in the United States. Enforced idleness and the attendant loss of purpose among these people is growing by leaps and bounds. How much longer must we stand by and watch a man who yesterday held a position of responsibility be forced to accept a position as a file clerk or an office boy because he has just turned 55 or 60 years of age? How much longer must we wait to help skilled people gain reemployment after losing their jobs due to no fault of their own? Mr. Chairman, the opportunity to remedy this situation is before us—the time is now.

This committee in H.R. 3651 has the opportunity of taking the first steps to eliminate the discriminatory practices which I have discussed. My bill, H.R. 8535, which would accomplish the same purposes, indicates my support for this legislation which would prohibit age discrimination in employment.

The operation of the proposed law is simple. The bill, which applies to persons between 45 and 65 years of age, simply makes it unlawful for an employer to "fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's age." The bill also prohibits age classification of employees which deprive employees of employment opportunities. Employment agencies and labor unions would also be prohibited from engaging in such discrimination.

The bill does not prohibit age classifications if age is a bona fide occupational requirement, reasonably necessary to the performance of a particular job.

Administration and enforcement of the provisions of the bill are vested in the Secretary of Labor who is authorized to hold hearings concerning alleged violations and to institute proceedings in the U.S. district court to enforce his findings. Violations would be punishable by a fine of not more than $500 or by imprisonment for not more than 1 year or both.

Mr. Chairman, the employment problem of older people is nationwide and requires a nationwide solution.

During my service in the Congress, I have fought for and witnessed the enactment of legislation which removed the discriminatory practices with respect to color and sex. Of course, I refer to the Equal Pay Act of 1963 (Public Law 88–38) which prohibited discrimination by sex; and the Civil Rights Act of 1964 (Public Law 88–352) which prohibited discrimination by employers because of race, religion, or national origin. It is time that we took still another step toward removing all discriminatory employment practices.

Mr. Chairman, this bill seeks no special privileges, because age should not be a factor in employment. Therefore, I urge early action on this legislation.

Mr. DENT. Thank you, Mrs. Kelly, for appearing before this subcommittee.

At this time I have the honor of presenting to this subcommittee a Member of Congress who needs no introduction. I present Hon. James C. Cleveland from the State of New Hampshire.

## STATEMENT OF HON. JAMES C. CLEVELAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

Mr. CLEVELAND. Mr. Chairman, I want to thank you for the opportunity to appear before the committee to offer testimony on this most important legislation.

I have introduced three bills in the area which the committee is presently studying. The purpose of these bills is to prevent systematic exclusion from employment of individuals over the age of 45, or discrimination against these individuals once employed, in terms of the conditions or privileges of their employment.

My first bill would prevent discrimination in employment because of the age of the applicant.

The second would make it an unfair labor practice for an employer or labor organization to discriminate unjustifiably on account of age.

The third would provide an income tax credit for an employer for increased costs directly due to the employment and/or training of older persons in his trade or business.

Both medical and technological advances have greatly increased the productivity of workers over 45. Therefore, discrimination against workers of this age is not only unfair to the workers, but also harmful to the employers themselves who are losing a valuable source of mature, stable, and experienced personnel. Discriminatory practices in hiring and working conditions against workers over 45 have their rationale in circumstances which simply no longer exist. Yet, the discriminatory practices continue, and constitute a severe and urgent problem.

Mr. Chairman, for several months now I have been urging speedy action upon these bills. I am pleased to see that your committee is now giving them the serious consideration which they deserve. Again I would like to thank you, Mr. Chairman, and the committee for this opportunity to offer testimony.

Mr. DENT. Thank you. I am sure that you have made a fine contribution to the deliberation of this committee.

Our next witness will be Congressman William C. Cramer. Mr. Cramer is from the State of Florida. We will be glad to hear your testimony at this time.

## STATEMENT OF HON. WILLIAM C. CRAMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. CRAMER. Mr. Chairman, I am delighted to have the opportunity to once more appear before this distinguished committee and to again discussion a problem that is very close to my heart.

Representing an area housing many retirees, Pinellas County, Fla., I have had the opportunity to witness firsthand the serious effects of employment discrimination based on age. It is a problem of the most serious magnitude and one I have attempted to alert the Congress to for many years.

On August 31, 1965, I appeared before this committee in support of my bill, H.R. 6640, which was similar to H.R. 6908, on which I

am testifying today. Unfortunately, no action was taken on that bill. I am hopeful we will be more successful this year.

I am convinced that a serious investigation into the problems of the elderly will disclose that closely related to the mental and physical problems accompanying growing old is the problem of unemployment which results in forced idleness and insecurity.

An authority in the field of geriatrics, Dr. Edward F. Bortz, has said:

> Older citizens who are actively employed will be more healthy and better adjusted and consequently a less likely drain on the Public Treasury. Instead of being consumers, they will be producers and taxpayers. They will take pride in being self-supporting and in being able to provide for their own needs. It can be predicted that healthy and alert senior citizens, well utilized by the community, will make far fewer demands for medical services.

Unfortunately, the therapy Dr. Bortz recommends is too often frustrated by hiring practices which make it impossible for older Americans to keep actively employed. In short, older Americans are discriminated against in the area of employment.

It is for this reason that I introduced and am today testifying in behalf of my bill, H.R. 6908, which amends the National Labor Relations Act so as to prohibit discrimination in employment because of age.

I introduced this legislation, Mr. Chairman, because in my judgment and in the judgment of many experts in the field of geriatrics, the reasons for such discrimination on the basis of age are inherently defective.

I'm sure this committee recognizes that the problem of discrimination on the basis of age, so far as employment practices are concerned, is manifold.

First, there is the problem of the individual over 65 years of age who can't afford to retire but can't find employment because of his age.

Secondly, there is the problem of the individual between the ages of 45 and 65 who, due to any number of factors, must seek new employment but finds such employment unavailable because of his age.

This category is directly related to the first I mentioned for when a person between the ages of 45 and 65 has difficulty finding suitable employment, he finds it equally difficult to financially prepare for his retirement years. Thus, upon reaching the age of 65, he must continue active employment. By this time, of course, his age compounds his problems.

There is third category of senior citizen who, despite his advanced years, desires and is fully capable of continuing active employment. This individual still has much to offer society but because of his age, cannot find employment.

An examination of the reasons why older persons are discriminated against by prospective employers discloses a tremendous number of fallacies which I believe are well worth exploring at this time.

In 1960, the Institute of Industrial Relations of the University of California made a study of the employment problems of older workers. In discussing hiring practices, the following observations stand out:

1. The study reveals that while "Older people are slower at organizing incoming data and acting on it in terms of new tasks," nevertheless, "Older people generally tend to stress accuracy over speed."

Thus, in jobs where accuracy is more important than speed, older persons have proven themselves most capable.

2. Illness, industrial accidents, and absentee rates are frequently cited as factors in not hiring older persons. The fact of the matter is that older workers have fewer accidents, although when they do have an accident, their recovery periods are longer. The net results, according to this study, is that the overall absenteeism rate falls steadily up to age 60, rises slightly thereafter, but nevertheless employees between 65 and 75 are absent only two-thirds as much as those less than 30 years of age.

3. Industrial welfare policies are also cited as a factor employers cite as being against older persons, the claim being that the cost of health and welfare plans is higher for an older work force. This study brings out the fact that this depends on the terms and coverage of the plans. For example, while the incidence of long illnesses and hospitalization is greater for an older employee, maternity care for employees and dependents is costlier with a younger group.

The report concludes that while the cost of group life, hospital and medical-surgical benefits is generally higher for older employees, "the difference is very minor when viewed in light of aggregate employment costs."

4. Some employers have considered it uneconomical to train middle-aged applicants who have only 15 to 20 years remaining before retirement age. The study reveals that offsetting this is the high turnover rate among the younger workers. "If a company should hire and train 100 workers at the age of 20 and another 100 at the age of 45, total years of service might well be greater for the latter," the study concludes.

Mr. Chairman, I cite these examples of employer misconceptions concerning older workers to dramatize the belief I hold that this is not a closed area where education and further study would be a waste of the taxpayer's dollars.

For these reasons, I support H.R. 3651, introduced by the distinguished chairman of this committee. I am particularly pleased to observe that the bill provides for research in this area "with a view to reducing barriers to the unemployment of older persons, and the promotion of measures for utilizing their skills * * *." The studies I alluded to strongly suggest that further research into this area would be most rewarding and proper publication of the findings highly advantageous to employers and employees of advanced years.

I should add that the Federal Government continues to be one of the biggest offenders of discriminatory hiring practices based on age. Although an Executive statement of policy was issued on March 14, 1963, relative to doing away with discrimination in hiring based on age, it appears that stronger action is needed. Legislation embracing Federal hiring practices should be enacted to give the effect of law to the declaration of policy so as to make certain that the Federal Government gives older workers an equal opportunity to secure employment.

It is my objective to assure senior citizens an equal opportunity with others to engage in gainful employment which they are physically and

mentally able to perform and to enable senior citizens to achieve a retirement income sufficient for healthful living on a reasonable standard and for participation in community life as happy, self-respecting citizens.

Passage of legislation outlawing discrimination in employment because of age will be a giant stride in obtaining these goals.

Mr. DENT. Congressman Cramer, it has been a pleasure to hear your testimony. Thank you for appearing here today.

At this time we will call upon the Hon. Melvin Price, Representative from the State of Illinois, who will present testimony on this legislation. Mr. Price, we welcome you here.

## STATEMENT OF HON. MELVIN PRICE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. PRICE. Mr. Chairman, distinguished members of the General Subcommittee on Labor, I appreciate having this opportunity to express my support for remedial legislation dealing with age discrimination in employment.

Discrimination in employment because of age is a serious problem that must be confronted. It is a cruel hoax that is perpetrated at the expense of our workers age 45 and over who are forced to seek employment solely because their age is considered a handicap. Ironically, and tragically, these individuals seeking employment do so in a society that professes a commitment to the concept of full employment, as expressed in the 1946 Employment Act.

The time has come to meet this problem, and I am glad this committee has focused its attention on a situation of longstanding concern to me. Since 1958 I have sponsored such antidiscriminatory legislation. My original bill sought to prohibit age discrimination in the hiring and employment practices by Government contractors. I further sponsored in the 89th Congress H.R. 11915 to amend the 1964 Civil Rights Act making discrimination because of age an unlawful employment practice. My present bill, H.R. 1094, is identical to H.R. 11915.

In this age of rapid technological progress, we find that increasingly higher educational achievements are needed for personnel advancement. Thus, more and more men are facing the problems of maximum hiring ages and mandatory retirement policies. What is to be done to create more available jobs for the unemployed over 45 years of age? Although these older workers are regarded by their employers as more stable, reliable, and responsible, the older individual is constanty confronted with the misconceptions and inaccurate generalizations about his lack of ability due to age. The burden is now upon him to convince a prospective employer that he has skills and qualities which will compensate for his lack of youth. This is difficult for many of these displaced workers because they are unaccustomed to personal interviews, employment tests, and the competition of the younger educated workers. It is also frequently economically and emotionally difficult to relocate to areas having better employment prospects.

This ever-increasing problem is not one that can be set aside for future consideration, for, by that time, it might be uncontrollable. As reported in the Older American Worker, a report of the Secretary of Labor to the Congress pursuant to section 715 of the Civil Rights Act of 1964 on age discrimination in employment, the "older" persons category includes approximately 55 million Americans aged 45 and over, which is one-fourth of our total population. Out of that 55 million, 29 million are employed and 750,000 are seeking employment. However, the 3 percent unemployment rate is higher since unemployment figures do not include those individuals who have relinquished seeking jobs because of repeated failures in locating employment, but actually want to work.

Unemployment of these "older" persons lasts an average of 19½ weeks as compared to 11 weeks for those under 45. Older persons represent about 25 percent of the labor force, or roughly 30 million, and, of those 750,000 unemployed, 150,000 make up about 35 percent of the long-term unemployed (6 weeks or more). Moreover, a significant portion of those unemployed are faced with the termination of unemployment compensation benefits because their eligibility period expires.

The older workers' plight should not be destined by gross misconceptions. These statistics must be reduced in order to save the fate of the older workers, for they are more needy than those in any other age bracket today. The poverty rate among heads of families is directly correlated to the age of the person. Nearly one-third of those over 55 are living in poverty with a family to clothe, feed, educate and protect. Our society cannot economically afford this unemployment problem.

I urge that we move now to recognize this unfair discrimination. The misunderstanding of the relationship of age to usefulness and the deliberate disregard of a worker's value solely because of age must be reevaluated and understood by the employers. The answer to any solution here must be administered by the use of education, information, and research into the problems of age discrimination in employment. There must be a realization of the older worker's potential and ability to be retrained and educated. They are still productive at age 45 and must not be relegated to the ash heap because of the older worker syndrome.

We must deal with this problem which stigmatizes the worker as he reaches the relatively young age of 45. One approach is with the Manpower Development and Training Act. It can be enlarged and expanded to further the needs of our society. We should learn by the examples already laid down in other crises of employment. When the Packard plant shut down permanently in 1956, the "Big Three" automobile companies in Detroit hired 60 percent of the young workers and only 20 percent of the older employees. Today one-half of all private job openings are barred to applicants 55 and over and one-fourth are barred to those 45 and over. Dr. Harold L. Sheppard recently testified before the U.S. Senate Subcommittee on Labor that the reason for such excellent reemployment of workers regardless of race could be attributed in part to Michigan's Fair Employment Practices Law which does prohibit job discrimination on the basis of race—unfortunately there is no parallel legal prohibition of discrimination due to age, which is exactly the purpose of my bill.

After the Studebaker plant shutdown, the National Council on Age in South Bend, Ind., found, among 4,500 workers aged 50 and over left unemployed, that two-thirds had dependents under the age of 19. Thus employment was essential for economic reasons to these workers. The concerted efforts of the South Bend Community Council, the U.S. Department of Labor, and the National Council on the Aging alleviated the problems of unemployment through intensive job counseling, development, and publicity. As reported by Norman Sprague, director of the employment and retirement program of the National Council on the Aging, the average age of the long-term employees of the Studebaker company was 55. Of the approximately 4,500 persons over 50 that were left unemployed by the shutdown, 4,000 were serviced by the combined programs and, as a result, 66 percent were soon reemployed or in the MDTA training program and only 8 percent were still looking for jobs.

My bill, H.R. 1094, amends the Civil Rights Act of 1964 to establish prohibitive measures in employment discrimination due to age. I proposed it to focus attention and to use it as a vehicle toward developing a solution to this problem. I certainly do not oppose any provisions in the pending legislation that encourage research and study activities of this situation. Our thinking about age as a factor in job performance can only be clarified by empirical studies of a variety of types of occupations. The correction of this problem will provide a valuable addition to our human resources and manpower development programs. I am not offering a panacea to these problems but an opening of roads to new hope for the "older" persons, and so I steadfastly support urgent passage of this legislation.

Mr. DENT. Thank you, Congressman Price, for appearing before this subcommittee.

At this time, I would like to have the testimony of a very valued Member of the Congress of the United States, one who has long been interested in the problems we have in this legislation, the Honorable James A. Burke, Representative of Congress from Massachusetts. We are happy to have you with us, Jim.

(Whereupon, at 12:55 p.m., the committee adjourned, subject to the call of the Chair.)

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## STATEMENT OF THE AIR TRANSPORT ASSOCIATION

This statement relating to legislative proposals to prohibit arbitrary discrimination in employment on account of age, to wit, H.R. 3651, H.R. 4221, and H.R. 3768, is submitted by the Air Transport Association of America on behalf of its membership which is composed of virtually all the U.S. certificated scheduled carriers by air.

The air transport industry herewith submits specific recommendations which, in its judgment, would improve the legislative proposals under consideration. The amendments recommended have a direct bearing on the operations of the air transport industry, but would not, in any way, alter the purpose of the bills being considered. Adoption of the recommendations would not mitigate elimination of unjustifiable arbitrary age discriminaiton which deprives older workers of opportunities for employment when they have the capacity to be productive participants in the national economy.

The basic recommendations of the air transport industry are as follows:

1. Any Federal age discrimination legislation enacted should preempt the jurisdiction of the States and be applicable to the air transport industry on a uniform nationwide basis, unencumbered by multiple and divergent State or local restrictions—at least as far as operating employees are concerned.

2. The age group to which any Federal age discrimination legislation would apply should be established by Congress. The Secretary of Labor should not be given discretion to adjust the age limits.

3. Enforcement of any Federal age discrimination legislation enacted should be under the same procedures now provided under the Fair Labor Standards Act.

The reasons for the above recommendations are as follows:

*The practical necessity for Federal preemption and uniformity of regulation*

If a Federal age discrimination statute is enacted, it should preempt the jurisdiction of the States. Any age legislation applicable to the air transport industry should provide for uniform national regulation as to operating employees such as flight crews of air carriers engaged in interstate and/or foreign air transportation. Preempiton is necessary because of the very nature of the air transportation business whose operating employees, in the performance of their duties, regularly and frequently cross State boundaries. It has long been recognized, ever since the celebrated case of *Gibbons* v. *Ogden* at the outset of our national history, that uniformity of treatment is peculiarly appropriate to the transportation industry. Conversely, subjection to a multiplicity of State or local restrictions relating to a subject susceptible to uniform rule is an inappropriate and undesirable burden upon interstate commerce not compatible with the public interest.

Whatever may be the merits of concurrent Federal and State age discrimination jurisdiction over employer and employees generally, multiple overlapping and divergent laws concerning conditions of employment create nothing but jurisdictional chaos and operating confusion when applied to interstate air transportation. It is therefore respectfully submitted that section 14 of H.R. 3651, and identical measures under consideration, which otherwise specifically preserves multiple State jurisdiction over all employees in interstate air transportation, be amended by adding at the end thereof a proviso as follows:

*Provided*, That operating employees who in the normal performance of their duties are required regularly to cross state or national boundaries in the employ of a carrier subject to the Railway Labor Act, the Civil Aeronautics Board, the Interstate Commerce Commission, or other agency of the Government of the United States, with respect to the transportation of persons or products in interstate and/or foreign commerce shall not be subject to any state or local legal prohibition or restriction with respect to discriminatory employment practices on account of age if the said carrier is subject to this Act.

The scheduled airline industry is a totally interstate or international industry. The various air carriers maintain bases in different States, provide service to cities in many States, and fly over a variety of States. The flight personnel of the carriers are domiciled throughout the

country and are regularly transferred to bases in different States. Subject to the Federal Aviation Administration and the Civil Aeronautics Board, the air carriers must apply their rules and regulations on a uniform basis. Further, by virtue of the Railway Labor Act and rulings of the National Mediation Board, airlines must recognize and deal with duly designated representatives of their employees in appropriate classes or crafts on a systemwide basis in negotiating and maintaining agreements embodying rules, rates of pay, and working conditions covering their employees.

Almost without exception, certificated air carriers have systemwide labor agreements covering their flight crew employees. Pursuant to those agreements, flight crew members are initially assigned to bases in different States and to flights serving various States. Thereafter, employees are relocated at other bases and reassigned to other flights serving different States in accordance with flight crew preferences in order of seniority or the needs of the particular company. Thus, not only are these operational employees in constant movement across the State and national borders in the course of fulfilling their flight duties, but their places of residence, assignment, performance of duties, and even of eventual retirement, cannot be forecast at any given time and are by their nature subject to unforeseen change. In these circumstances, national uniformity of regulation is a practical necessity. Differing regulation by one or more States of the employees of an air carrier moving constantly as above described into, out of, and above a wide variety of States, is extremely impractical and undesirable.

Out of the 50 States and the District of Columbia, 27 presently have no laws prohibiting age discrimination in employment. Of the remaining 24 some apply to any age, but most apply to specific age brackets between 40 and 65. These groups constitute the category known as "the older worker" to whose employment problems the bills under consideration are addressed. Federal preemption in the area of age discrimination legislation is clearly justified when considered in light of the need that would otherwise occur for multiple proceedings occasioned by State laws, the inevitability of inconsistent rulings by State enforcement agencies, and the uncertainty of the effect of one State's rulings in other States, including those without age statutes, on employees such as airline flight crews.

The operations of one major airline provides a typical illustration of the problems encountered. The carrier has bases in the States of Illinois, Tennessee, Texas, and Virginia. It serves points within the District of Columbia and the States of Arizona, Arkansas, Illinois, Kentucky, Missouri, Oklahoma, Tennessee, Texas, Virginia, and West Virginia. It has pending applications to serve points in Alabama, Florida, Georgia, Mississippi, Nevada, and Utah. None of these States has an age statute.

The same airline also has bases in California, Massachusetts, and New York. It is certificated to serve points within those States and also within the States of Connecticut, Delaware, Indiana, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Rhode Island. It has pending applications to serve points in Alaska, Colorado, Hawaii, Louisiana, Nebraska, Oregon, and Washington. Each of those States has an age statute differing from the other in various ways.

Some of the statutes specifically provide that an employer may lawfully refuse to hire or may discharge an employee on the basis of age where age is a bona fide occupational qualification. The agencies administering the statutes in the different States may or may not determine, as to a particular position, that age is a bona fide occupational qualification. Thus, an airline might find an age regulation applicable to a given flight crew member valid in some states where it operates and invalid in other States for the same employee during occasional duty in the latter States, or while temporarily located there by virtue of bidding or company assignment.

Similarly, some States specifically provide exemptions for certain types of retirement plans which qualify under their age statutes. An airline could find a reassignment or retirement plan valid in one State where it operates but invalid in another as to similarly circumstanced employees. The employees' rights would thus be subject to change depending upon changes in base or route assignments.

