No. 132016

In the Supreme Court of Illinois

LISA JOHNSON, et al.,

Plaintiffs-Appellants,

v.

AMAZON.COM SERVICES LLC,

Defendant-Appellee.

On Certified Question from the United States Court of Appeals
for the Seventh Circuit, Case No. 24-1028.
There Heard on Appeal from the United States District Court
for the Northern District of Illinois, Case No. 23-cv-685
The Honorable Thomas M. Durkin, Judge Presiding.

BRIEF OF DEFENDANT-APPELLEE AMAZON.COM SERVICES LLC

Sari M. Alamuddin
Kevin F. Gaffney
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive
Chicago, IL 60606
(312) 324-1000
sari.alamuddin@morganlewis.com
kevin.gaffney@morganlewis.com

Gary Feinerman
LATHAM & WATKINS LLP
330 North Wabash Avenue
Suite 2800
Chicago, IL 60611
(312) 777-7110
gary.feinerman@lw.com

S.Y. Jessica Hui
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
jess.hui@lw.com

Jeremy L. Brown
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
(202) 637-2200
jeremy.brown@lw.com

November 14, 2025

Counsel for Defendant-Appellee Amazon.com Services LLC

E-FILED
11/14/2025 8:03 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND STATEMENT OF POINTS AND AUTHORITIES

Page(s)

Page(s)

Page(s)

Page(s)

Page(s)

Page(s)

Page(s)

Page(s)

Page(s)

Page(s)

Page(s)

NATURE OF THE ACTION

During the COVID-19 pandemic, and consistent with Illinois and federal health guidance, Defendant-Appellee Amazon.com Services LLC—like employers, large and small, across Illinois and the country—required its employees to undergo COVID-19 screenings, consisting of a temperature check and health questionnaire, before beginning their work shifts. Plaintiffs-Appellants, former Amazon employees in Illinois, brought this suit in the Circuit Court of Cook County, alleging they were owed overtime compensation under the Illinois Minimum Wage Law (IMWL), 820 ILCS 105/1 *et seq.*, and the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, for time spent in pre-shift COVID-19 screenings. A72-96.

Amazon removed the suit to the U.S. District Court for the Northern District of Illinois. The district court dismissed the suit, holding in pertinent part that the FLSA and IMWL's respective overtime