Further problems arise from the different ages in State statutes and the uncertainty as to the territorial scope of their applicability. Does a State law apply only to persons hired, residing, working, or terminated within a State? Can they or do they constitutionally apply to nonresident employees flying in and out of the State? How much of a person's working time must be within a State to make its law and rulings applicable to that employee? Does the law of one State follow the traveling employee into another State, and if so, for what purposes and for how long? Is a carrier subject to liability for treating an employee one way in one State and like employees differently in a second or third or fourth State.

Suppose an airline has a rule for reasons of safety or economics that a flight engineer on jet aircraft will not be retrained to qualify as a pilot after age 42. Should that rule be valid in all the States that have no age statutes or whose statutes only apply to higher ages and possibly invalid in other States, depending on the bona fide ocupational qualification determination of the State involved?

Suppose an airline has a rule that stewardesses shall uniformly be reassigned to ground services at a specified age with no loss of pay. Should that rule be valid in all the States that have no age statutes or whose statutes only apply to higher ages? Should it possibly be invalid in various other States, depending on the bona fide occupational qualification or retirement plan determination of the State involved?

Suppose an airline adopts a rule for reasons of safety or economics that a pilot will not, after a certain age, be trained for service on new equipment such as the coming supersonic transport. Should that rule be valid in all States that have no age statutes, or whose statutes apply only to higher ages? Should it be invalid in various other States depending on the bona fide occupational qualification determination of the State involved? Must an airline having such a rule secure a bona fide occupational determination in every State in which it operates? Would a Federal ruling be binding nationwide? Can a New York decision bind the airline in California or employees flying back and forth between them?

Would the law of the base State, or the residence State, or the assignment State, apply to the flight engineer or pilot? Or the law of the State where he might choose to put in his request? Or all? Or none?

Would the law of the State where a stewardess was originally hired apply? Or the law of her first base? Her present base? Or the law of the State to which she most recently requested transfer? If required to hire someone in Massachusetts, for example, would assignment or transfer to Pennsylvania permit termination of the employee because of the difference in laws or commission determination between those States?

These issues, it is submitted, strongly emphasize the problems encountered by an airline in seeking to apply uniformly its policies where different State rules applicable to an employee who works in two or perhaps as many as half a dozen States every day of the week. They serve to underscore the impracticality, undesirability, and added burden placed on interstate commerce of divergent State laws.

There is little likelihood of the need for multiple proceedings or of such conflicts and overlaps in the average business enterprise where employees are essentially static and work primarily in one place. However, in the air transport industry, flight crews have no single location of employment and mobility is an inescapable hallmark distinguishing interstate air transportation from most other industries.

The air transport industry hires flight crews from every State, not to work in the State where they are hired, but to work in many States. They may be interviewed in one State, hired in another, trained in a third, initially assigned in a fourth, and reassigned again and again. This may be either on the basis of seniority bidding rights or of the carrier's business needs. In either case, the mobility is pursuant to collective-bargaining agreements which under the law are systemwide both in negotiation and application.

Existing Federal legislation already recognizes the need for uniform systemwide application of regulations to the air transport industry which is inherently highly mobile and multistate. The Federal Aviation Administration and the Civil Aeronautics Board regulations follow this pattern. The Railway Labor Act clearly envisages uniform systemwide employment conditions. Age discrimination regulation should be no different. At least to the limited extent covered by the recommended proviso set forth above, uniform national treatment is the only practical procedure to be followed in applying an age discrimination statute to the air transport industry.

*Congress Should Establish the Age Group in Any Federal Age Discrimination Legislation—The Secretary of Labor Should Not Be Given Discretion To Adjust the Age Limits*

Section 13 of H.R. 3651, and its counterpart, entitled "Limitation," provides that the coverage of the proposed act shall be limited to "individuals" who are at least 45 years of age, but less than 65 years of age, thus covering the older worker who has been the subject of each report of the Secretary of Labor to the Congress on the question of age discrimination in employment.

If Federal age legislation is to be enacted to protect the employment opportunities of such older workers the proposed age brackets specified in the bills are clearly appropriate.

However, the bills also state:

> *Provided*, That in order to effectuate the purposes of this Act, the Secretary may by rule or regulation issued under Section 10 of this Act, provide for appropriate adjustments, either upward or downward, in the maximum and minimum age limits provided in this Section.

It is recommended that this proviso be stricken in its entirety and that there be substituted therefor an amendment, comparable to the provisions of section 4(d) of the Fair Labor Standards Act. Such an amendment would require an annual report to the Congress from the Secretary of Labor covering enforcement activities under the act, "including such information, data, and recommendations for further legislation in connection with the matters covered by the act as he may find advisable."

The proviso as now contained in the bills under consideration would, if enacted, be an unprecedented abdication of congressional authority to set the limits of statutory application by authorizing the Secretary of Labor unilaterally to adjust the age limitations specified.

As drafted, the proviso would appear to enable the Secretary to single out special businesses for special treatment. This is of dubious fairness and certain undesirability. The proviso should be wholly omitted and the policymaking power retained by the Congress. At the very least, the power of adjustment should be limited to uniform and comprehensive nationwide application after following specified procedures. The procedures should be designed to establish the need for an adjustment to relieve the employment problems of the older worker to which the proposed legislation is addressed.

The issue of age discrimination in employment is a comparatively new area of Federal involvement presenting a whole range of new and complicated problems never before squarely encountered. It is no doubt true that the Congress cannot anticipate every problem which may arise. However, these are not reasons for Congress to abdicate its responsibility to legislate definitively on the basis of facts before it so as to resolve the national problem presented.

The Secretary of Labor has found that the need for Federal action involves "the older worker" between the ages of 45 and 65. If subsequent experience indicates that the problem of age discrimination in employment requires broader action, the appropriate course is to require the Secretary of Labor to report to the Congress. The Congress can then review the matter and the desirability of further Federal action in the light of executive experience, just as in 1964 and 1966, when the Secretary of Labor was required to make the reports on which the bills before this committee are based.

*Enforcement of Any Federal Age Discrimination Legislation Enacted Should Be Under the Same Procedure Provided Under the Fair Labor Standards Act*

The bills being considered by this subcommittee would give the Secretary of Labor power to issue cease and desist orders after an administrative hearing, and to have those orders enforced in a U.S. court of appeals, where the Secretary's findings would be final and binding. However, it is strongly urged that an amendment to the H.R. 3651 and its counterparts be adopted to provide the same kind of enforcement procedures as those now provided under the Fair Labor Standards Act through the Wage-Hour Division of the Department of Labor. All that would be required for such a procedure would be to strike section 7 of H.R. 3651, and others, and to substitute therefor the substance of section 16 and 17 of the Fair Labor Standards Act appropriately modified to fit the special needs of the proposed legislation in question.

The traditional enforcement pattern of the Fair Labor Standards Act gives investigatory power to the Labor Department, but provides for enforcement by the Secretary of Labor, or a private party, through suit on an alleged discriminatory practice in a U.S. district court with jurisdiction to make its own findings of fact in accordance with usual judicial rules subject to far more adequate judicial review.

There are several advantages to the recommended amendment:

First, it would permit enforcement by the Wage and Hour Division of the Department of Labor, thereby making it unnecessary to establish a whole new bureau just to enforce age discrimination legislation. The Wage and Hour Division already has a complete staff of investigators, regional offices, and regional attorneys, fully capable of enforcing this legislation in addition to its already existing jurisdiction.

Second, the amendment would separate the rulemaking and prosecution functions from the responsibility for adjudication subject to full judicial review. This would enhance the objectivity and impartiality of the decisionmaking process.

Third, the amendment would provide an enforcement procedure which is already familiar to labor, to management, and to the regional offices of the Wage and Hour Division, thereby expediting effective enforcement of any age discrimination statute.

Further, in connection with the mechanics of enforcement, it is recommended that a time limit be established for filing complaints of age discrimination. It is also recommended that provisions be made for the confidentiality of any conciliation discussions.

*Time Limits for Filing Complaints*

H.R. 3651, and others, as drafted, contain no time limit on the filing of discrimination complaints. Any alleged unlawful age discrimination in employment is apparent at the time it is committed and should be protested immediately if at all. In order to expeditiously resolve the issues in the interest of avoiding undue employment turmoil, it is recommended that this omission be rectified by requiring that any charge of unlawful discrimination in employment because of age must be filed within 90 days of its alleged occurrence.

*Confidentiality of Conciliation Efforts*

In attacking the problems of unacceptable discrimination, conference, concilitation, and persuasion have always played a paramount part. To promote to the utmost the effectiveness of such procedures, it is recommended that any age discrimination legislation contain a provision that nothing said or done in the conciliation process should be permitted to be used as evidence in a subsequent enforcement proceeding. Failure to provide such a safeguard could destroy the usefulness of the entire conciliation process by causing the parties to adopt rigid positions. True conciliation requires flexibility and confidentiality in order to fully explore the possibilities for settlement, not only of the particular complaint at hand, but perhaps also of more far-reaching employment policies.

## CONCLUSION

In his 1965 report, entitled, "The Older American Worker—Age Discrimination in Employment" a report required by the Congress

under section 715 of the Civil Rights Act of 1964, the Secretary of Labor made it clear that the primary purpose of any Federal age legislation should be to provide employment opportunities for "older workers." While the report called for Federal antidiscrimination legislation to insure such employment opportunities, it also recognized the place of reassignment and "retraining opportunities for older workers."

If a Federal age discrimination statute is to be enacted, it is respectfully submitted that this primary purpose should remain paramount. It should be drafted to accomplish the Government's legitimate objective of full employment of "older workers" without involving the Government in guaranteeing the job preferences of individual employees unwilling to accept proffered retraining and reassignment to jobs with comparable pay. If the national interest in employment of our "older workers" does, indeed, require legislation of the nature as proposed, the scope of the legislation should be directed to resolving the actual problem presented and tailored, where possible, to fit legitimate business needs. The recommendations contained herein are directed to that end. The Air Transport Association will be pleased to cooperate with the subcommittee and its staff in enlarging upon or implementing them.

(At the request of Congressman Scherle the following information was submitted for the record:)

CONTINENTAL AIR LINES, INC.,
*Washington, D.C., August 21, 1967.*

Hon. WILLIAM J. SCHERLE,
*House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN SCHERLE: Reference is made to your letter of August 17th.

This is to advise you that Continental Airlines does not have any policy which prohibits continued employment of female flight attendants after the age of 32 or 35 or any other specified age. Continued employment as a hostess with Continental Airlines is dependent upon appearance and performance irrespective of age, and this policy is predicated upon our desire and need to maintain standards of service to the general public.

Respectfully yours,

HARVEY J. WEXLER,
*Vice president, Governmental affairs.*

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DELTA AIR LINES, INC.,
*Atlanta, Ga., August 24, 1967.*

Hon. WILLIAM J. SCHERLE,
*Longworth Building,*
*Washington, DC.*

DEAR CONGRESSMAN SCHERLE: Thank you so much for your letter of August 17th which Mr. Griffith forwarded to me.

Delta does not have a policy which prohibits the continued employment of female flight attendants after a certain age and we have never released a Stewardess for being "overage". Our Stewardesses may continue flying as long as their appearance, personality and job performance meet acceptable standards.

At the present we have sixty-five Stewardesses who are age 32 or over, as follows:

| Age | Number of stewardesses | Age | Number of stewardesses |
|---|---|---|---|
| 32 | 15 | 38 | 3 |
| 33 | 13 | 39 | 3 |
| 34 | 12 | 40 | 1 |
| 35 | 6 | 41 | 1 |
| 36 | 6 | 42 | 1 |
| 37 | 4 | | |

These sixty-five Stewardesses represent 5.7% of Delta's total Stewardess personel complement.

Cordially,

W. T. BEEBE,
*Vice President, Personnel.*

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EASTERN AIR LINES, INC.,
*Washington, D.C., September 5, 1967.*

HON. WILLIAM J. SCHERLE,
*U.S. House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN SCHERLE: Reference is made to your letter of August 17, 1967, in which you inquire as to whether Eastern has any "policy of prohibiting continued employment of female flight attendants after the age of 32 or 35", and request for a description of such policy if it exists.

This is to advise that Eastern Airlines has no such policy.

Sincerely,

LYLE S. GARLOCK,
*Staff Vice President, Federal Affairs.*

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PAN AMERICAN WORLD AIRWAYS,
*Washington, D.C., August 22, 1967.*

HON. WILLIAM J. SCHERLE,
*Longworth Building,*
*Washington, D.C.*

DEAR MR. SCHERLE: You inquire in your letter of August 17th whether Pan American Airways has a policy of prohibiting continued employment of female flight attendants after the age of 32 or 35.

Pan American does not now have such a policy, nor have we ever placed such restrictions on our stewardesses. Mandatory retirement age for all of our flight personnel is age 60. Female flight attendants may continue in this field until they reach age 60 so long as they continue to fulfill the other requirements of their position.

I hope this has satisfactorily answered your inquiry. If I can be of any further assistance, please do not hesitate to contact me.

All best wishes.

Sincerely,

ROGER B. DOULENS,
*Assistant Vice President.*

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TRANS WORLD AIRLINES, INC.,
*Washington, D.C., August 24, 1967.*

Hon. WILLIAM J. SCHERLE,
*Longworth Building,*
*Washington, D.C.*

DEAR CONGRESSMAN: Thank you for your letter of August 17 in connection with the hearings which were held on Age Discrimination.

TWA has in the past had a policy of transferring flight attendants to ground positions at age 35. However as you know, TWA has recently completed negotiations with our hostess union. Provisions of the new contract, which is awaiting ratification, provide that enforcement of any agreements to ground hostesses at

age 35 will no longer be carried out. For all practical purposes they are null and void.

Should you have any further questions please feel free to call on me.

Cordially,

RICHARD S. TRIBBE,
*Director, Legislative Affairs.*

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NATIONAL AIRLINES,
*Miami, Fla., August 23, 1967.*

Hon. WILLIAM J. SCHERLE,
*House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN SCHERLE: Thank you for your recent letter requesting a statement relative to the Age Discrimination in Employment Act hearings before your committee.

National Airlines is now in contract negotiations with the Air Line Pilots Association (Stewardesses) representatives. The policy upon which you seek clarification is in issue. Therefore, we feel it would be improper for us to publicly comment until such negotiations are concluded.

Every good wish to you.

Sincerely,

E. JOSEPH HILLINGS,
*Director, Public Affairs.*

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BRANIFF INTERNATIONAL,
*Dallas, Tex., August 29, 1967.*

Hon. WILLIAM J. SCHERLE,
*Congress of the United States,*
*Washington, D.C.*

MY DEAR CONGRESSMAN SCHERLE: Your letter of August 17, 1967, to our Mr. R. H. Burck relative to the hearings on the Age Discrimination in Employment Act of 1967 has been referred to me for reply.

I understand that since sending us your letter of August 17, 1967, the Air Transport Association, on behalf of the airline industry, has filed a supplemental statement to its original statement filed on August 15, 1967, in connection with your hearings on bills dealing with age discrimination. This supplemental statement contains a complete explanation of the airlines' stewardess or hostess reassignment policies and very accurately states some of the reasons for Braniff having a policy of having its hostesses transfer to non-flying assignments within the Company upon reaching age 32.

We established our age policy on the sound and logical premise that the physical requirements of the job were such that a young person could meet those requirements without any chance of impairing her own health which would not necessarily be the case of older persons. Furthermore, we were of the opinion that a reasonable age for a job transition for such a hostess to a ground position, such as reservationist or general office work, was at an age that permitted retraining in the regularly normal established time and which would not create any unusual difficulties or hardships on the person involved. The hostess in this transition would normally be competitive with other employees in such assignments to which she was transferred, and, therefore, we felt that any age past 32 could put her at a disadvantage. Of course, there are always exceptions to the rule, but we do not believe that any personnel policy nor governmental regulations should be established on an exception to the rule.

Since 1956, we have had our hostesses, prior to the time of employment, sign a statement to the effect that they agree to transfer to a ground job upon reaching age 32. If all of the hostesses currently in our employ would not terminate their services prior to April, 1969, we would at that time have our first case requiring a hostess to transfer to a non-flying position. There could possibly be three other such cases in the year 1969. One can see that this is not an immediate problem at Braniff.

The nature of the job of a hostess because of travel and lodging away from her home base with other hostesses, further substantiates the practicality of having a rule that fosters this close association within a compatible age group. Our rule was established upon the premise that to require a girl of 21 to associate so closely with an older woman would not be conducive to a situation that would produce the most harmonious relationships which are so essential to satisfactory service of our hostess group to the traveling public.

Most of the hostesses stay with Braniff for about two years, after which they voluntarily terminate their services, with over 75% of our hostesses leaving for the purpose of getting married. Of those remaining, we feel that our policy of requiring these employees to transfer to ground jobs at age 32 creates employment and an employable situation which might not be available to a hostess if she was allowed to fly indefinitely and into a period of her life when she could easily become disqualified for other employment.

The very fact that our hostess group has voluntarily terminated their services after an average of two years of employment supports the position that there is a general understanding and acceptance, that the nature of this work is of a temporary period in her transition from an academic career to that of marriage and homemking.

It is interesting to note, and certainly supports the reasonableness of the company's position, that with 739 hostesses currently in its employ, the company has only 19 who are over 32 years of age, and as previously mentioned, the company has not transferred a flight hostess to a ground position because of having reached age 32 and will not be confronted with this situation until April of 1969.

I trust the information which we have presented is useful and we are certainly pleased to comply with your request.

Sincerely,

MALCOLM HARRISON,
*Vice President, Personnel Relations.*

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AMERICAN AIRLINES POLICY ON REASSIGNMENT OF STEWARDESSES

This paper explains in detail the reassignment policy for stewardesses followed by American Airlines, and the reasons underlying its adoption and retention.

A. WHAT THE REASSIGNMENT POLICY IS

Young ladies serve a maximum of 13 years as stewardesses on American Airlines. They are hired beginning at age 20 and are permitted to fly until age 33. In their 32nd year, they are reassigned to ground positions in the Company.

The reassignment policy is the product of a long history of collective bargaining between American Airlines and the stewardess union. The age 32 provision was first set forth in an agreement becoming effective in 1953, and it has been reaffirmed, with modifications, in each subsequent agreement with the union.[1] An age 32 provision also is part of the individual agreement signed by each stewardess prior to becoming an employee.

The most recent agreement with the union contains the reassignment policy in its present form. It was signed on October 12, 1965, and will remain in effect until December 31, 1967.

The essential features of the policy may be outlined as follows:

1. The policy is one of reassigment rather than termination.
   a. Each stewardess is guaranteed another position with American Airlines at age 32.
   b. She is guaranteed that her salary will be not less than in her former position.
   c. She retains her company seniority, and her length of service is credited to her new job.
   d. She retains all company benefits, including sick leave, group insurance, and free and reduced rate air transportation.
   e. She receives the necessary on-the-job training from the Company for her new position at no cost to her, and cannot be discharged for lack of proficiency during the first eighteen months in her new position.
   f. Full travel and moving expenses are paid if relocation is required.
2. Senior stewardesses also are given professional vocational guidance and so far as possible, a choice of career opportunities is offered. In the past, a wide range of jobs have been available, including:
   a. Sales Representative
   b. Stewardess Supervisor

[1] The Transport Workers Union is the bargaining representative for stewardesses. Forty-two stewardesses who were employees on November 30, 1953, are exempt from the reassignment policy. They therefore are not included in the computations in this paper.

c. Stewardess Instructor
d. Passenger Service Manager
e. Receptionist
f. Ticket Agent
g. Reservations Service Agent
h. Secretary
i. Flight Recruitment Representative

3. 34 American Airlines stewardesses became 32 in 1966. Of them, 9 accepted positions with American.

4. Some stewardesses reaching age 32 prefer to leave the Company. They are given the opportunity to serve up to 12 additional months as a stewardess. Upon resignation, they receive severance pay of $250 for each year of service, with a maximum of $3,000.

B. NUMBER OF STEWARDESSES AFFECTED

In actual practice, very few stewardesses remain until age 32—less than one percent of American's 3,126 stewardesses or an average of 28 a year. Thus relatively few stewardesses are affected by the reassignment policy. There are two main reasons:

1. The stewardess position is of interest primarily to young women.
   a. More than 23,600 applicants sought employment as stewardesses with American Airlines last year. Their average age was 20 years.
   b. The average age of the 1,170 girls who will graduate from American's Stewardess College at Forth Worth, Texas, in 1967 is about 21 years.
   c. The average age of American's stewardesses now employed is 23.5. Only 3 percent are over 30.
2. There is a high turnover rate for stewardesses. Based on past experience, American can expect a new stewardess to serve about 24 months.

C. BENEFITS OF THE STEWARDESS REASSIGNMENT POLICY

*1. The airlines benefit*

The stewardess is the "Welcome Aboard!" of the airline industry—she is an airline's most important good will ambassador. Last year, passengers wrote 29,887 complimentary letters to American Airlines about stewardesses, far more than the total number of letters written with respect to all other groups of employees. The stewardess has become the image of the industry, symbolizing the youth and vitality of the airlines: she is featured in airline advertising; her uniform and accessories are carefully designed by professional agencies; she is trained in modeling skills—grooming, posture, poise, etc.—and stewardesses are present as airline representatives at all important public functions (such as the inauguration of new services). Her importance as the image of the industry is indicated by the care with which she is selected (only about one and one-half percent of the applicants were accepted by American in 1966).

*2. The stewardesses benefit*

The stewardess position offers an excellent opportunity for young women. The training required is supplied solely by the airline. In American's case, each stewardess is a graduate of a six-week training course at the American Airlines Stewardess College in Fort Worth, Texas. The Company invests about $8,100 in the first year for each stewardess hired. Salaries range up to $565 per month in addition to expenses and extensive fringe benefits.

The stewardess position offers an unparalleled opportunity for travel. It also leads directly to marriage for a large majority of the stewardesses hired, and statistics show that stewardess marriages are phenomenally successful: the divorce rate is only 1 out of 47 marriages compared with a national divorce rate of 1 out of 4.

The reassignment policy does not cause unemployment; instead, it creates employment. Each senior stewardess is guaranteed a career position, and her reassignment provides an opening for another young woman who wishes to fly. With an average turnover rate of two years, the reassignment of just one senior stewardess can be expected to create openings for five more new stewardesses in a ten-year period—in addition to the original replacement.

*3. The public benefits*

To serve the public well, a stewardess must be highly motivated. Unlike most other jobs, there is no effective direct supervision of the manner in which a

stewardess does her work; there is no "foreman" watching her on the job in the air. The stewardess therefore must be a "self-starter" who responds with a young girl's enthusiasm for an exciting job.

This self-generated enthusiasm becomes diminished when flying has lost its thrill and the job has become a matter of routine. Additional factors also develop to affect motivation. Senior stewardesses may experience emotional problems resulting from the absence of a permanent home and family relationship. Consciousness of growing age disparity may prevent a cooperative team spirit from developing in the cabin.

Poor motivation causes poor service. Poor service results in loss of business and good will.

Another reason young stewardesses serve the public better is that they have the physical agility and endurance to do a good job. A stewardess must be able to serve dozens of means in a short period of flying time—often in turbulent air—at a cabin pressure equivalent to about 6,000 feet altitude. Round the clock airline schedules and changes in time zones result in irregular hours. Long periods of time are spent walking, bending and lifting. Stewardesses must be able to complete meal and beverage service quickly enough to meet jet schedules. Yet they must also retain sufficient vigor to give courteous, sympathetic attention to passengers requiring assistance.

Periodically each stewardess is given recurrent training which includes participation in strenuous emergency drills. Practice aircraft evacuations must be completed within two minutes, under standards fixed by the Federal Aviation Agency. During that time, stewardesses open emergency exists (requiring a force of 50 to 80 pounds pressure), handle escape chutes, and otherwise assist in the evacuation of the aircraft. The more rapidly these duties can be performed, the greater is the margin of safety in an emergency.

### D. POSSIBLE ALTERNATIVES

No one can reasonably contend that stewardesses should be retained until normal retirement at age 65. Between ages 38 and 50, women are subject to changes in metabolism and in the endocrine, circulatory, digestive, nervous and cutaneous systems, symptoms of which would interfere with the desirable performance of such a job. Problems associated with the climacteric stage of life frequently develop. Personality traits may alter; emotional reactions may become heightened and unsure in times of stress or emergency. In addition, older women would not be able to respond well to the physical requirements of the job. For this reason, the New York State Unemployment Insurance Appeal Board, after investigating the reassignment policy of American Airlines, reached the following conclusion:

"We take official notice of the fact that the position of an airline stewardess involves at times extraordinary physical effort in handling passengers, administering first aid and coping with emergencies and airline disasters. By its very nature, the job of airline stewardess is a hazardous one. For unemployment insurance purposes, the age limitation of 33 imposed by company and union agreement is a reasonable one and not discriminatory." (Appeal No. 118,040, March 9, 1965.)

Similarly, the Pennsylvania Fair Employment Practice Commission issued the following statement:

"Our Commission made the policy decision that the imposition of age limits less than forty for the position of airline stewardess or hostess constitutes a bona fide occupational qualification under Section 5 of the Pennylvania Fair Employment Practice Act. This was decided principally on the ground that the rigorous training required to qualify a woman as an airline stewardess or hostess could not ordinarily be undertaken by women of age forty or more." (Letter from Pennsylvania Fair Employment Practices Commission to United Air Lines, signed by Nathan Agran, General Counsel, dated August 27, 1959.)

Thus, since women cannot continue to serve as stewardesses until the Company's normal retirement age of 65, two alternatives can be considered:

1. An individual determination—case by case and year by year—of which senior stewardesses could no longer continue; or
2. A stated policy which is equally applicable to all stewardesses—such as the American Airlines reassignment program.

As shown below, the American Airlines reassignment program is the more desirable of the two. Under it, a senior stewardess is guaranteed a position which will provide a career until normal retirement at age 65.

*1. Individual determinations concerning the ability of senior stewardesses to continue to serve*

Those who advocate the making of individual determinations as to the continuing capability of aging stewardesses fail to recognize the practical difficulties involved.

a. A fundamental principle of union representation requires all employees to be treated equally. The stewardess union would hardly be willing to permit determinations that some aging stewardesses cannot continue while others of the same age are permitted to do so.

b. Moreover, the determination that certain employees have become deficient as stewardesses because of the effects of aging, while others of the same age continue to be acceptable, would be highly objectionable to the women concerned. Charges of unfairness, favoritism, and subjective factors would be inevitable.

c. In contrast, reassignment applied uniformly to all at age 32 cannot be regarded as an indication of personal deficiency or failure. Like graduation from high school or college, the event symbolizes a new level of career development. It is true that a few women resent the policy as requiring a change from a glamorous flight job to what they regard as a more pedestrian way of life. This would be equally true, however, if the reassignment were at *any* age.

*2. The American Airlines reassignment policy*

The reassignment policy is based on three underlying considerations.

a. The fact that medical, motivational, and customer service considerations require termination of stewardesses *at some point* prior to age 65.

b. The fact that it is not feasible to determine continuing eligibility of senior stewardesses on the basis of individual differences in aging.

c. The fact that the beginning of a new career for former stewardesses should not be deferred beyond age 32.

Points a. and b. above have been discussed earlier in this paper. As to point c., American Airlines has sought and obtained the advice of an eminent industrial psychologist who regarded the following factors as significant:

a. Retraining will be needed to qualify stewardesses for new careers, whether the new job is inside the Company or outside the Company.

b. Studies have shown that the percentage of persons utilizing retraining drops markedly when the age advances to the 30's and 40's. A study published by Michael E. Borus in the September 1965 issue of the *Labor Law Journal* indicates that the correlation is as follows (p. 578):

| *Age* | *Proportion of graduates utilizing retraining, in percent* |
|---|---|
| Under 20 years | 82.2 |
| Under 30 years | 83.8 |
| 30 years and over | 66.7 |
| 40 years and over | 56.2 |

c. More job opportunities are available for a woman in her early 30's than for older women.

d. A stewardess in her early 30's adapts more readily to a new type of job and hence is more likely to succeed in her new career.

e. In addition, there will be more opportunities for advancement if job entrance is made at an early age.

Based on the foregoing considerations, the consulting psychologist retained by American concluded that the reassignment policy is in accord with sound personnel practice in providing for job transition. His only suggestion was that activities designed to help stewardesses transfer to new jobs be moved up to begin at age 28, and cover a range of four years.

CONCLUSION

The American Airlines reassignment policy is the best solution yet devised for the problem of stewardess aging:

a. It permits the airlines to provide the highest level of service for their passengers.

b. It provides former stewardesses with permanent careers in the airline industry.

c. It provides other young women with a very desirable form of employment.

d. Job transition is made at the optimum age for retraining and future advancement.

e. Individual comparisons involving the effects of aging are avoided.

The airline industry is a progressive industry, and American Airlines is a leading airline. American was the first domestic airline to participate in Plans for Progress. The Company has received repeated commendations for its efforts to leiminate discrimination and provide full equality of opportunity. The reasignment policy represents another progressive response by American Airlines to a difficult problem in human relations.

(The following material was submitted for the record:)

STATEMENT OF ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (AAR) asks that the railroad industry be excepted from the provisions of H.R. 3651 and H.R. 5481 (and similar bills) which would make unlawful, discrimination in employment because of age.

The AAR is an unincorporated, voluntary association of Class I railroads which operate 96 percent of the railroad mileage in the United States, whose revenue amount to 96 percent of railroad revenues in the United States, and whose employees constitute 95 percent of the total number of railroad workers in the United States.

The purpose of this statement is to succinctly set forth the compelling reasons which cause the railroad industry to seek an exemption from age discrimination legislation as embodied in H.R. 3651 and H.R. 5481. Since the railroads' concerns stem basically from considerations which particularly apply to the railroad industry but may or may not be true of other industry segments, the AAR limits its request for relief of the Committee to an exclusion of the railroads from these particular proposals and age discrimination legislation in general. As the following comments demonstrate, a rail industry exclusion is a matter of over-all public interest, for a statute which would force the railroads to accept older new hires would impair the capacity of the industry to service, now and in the future, the nation's over-all transportation requirements.

There are two fundamental concepts which support these general statements. First, because of a combination of circumstances which will be outlined in more detail subsequently, the rail industry has a work force which is disproportionately over age. To prepare for the demands which are sure to come from all portions of the economy as it expands in virtually every calculable respect, the railroads are attempting to remedy this age imbalance. H.R. 3651 and H.R. 5481 would nullify these remedial efforts by increasing the percentage of older workers in the total work force.

Since it may not be readily apparent why an age imbalance factor is undesirable, a brief explanation at this introductory stage may be helpful. With a transportation mode where public convenience and necessity are at stake, an experienced work force is important. Since experience comes from years of service, employee turnover, that is, the rate at which the various decremental factors remove experienced incumbents from the working rolls, should be fairly uniform on a year-to-year basis. If for any reason an especially high turnover occurs over a relatively short period of time, the quality of the work force will be affected. A work force heavy with age turns over more rapidly than one in age balance and in so doing changes the composition of the work force. It is for this reason that an age distribution balance should be struck. H.R. 3651 and H.R. 5481 would feed the present age imbalance in the rail industry and its byproducts.

A key concept, the significance of which must be appraised in changing any personnel policy in the railroad industry, is the seniority principle. All of the collective agreements between rail management and the various unions have adopted it and the assignment of the work force depends on it. It is firmly embedded not only in the labor agreements, but in the working philosophy and everyday thinking of the railroad worker. Principles of the seniority system are (1) hiring of young new entrants and (2) progression from the least desir-

able jobs (including the element of physical demands[1]) to the more desirable ones as years of service are acquired. Age discrimination legislation, unless accompanied by clear and concise exceptions and qualifications, is diametrically opposed to these principles for it would bring elderly new entrants without any accredited years of service or experience into the bottom of the seniority spectrum working on the least desirable, most physically taxing assignments.

The principle of indiscriminate hiring, regardless of age considerations, is an important personel policy change. It should not be precipitately thrust upon the railroad industry whose work force by agreement with its employees revolves around the seniority concept.

The foregoing comments briefly summarize the two general considerations which prompt the Association to seek an exclusion from the coverage of H.R. 3651 and H.R. 5481. A more detailed, although not unduly lengthy, explanation of these two central points, follows:

Industry in general, and the transportation modes in particular, must have effective manpower. Manpower is the work force, the make-up of which is determined by many factors, all of which are interrelated and dependent on each other. In origin the work force structure of the basic industries was management-designed, but as organized labor gained power its influence on the structure and composition of the working forces became more apparent. The end products are an accommodation of one to the other and as a result work force composition varies from industry to industry.

In the railroad industry the structure and composition of the work force revolves around one of these end products, namely, the key concept of seniority which is incorporated in all labor agreements. Because the rail seniority concept is so pervading, no fundamental change in personnel policy, and the legislation under discussion unquestionably is of that character, should be attempted without a careful appraisal of what effect it will have on a work force which operates on the seniority principle. In that respect, a cursory appraisal illustrates that legislation which would discriminate against the preferential hiring of younger workers is opposed to the principles which make the rail seniority-oriented work force operable.

To illustrate, between 1940 and 1965 total railroad employment declined from 1,450,000 to 790,000—almost 50 percent. Since seniority preserved the employment rights of the worker with more service time, the layoffs were concentrated among junior employees. The end result, of course, is a surviving work force heavily weighted with older workers. Declining employment opportunities coupled with the application of seniority could produce no other result, and with the railroads both of these factors were active. Employment declines were steep; the seniority principle controlled; and the industry is saddled with the disproportionately over-age work force.[2] While the railroads have made some progress by hiring younger new entrants, uneven distribution is one of the industry's personnel problems. Passage of this legislation without a rail industry exclusion would only accentuate it.[3]

In 1961, after a full year of extensively studying the rules and practices which govern the working conditions of railroad operating employees, the Presidential Railroad Commission found that the rail work force is older than that of manufacturing industries generally and recommended that rail management and the rail unions adopt a compulsory retirement program. (Report of Presidential Railroad Commission, pp. 28, 32–33. Such findings and recommendations were unquestionably influenced by a desire to strengthen the Nation as well as the railroads, for as the Commission said, "The manpower of the railroad industry

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[1] In the words of the Presidential Railroad Commission: "These operating employees have had to adjust to a way of life which is in many ways different from the pattern of employees in 'outside' industry. They are subject to call at irregular hours, round the clock; many of them cannot accommodate their time away from duty to the normal family program of free Sundays and evenings. Many of them must spend considerable time at distant terminals, away from their families and communities. They work out of doors regardless of weather, in the desert heat, or pouring rain, or amid snow and ice. Until they have achieved very considerable seniority, they are subject to irregularity of employment and often to extensive furloughs." (Report of the Presidential Railroad Commission, February 1962, page 23.)

[2] In 1964 67% of the industry's employees were 40 years of age or over; 42% were 50 or over; 30% 55 or over; and 18% 60 or over (Table D–7, 1965 Annual Report of the Railroad Retirement Board.)

[3] While the number of employees with less than 10 years of service is now on the rise after a long period of decline, in 1964 there were 239,000 rail employees with between 20 and 29 years of service and 164,000 with over 30 years of service; 109,000 of those with 30 or more years of service were over 60 years of age. (1965 Report of the Railroad Retirement Board, p. 52.)

represents one of our national assets. The industry's work force is a key resource composed of employees of varied skills and occupations, including those who man the trains." (Report of the Presidential Railroad Commission, p. 23.)

These remarks, even more valid in 1967, highlight the importance of keeping the industry's work force in top-notch condition. This request of the AAR for an exemption is in keeping with that theme.

In its consideration of certain changes in railroad organizational structure and the effect of such changes on employment in the industry, the Interstate Commerce Commission has recognized the age factor and encouraged "the establishment of a retirement allowance to stimulate early retirement by senior employees." [4]

The problem of putting the industry's work force in age balance is the first practical factor which causes the Association to seek exclusionary relief. The second stems from the seniority system in operation.

Within the spectrum of jobs available to most of the individual rail job classifications and particularly to the operating classes such as road trainmen and yard switchmen, work requirements, including physical efforts, differ. In short, some are more taxing and demanding than others, even though the job titles and rates of pay may be identical. The seniority system permits the employees with the most years of service best selection of available jobs, and this principle repeats itself through the entire selection process. In theory and practice, advancing age diminishes the human physiological capacities, including the important factors of coordination and ability to withstand exposure to the elements, but where the seniority principle is applicable, it compensates by allowing the older worker to select the physically less taxing jobs. Application of the system, therefore, would be impaired by placing older new hires at the bottom of the seniority roster.

The work of the operating crafts, that is, the people who run the industry's trains and yard engines, is such that their know-how is acquired at a time when the body is physically best able to absorb the mistakes that inexperience spawns. Older new hires would suffer from their relative inability to withstand the lapses that inexperience breeds but for which the younger man is better prepared to withstand and learn from.

Instead of being able to select their jobs, the compensating factor of a seniority system, or have management pick the proper jobs for them, the older new hires would be saddled with the most undesirable positions, those they would be the least capable of performing. The inexorable results when a mismatch of man and job occurs on any large-scale basis would happen. More specifically, older new hires doing the same physically taxing work means reduced productivity, a less efficient over-all operation and a much higher employment turnover with all of its incidental disadvantages.

A final pragmatic consideration which the proposed legislation overlooks is the amount and kind of training which new hires must receive before they can perform the tasks for which they are hired. On the railroads many of the crafts do require training, and this is usually at railroad expense, with the employee under pay during the training period. The wherefore of maximum age requirements for every apprentice or training program is well illustrated by the law of diminishing returns. Obviously, the age of the new hire and the intensity and length of each training period determines to a great measure the return which can be expected from the training. Subjecting the railroads or any other industry, for that matter, to indiscriminate hiring regardless of age, where many of the employees require extensive training, is unfair and itself discriminatory.

Both H.R. 3651 and H.R. 5481 contain the following or similar language:

"It shall not be unlawful for an employer, employment agency or labor organization to take any action otherwise prohibited . . . where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age."

It may well be that these exculpatory provisions would allow the railroads to continue to hire younger new entrants because of the current work force age imbalance, the seniority concept, and by reason of the nature of railroad work in general. Perhaps that is the intention of the exceptions. If so, in the railroad's case at least, it is earnestly submitted that such an intention should be made

[4] Chesapeake and Ohio—Control—Western Maryland Railway, 328 I.C.C. 684, 716 (Feb. 21, 1967).

more definite and certain by expressing it in terms of an over-all industry exception, thus avoiding the uncertainty and possible vagaries of administrative interpretation.

While the AAR's position as outlined above is that the rail industry should be excluded from age discrimination legislation, we wish to bring to the attention of the Committee what we think are deficiencies of the pending bills:

1. The general prohibitory paragraph of H.R. 5481 and of Section 4 of H.R. 3651 would make unlawful age discrimination and does not include the qualifying term "arbitrary." This is a departure from the concept of eliminating only "arbitrary" discrimination which is the concept set forth throughout "The Older American Worker," the Report of the Secretary of Labor upon which the legislation is based.[5] In the Report it is concluded that all age restrictions cannot be conceived as arbitrary and that there should be concentration on the arbitrary aspects of discrimination which could and should be stopped:

"The firmest conclusion from this year long study is that the most serious barriers to the employment of older workers are erected on just enough basis of fact to make it futile as public policy, and even contrary to the public interest, to conceive of all age restrictions as 'arbitrary' and to concentrate on the prohibition of practices which include this element."[6]

Since the Report, as well as the declared purposes of H.R. 3651 (Section 2(f)), establish that it is only "arbitrary" discrimination which is intended to be proscribed and recognize that there is a difference, the substantive provisions of the bills should be amended to specifically apply only to arbitrary discrimination. This distinction has not been made in the one place where it is most important, *i.e.*, the provisions of H.R. 5481 and H.R. 3651 which would make discrimination unlawful.

2. It would be particularly inappropriate to impose criminal enforcement provisions as H.R. 3651 would do. A determination of whether arbitrary discrimination had been committed would be a highly subjective one. Where criminal penalties are involved, citizens are entitled to some specific indication of what is unlawful. Whether a specific act or course of conduct amounts to arbitrary discrimination will frequently involve hairline distinctions. The imposition of criminal penalties is totally unjustified in these circumstances.

In this regard a bill before the Senate (S. 830) which as introduced was identical with H.R. 3651 has been the subject of hearings before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare. On April 26, 1967, the Labor Subcommittee ordered S. 830, with certain amendments, reported to the full committee. S. 830 as ordered reported by the subcommittee has been amended to eliminate the criminal penalty features which are objectionable.

3. Section 13 of H.R. 3651 would limit the prohibitions in the bill to individuals who are at least forty-five years of age but less than sixty-five years of age but would grant the Secretary of Labor unlimited discretion to adjust these maximum and minimum age limits either upward or downward as he may deem appropriate. This broad discretion to adjust the applicable age limits should be eliminated. There are no standards provided to direct the Secretary in exercising such authority. The bill and the supporting statements made in its behalf are directed toward the problem of older workers. The Secretary's Report, on which H.R. 3651 is based, deals solely with the problems of older workers. There has been no justification whatever for permitting the age minimum to be lowered. The consequences of raising the maximum age limit would be far reaching. They would be such that Congress itself should make any later adjustment if any is to be made and if any could be shown to be essential.

4. Consideration must be given to how the pending legislation would affect private pension and retirement plans in industry. Section 4 of H.R. 3651 would make unlawful any private pension or insurance plan which specifies a maximum age limit after which new employees are not covered by such plans, *i.e.*, maximum participation ages. In his testimony on S. 830 (which is identical with H.R. 3651) before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, the Secretary stated (Hearings, Transcript of Record, pp. 39–40) that the effect of Section 4(f)(2) would be to protect almost all private pension plans of which he is aware. This is not the case as we understand and read that section of the pending bill. That section would protect only a mandatory retire-

[5] The Older American Worker—Age Discrimination in Employment. Report of the Secretary of Labor to the Congress Under Section 715 of the Civil Rights Act of 1964 (June 1965).

[6] Ibid, p. 21.

ment policy or system which is not a subterfuge to evade the purpose of the Act and would provide little or no protection for the ordinary private pension plan. It would appear from the Secretary's testimony that the bill intends, at least that private pension and insurance plans would be protected. If this is the case, there should be no objection to amending the legislation to avoid any harmful effect upon such pension plans.

S. 830, as ordered reported by the Senate Labor Subcommittee, has satisfactorily taken care of this problem by amending Section 4(f)(2) to read that it shall not be unlawful for an employer.

"(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as retirement, pension, or insurnce plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual;"

Such an amendment is important in the railroad industry since a number of railroads provide employee pension plans which have maximum participation ages. Most such plans include maximum ages of 50 or 55. Among the reasons for establishing maximum participation ages are cost and actuarial considerations. If the railroads, and other industries, are required to eliminate these provisions the result could well be to make it more difficult for aged workers to obtain employment rather than to assist them.

5. There are 23 States which have laws which attempt to deal with the problem of discrimination in employment because of age. Section 14 of H.R. 3651 provides that nothing therein shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age. It seems clear to us that if there is to be Federal legislation, it should preempt the various and sundry State laws on the subject rather than superimpose another set of administrative regulations, notice-posting, record-keeping, report-making and enforcement requirements and standards upon industry. If the State laws have been ineffective, as most apparently have, and for this reason Federal legislation is deemed necessary, there is no justification for continuing the authority and jurisdiction of State bodies in this regard. This kind of double jeopardy has no beneficial effect and simply adds another layer of governmentally prescribed obstructions to the efficient operation of a business.

In conclusion, it is respectfully requested that the Committee recognize the unusual age and other circumstances which exist with respect to the work force in the railroad industry and that the industry be excepted from the provisions of H.R. 3651 and H.R. 5481.

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## Statement by National Association of Manufacturers

### INTRODUCTION

The National Association of Manufacturers is pleased to present its views on H.R. 3651, and related bills pertaining to age discrimination in employment.

For more than forty years, the Association has been encouraging manufacurers to make the best possible use of the experience, knowledge, and skills which older people possess. Over the years a wide range of meetings and conferences have been conducted with numerous groups and organizations, to stimulate the evaluation of management policies and practices dealing with older job applicants, and to educate management personnel as to the economic desirability of utilizing the reservoir of talent represented by the older worker.

NAM has had a long-standing policy of encouraging employment of older workers. Currently, our policy position reads as follows:

"Older workers offer seasoned experience, judgment and stability, and constitute a valuable asset in the nation's work force. Employers are urged to observe hiring practices which give consideration to skills and abilities rather than to any age factor."

In furtherance of this policy, NAM has done a great amount of work to promote the hiring of older workers.[1] Partly as a result of the wide distribution given NAM publications on this subject, most employers are aware today that hiring older people makes economic good sense.

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[1] This effort is reflected in some degree by the publications *Employment of Mature Workers* (1960) and *The Productive Years—Ages 45–65* (1963), copies of which are submitted to the Subcommittee herewith.

REVIEW OF THE PROBLEM

Our work in this field convinces us that the long-term, permanent solution to this problem can best be attained through further education, rather than through legislation, especially at the federal level. Excellent progress is being made by the voluntary route. Many firms have dropped bans on hiring older people. They have learned to place high value on older men and women, particularly so in this labor-short period. Educational programs are the most important and effective way to increase the employment of older workers, according to those state officials who are responsible for the administration of state age discrimination laws.

Twenty-three states and Puerto Rico have already adopted laws prohibiting age discrimination. All but three of these laws have been passed since 1955, most of them since 1960. This legislation exists in the major industrial states and covers more than half of the nation's industrial workers. Additional state legislation is probable. It would seem neither wise nor necessary to pass a federal law on this subject at a time when the states are taking affirmative action to resolve this problem at the state level.

We do not suggest that all problems pertaining to older workers have been solved. Mergers, shutdowns, moves to new locations, expansion, automation, elimination of unneeded jobs—these are frequent occurrences in the business world, with important consequences for all employees regardless of age. The result may be the unemployment of older people. This does not mean, however, that a federal law will solve the problem any more than age discrimination laws have completely eliminated the problem in those states which have such laws.

Programs to train, retrain, and upgrade the skills of the older worker should be intensified to qualify him for available job openings. In today's market, many jobs go unfilled because of the lack of qualified applicants *of any age*. Education and training of the older worker are essential to a solution of the problem. Job-matching techniques and job-vacancy inventories, together with better coordination with training programs, will prove much more constructive in filling vacant jobs than the approach proposed in the pending bills.

Secretary of Labor Wirtz recognized a fundamental truth when he said:

"A strong and viable economy is the most important single factor improving employment prospects for middle-aged and older workers who lose their jobs. The more vigorous the economy—the higher the level of activity and the more rapid the rate of growth—the better the employment opportunities for workers of all ages."[2]

It is often easy, when attempting to solve a problem of this kind, to forget conflicting, competing considerations which represent equally desirable objectives in the total economy. The United States is faced with the need to absorb more than a million young workers into the labor force each year. From 1960 to 1965, the labor force grew by five and a half million workers, most of whom were young people just entering the labor market. From 1965 to 1970, the growth will be almost two million new workers per year.

Massive efforts have been launched of late to assimilate young people into the labor force. Yet to the extent that available jobs go to older workers, solving the problem of new entrants into the job market becomes more difficult. Our national programs can work at cross purposes with one another.

In fact, there is a growing body of opinion that discrimination is unfair at any age—that any legislation attempting to deal with the problem of age discrimination in employment should outlaw all age discrimination rather than attempt to provide protection for specific age groups.

Nor should we overlook the tremendous—and relatively unrecognized—contribution toward stability of the work force represented by industry's policy of promoting from within. Few people will argue with the desirability of this basic business practice. Yet such a practice relies to a considerable extent upon hiring workers at relatively young ages and training them within the company for ever-increasing levels of responsibility over the years.

In our free competitive system, especially now when there are critical labor shortages in many parts of the country, employers recognize the importance of hiring older workers with skills and valuable experience. The law of the marketplace is inexorable in employment practices as well as in other things. Our growing economy is an enormously complex mechanism. Placing an additional legislative restriction on employment practices, no matter how desirable

[2] *The Older American Worker*, Report of the Secretary of Labor to the Congress under Section 715 of the Civil Rights Act of 1964, Page 67 (June 1965).

the social goal, can effectively reduce the very job opportunities it seeks to create by diverting energies which would otherwise be devoted to the maintenance of full production.

COMMENTS ON SPECIFIC PROPOSED LEGISLATION

Now let us look briefly at the kind of problems which H.R. 3651 would raise. Employment and layoff should be entirely without regard to age, except in those situations recognized in H.R. 3651 where age is a bona fide occupational qualification or all employees are covered by a bona fide retirement policy.

It is imperative, however, that there be no conflict with either new or established retirement policies. Pension plans and insurance plans should be excluded from the coverage of this proposed legislation; otherwise, the measure could create havoc with such private plans. Any law should specify clearly that bona fide pension and insurance plans, and similar types of employee benefits, are *not* to be considered "terms or conditions of employment" with respect to which it is unlawful to include differentiations based on age. Because of the far-reaching implications, any such significant revision of pension and insurance plans in this country should be accomplished knowingly and intentionally, not inadvertently by legislation designed to resolve an entirely different matter.

Further, we believe it is undesirable to include criminal penalties in such a proposed law. This is, at best, a very difficult area in which to enact intelligent and workable legislation. The addition of criminal sanctions, even for second offenders, can obstruct rather than assist in the resolution of the sensitive social problem which this legislation seeks to reach. The various ability and skill factors which have to be assessed in interviewing and placing an applicant make the problem one which should not be subject to the threat of criminal penalties. The very existence of criminal sanctions could militate against success of the "informal methods of conference, conciliation, and persuasion" envisioned by H.R. 3651.

Nor should such prohibitions be enforced by an administrative determination of guilt as provided by the bill. Individuals responsible for day-to-day administration of a particular statute tend to become advocates of the cause which the statute seeks to promote. They soon become less than objective when individual cases are presented to them. These provisions will be susceptible to sharply varying interpretations.

Enforcement must be objective and impartial; it must not unduly hamper an honest employer just because his judgment and evaluation of the ability and skill factors involved happen to differ from those of Department of Labor employees. A better procedure than administrative hearings would be for matters in dispute to be resolved by a new trial of the issues in a United States district court.

In order to avoid a further increase in the number of administrative agencies within the executive department of the federal government, we strongly support the view that this measure, if enacted, be administered by the Wage and Hour Division rather than by an entirely new agency. The Wage and Hour Division, which presently enforces the age provisions of the child labor laws and the wage discrimination provisions of the Equal Pay Act, would doubtless have the staff and experience to deal with the problems of age discrimination.

Finally, in order for the act not to discriminate in favor of workers in any particular age bracket, such as 45–65, it should contain the exception "where the differentiation is based on reasonable factors other than age" and the exception of a "bona fide occupational qualification reasonably necessary to the normal operation of the particuar business," both of which are proposed in H.R. 3651.

SUMMARY

Voluntary efforts offer the best means for continued advancement against arbitrary age discrimination in employment.

No matter with what skill the proposed bills may be improved, legislation will not resolve the problem of arbitrary age discrimination. But voluntary efforts *can*. With the cooperation of employers and employees alike, great strides can be made against whatever barriers still exist.

In furtherance of its long-standing policy, NAM will continue its efforts to encourage manufacturers to avail themselves of the skills and experience of older people who have so much to offer as employees. We continue to believe that more significant progress can be made through voluntary efforts, at both the national, state, and local levels, than by national edict.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
*Washington, D.C., August 22, 1967.*

Hon. JOHN H. DENT,
*Chairman, General Subcommittee on Labor,*
*Washington, D.C.*

DEAR CONGRESSMAN DENT: This Association wishes to go on record with your Subcommittee in connection with its consideration of H.R. 3651 which would prohibit discrimination in employment on account of age.

Our Association recognizes the fact that this measure deals with a most difficult problem; but if legislation is to be enacted, we hope that you will give consideration to the dangers of hiring older workers in construction because of the many hazardous situations which prevail in the industry.

The construction industry, it is suggested, be most carefully considered for waiver of the requirement for the hiring of older workers on construction projects because of the inherent hazards. It is not uncommon to require men to work from scaffolds, ladders, or stages, nor is it unusual to encounter tunnel operations in construction all of which require men with fast, unwavering reflexes.

We suggest that a provision be added authorizing the administrator to make an exception with regard to employment in the construction industry based on consultation with members of the industry. The practical effect of this is shown by the enclosed Wage-Hour Regulation, which draws a line of age in employment in hazardous construction work.

No doubt you will treat the employment of the older workers on construction with the same careful consideration given to minors. The employment of minors under 18 is, as you know, prohibited by law on several phases of construction.

We hope that the Committee will recognize the unusual age requirements and circumstances that exist with respect to the work force in our indusry.

I wish to thank the Committee for allowing us this opportunity to submit our views on this pending legislation.

Sincerely,

WILLIAM E. DUNN,
*Executive Director.*

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AIR TRANSPORT ASSOCIATION OF AMERICA,
*Washington, D.C., August 22, 1967.*

Re: Bills Against Age Discrimination: H.R. 3651, H.R. 4221, and H.R. 3768.

Hon. JOHN H. DENT,
*Chairman, General Subcommittee on Labor, Committee on Education and Labor,*
*U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The attached statement is submitted in behalf of the scheduled airline industry as a supplement to our original statement filed on August 15, 1967, in connection with your hearings on bills dealing with age discrimination.

The supplemental statement is believed necessary due to the fact that during the course of the hearings on H.R. 3651, H.R. 4221 and H.R. 3768, proposals which we believe to be unjustified were submitted to change the basic theory of the proposed legislation from protection of the "older worker" to protection of the younger worker. Since the proposals presented were based on the assumption that wrongful personnel policies and practices exist with reference to the employment of airline stewardesses, the airline industry believes that the facts in regard to such policies need to be placed in the record.

Our supplemental statement contains a complete explanation of the airlines' stewardess reassignment policies, and we believe obviates any allegation that the reassignment policies relate to the problem of the "older workers" and their employment.

Thank you for your consideration.

Cordially,

S. G. TIPTON, *President.*

SUPPLEMENTAL STATEMENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

Re: H.R. 3651, H.R. 4221, and H.R. 3768 Relative to Age Discrimination in Employment.

This supplemental statement is submitted in opposition to proposals made by witnesses during the hearings before the Subcommittee on August 15–17, 1967,

to alter radically the character and scope of H.R. 3651, H.R. 4221 and H.R. 3768 by extending their coverage far beyond the problem which prompted the introduction of those bills and the studies which support them. We refer to proposals to transform them from bills addressed to the problem of age discrimination in employment against "The *Older* American Worker"—basically those 45 to 65—into bills also covering the *younger* American worker—those below 45.

*I. The Genesis of Older Worker Legislation*

H.R. 3651 and the other bills under consideration are themselves the product of considerable study of the specific problem to which they are addressed, and of some significant legislative history. That history explains why their coverage was basically limited to persons 45 to 65.

Pursuant to Section 715 of the Civil Rights Act of 1964, the Secretary of Labor prepared and delivered to the Congress in 1965 a report entitled "The Older American Worker," defined by that report as persons 45 and over. The report recommended four types of action to increase employment opportunities for such older workers.

In the 89th Congress, the Senate included in its version of the 1966 amendments to the Fair Labor Standards Act (Public Law 89–601) a provision outlawing age discrimination against those persons covered by the Secretary's 1965 report—those 45 to 65. That provision was deleted in conference, but a substitute provision was enacted directing the Secretary of Labor to submit to the 90th Congress, not later than January 1967, "specific legislative recommendations for implementing the conclusions and recommendations" contained in his 1965 report (Public Law 89–601, Section 606).

On January 23, in a Special Message to the Congress on "Older Americans" the President proposed legislation prohibiting arbitrary and unjust discrimination in employment in respect of persons 45 to 65. H.R. 3651 and the identical bills are presented as carrying out the terms of the President's Special Message and presumably represents the Secretary of Labor's proposed implementation of his 1965 report on the "Older American Worker" as contemplated by the 1966 Act.

*II. Union Proposals to Alter Theory of "Older Worker" Legislation*

During the Subcommittee hearings, it was proposed by representatives of several labor organizations that the provisions of the new legislation be made applicable to all persons regardless of age, or at least to a very substantial category of persons under 45. According to the Department of Labor's statistics, there are always twice as many persons in the civilian labor market who are below 45 years of age (46 million) as there are in the 45–65 age category (26 million). Thus, the proposed extension of the legislation to cover persons of all ages would roughly triple the number of persons included within its provisions and increases the employees subject to its coverage by several tens of millions.

The proposals to effect this radical change in the scope and coverage of the legislation do not even pretend to be based upon any general examination or study comparable to "The Older American Worker" report of the very different questions raised by the new proposals in respect to younger workers. As far as we are aware, there is no significant age discrimination problem affecting younger workers requiring remedial legislation. Furthermore, nobody appears to have inquired whether the adoption of a statute outlawing age discrimination at ages below 45 would have undesired effects upon apprentice training or other programs designed to provide special employment opportunities to very youthful or deprived groups.

*III. Unions' General Proposal to Serve Special Interest of Very Small Group*

It is clear from the testimony before the Subcommittee that the sweeping proposals to revolutionize the theory and character of the "Older Worker" legislation are prompted, frankly and overtly, to answer the special demands of a relatively small handful of employees in a unique situation—those few airline stewardesses who are unwilling at age 32–35 to accept ground employment with the airlines which employ them. Because this is the source of the proposals the Air Transport Association feels a special interest in opposing them.

As it happens, this tiny group is already represented under the Railway Labor Act by powerful unions skilled in collective bargaining techniques, and are thus not in need of special legislation to meet their special problem. Moreover, the employees on whose behalf this sweeping legislation is sought are persons (1) who specifically agreed at the time they were hired as stewardesses that they would cease being flight stewardesses at some specified age; (2) who have al-

ready agreed, in the collective bargaining process, that their union contract shall not bar their termination as flight stewardesses at that age; (3) who are generally offered, at or about the age for expiration of their assignment as flight stewardesses, other employment on their airline, at no reduction in pay.

*IV. No Justification for Altering Theory of "Older Worker" Legislation to Cover Airlines' Stewardesses Reassignment Policies*

The Subcommittee has beeen told in effect by a leading union representative of those few stewardesses that they do not *want* the other "straight 40-hour week" ground jobs at ages 32 or 35 because those jobs would mean the loss of glamour, the aura that surrounds a woman who earns her living in the air. The Air Transport Association respectfully suggested to the Subcommittee that the fear of a small number of young women that they are going to lose some of their glamour at ages 32–35 if they accept airline employment in a position other than as flight stewardesses, hardly requires federal legislation. It clearly does not justify adding tens of millions to the coverage of the proposed statute.

Some of the union testimony before the Subcommittee may have left the impression that stewardesses who reach a certain age have their employment terminated at that age without regard to their future employment status. That is far from the fact. The airlines who have age restrictions generally recognize a responsibility to find alternative employment with the airlines at no loss of pay or seniority. That obligation has been formally recognized in agreements reached in collective bargaining which are applicable to all stewardesses who reach the reassignment age during the term of the contract, as shown by Attachment A. We also attach evidence of the alternate employment policy of another airline with age restrictions which is a typical illustration of the application of reassignment on carriers having such a policy (Attachment B).

We also submit, as Attachment C, a copy of a determination of the New York State Unemployment Insurance Appeals Board in a case involving American Airlines which describes how American's alternate employment policy works and which, in practice, finds that a stewardess who failed to accept assignment to different work under that policy had quit her employment without good cause. That finding emphasizes, we think, the fact that the proposals for sweeping changes in the age discrimination law because of the so-called "airline stewardess age problem" are unsupported by a single case in which the airlines' stewardess reassignment policies have resulted in forced unemployment.

The stewardess representatives have also suggested to the Subcommittee that stewardesses should not be required to transfer to other jobs at age 32–35 because they are not trained for the other employment. For that reason, it is said they should be permitted to remain as stewardesses "as long as they can."

Most stewardesses cannot physically expect to continue as stewardesses to or past middle age, and that they must stop flying as stewardesses long before normal retirement at age 65. If a woman of 35 would have difficulty adjusting to ground employment because, having been a stewardess for 15 years, she is not trained for anything else, she is likely to be in a far worse position if she is permitted to continue flying until 45 by which time chances are overwhelming that she will physically *have* to stop. Obviously, readjustment to other employment will be far more difficult at 45 than at 32 or 35. In sum, a policy of reassigning stewardesses to other employment provided by the airlines during the stewardesses' early 30's is in the interest of the stewardesses as well as the airlines. The policy does not create a problem ; it is an attempt to solve one.

The airlines who have stewardess age regulations have them because they have been found necessary to maintenance of a satisfactory level of stewardess service under the conditions applicable to the particular airlines. Those airlines have studied their own problems carefully and can demonstrate that strength, agility, resilience, attractiveness, and high motivation—all natural attributes of youth—are characteristics necessary under the particular conditions of their operation to quality performance of the stewardess function.

However, following as it does, the close of the hearings on H.R. 3651 and other identical proposals, this is not the occasion to argue the merits of the airlines' stewardess age policies. The bills to which these hearings relate are applicable to the Older Worker and are not addressed to the airlines' stewardess age policies. The Subcommittee, we believe, simply has not an adequate basis to reach any conclusions on that matter as a result of these hearings.

*V. Conclusion*

Any effort to extend the pending bills to younger workers so as to cover stewardesses raises significant questions which would require serious study of the

situation of younger workers generally, and of airline stewardesses in particular. Nobody has conducted or suggested such a study for the obvious reasons that (a) there is *no* real problem of age discrimination against the younger worker justifying such a study; and (b) in respect to airline stewardesses in particular, those who know the airline industry know that a serious study would reveal there is no "stewardess age problem" requiring remedial legislation by the Congress.

We strongly believe that present airline policies and the processes of free collective bargaining afford the stewardesses, on this question as on so many others, more than sufficient assurance of fair dealing.

Attachments.

[Attachment A]

AMERICAN AIRLINES-TWU STEWARDESSES REASSIGNMENT AGREEMENT

APPENDIX D

MEMORANDUM AGREEMENT BETWEEN AMERICAN AIRLINES, INC., AND THE AIR LINE STEWARDESSES IN THE SERVICE OF AMERICAN AIRLINES, INC.

As Represented by the Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL–CIO

This Memorandum Agreement is made and entered into in accordance with the provisions of Title II of the Railway Labor Act, as amended, by and between American Airlines, Inc. (hereinafter known as the "Company") and the Air Line Stewardesses in the service of American Airlines, Inc. as represented by the Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL–CIO (hereinafter known as the "Association").

It Is Hereby Mutually Agreed:

1. A stewardess employed by the Company as a stewardess on or after December 1, 1953 shall be transferred to other employment within the Company effective with the first day of the month following the month in which her thirty-second (32nd) birthday falls unless she elects the alternative provided in Paragraph 8 below.

2. In the month in which her thirty-first (31st) birthday falls and again in the sixth (6th) month following the month in which her thirty-first (31st) birthday falls, a stewardess shall be interviewed by her supervisor and informed of her rights and obligations under the provisions of this Memorandum Agreement. On the occasion of the latter interview, she shall elect in writing her choice of other employment as provided in Paragraph 3 below, or the alternative provided in Paragraph 8 below.

3. (a) A stewardess who elects to transfer to other employment within the Company under the provisions of this Agreement shall be interviewed by her supervisor not later than two (2) months prior to her thirty-second (32nd) birthday, at which time she shall be informed as to the job vacancies that are open and the location of each. She shall have the option of selecting from the available job vacancies any one for which she has the minimum qualifications. The selected job shall be reserved for her and the appropriate management member shall be so notified.

(b) In the event that no job vacancies exist at the time of the interview provided under 3(a) above, the stewardess shall be so informed. As soon as possible thereafter, but in any event not later than the first day of the month in which her thirty-second (32nd) birthday falls, the Company shall make available a job to be effective on the first day of the month following. The Company will make every effort to make available to such stewardess a job in the city in which she is presently based, if such is her desire. The stewardess and the appropriate member of management shall be notified of the job made available.

4. A stewardess who is interviewed under the provisions of paragraphs 2 and 3 above shall not be required to give up her scheduled duty-free days to accomplish these interviews. If it is necessary to remove such stewardess from a regularly scheduled trip in order to accomplish such interviews, she shall ge given flight time pay and flight time credit for such missed trip. If such stewardess is required to travel to a job interview, she shall be furnished a Class "C" pass and shall be reimbursed for expenses incurred in such travel in accordance with applicable Company regulations.

5. When a stewardess, under the provisions of this Memorandum Agreement, selects and is awarded a job in a city other than the city in which she is based

at the time of her thirty-second (32nd) birthday, the Company shall pay her full travel and moving expenses (in accordance with AA Regulations) to the city where the job selected or made available, as the case may be, is located.

6. A stewardess who is transferred to other employment under the provisions of this Memorandum Agreement shall be guaranteed:

(a) Her accredited Company seniority;

(b) Time equivalent to her length of service with the Company to be credited to her new job.

(c) Effective October 1, 1965 a monthly rate of pay not less than the base pay applicable to her final month of service as a stewardess plus five (5) hours' incentive pay at jet equipment rates.

(d) Effective June 1, 1966 a monthly rate of pay not less than the base pay applicable to her final month of service as a stewardess plus seven (7) hours' incentive pay at jet equipment rates.

7. In the event of a layoff involving employees in her new job classification, Company seniority shall govern in determining her relative position among the groups of employees concerned. During her first year and one half of service in her new job, proficiency alone will not be considered grounds for termination, in that this period of time shall be considered a training period in the type of work assigned. After the first year and one half in her new job, seniority and ability shall be considered as applicable to all employees in the group(s) concerned.

8. A stewardess who desires not to transfer to other employment with the Company under the provisions of this Memorandum Agreement may elect instead to terminate her employment relationship with the Company. In the event such stewardess elects to terminate, she shall be permitted to defer her termination date to but not beyond the last calendar day of the twelfth (12th) month following the month in which her thirty-second (32nd) birthday occurs, at which time she shall be terminated in any event.

9. A stewardess who terminates her employment in the month in which her thirty-second birthday occurs or in any of the succeeding twelve (12) months shall be entitled to severance pay in the amount of two hundred and fifty dollars ($250.00) for each year of compensated service as a stewardess with the Company, pro-rated from her date of hire as a stewardess up to her date of termination or the last day of the month in which her thirty-second (32nd) birthday falls, whichever first occurs.

10. The provisions of this Memorandum Agreement shall not apply to any stewardess who was in the service of the Company as a stewardess (including a stewardess on leave of absence) on November 30, 1953.

11. Each stewardess employed on or after the effective date of this Memorandum Agreement shall, at the time of employment, be informed of the provisions of this Agreement, and that her acceptance of such provisions is a condition of such employment.

12. The following provisions shall apply in the event the foregoing provisions of this Agreement are invalidated during the term of the Agreement by (i) the enactment of federal legislation, or (ii) the finding of a federal administrative agency, and (iii) a final judicial determination that such legislation or finding, as the case may be, is applicable to stewardesses in the employ of the Company:

(a) Within thirty (30) days following entry of such final judicial determination, the Company shall give written notice (mailed to the last known address as shown by Company records) to each former stewardess who after the effective date of this Agreement left the Company's employ or is employed in another position in the Company pursuant to the terms of this Agreement of her right to re-employment as a stewardess upon the following terms and conditions:

(1) She must file with the Company a written application for reemployment within sixty (60) days following the date of the Company's notice;

(2) She must meet all qualifications required by the Company of its stewardesses.

(3) If reemployed as a stewardess she will be assigned the Company and stewardess seniority that she would have had if her employment as a stewardess had not been terminated;

(4) Upon such reemployment she will have the right to return to the base at which she was last employed or, if she desires, to such other base to which she would have been entitled by the Basic Agreement.

(5) If her election of a base pursuant to subparagraph (4) hereof

requires a change of residence, the expenses necessitated by such move will be paid by the Company;

(6) Her rate of pay upon reemployment shall be the rate of pay to which she would have been entitled under the Basic Agreement had her employment as a stewardess not been terminated, provided that if the amount of severance pay she received upon termination under the provisions of Paragraph 9 of this Memorandum Agreement exceeds the amounts she would have earned on the basis of seventy-five hours per month on jet equipment during the period between her date of termination and her date of restoration to the Company's payroll, the difference between such severance pay and such potential earnings shall be deducted from her pay, in equal monthly installments, during the first six (6) months following her restoration to the Company's payroll;

(7) She will be entitled upon reemployment to the same vacation privileges as other stewardesses of comparable seniority, and she will be entitled to such sick leave as would have accrued had she continued her employment as a stewardess.

(8) Any former stewardess who is unable to meet the qualifications required by the Company for its stewardesses within sixty (60) days following the date of her application for reemployment shall not be entitled to reemployment as a stewardess.

(b) Any dispute as to whether an applicant for reemployment as a stewardess meets the qualifications required by the Company for its stewardesses shall be settled by arbitration at New York, New York in accordance with the rules then obtaining of the American Arbitration Association. The arbitration panel shall consist of one member appointed by the Company, one member appointed by the Association, and one member, who shall act as Chairman, appointed by the American Arbitration Association. Any other dispute concerning the interpretation or application of this Agreement shall be settled in the manner provided in the Basic Agreement for the settlement of similar disputes under the latter contract.

13. While this Memorandum expresses the voluntary agreement of the parties, it is not intended that the Association in behalf of any employee be precluded from testing the validity of any aspect of this Agreement under the laws of the State of New York, but a decision in New York shall not affect this Agreement in other states.

14. This Memorandum Agreement shall remain in full force and effect concurrently with the Basic Agreement between the Company and the Association effective October 1, 1965 covering rates of pay, rules and working conditions, subject to the provisions of the Duration of Agreement clause of such Basic Agreement.

In Witness Whereof, the parties hereto have signed this Memorandum of Agreement this 12th day of October, 1965.

Witness:
E. J. MAHON.
F. C. BONNER.
E. J. TRAPP.
M. T. DOWNING.

FOR AMERICAN AIRLINES, INC.
KENNETH L. MEINEN,
*Vice President—Personnel.*
A. DI PASQUALE,
*Assistant Vice President, Labor Contract Administration.*

Witness:
NANCY JANE COLLINS.
MARGARET NORRIS.
JOETTA S. CUNNINGHAM.
MABREY BYRNES.

FOR AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO.
JAMES F. HORST,
*International Vice President, Subject to Ratification.*
COLLEEN BOLAND,
*President—ALSSA.*
FREDRIC A. SIMPSON,
*International Representative.*

[Attachment B]

UNITED AIR LINES

NOTICE OF STEWARDESS EMPLOYMENT CONDITIONS

*Company Regulations Pertaining to Duration of Stewardess Employment:*

1. It is a condition of stewardess employment that stewardesses remain unmarried. Marriage of a stewardess automatically disqualifies her from the stewardess job. It is the Company's practice to consider stewardesses who give advance notice of marriage for ground jobs with the Company; however, such other employment is not guaranteed.

2. It is a condition of stewardess employment that applicants who enter training after October 1, 1965 may not continue in employment as stewardesses beyond the end of the month in which they reach their thirty-second birthday. The Company at that time will transfer such stewardesses, Company seniority unbroken, into other employment with the Company.

Such stewardesses will be paid in their new position an amount equal to their average monthly earnings during their last six months as a stewardess.

If no positions are available at the location at which the stewardess is domiciled when she reaches her thirty-second birthday, she will be transferred at Company expense to another location where a position exists.

I acknowledge that I have read and understand the foregoing summary of regulations pertaining to the duration of stewardess employment.

Date _____ Signed _____
Application for Stewardess Employment

Witness _____

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[Attachment C]

NEW YORK STATE DEPARTMENT OF LABOR,
UNEMPLOYMENT INSURANCE APPEAL BOARD,
*New York, N.Y.*

Eloise N. Soots
150 East 49 Street, Apt. 9E
New York, New York

LO 511
Division of Employment
3 Carlisle Street
New York, New York 10006

American Airlines
633 Third Avenue
New York, New York
Att: Richard A. Lempert, Esq.

O'Donnell & Schwartz, Esqs.
501 Fifth Avenue
New York, New York 10017
Att: Clayton Sinclair, Jr.

Employer No.
Appeal No. 131,143A
S. S. No. 246-40-1135
Referee No. 511-576-65

Please Take Notice that the decision set forth below was mailed and filed in the Department of Labor on September 26, 1966.

Please Take Further Notice that within thirty days after the mailing of this decision, the Commissioner or any other party affected thereby who appeared at the appeal before the Board may appeal questions of law involved in such decision to the Appellate Division of the Supreme Court, Third Department. Written notice of such appeal should be mailed to the Appeal Board, 500 8th Ave., N.Y. 18, N.Y., within the time above stated.

DECISION OF THE BOARD

Present: Louis J. Naftalison, Isidore Schechter, John A. Rogalin, James R. Rhone, Philip F. Wexner, Members.

Claimant applies, pursuant to Section 534 of the Law, to reopen and reconsider the decision of the Board filed March 3, 1966 (Appeal Board, 128, 115), affirming the decision of the referee filed November 3, 1965 sustaining the initial determination of the local office disqualifying claimant from receiving benefits effective September 1, 1965 on the ground that she voluntarily left her employment without good cause.

A hearing was held before the Board at which all parties were accorded a full opportunity to be heard and at which claimant, her attorney and a representative of the employer and its attorney and a representative of the Industrial Commissioner appeared and testimony was taken. The Board considered briefs submitted by the attorneys for claimant and for the employer on this application.

After due deliberation having been had on claimant's application, the Board determined to reopen and reconsider its decision.

Now, therefore, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT

Claimant was employed as an airline stewardess by the employer herein from February 27, 1956 to August 31, 1965. Prior to such employment, she had worked for about five and one-half years in an insurance and real estate office in North Carolina, where she had performed general office work, including typing and the handling of insurance policies.

Claimant was sent to a training school for stewardesses maintained by the employer in Fort Worth, Texas, prior to the actual commencement of her employment. While in training on August 2, 1955, she signed a statement in which she acknowledged that she had been informed that according to the terms of the collective bargaining agreement between the employer and the stewardess' union, (of which she had to become a member), her employment as a stewardess would not continue beyond the end of the month during which her 32nd birthday falls. This policy of the employer is more fully set forth in the collective bargaining agreement between the employer and the Airlines Steward and Stewardesses Association, Local 550, TWU-AFL-CIO, which provides in substance:

"That upon reaching her thirty-second (32nd) birthday, a stewardess would be transferred to other employment within the Company unless she elected one of the following alternatives:

"(a) If she did not desire to transfer to other employment within the Company, she could elect to either terminate her employment at such time or be permitted to defer her termination date to, but not beyond, the last calendar day of the twelfth (12th) month in which her thirty-second (32nd) birthday occurs, at which time she would be terminated, in any event, or

"(b) If a stewardess elected to terminate her employment in any of the succeeding six (6) months following her thirty-second (32nd) birthday, she would be entitled to severance pay in a stipulated amount, but a stewardess who terminated her employment after the said six (6) month period, would not be entitled to severance pay.

"(c) When she reaches her thirty-first (31st) birthday and again six (6) months later the stewardess is to be interviewed and informed of her rights to transfer or the termination of her employment on reaching her thirty-second (32nd) birthday. At this time, the stewardess shall elect in writing her choice of accepting other employment or the alternative options granted her."

This agreement reserves to a stewardess her right to sue in the courts of the State of New York, in an action to test the validity of any portion of the collective bargaining agreement.

On August 13, 1963 when claimant reached her thirty-first (31st) birthday, she was interviewed by her supervisor and informed of her rights of election and options regarding her status upon reaching her thirty-second (32nd) birthday. Claimant was told she was required to make her choice by February 16, 1964. She then specified a desire to be assigned either to the "Admirals' Club" or to any position utilizing her secretarial skills and some public relations work but limited to the New York area. On February 9, 1964, claimant was again interviewed and repeated her willingness to accept a transfer to other employment

with the Company upon reaching her thirty-second (32nd) birthday and she signed a statement to that effect.

Between June 3 and July 10, 1964, claimant was offered six office jobs with the employer, all in the New York area, which were in the following classifications: two jobs were in the general and executive offices, a job involving clerical work in a public relations office; a job as a passenger service representative at the La Guardia Airport or at a local ticket office; a job of reservation salesman at the Company's 42nd Street office and a job as a stenographer-clerk at the La Guardia Airport in New York City. All of these jobs were at claimant's regular salary as a stewardess and preserved her seniority rights. Claimant refused all of these assignments and on January 10, 1964 she signed a statement that she was not willing to accept any ground job, that she desired only the job of a stewardess. The statement read:

"The stewardess has elected to not accept transfer, but rather to terminate her employment in the twelve (12) month period following her thirty-second (32nd) birthday (which is August 16, 1964)."

Pursuant to claimant's election, her employment was terminated by the employer on August 16, 1965. Claimant filed a claim for benefits effective September 1, 1965. An initial determination was made disqualifying her from receiving benefits on the ground that she voluntarily left her employment without good cause, because she could have contined her employment with her employer by accepting a ground job. The initial determination was sustained by the referee and his decision was affirmed by the Board in Appeal Board, 128,115 filed March 3, 1966, which decision incorporated by reference our decision in Appeal Board, 118.040 (*Matter of Arnold*). This case (Appeal Board, 118,040) involved a stewardess who was employed by the same employer as was this claimant and who lost her employment under the same facts and circumstances as in this case on appeal. In that case, the Board held that the stewardess brought about her own loss of employment by her deliberate action in refusing to accept a transfer to ground employment with her employer upon reaching her thirty-second (32nd) birthday. No appeal was taken from the Board's decision in that case.

Thereafter and prior to December 16, 1964, claimant's union filed a complaint with the State Commission for Human Rights on behalf of claimant and other stewardesses similarly situated, alleging that this employer and other airlines were discriminatory in compelling stewardesses to cease flying upon reaching their thirty-second (32nd) birthday and that their discharge because of such age limitations was in violation of Section 296.1(a) of the Executive Law. This section provides:

"It shall be an unlawful, discriminatory practice:

> "(a) For an employer, because of the age, race, creed, color or national origin or sex of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

Section 297 of the Executive Law provides that upon the filing of such complaint, the chairman of the Commission shall appoint one of the Commissioners as an Investigating Commissioner, who shall make a prompt investigation of the facts and determine whether or not probable cause exists for crediting the allegations of the complaint that the respondent was engaged in unlawful discriminatory practices. If the Investigating Commissioner finds that probable cause does exist, then he shall try to have the discriminatory practice eliminated through conference, conciliation or persuasion. If this fails, then the Investigating Commissioner shall cause to be issued and served upon the respondent a written notice with a copy of the complaint, directing him to answer the charges of the complaint at a hearing to be held before three members of the Commission (of which the Investigating Commissioner may not be a member) at a time and place to be fixed by the chairman of the Commission. The hearing to be held upon the complaint and answer of the respondent shall result in findings of fact and the issuance of a proper order of the Commissioner directing the respondent to desist from discriminatory practices. The validity of such ruling may then be tested in the State Courts in a proper action.

Upon the filing of the complaint by claimant's union, an Investigating Commissioner was appointed by the chairman of the Commission for Human Rights on December 17, 1965. An investigation of the charges made by the union was then held by the Investigating Commissioner. Claimant was one of the stewardesses who appeared and testified during the investigation. At the conclusion of such investigation, the Investigating Commissioner filed his report dated March 23, 1966, in which he made the following conclusions:

"SUMMARY

"(1) None of the evidence on hand gives warrant for the establishment of an industrywide policy setting a special arbitrary chronological age for continued employment of airline stewardesses—whether age 32 or 35, or any age below that of the standard mandatory retirement age for company employees.

"(2) The evidence on hand does support the opposite position; namely, that termination as an airline stewardess prior to the employer's standard mandatory retirement age should be predicated solely on the individual stewardess' continued ability to perform the duties of the position at the level of performance required by each airline company for its stewardesses.

"(3) On the basis of the evidence before me as Investigating Commissioner, I do not find that, under the New York State Law Against Discrimination, there is support for a claim that a *bona fide* occupational qualification based on age for continued employment properly applies to the airline stewardess position on an industrywide basis."

He later filed a separate report on April 20, 1966 in connection with this claimant's complaint in which he concluded:

"Accordingly, based on the evidence before me, I find probable cause in the above-entitled case and will now go forward with the further procedures authorized by the Law Against Discrimination."

On July 28, 1966, the Investigating Commissioner filed a direction for the issuance of a notice of hearing to be held before three members of the Commission on the claimant's complaint and the respondent's answer thereto, because he did not succeed in eliminating the unlawful, discriminatory practices complained of by the claimant, through the means of conference, conciliation and persuasion.

On the basis of the proceedings held before the Investigating Commissioner appointed by the Commission for Human Rights and on the basis of his report and recommendations, the attorneys for the claimant made this application to reopen and reconsider the decision of the Board. Thereupon, a hearing was held before the Board at which claimant and her attorney and representatives of the employer and its attorney and a representative of the Industrial Commissioner appeared and further testimony was taken and the reports of the Investigating Commissioner were submitted in evidence. At this hearing claimant and her attorney conceded that no steps had been taken by her to institute any grievance procedure set forth in the collective bargaining agreement which provides:

"ARTICLE 25—GRIEVANCE PROCEDURES

"(c) GRIEVANCE—APPEAL:

"(1) A stewardess, or group of stewardesses, having a grievance concerning any action of the Company affecting her, may present her grievance in person or through her representative within seven (7) days to the appropriate Manager—Flight or his designee who shall evaluate the grievance and render his decision as soon as possible but not later than seven (7) days following receipt of said grievance."

Since the termination of her job as a stewardess, claimant has been employed as a free-lance script supervisor in theatrical and television productions. She has succeeded in obtaining three engagements in this field.

OPINION

We give full respect and consideration to the report of the Investigating Commissioner of the State Commission for Human Rights. However, such report is not a final determination of the matters concerned in the complaint against the employer.

Section 297 of the Executive Law provides that if the Investigating Commissioner finds probable cause exists to entertain the complaint, the matter is then referred to a panel of three commissioners (from which the Investigating Commissioner is excluded) and formal hearings are held and a determination made as to the existence of the discriminatory practice. Following such decision of the Commission, the aggrieved party may obtain a judicial review of the order of the Commission in the State courts. Since the Commission has not as yet scheduled hearings or rendered its decision on the complaint brought against the employer airline by the claimant and other stewardesses, this matter is still pending before it and consequently reliance cannot be had solely on the report

of the Investigating Commissioner. Such report is exploratory and part of the preliminary steps in the procedure provided by the Executive Law. Therefore, the claimant's application to reopen the decision of the Board based upon the report of the Investigating Commissioner is premature.

We hereby incorporate by reference our decision in Appeal Board, 118,040 (*Matter of Arnold*) which is made part of this decision with the same force and effect as if fully set forth herein, and from which decision no appeal was taken by the claimant therein. For the reasons set forth therein we adhere to our previous conclusion that the initial determination of the local office be sustained.

It must be emphasized that in the case on appeal, the claimant was not discharged because she reached a specific age. The employer offered to transfer her to several ground jobs and she was given the choice to accept anyone of them or terminate her employment. Claimant first made her choice to accept such transfer, but then withdrew her election and insisted on continuing only as a flight stewardess, even though she knew that the agreement under which she was hired and accepted her employment provided tat she would not be permitted to fly after attaining thirty-two years of age.

It is significant that claimant has not invoked the grievance procedure afforded her by the collective bargaining agreement.

Inherent in the procedures followed by the employer pursuant to the collective bargaining agreement is the right and prerogative of management to assign workers to other jobs within their training, experience and competence. We hold that the employer herein afforded claimant the opportunity to continue in its employment at various jobs at the election of claimant and which would carry with them no loss in remuneration or seniority status.

We conclude that claimant voluntarily left her employment without good cause.

DECISION

Claimant's application to reopen and reconsider the decision of the Board filed March 3, 1966 (Appeal Board, 128,115) is granted and the said decision of the Board is rescinded.

The initial determination of the local office disqualifying claimant from receiving benefits effective September 1, 1965, on the ground that she voluntarily left her employment without good cause, is sustained.

The decision of the referee is affirmed.

LOUIS J. NAFTALISON,
*Member.*
ISIDORE SCHECHTER,
*Member.*
JOHN A. ROGALIN,
*Member.*
JAMES R. RHONE,
*Member.*
PHILLIP F. WEXNER,
*Member.*

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STATEMENT OF AMERICAN TELEPHONE AND TELEGRAPH CO.

The American Telephone and Telegraph Company makes this statement on behalf of the Bell System.

First, the Bell System does not oppose the objective of this bill that there should not be discrimination on account of age practiced by employers, labor unions or employment agencies. Indeed the Bell System companies have complied with the laws of the many States dealing with discrimination in employment on account of age and, to the Company's knowledge, none of the System companies has ever been held in violation of any of those laws.

In its present form, H.R. 3651, even though not so intended, could adversely affect the pension and retirement plans of the Bell System companies and those of many other employers in the country.

*Description of Bell System Pension Plans*

The Bell System consists principally of the American Telephone and Telegraph Company, 21 regional telephone operating companies, Western Electric Company and Bell Telephone Laboratories. Each company has a separate pension plan and separate funds separately administered. These plans cover approximately 800,000 active employees and about 95,000 employees retired on service pensions.

There are 30 banks as trustees. Since the plans are substantially identical, a description of certain of the features of the American Telephone and Telegraph Company plan will suffice.

Although the Plan was established by Company action, since 1947 union agreements have contained provisions relating to the Plan. The union can and does submit grievances of individual employees as to treatment under the Plan, and it bargains with the Company on changes in the Plan.

The Company has had in effect since July 1, 1930 a rule requiring the retirement at age 65 of all officers or other employees, whether or not eligible for pension. Exceptions require the approval of the Board of Directors in each case, and are almost never made. No exception has ever been made in the case of an officer.

Retirement with an undiscounted pension at an employee's request, or in the discretion of the Employees' Benefit Committee is provided at the following minimum ages and terms of service:

| Minimum age | | Minimum service |
|---|---|---|
| Men | Women | |
| 65 | 65 | 15 years. |
| 60 | 55 | 20 years. |

Undiscounted service pensions are also available at the following minimum ages and terms of service but require the approval of the Employees' Benefit Committee:

| Minimum age | | Minimum service |
|---|---|---|
| Men | Women | |
| 55 | 50 | 25 years. |
| None | None | 30 years. |

All of the above are service pensions payable for life from the Pension Fund. Once granted, they cannot be revoked.

The annual pension to which an employee is entitled is an amount equal to 1% of his average annual pay during the 5 years next preceding retirement (or the 5 consecutive years in which he received higher pay), multiplied by the number of years of service, subject to adjustment, as provided in the Plan, on account of specified minimum pension levels and Social Security Benefits.

Minimum pension amounts are:

| | Before age 65 | From age 65 on |
|---|---|---|
| Service 20 to 29 years | $85 | $115 |
| Service 30 to 39 years | 85 | 120 |
| Service 40 years and over | 85 | 125 |

*Adverse Effects of H.R. 3651*

The bill under consideration makes it unlawful to "discriminate against any individual with respect to his compensation, terms or conditions or privileges of employment because of such individual's age." (Section 4(a)(1).) "Age" is at least 45 but less than 65 but these limits can be varied up or down by the Secretary as necessary.

As noted, Bell System plans specify service pension eligibility on a formula in which both service and age are determinative. This is also typical of a great many other pension plans. Also the amount of the minimum pension varies with the retired employee's age and service and this is not uncommon. The only provision in the bill relating directly to retirement plans is Section 4(f)(2) which permits employers "to separate involuntarily an employee under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this Act." We have no quarrel with this provision but submit it does not prevent the adverse effects this legislation could otherwise be interpreted to have on pension and retirement systems.

For example, if persons age 60 are entitled to retire on an immediate pension at their own request after 20 years of service, could not it be held a discrimination because of age if employees 45 with 20 years' service are not given the same privilege? Also, should the Secretary increase the limit to 65 or above, claims to immediate pension could be presented by 45-year old employees with as little as 15 years of service since employees with that amount of service are entitled to pensions at age 65.

There is, of course, no way of knowing just how many people would attempt to take advantage of such an interpretation but it can be expected that many capable employees would take abnormally early pensions either to withdraw from the labor market or seek what may appear to be greener pastures. In either case, the cost to the employer would be substantial.

The Company is certain that the Bell System pension plans are well designed to serve its employees and its bsuiness. They have been modified and amended over the years to meet the changing requirements of the business and the needs of its employees. They are soundly and properly financed. The companies have an unconditional obligation to pay the pensions under the plans and they are in a position to do so.

*Proposed Amendment*

It is doubtful that the proposed bill is intended to have the effects outlined here. However, it is felt that an amendment is needed and to that end it is suggested that consideration be given to substituting for subparagraph (2) of Section 4(f) the following:

"(2) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as retirement, pension, or insurance plans which is not a subterfuge to evade the purposes of this Act except that no such employee benefit plan shall excuse the failure to hire any individual; or".

Reference might also be made to the declared policy of the Government against age discrimination in employment under federal contracts as expressed in Executive Order 11141 dated February 12, 1964. This order bans discrimination on account of age but exclude retirement plans as well as situations where age is a bona fide occupational qualification.

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TOWERS, PERRIN, FORSTER, & CROSBY, INC.,
*Philadelphia, Pa., August 3, 1967.*

Re H.R. 3651 and H.R. 4221.

Hon. JOHN H. DENT,
*Chairman, Subcommittee on Labor,*
*Committee on Education and Labor,*
*U.S. House of Representatives,*
*Washington, D.C.*

DEAR CONGRESSMAN DENT: According to the Congressional Record your Subcommittee is holding public hearings on H.R. 3651 and identical bill H.R. 4221, the "Age Discrimination in Employment Act of 1967." Although we do not plan to testify in person at the hearings on provisions of this bill, we should like to take this opportunity to file our comments relating to it.

We present our views not only as an employer administering our own employee benefit plans but also as consultants and actuaries in employee benefits, direct compensation, actuarial matters, organization, personnel administration and communications. We have been actively engaged in consulting work for almost 50 years, having done our first pension consulting as early as 1917. We presently serve over 800 clients.

*Comment on section 4(f) (2)*

We are pleased to note that section 4(f) (2) of the bill (page 6, line 9) exempts from unlawful employment practices the compulsory retirement of any employee under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of the act. However, we suggest that the exemption does not go quite far enough to encompass two other reasonable and long established practices of employers in the administration of their employee benefit plans.

(1) The Act should clearly state that it is not unlawful to require an employee to work a minimum number of years with the employer to become entitled to a pension at retirement and for the continuation of all or part of

the death, medical or other employee benefits after retirement. Many employers are not averse to hiring elderly employees who are close to the normal retirement age. For good business reasons, however, they are reluctant to provide lifetime benefits after retirement for "short service" employees. "Short service" is commonly defined as less than 10 years of service.

(2) Many employee pension plans allow or require employees to retire prior to age 65. Normal retirement ages of 60 or 62 are not uncommon today. The Act should make clear that under such circumstances it shall not be unlawful to provide different employee benefits, such as group life insurance, medical benefits, etc. to retired employees than may be provided to active employees at the same ages.

*Recommendation*

Accordingly, we respectfully suggest that subsection (f) of section 4 of the bill be amplified not only to exclude application of the act to the compulsory retirement of an employee under a bona fide pension or retirement plan but also

(1) to exclude application of the act to the operation of the terms or conditions of any other bona fide employee benefit plan, and

(2) that it shall not be unlawful to require a minimum period of service to be entitled to benefits after retirement under any bona fide employee benefit plan.

In the absence of such exclusions, we fear that hundreds of long established, bona fide pension, group life insurance, medical and other employee benefit plans may be in violation of section 4(a)(1) if it is assumed that these plans come within the purview of "conditions or privileges of employment" specified in that section. Incidentally, the Pennsylvania Human Relations Act provides for such exemptions.

Respectfully submitted.

CHARLES S. MANNING, *Executive Vice President.*

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AGRICULTURAL PRODUCERS LABOR COMMITTEE,
*Los Angeles, Calif., August 18, 1967.*

Re: Proposed Federal Legislation on Age Discrimination, H.R. 3651 and 4221.

Hon. CARL PERKINS,
*Chairman of the House Committee on Education and Labor,*
*Washington, D.C.*

Hon. JOHN DENT,
*Chairman of the House General Labor Subcommittee,*
*Washington, D.C.*

DEAR SIRS: This organization represents citrus and avocado growers and packers in the States of California and Arizona. The purpose of this letter is to recommend a NO vote on pending Federal legislation regarding age discrimination.

Current Federal legislation which prohibits discrimination in connection with certain employment practices is based upon race, color, religion, sex, or national origin. Each of these criteria is capable of objective determination, thereby facilitating easy enforcement practices. Proposed legislation which would prohibit job discrimination based on age would prohibit discrimination against persons between the age of 45 and 65 "who are able to perform the work". This concept of "ability to perform the work" interjects a highly subjective criterion into the law. How do you measure if a prospective employee is able to perform the work? On this question reasonable men can arrive at divergent opinions based on the same facts.

California citrus and avocado growers are experiencing extensive competition from foreign markets, and such growers are presently caught in the economic cost-price squeeze. Such employers, who pay the highest wages for agricultural jobs in the United States, must—to survive economically—employ persons *best qualified* to perform the work. Also, experience has shown that workers approaching age 65 are more susceptible to on-the-job injury, thereby increasing compensation insurance rates. Finally, this age discrimination legislation will hinder employment opportunity for teenagers and young adults who comprise a vast proportion of the total work force. The ability of such workers to find employment upon termination of their education is of the highest public concern.

Enactment of the proposed Federal legislation on age discrimination will seriously and adversely affect California citrus and avocado growers and pack-

ers and have the same effect upon a large proportion of the youthful American work force. For the foregoing reasons a *NO* vote is requested on H.R. 3651 and 4221.

Very truly yours,

J. J. MILLER,
*Executive Vice President.*

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OFFICE OF ECONOMIC OPPORTUNITY,
EXECUTIVE OFFICE OF THE PRESIDENT,
*Washington, D.C., August 3, 1967.*

Hon. JOHN H. DENT,
*House of Representatives,*
*Washington, D.C.*

DEAR JOHN: I was extremely disappointed to learn only this afternoon that your Subcommittee has been holding hearings on the excellent Bill which you have introduced to ban discrimination against older workers.

Had I known of the hearings, I would certainly have been present to add my plea for a favorable report regarding this legislation. Why I did not know of it, I cannot imagine, but you may be sure that I am filing a strong complaint with those who should have notified me. Indeed, I would have been most grateful if someone on your staff would have let me know directly.

I would like to say now, however, that I believe such legislation to be badly needed and long overdue. In my opinion, it would do much to open employment opportunities for many competent people who are now unable even to have their applications considered, simply because they have reached someone's arbitrary age limit. Furthermore, it would give to all of us the benefit of the contribution to the work force which these competent people could make, if their applications could at least be considered on their merits regardless of their age.

I would be grateful if you would have this statement entered into the record, and be assured of my earnest hope that your Bill will be favorably reported and ultimately adopted.

Yours sincerely,

GENEVIEVE BLATT,
*Assistant Director.*

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STATEMENT BY AMERICAN LIFE CONVENTION, HEALTH INSURANCE ASSOCIATION OF AMERICA, LIFE INSURANCE ASSOCIATION OF AMERICA

The American Life Convention, the Health Insurance Association of America and the Life Insurance Association of America appreciate this opportunity to express our views with respect to H.R. 3651 and H.R. 4221 which would prohibit arbitrary discrimination in employment on the basis of age. Our Associations have an aggregate membership of 509 companies in the United States and Canada which have in force approximately 93 percent of the life insurance, and 87 percent of the accident and health insurance, written in the United States. These companies also hold 99.9 percent of the reserves of insured pension plans in the United States. These plans cover more than seven million participants or 99.7 percent of those under insured pension plans.

These bills would make unlawful age discrimination in employment except where age is a bona fide occupational qualification. They would also exempt compulsory retirement arrangements. The primary purpose of the bills would be to alleviate the difficulties which many workers over age 45 encounter in finding and maintaining satisfactory employment. We share the interests of the sponsors of this legislation and support the objective of encouraging the employment of older individuals.

This is an age group for whom a number of our member companies, have, over a long period of time, developed recruiting programs to specifically attract their talents and experience. In general the results of these efforts have been excellent not only in terms of the interest of the companies but the interests of the older worker. The stability and judgment of these mature employees are qualities sought by many of our companies. The education and research programs envisioned by the proposed legislation would be constructive and further encourage the employment of older workers. These positive programs appear to represent a most promising approach to reduce the employment difficulties faced by unemployed individuals over age 45.

We are concerned, however, that this proposed legislation goes beyond matters related to the hiring and discharging of older workers and would affect the terms, conditions and privileges of their employment. As presently written the legislation could be disruptive of traditional and legitimate underwriting practices in accident and health insurance, life insurance, and welfare and pension plans. Specifically, we suggest that the legislation be amended to make it clear that it would not affect the establishment or operation of the terms or conditions of any bona fide retirement, pension, employee benefit or insurance plan. This would be accomplished by substituting for Section 4(f)(2) as introduced, the following language:

"To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as retirement, pension, or insurance plan, which is not a subterfuge to evade the purpose of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual or . . ."

We understand that such an amendment to companion bill, S. 830, has been approved by the Labor Subcommittee of the Senate.

Similar exemptions have been adopted in most of the states which have laws prohibiting discrimination in employment on the basis of age. A summary of these statutory provisions is attached for your information.

The age of employees is a necessary and important factor in the design and underwriting of all insurance and pension plans. The age at which a worker enters a pension plan affects the cost of providing a given pension benefit because it governs the duration of time over which contributions, including interest, can be accumulated to fund his pension. The age distribution of the covered employees also governs the premium rate of group life insurance just as it does with individual life insurance.

In accident and health insurance the age-related cost factors are less substantial but nevertheless real. Demonstrable increases in morbidity inherent with advancing age are partially, but not fully, offset by decreasing maternity benefit costs. A slower rate of recuperation for older individuals also tends to increase costs.

These inherent age-related factors in employee benefit plans, have, over the years, led to a variety of practices designed to produced equitable treatment among the various employees and to help stabilize costs whether paid by the employer or employee. In pension plans, contributions by older employees may be increased for those hired after a certain age; normal retirement age may vary with age of entry. Similarly, for employee life insurance plans, benefits are generally reduced after a particular age. Although this is usually related to the normal retirement age it can occur prior to age 65. In group life insurance plans the waiver-of-premium provision for disabled employees is usually effective only for disabilities occurring prior to age 60.

In the accident and health insurance field there are various age-related terms and conditions. For example, since the advent of Medicare, medical and hospital coverage under an employee benefit plan is generally adjusted to the Medicare benefits to which an employee and his spouse become entitled.

In brief, virtually all employee benefit plans involve numerous age-related provisions. These provisions vary greatly dependent upon many factors including: the benefits provided, whether the plan is contributory or entirely financed by the employer, whether the plan is negotiated with a union or unilaterally developed by the employer, whether the plan or portions of it are insured or uninsured, the age structure of the group and the nature of the employment.

These differentiations related to age are accepted practices and procedures. If enacted without appropriate exemptions, the bills under consideration could deter the establishment or continuance of some employee benefit plans due to the uncertainty as to which age-related provisions could be held to be discriminatory. Or alternatively, since age-related differences can be eliminated in either of two ways, cost pressures might lead to less liberal provisions for all.

These problems would be particularly troublesome to the small firm. Moreover, the small firm traditionally lacks the expertise to rearrange its fringe benefits so as to accommodate a new set of government requirements and would therefore seek to avoid the problems by not employing the older workers.

In summary, we believe it is extremely important that employers and labor organizations be allowed to continue to make differentiations based on age in the broad spectrum of employee benefit programs. Without an exemption for pensions and insurance programs, the proposed legislation will tend to be self-defeating and additionally will be disruptive of the fringe benefit programs which are becoming increasingly important each year to the maintenance of income for

disabled and retired employees and their dependents and survivors. We urge you to consider the possible undesirable effects that could flow from taking such a step.

As always, our Associations stand ready to assist the Committee or its staff with further information or such other assistance as may be needed.

TWENTY-FIVE JURISDICTIONS HAVE STATUTES PROHIBITING DISCRIMINATION IN EMPLOYMENT BECAUSE OF AGE

A

The New York law (§ 296, Executive Law) contains language specifically exempting bona fide pension policies or systems and the varying of insurance coverage as follows:

"But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age."

The statutes of the following fourteen (14) states contain exemption language similar to that of the New York statute:

| | |
|---|---|
| California | § 2072, Unemployment Ins. Code |
| Connecticut | § 31–126 |
| Delaware | Title 19, § 712 |
| Hawaii | § 90A–8 |
| Idaho | § 44–1602 |
| Maine | Title 26, § 852 |
| Maryland | Art. 100, § 79 |
| Montana | HJR 12, Laws 1961 |
| Nebraska | § 48–1003 |
| New Jersey | § 18:25–2.1 |
| North Dakota | § 34–01–17 |
| Pennsylvania | Title 43, § 955, Purdon's Stats. |
| Washington | § 49.44.090 |
| Wisconsin | § 111.32(5) (c) |

B

The statutes of the following three (3) states contain a provision exempting pension or retirement plans:

| | |
|---|---|
| Indiana | § 40–2327, Burns' Stats. |
| Louisiana | § 23:893 |
| Rhode Island | § 28–6–5 |

C

The following six (6) jurisdictions have enacted age discrimination statutes with no exemption for pensions or insurance:

| | |
|---|---|
| Alaska | § 18.80.220 |
| Colorado | § 80–11–16 |
| Massachusetts | Chapter 151, B, § 4 |
| Ohio | § 4101.17 |
| Oregon | § 659.024 |
| Puerto Rico | §§ 146–152, Ch. 7, Part I, Title 29 |

D

Texas has enacted such a statute applicable to public employees only.

(See attachment for texts of pertinent provisions.)

CALIFORNIA UNEMPLOYMENT INS. CODE, § 2072

**§ 2072. Prohibited acts; rejection or termination of employment; physical and medical examinations; promotions**

It is unlawful for an employer to refuse to hire or employ; or to discharge, dismiss, reduce, suspend, or demote any individual between the ages of 40 and 64 solely on the ground of age, except in cases where the law compels or provides for such action. This section shall not be construed to make unlawful the rejection or termination of employment where the individual applicant or employee failed to meet bona fide requirements for the job or position sought or held, or to affect bona fide retirement or pension programs; nor shall this section preclude such physical and medical examinations of applicants and employees as an employer may make or have made to determine fitness for the job or position sought or held.

Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities and trade schools shall not, in and of themselves, constitute a violation of this chapter.

This section shall not limit the right of an employer, employment agency, or labor union to select or refer the better qualified person from among all applicants for a job. The burden of proving a violation of this section shall be upon the person or persons claiming that the violation occurred. Added Stats. 1961, c. 1623, p. 3518, § 1.)

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CONNECTICUT GENERAL STATUTES, § 31–126

CHAPTER 563, FAIR EMPLOYMENT PRACTICES

**Sec. 31–126. Unfair employment practices.** It shall be an unfair employment practice (a) for an employer, by himself or his agent, except in the case of a bona fide occupational qualification or need, because of race, color, religious creed, age, national origin or ancestry of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against him in compensation or in terms, conditions or privileges of employment; (b) for any employment agency, except in the case of a bona fide occupational qualification or need, to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, any individual because of his race, color, religious creed, age, national origin or ancestry; (c) for a labor organization, because of the race, color, religious creed, age, national origin or ancestry of any individual to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless such action is based on a bona fide occupational qualification; (d) for any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any unfair employment practice or because he has filed a complaint or testified or assisted in any proceeding under section 31–127; (e) for any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts herein declared to be unfair employment practices or to attempt to do so; (f) for any employer, employment agency, labor organization or person, except in the case of a bona fide occupational qualification or need, to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against individuals because of their race, color, religious creed, age, national origin or ancestry. The provisions of this section *as to age* shall not apply to (1) termination of employment where the employee is thereupon entitled to benefits under the terms or conditions of any bona fide retirement or pension plan or collective bargaining agreement between the employer and a bona fide labor organization, (2) operation of the terms or conditions of any bona fide retirement or pension plan, (3) operation of the terms or conditions of any bona fide group or employee insurance plan or (4) operation of any bona fide apprenticeship system or plan. (1963, P.A. 261.)

DELAWARE CODE, TITLE 19, §§ 710, 712

**§ 710. Unlawful discriminatory practices**

It shall be unlawful employment practice or unlawful discrimination, as the case may be,

(a) for an employer or employment agency to refuse to hire, employ or license, or to bar or discharge from employment, any individual because of his race, creed, color or national origin, or because such individual is between 45 and 65 years of age;

(b) for an employer or employment agency to discriminate against any individual in compensation or in the terms, conditions or privileges of employment because of race, creed, color or national origin, or because such individual is between 45 and 65 years of age;

(c) for any employer or employment agency to print, circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination, unless based on a bona fide occupational qualification;

(d) for any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employers or employees because of race, creed, color or national origin, or because any such person, member, employer or employee is between the ages of 45 and 65 years;

(e) for any employer, labor organization or employment agency to discharge, expel, penalize or otherwise discriminate against any person because he has opposed any practice forbidden by this subchapter or because he has filed a complaint, testified or assisted in any proceeding respecting the employment practices and discrimination prohibited under this subchapter;

(f) for any person, whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the practices forbidden by the act, or to attempt to do so. Added 52 Del.Laws, Ch. 337, § 1, eff. July 9, 1960.

**§ 712. Preservation of employment rights, practices and benefits**

Nothing contained in this subchapter shall be construed to conflict with the laws relating to child and female labor, nor to prohibit the establishment and maintenance of bona fide occupational qualifications, nor to prevent the termination or change of the employment of any person who is unable to perform his duties, nor to interfere with the operation of the terms or conditions of any bona fide retirement, pension, employee benefit or insurance plan. Added 52 Del.Laws, Ch. 337, § 3, eff. July 9, 1960.

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HAWAII 1965 SUPPLEMENT, §§ 90A–1—90A–A–9

CHAPTER 90A, EMPLOYMENT PRACTICES

[PART I. DISCRIMINATORY PRACTICES]

[§ 90A–1.] **Discriminatory practices made unlawful; offenses defined.** It shall be unlawful employment practice or unlawful discrimination:

(a) For an employer to refuse to hire or employ or to bar or discharge from employment, any individual because of his race, sex, age, religion, color or ancestry, provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question;

(b) For an employer to discriminate against any individual in compensation or in the terms, conditions or privileges of employment because of race, sex, age, religion, color or ancestry;

(c) For any employer or employment agency to print, circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, sex, age, religion, color or ancestry, unless based on a bona fide occupational qualification;

(d) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer or employees because of race, sex, age, religion, color or ancestry;

(e) For any employer, labor organization or employment agency to discharge. expel, or otherwise discriminate against any person because he has opposed any practice forbidden by this part or because he has filed a complaint, testified or assisted in any proceeding respecting the employment practices and discrimination prohibited under this part;

(f) For any person whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the practices forbidden by this part, or to attempt to do so. [L. 1963, c. 180, s. 1.]

[§ 90A–1.5.] **Definitions.** As used herein:

(a) "Person" means one or more individuals, and includes partnerships, associations or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(b) "Employment agency" means any person undertaking to procure employees or opportunities to work.

(c) "Labor organization" means any organization which exists and is constituted for the purpose, in whole or or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(d) "Employer" means any person having one or more persons in his employment, and includes any person acting as an agent of an employer, directly or indirectly.

(e) "Employment" means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered into. [L. 1964, c. 44, s. 2a.]

[§ 90A–2.] **Enforcement jurisdiction; power of department to prevent unlawful discrimination.** The state department of labor and industrial relations, hereinafter referred to as "department", shall have jurisdiction over the subject of employment practices and discrimination made unlawful by this part. When it shall appear to it that an unlawful employment practice or discrimination may have been committed, the department shall make a prompt investigation in connection therewith. If it is determined after such investigation that further action is warranted, the department shall immediately endeavor to eliminate the unlawful employment practice or discrimination complained of by conference, conciliation and persuasion. [L. 1963, c. 180, s. 2.]

[§ 90A–3.] **Complaint against unlawful discrimination.** Any person claiming to be aggrieved by an alleged unlawful employment practice or discrimination may file with the department a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice or discrimination complained of and which shall set forth the particulars thereof and contain such other information as may be required by the department. The state attorney general may, in like manner, make, sign, and file such complaint.

No complaint shall be filed after the expiration of ninety days after the alleged act of unlawful employment practice or discrimination. [L. 1963, c. 180, s. 3.]

[§ 90–4.] **Proceeding on complaint.** After the filing of any complaint, an investigation shall be made and an attempt to eliminate such practice or discrimination shall be made as provided in section [90A–2] unless such attempt has previously been made.

In case of failure to eliminate such practice or discrimination, or in advance thereof if in the judgment of the department circumstances warrant, a written accusation, together with a copy of such complaint, as the same may have been amended, shall be issued and served requiring the person, employer, labor organization or employment agency named in such accusation, hereinafter referred to as "respondent", to answer the charges of such accusation at a hearing. [L. 1963, c. 180, s. 4; a.m. L. 1964, c. 44, s. 2b]

L. 1964 substituted "complaint" for "accusation" in first par.

[§ 90A–5.] **Same: hearings under administrative procedure act.** Hearings held under the provisions of this part shall be conducted in accordance with the Hawaii administrative procedure act, chapter 6C. [L. 1963, c. 180, s. 5; am. L. 1964, c. 44, s. 2c.]

[§ 90A–6.] **Same: findings and orders thereon; requirement that order show rights of appeal.** If the department finds that a respondent has engaged in any unlawful employment practice or discrimination as defined in this part, the department shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or discrimination and to take such affirmative

action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in any respondent labor organization, as, in the judgment of the department, will effectuate the purpose of this part, and including a requirement for report of the manner of compliance. If the department finds that a respondent has not engaged in any such unlawful employment practice or discrimination, the department shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the accusation as to such respondent. A copy of its order shall be delivered in all cases to the attorney general, and such other public officers as the department deems proper.

Any order issued by the department shall have printed on its face references to the provisions of the Hawaii administrative procedure act which prescribe the rights of appeal to any party to the proceeding to whose position the order is adverse. [L. 1963, c. 180, s. 6; am. L. 1964, c. 44, s. 2c.]

L. 1964 substituted "act" for "part".

[§ 90A–7.] **Rules and regulations.** The department shall make such rules and regulations, not inconsistent with this part as in the judgment of the department seem appropriate for the carrying out of the provisions of this part and for the efficient administration thereof. [L. 1963, c. 180, s. 7.]

[§ 90A–8.] **Exceptions.** Nothing contained in this part shall be deemed to:

(a) repeal or affect any law or ordinance or government rule or regulation having the force and effect of law which prohibits, restricts or controls the employment of minors;

(b) prohibit or prevent the establishment and maintenance of bona fide occupations qualifications;

(c) prohibit or prevent the termination of or change the employment of any person who is unable to perform his duties;

(d) affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit or insurance plan;

(e) prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from giving preferance to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained;

(f) conflict with or affect the application of security regulations in employment established by the United States or the State of Hawaii. [L. 1963, c. 180, s. 8; am. L. 1964, c. 44, s. 2d.]

L. 1964 amended section generally.

[§ 90A.–9.] **Penalties.** Whoever shall willfully resist, prevent, impede or interfere with the department or any of its agents or representatives in the performance of duties pursuant to this part, or who shall in any manner willfully violate an order of the department, shall be fined not more than $200 for the first offense and for the second and any subsequent offense, shall be fined not more than $500, or imprisoned for not more than ninety days, or both. [L. 1963, c. 180, s. 9.]

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IDAHO CODE, § 44–1602

**44–1602. Unlawful employment practice—Exceptions—Employee over 60—Age discrimination in employment prohibited.**—It shall be an unlawful employment practice, except where based upon a bona fide occupational qualification, or retirement or pension plan, or upon applicable security regulations established by the United States or the state of Idaho, and execpt where the employee is 60 years of age or older, for any employer because of the age of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment, if the individual is the best able and most competent to perform the services required. [1965, ch. 154, § 2, p. 299.]

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MAINE REVISED STATUTES, § 852

**§ 852. Unlawful employment practices**

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security reg-

ulations established by the United States or the State of Maine, for any employer because of the race, color, religious creed, ancestry, age or national origin of any individual to refuse to hire or employ, or to bar or to discharge from employment such individuals, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required. This section shall not apply to:

1. **Termination.** Termination of employment because of the terms or conditions of any bona fide retirement or pension plan;

2. **Retirement plan.** Operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement;

3. **Insurance plan.** Operation of the terms or conditions of any bone fide group or employee insurance plan.

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MARYLAND 1964 CUMULATIVE SUPPLEMENT, ART. 100, § § 78–79

DISCRIMINATION

**§ 78. Discrimination because of age**

(a) It is harmful employment practice:

(b) For an employer, because of the age of any person, to refuse to hire or employ or to bar, or discharge the person from employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment, because of his age, unless based upon a bona fide occupational qualification.

(c) For an employer or employment agency to print or circulate, or cause to be printed or circulated, any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which directly or indirectly, expresses any limitation, specification, or discrimination as to age, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification. (1964, ch. 186.)

**§ 79. Definitions**

(a) For the purposes of this subtitle,

(b) The term "employer" does not include a club exclusively social, or a fraternal, charitable, educational or religious association or corporation, if the club, association or corporation is not organized for private profit or any person, company or corporation engaged in interstate transportation whose employment practices are regulated by federal statute or regulation.

(c) The term "employment agency" includes any person, firm or corporation undertaking to procure employees, or opportunities to work.

(d) The term "age" applies as to any person who is forty years of age or over and not more than sixty-five years of age. However, the use of the term "age" in this subtitle is not (1) to prevent the termination of the employment of any person who is physically unable to perform his duties, or (2) to affect the retirement policy or system of any employer if such policy or system is not merely a subterfuge to evade the purposes of this subtitle, or (3) to preclude the varying of insurance coverages according to an employee's age. (1964, ch. 186.)

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MONTANA H. J. R. 12, LAWS 1961

Whereas, the legislature of the State of Montana finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is incompatible with the constitution, deprives the State of Montana of the fullest utilization of its capacities for production, and endangers the general welfare: and

Whereas, hiring bias generally against workers over forty (40) years of age deprives the State of Montana of its most important resource of experienced and skilled employees, adds to the number of persons receiving public assistance, tosses away our investment in trained, able people, and deprives older people of the dignity and status of self-support; and

Whereas, in the colossal struggle with communism, American cannot afford to arbitrarily diminish its reservoir of skills and knowledge, and to waste it may be fatal to freedom: Now, therefore, be it

*Resolved*, That the thirty-seventh legislative assembly of the State of Montana hereby declares it to be against the public policy of the State of Montana, and an unfair employment practice, for an employer, by himself or his agent, except in the case of a bona fide occupational qualification or need, because an individual is between the ages of forty (40) and sixty-five (65) years, to arbitrarily refuse to hire or employ, or to bar or to discharge from employment such individual or to discriminate against him in compensation or in terms, conditions or privileges of employment, or to fail or refuse to classify him properly or to refer him for employment, or to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against such individual; however, be it further

*Resolved*, That nothing herein shall be construed to apply to employees or prospective employees who are physically or mentally unable, or otherwise incapacitated, to perform the duties of such employment, or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this resolution, nor shall anything in this resolution to be deemed to preclude the varying of insurance coverages according to an employee's age.

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NEBRASKA REVISED STATUTES, §§ 48–1002—48–1006

**48–1002. Unjust discrimination in employment; act; definitions.** As used in sections 48–1001 to 48–1006, unless the context otherwise requires:

(1) Person shall include one or more individuals, partnerships, associations or corporations;

(2) Employer shall mean a person in this state having in his employ one or more individuals, and any person acting in the interest of an employer, directly or indirectly; and

(3) Labor organization shall mean any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment.

**48–1003. Unjust discrimination in employment; construction of act; practices not prevented or precluded.** The provisions of sections 48–1001 to 48–1006 shall not be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of sections 48–1001 to 48–1006; nor shall the provisions of sections 48–1001 to 48–1006 be deemed to preclude the varying of insurance coverages according to an employee's age.

**48–1004. Unjust discrimination in employment; unlawful employment practices; enumerated.** (1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to his terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against such individuals, because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive such individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, or would affect adversely his wages, hours, or employment.

(3) It shall be an unlawful employment practice for any employer or labor organization to discharge, expel or otherwise discriminate against any person, because he opposed any unlawful employment practice specified in this act or

has filed a charge, testified, participated, or assisted in any proceeding under sections 48–1001 to 48–1006.

**48–1005. Unjust discrimination in employment; violations of act; penalty.** Any person who violates any provision of sections 48–1001 to 48–1006 shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined in a sum not to exceed ten dollars.

**48–1006. Act Prohibiting Unjust Discrimination in Employment Because of Age; citation.** Sections 48–1001 and 48–1006 may be cited as the Act Prohibiting Unjust Discrimination in Employment Because of Age.

NEW JERSEY REVISED STATUTES, § 18:25–2.1

**18:25–2.1 General construction**

Nothing contained in this act or in the act to which this is a supplement shall be construed to require or authorize any act prohibited by law, nor to conflict with the provisions of chapter 2 (child and female labor) of Title 34 (Labor) of the Revised Statutes, nor to require the employment of any person under the age of 21, nor to prohibit the establishment and maintenance of bona fide occupational qualifications or the establishment and maintenance of apprenticeship requirements based upon a reasonable minimum age nor to prevent the termination or change of the employment of any person who in the opinion of his employer, reasonably arrived at, is unable to perform adequately his duties, nor to preclude discrimination among individuals on the basis of competence, performance, conduct or any other reasonable standard, nor to interfere with the operation of the terms or conditions and administration of any bona fide retirement, pension, employee benefit or insurance plan or program. L.1962, c. 37, § 8, supplementing chapter 169, Title 18.

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NEW YORK EXECUTIVE LAW, § 296

**§ 296. Unlawful discriminatory practices**

1. It shall be an unlawful discriminatory practice:

(a) For an employer, because of the age, race, creed, color or national origin or sex of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency to discriminate against any individual because of his age, race, creed, color or national origin, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

(c) For a labor organization, because of the age, race, creed, color or national origin or sex of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color or national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

1-a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review;

(b) To deny to or withhold from any person because of his race, creed, color or national origin or sex the right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(c) To discriminate against any person in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color or national origin or sex;

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

2. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color or national origin, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed, color or national origin is unwelcome, objectionable or not acceptable, desired or solicited.

3. It shall be an unlawful discriminatory practice for the owner, lessee, sublessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

(a) To refuse to rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color or national origin of such person or persons.

(b) To discriminate against any person because of his race, creed, color or national origin in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color or national origin of a person seeking to rent or lease any publicly-assisted housing accommodation.

(d) Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

3-a. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because an individual is between the ages of forty and sixty-five, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment.

(b) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination respecting individuals between the ages of forty and sixty-five, or any intent to make any such limitation, specification or discrimination.

(c) For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age.

NORTH DAKOTA CENTURY CODE, § 34-01-17

**34-01-1.7. Unlawful to discriminate because of age.**—No person, persons, firm, association or corporation, carrying on or conducting within this state, any business requiring the employment of labor, shall refuse to hire, employ, or license, or bar or discharge from employment, any individual between the ages of forty and sixty-five years, solely and only upon the ground of age; when the reasonable demands of the position do not require such an age distinction; and, provided that such individual is well versed in the line of business carried on by such person, persons, firm, association or corporation, and is qualified physically, mentally and by training and experience to satisfactorily perform the labor assigned to him or for which he applies. Nothing herein shall affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of that section. Any person or corporation who violates any of the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not to exceed twenty-five dollars or by imprisonment in the county jail for not to exceed one day or by both such fine and imprisonment.

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PURDON'S PENNSYLVANIA STATUTES, § 955, TITLE 43

**§ 955. Unlawful discriminatory practices**

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania:

(a) For any employer because of the race, color, religious creed, ancestry, age or national origin of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required. The provision of this paragraph shall not apply, to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or employe insurance plan.

(b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to

(1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, religious creed, ancestry or national origin of any applicant for employment or membership.

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, religious creed, ancestry, age or national origin.

(3) Deny or limit, through a quota system, employment or membership because of race, color, religious creed, ancestry, age, national origin or place of birth.

(4) Substantially confine or limit recruitment or hiring of individuals with intent to circumvent the spirit and purpose of this act, to any employment agency, employment service, labor organization, training school or training center or any other employe-referring source which services individuals who are predominantly of the same race, color, religious creed, ancestry, age or national origin.

(c) For any labor organization because of the race, color, religious creed, ancestry, age or national origin of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

(d) For any employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

(e) For any person, whether or not an employer, employment agency, labor organization or employe, to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct

or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be unlawful discriminatory practice.

(f) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, color, religious creed, ancestry, age or national origin.

(g) For any individual seeking employment to publish or cause to be published any advertisement which specifies or in any manner expresses his race, color, religious creed, ancestry, age or national origin, or in any manner expresses a limitation or preference as to the race, color, religious creed, ancestry, age or national origin of any prospective employer.

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WASHINGTON REVISED CODE, § 49.44.090

CHAPTER 49.44, VIOLATIONS—PROHIBITED PRACTICES

**49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions.** It shall be an unfair practice:

(1) For an employer or licensing agency, because an individual is between the ages of forty and sixty-five, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: *Provided,* That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the director of labor and industries through the division of industrial relations.

(2) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination respecting individuals between the ages of forty and sixty-five: *Provided,* That nothing herein shall forbid a requirement of disclosure of birth date upon any form of application for employment or by the production of a birth certificate or other sufficient evidence of the applicant's true age.

Nothing contained in this section or in RCW 49.60.180 as to age shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; nor shall anything in this section or in RCW 49.60.180 be deemed to preclude the varying of insurance coverages according to an employee's age; nor shall this section be construed as applying to any state, county, or city law enforcement agencies, or as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors. [1961 c 100 § 5.]

Element of age not to affect apprenticeship agreements: RCW 49.04–.910.
Unfair practices, discrimination because of age: RCW 49.60.180–49.60.200.

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WISCONSIN STATUTES, §§ 111.31—111.32

SUBCHAPTER II. FAIR EMPLOYMENT

**111.31 Declaration of policy**

(1) The practice of denying employment and other opportunities to, and discriminating against, properly qualified persons by reason of their age, race, creed, color, handicap, sex, national origin or ancestry, is likely to foment domestic strife and unrest, and substantially and adversely affect the general welfare of a state by depriving it of the fullest utilization of its capacities for production. The denial by some employers and labor unions of employment opportunities to such

persons solely because of their age, race, creed, color, handicap, sex, national origin or ancestry, and discrimination against them in employment, tends to deprive the victims of the earnings which are necessary to maintain a just and decent standard of living, thereby committing grave injury to them.

(2) It is believed by many students of the problem that protection by law of the rights of all people to obtain gainful employment, and other privileges free from discrimination because of age, race, creed, color, handicap, sex, national origin or ancestry, would remove certain recognized sources of strife and unrest, and encourage the full utilization of the productive resources of the state to the benefit of the state, the family and to all the people of the state.

(3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified persons regardless of their age, race, creed, color, handicap, sex, national origin or ancestry. * * * This subchapter shall be liberally construed for the accomplishment of this purpose.

**111.32 Definitions**

(3) (a) The term "employer" shall not include * * * a social club, fraternal or religious association * * * not organized for private profit.

(5) (a) * * * "Discrimination" means discrimination because of age, race, color, sex, creed, national origin or ancestry, by an employer individually or in concert with others against any employe or any applicant for employment, in regard to his hire, tenure or term, condition or privilege of employment and by any labor organization against any member or applicant for membership, and also includes discrimination on any of said grounds in the fields of housing, recreation, education, health and social welfare as related to a condition or privilege of employment.

(b) It is discrimination because of age:

1. For an employer, labor organization, or person in the fields of housing, recreation, education, health and social welfare, or any licensing agency, because an individual is between the ages of 40 and 65, to refuse to hire, employ, admit or license, or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment;

2. For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which implies or expresses any limitation, specification or discrimination respecting individuals between the ages of 40 and 65, or any intent to make such limitation, specification or discrimination;

3. For any employer, licensing agency or employyment agency to discharge or otherwise discriminate against any person because he has opposed any discriminatory practices under this section or because he has made a complaint, testified or assisted in any proceeding under this section.

(c) Nothing in this subsection shall be construed to prevent termination of the employment of any person physically or otherwise unable to perform his duties, nor to affect any retirement policy or system of any employer where such policy or system is not a subterfuge to evade the purposes of this subsection, nor to preclude the varying of insurance coverage according to an employes' age; nor to prevent the exercise of an age distinction with respect to employment of persons in capacities in which the knowledge and experience to be gained might reasonably be expected to aid in the development of capabilities required for future advancement to supervisory, managerial, professional or executive positions.

(5) (d) *Exceptions in sex discrimination.* The prohibition against discrimination because of sex does not apply to the exclusive employment of one sex in positions where the nature of the work or working conditions provide valid reasons for hiring only men or women, or to a differential in pay between employes which is based in good faith on any factor other than sex.

(5) (e) The prohibition against discrimination because of age shall not apply to hazardous occupations including, without limitation because of enumeration, law enforcement or fire fighting.

(5) (f) The prohibition against discrimination because of handicap does not apply to failure of an employer to employ or to retain as an employe any person

who because of a handicap is physically or otherwise unable to efficiently perform, at the standards set by the employer, the duties required in that job. An employer's exclusion of a handicapped employe from life or disability insurance coverage, or reasonable restriction of such coverage, shall not constitute discrimination.

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BURNS' INDIANA STATUTES, §§ 40–2318—40–2328

**40–2318. Age discrimination—Definitions.**—For the purpose of this act [§§ 40–2318—40–2327]: "discrimination" shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty [40] years and has not attained the age of sixty-five [65] years;

"person" shall mean and include an individual, partnership, corporation or association, and

"employer" shall mean and include any person in this state employing one or more individuals, labor organizations, the state and all political subdivisions, boards, departments and commissions thereof, but does not include religious, charitable, fraternal, social, educational or sectarian corporations or associations not organized for private profit, other than labor organizations and nonsectarian corporations or organizations engaged in social service work. [Acts 1965, ch. 368, § 1, p. 1154.]

**40–2319. Dismissal—Refusal to employ.**—It is declared to be an unfair employment practice and to be against public policy to dismiss from employment, or to refuse to employ or rehire, any person solely because of his age if such person has attained the age of forty [40] years and has not attained the age of sixty-five [65] years. [Acts 1965, ch. 368, § 2, p. 1154.]

**40–2320. Discrimination by labor organizations.**—It is hereby declared to be an unfair employment practice for any labor organization to deny full and equal membership rights to any applicant for membership or to fail or refuse to classify properly or refer for employment any member solely because of the age of such applicant or member if such person has attained the age of forty [40] years and has not attained the age of sixty-five [65] years. [Acts 1965, ch. 368, § 3, p. 1154.]

**40–2321. Discriminatory contracts void.**—Any provision in any contract, agreement or understanding entered into on or after October 1, 1965, which shall prevent or tend to prevent the employment of any person solely because of his age, who has attained the age of forty [40] years and has not attained the age of sixty-five [65] years shall be null and void. [Acts 1965, ch. 368, § 4, p. 1154.]

**40–2322. Investigative powers of commissioner.**—The commissioner of labor shall investigate all complaints of discrimination, and for such purpose the commissioner shall have full power and authority:

(1) to receive, investigate and pass upon charges of discrimination against any person employed within the state; and

(2) to enter any place of business or employment within the state for the purpose of examination and making a transcript of records in any way appertaining to or having a bearing upon the question of the age of any person so employed. [Acts 1965, ch. 368, § 5, p. 1154.]

**40–2323. Employees' records—Investigation—Conciliation—Complaint—Hearing.**—Every person shall keep true and accurate records of the ages of all persons employed by him as reported by each employee, and shall upon demand furnish to the commissioner of labor, or his authorized representative, a true copy of any such record, verified upon oath. Such record shall be open to investigation by the commissioner at any reasonable time. If on all the testimony taken, the commissioner of labor shall make a preliminary determination that the employer has engaged in or is engaging in unfair employment practices, the commissioner shall endeavor to eliminate such unfair employment practices by informal methods of conference, conciliation and persuasion. If voluntary compliance cannot be obtained, the commissioner of labor shall be empowered to issue a complaint stating the charges and giving not less than ten [10] days' notice of hearing before the commissioner of labor at a place therein fixed. Any complaint issued pursuant to this section must be so issued within four [4] months after the alleged unfair employment practices were committed. The respondent shall have the right to file an answer to such complaint and may appear at such hearing with or without counsel to present evidence and to examine and cross-examine witnesses. Upon the completion of testimony at such hearing, if

determination is made that unfair practices were committed, the commissioner of labor shall state his findings of fact and, if satisfied therewith, may issue his finding that the employer has ceased to engage in unfair employment practices. [Acts 1965, ch. 368, § 6, p. 1154.]

**40–2324. Written findings of fact by commissioner.**—If the commissioner of labor shall find no probable cause exists to substantiate the charges, or, if upon all the exidence, he shall find that an employer has not engaged in unfair employment practices, the commissioner of labor shall state in writing his findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such employer. [Acts 1965, ch. 368, § 7, p. 1154.]

**40–2325. Discharge for furnishing evidence unfair.**—It shall be an unfair employment practice for any employer to discharge an employee because he has furnished evidence in connection with a complaint under this act [§§ 40–2318—40–2327]. [Acts 1965, ch. 368, § 8, p. 1154.]

**40–2326. Proceedings not publicized—Facts published.**—No publicity shall be given to any proceeding before the commissioner of labor, either by the commissioner of labor or any employee thereof, provided that the commissioner may publish the facts in the case of any complaint upon which a determination has been made. [Acts 1965, ch. 368, § 9, p. 1154.]

**40–2327. Employees excepted.**—These provisions shall not apply to a person employed in private domestic service or service as a farm laborer nor to a person who is qualified for benefits under the terms or conditions of an employer retirement or pension plan or system. [Acts 1965, ch. 368, § 10, p. 1154.]

**40–2328. Effect of other laws—Certain rights unaffected.**—Any law inconsistent with any provision hereof shall not apply. Nothing contained herein shall be deemed to repeal any of the provisions of any law of this state relating to discrimination because of age, race or color, religion, or country of ancestral origin. Nothing herein shall be deemed to limit, restrict or affect the freedom of any employer in regard to (a) fixing compulsory retirement requirements for any class of employees at an age or ages less than sixty-five [65] years; (b) fixing eligibility requirements for participation in, or enjoyment by employees of, benefits under any annuity plan or pension or retirement plan on the basis that any employee may be excluded from eligibility therefor who, at the time he would otherwise become eligible for such benefits, is older than the age fixed in such eligibility requirements or (c) keeping age records for any such purposes. [Acts 1965, ch. 368, § 11, p. 1154.]

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LOUISIANA REVISED STATUTES, § 893, TITLE 23

**§ 893. Age limits for employment; fixing or by employers prohibited; penalty**

It is unlawful for any person employing labor in Louisiana, and having twenty-five or more employees, to adopt any rule for the discharge of said employees and for the rejection of applications for employment of new employees upon any age limit under fifty years, except where the employer has adopted a system of old age pension for the pensioning of employees with periods of service no greater than thirty-five years and with pension allowances of no less than forty-five dollars per quarter.

Whoever violates the provisions of this Section shall be fined no more than five hundred dollars or imprisoned for not more than ninety days, or both.

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RHODE ISLAND GENERAL LAWS, §§ 28–6–1—28–6–5

**28–6–1. Age discrimination—Definition of terms.**—For the purposes of§§ 28–6–1 to 28–6–16, inclusive:

"Discrimination," shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years, unless based upon a bona fide occupational qualification;

"Person" shall mean and include an individual, partnership, corporation or an association, as the case may be;

"Employer" shall mean and include any person in this state employing one (1) or more individuals; labor organizations; the state; and all political subdivisions, boards, departments and commissions thereof, but does not include a religious, charitable, fraternal, social, educational, or sectarian corporation or association not organized for private profit, other than labor organizations and nonsectarian corporations or organizations engaged in social service work;

"Employment agency" shall mean and include any person undertaking to procure employees for opportunities to work.

Words employing the masculine gender shall mean and include the femine gender, as the case may be.

History of Section.
P.L. 1956, ch. 3795, § 1; P.L. 1962, ch. 96, § 1.

**28-6-2. Age discrimination by employers and/or employment agencies.**—(a) It is declared to be an unlawful employment practice and to be against public policy for an employer, by himself or by his agent, to dismiss from employment, or to refuse to employ or rehire any person because of his age if such person has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years, unless based upon a bona-fide occupational qualification;

(b) It is declared to be an unlawful employment practice and against public policy, for any employment agency, except in the case of a bona-fide occupational qualification, to fail or refuse to classify properly or to fail or refuse to refer for employment, or otherwise to discriminate against any individual because of his age if such person has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years.

(c) It is declared to be an unlawful employment practice and against public policy for any employer or employment agency to print or circulate, or cause to be printed or circulated, any statement, advertisement or publication, and to use any form or application for employment, or to make any inquiry in connection with employment, which expresses directly or indirectly, any intent to dismiss from employment, or to refuse to employ or rehire any person because of his age if such person has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years, unless based upon a bona fide occupational qualification.

**28-6-3. Age discrimination by labor organizations.**—It is hereby declared to be an unlawful employment practice for any labor organization to deny full and equal membership rights to any applicant for membership or to fail or refuse to classify properly or refer for employment any member because of the age of such applicant or member if such person has attained the age of forty-five (45) and has not attained the age of sixty-five (65) unless based on a bona fide occupational qualification.

History of Section.
P.L. 1956, ch. 3795, § 3.

**28-6-4. Discriminatory contracts void.**—Any provision in any contract, agreement or understanding entered into on or after October 1, 1956, which shall prevent or tend to prevent the employment of any person because of his age who has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years shall be null and void, unless based on a bona fide occupational qualification.

History of Section.
P.L. 1956, ch. 3795, § 4.

**28-6-5. Employment exempt.**—The provisions of §§ 28-6— to 28-6-16, inclusive, shall not apply to persons employed in private domestic service or service as a farm laborer, nor to a person who is qualified for benefits under the terms or conditions of an employer retirement or pension plan or system.

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ALASKA STATUTES § 18.80.220

**Sec. 18.80.220. Unlawful employment practices.** It is unlawful for

(1) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color or national origin, or because of his age when the reasonable demands of the position do not require age distinction;

(2) a labor organization, because of a person's age, race, religion, color or national origin, to exclude or to expel him from its membership, or to discriminate in any way against one of its members or an employer or an employee;

(3) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment or to make an inquiry in connection with prospective employment, which expresses, directly or indirectly, a limitation, specification or discrimination as to age, race, creed, color or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because he has opposed any practices forbidden under §§ 200–280 of this chapter or because he has filed a complaint, testified or assisted in a proceeding under this chapter; or

(5) an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business or type of work in the same locality. (§ 6 ch 117 SLA 1965)

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COLORADO STATUTES, § 80–11–16

**80–11–16. Age of employee not ground for discharge.**—No person, firm, association or corporation, carrying on or conducting, within this state, any business requiring the employment of labor, shall discharge any individual between the ages of eighteen and sixty years, solely and only upon the ground of age; provided that such individual is well versed in the line of business carried on by such person, persons, firm, association or corporation, and is qualified physically, mentally and by training and experience, to satisfactorily perform and does satisfactorily perform the labor assigned to him, or for which he applies.

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MASSACHUSETTS GENERAL LAWS, CH. 151 B, § 4

**§ 4. Unlawful Employment Practices**

It shall be an unlawful employment practice:

1. For an employer, by himself or his agent, because of the race, color, religious creed, national origin, age, or ancestry of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.

2. For a labor organization, because of the race, color, religious creed, national origin, age, or ancestry of any individual to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless based upon a bona fide occupational qualification.

3. For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly any limitation, specification or discrimination as to race, color, religious creed, national origin, age, or ancestry or any intent to make any such limitation, specification or discriminate in any way on the ground of race, color, religious creed, national origin, age, or ancestry, unless based upon a bona fide occupational qualification.

3A. For any person engaged in the insurance or bonding business, or his agent, to make any inquiry or record of any person seeking a bond or surety bond conditioned upon the faithful performance of his duties or to use any form of application, in connection with the furnishing of such bond, which seeks information relative to the race, color, religious creed, national origin or ancestry of the person to be bonded.

4. For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five.

5. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.

Notwithstanding the foregoing provisions of this section, it shall not be an unlawful employment practice for any person, employer, labor organization or employment agency to inquire of an applicant for employment or membership as to whether or not he or she is a veteran or a citizen. (1946, 368, § 4; 1947, 424; 1950, 697 §§ 6–8; 1955, 274.)

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OHIO REVISED CODE, § 4101.17

**4101.17 Interview with, or discharge of, person in certain age group.** No employer shall refuse opportunity of interview for employment of applicants or discharge without just cause any employee between the ages of forty and sixty-five who are physically able to perform the duties and otherwise meet the established requirements of the industry and laws pertaining to the relationship between employer and employee. (129 v 1803. Eff. 8-28-61)

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OREGON REVISED STATUTES, §§ 659.015—659.026

**659.015 Declaration of policy against discrimination in employment because of age.** It is declared to be the public policy of Oregon that available manpower should be utilized to the fullest extent possible. To this end the abilities of an individual, and not any arbitrary standards which discriminate against an individual solely because of his age, should be the measure of the individual's fitness and qualification for employment.

[1959 c.547 § 2 and 1959 c.689 § 2]

**659.020 Declaration of policy against discrimination; opportunity to obtain employment without discrimination recognized as a civil right.** (1) It is declared to be the public policy of Oregon that practices of discrimination against any of its inhabitants because of race, religion, color or national origin are a matter of state concern and that such discrimination threatens not only the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

(2) The opportunity to obtain employment without discrimination because of race, religion, color or national origin hereby is recognized as and declared to be a civil right.

**659.022 Purpose of ORS 659.010 to 659.110.** The purpose of ORS 659.010 to 659.110 is to encourage the fullest utilization of available manpower by removing arbitrary standards of race, religion, color, national origin or age as a barrier to employment of the inhabitants of this state; to insure human diginity of all people within this state, and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of discrimination of any kind based on race, religion, color or national origin. To accomplish this purpose the Legislative Assembly intends by ORS 659.010 to 659.110 to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of discrimination because of race, religion, color or national origin are based.

(2) An adequate remedy for persons aggrieved by certain acts of discrimination because of race, religion, color or national origin or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of discrimination through a procedure involving investigation, conference, conciliation and persuasion; to encourage the use in good faith of such machinery by all parties to a complaint of discrimination; and to discourage unilateral action which makes moot the outcome of final administrative or judicial determination on the merits of such a complaint.

[1963 c. 622 § 2]

**659.024 Unlawful employment practice for private employer to discriminate because of age.** (1) It is an unlawful employment practice for an employer to refuse to hire or employ or to bar, discharge, dismiss, reduce, suspend or demote any individual because of his age if the individual is 25 years of age or older and under 65 years of age; but the selection of employees on the basis of relevant educational or experience requirements, or relevant physical require-

ments, including but not limited to strength, dexterity, agility and endurance, is not an unlawful employment practice.

(2) It is an unlawful employment practice for any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to age of any person who is 25 years of age or older and under 65 years of age, or any intent to make such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(3) "Employer," as used in this section, means any person who has six or more persons in his employ, but does not include the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities.

(4) The provisions of this section apply to an apprentice under ORS chapter 660, but the selection of an apprentice on the basis of the ability to complete the required apprenticeship training and the industry average period of employment, thereafter before attaining the age of 65 years is not an unlawful employment practice.

[1959 c. 547 § 3; 1963 c. 622 § 5; 1965 c. 575 § 1]

**659.026 Unlawful employment practice for public employer to discriminate because of age.** (1) It is an unlawful employment practice for a public employer or any person acting for a public employer to disqualify or discriminate against any individual in any civil service entrance, appointment or promotion examination or rating, or to refuse to hire, employ or reemploy or to bar, discharge, dismiss, reduce, suspend or demote any individual because of his age if the individual is 25 years of age or older and under 65 years of age; but the compulsory retirement of employees required by law at an age under 65 years and the selection of employees on the absis of relevant educational or experience requirements or relevant physical requirements, including but not limited to, strength, dexterity, agility and endurance, are not unlawful employment practices.

(2) The complaint and appeal procedure provided under this chapter shall not apply to an employee, against whom an unlawful employment practice described in subsection (1) of this section has allegedly been practiced, to whom there applies a procedure for administrative review of the practice as provided under any other statute governing employment by a public employer.

(3) "Public employer," as used in this section, includes the state, counties, cities, districts, authorities, public corporations and entities and any of their instrumentalities organized and existing under charter or law, which employ one or more persons, except the Oregon National Guard, the Oregon unorganized militia and the Oregon Naval Militia.

(4) The provisions of this Act do not apply to:

(a) Employees of institutions under the Oregon State Board of Control, including but not limited to the Oregon State Penitentiary and of the Oregon State Correctional Institution, whose duties, as assigned by the warden or superintendent, include the custody of persons committed to the cusody of or transferred to the institution.

(b) Employees of the Department of State Police who are classified as police officers by the Superintendent of State Police.

(c) Employees of the Oregon Liquor Control Commission who are classified as enforcement officers by the administrator of the commission.

(d) Employees of the State Department of Agriculture who are classified as enforcement officers by the director of the department.

(e) Sheriffs and those deputy sheriffs whose duties, as classified by the sheriff, are the regular duties of police officers.

(f) Police chiefs and policemen of a city who are classified as police officers by the council or other governing body of the city.

(g) Fire chiefs and firemen of a political subdivision of this state who are classified as fire fighters by the governing body of the political subdivision.

(h) Weighmasters employed by the State Highway Department.

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PUERTO RICO FAIR EMPLOYMENT PRACTICE ACT, TITLE 29, PART I, CHAPTER 7

§ 146. Any employer who discharges, suspends or demotes his employee, or reduces the salary of, or imposes or attempts to impose more burdensome

working conditions on, his employee, or who refuses to employ or re-employ any person by reason of advanced age, as the latter is hereinafter defined, or by reason of the race, color, creed, birth or social position of the employee or applicant for employment: (a) shall incur civil liability (1) for a sum equal to twice the amount of the damages sustained by the employee or applicant for employment on account of such action; (2) or for a sum not less than one hundred (100) dollars nor more than one thousand (1,000) dollars, in the discretion of the Court, if no pecuniary damages are determinable; (3) or twice the amount of the damages sustained if it were under the sum of one hundred (100) dollars; and, (b) he shall, also, be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not less than one hundred (100) dollars nor more than five hundred (500) dollars, or by imprisonment in jail for a term not less than thirty (30) days nor more than ninety (90) days, or by both penalties, in the discretion of the Court.

The court may, in the judgment passed on civil actions brought under the preceding provisions, direct the employer to reinstate the employee in his former employ and to stop and desist from the act involved.

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VERNON'S TEXAS CIVIL STATUTES, § 6252—14

**Art. 6252—14. Denial of right to work because of age**

Section 1. It is hereby declared to be the policy of the State of Texas that no person shall be denied the right to work, to earn a living, and to support himself and his family solely because of age.

Sec. 2. No agency, board, commission, department, or institution of the government of the State of Texas, nor any political subdivision of the State of Texas, shall establish a maximum age under sixty-five (65) years nor a minimum age over twenty-one (21) years for employment, nor shall any person who is a citizen of this State be denied employement by any such agency, board, commission, department or institution or any political subdivision of the State of Texas solely because of age; provided, however, nothing in this Act shall be construed to prevent the imposition of minimum and maximum age restrictions for law enforcement peace officers or for fire-fighters; provided, further, that the provisions of this Act shall not apply to institutions of higher education with established retirement programs. Acts 1963, 58th Leg., p. 857, ch. 327.

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STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

The National Retail Merchants Association is a voluntary non-profit research organization serving retail, department, women's specialty and other branches of the retail trade. Its membership embraces more than 15,000 individual stores located in every part of the United States and abroad which employ approximately 1,000,000 persons. Combined annual sales volume of its membership is approximately 2 billion dollars.

The National Retail Merchants Association (hereafter referred to as NRMA) wholeheartedly endorses the principle of non-discrimination in employment based soley on age. Subject to occupational qualifications, an individual should have equal employment opportunity regardless of age.

CURRENT LEGISLATION

Your committee has before it, for consideration, H.R. 3651 introduced by Congressman Perkins, which sets forth the Administration's proposal as introduced on January 24, 1967 and along with other supporting legislation. These proposed measures place direct and major emphasis on the vital area of preventing discrimination based solely on age in the hiring of qualified individuals. The principle objective of the framers of this legislation, as well as that of the Executive Branch of the Government, is not to deprive a person seeking employment, who solely because of his age and who through no fault of his own, finds himself without work either because his previous employer has had to close his businss or has had to drastically reduce his labor force. The same objective of nondiscrimination applies to the older person who suddenly finds it necessary to seek initial gainful employment or to return to the labor market.

A secondary, but still important intended principle is the arbitrary discharge of older workers based solely on age when not supported by other bona-fide factors. NRMA wholeheartedly supports these two basic principles. It endorses appropriate legislation and objective enforcement thereof, to prevent such discrimination with appropriate safeguards to provide obvious and clearly required exemptions. These exemptions should include, as generally recognized in the legislation proposed, special consideration free of discriminatory findings such as:

a. bona-fide occupational qualification.
b. established requirements of retirement and insurance programs.
c. any statutory requirements which may exist at federal or state levels, and
d. any factors other than "age".

NRMA POSITION

Our basic position is that the legislative intent here is, and should be, confined solely to the discriminatory *hiring* and *discharging* on the basis of age.

We do not believe that the major purpose or need is to attempt to regulate the internal employment operations, procedures and controls of management. We believe it would be most unwise to include such objectives in this legislation. To do so would attempt unrealistically to regulate employment privileges, promotions and other facilities. The administration of these special provisions would not only be highly impractical, but would tend to compromise the inherent right of business to make its own decisions in these areas as necessitated by efficient and profitable Management free of Governmental intrusion.

There are many economic factors, other than "age", which must come into play in the efficient management of today's business. Changes in business objectives and organizational structure, business expansion, new methods and techniques, specialized educational background, training, as well as specialized experience are basic factors unrelated to age upon which management must rely and be guided.

To include promotions, job transfers and other facilities would dilute the administration and enforcement of such legislation away from its basic purpose of eliminating discrimination in the *hiring* and *discharge* of employees. This is truly the root of the age discrimination problem. Whatever Government agency is charged with administering and enforcement of this legislation would be subject to hundreds and hundreds of invalid claims of age discrimination from disgruntled employees or uninformed applicants, thus wasting enforcement manpower and imposing unduly on the employer energies conducting his business by having to refute such invalid claims.

For these reasons, we strongly urge that the definition of the term "employment" as used in such legislation be limited to the *"hiring and discharge"* of prospective or existing employees, and should not include internal job methods, procedures, performance or requirements.

AGE RANGE

We believe that the age application of this legislation should apply to an individual who is at least 45 years of age, but who has not attained the earliest age which he or she is eligible to receive full old-age benefits under the Social Security Act. If subsequent developments should require an adjustment of this age range—up or down—it should be so determined after adequate public hearings by the Administrative Agency in question.

ADMINISTRATIVE AGENCY

We strongly urge that for the purpose of enforcement, the administration of such legislation be placed under the Fair Labor Standards Act through a new amendment to be known as Section 6(f) thereby placing its enforcement under the Wage and our Public Division of the U.S. Department of Labor. This division of the Labor Department already has the responsibility for the enforcement of this Act and also the Equal Pay Act of 1963. Covered employers are familiar with its basic regulations, its investigatory procedures, and its record keeping requirements.

To establish a separate division of the U.S. Department of Labor as the administrative agency to interpret and enforce anti-age discrimination, would merely

be duplicating at considerable added expense and great confusion the enforcement organization which already exists in the established Wage and Hour Administration.

Otherwise, employers, as well as their employees, would be confronted with still another Governmental agency applying different regulations, different enforcement procedures, different employer coverage, and different penalties.

INTERNAL EMPLOYMENT PRACTICE

If Congress, in its wisdom, should insist upon including in this legislation internal promotion and other related problems and facilities, then we strongly urge that those individuals defined in Section 13(a)1 of the Fair Labor Standards Act should be exempt from such promotion and related policies. These individuals are bona-fide executive, administrative and professional employees and are currently exempt from the Fair Labor Standards Act and the Equal Pay Act of 1963 if they meet the tests prescribed by the Wage and Hour Administration.

We sincerely thank the Committee for making available this opportunity to submit our views in writing on this pending legislation. We hope you will give these views your personal and favorable consideration.

Respectfully submitted.

NATIONAL RETAIL MERCHANTS ASSOCIATION.

AUGUST 11, 1967.

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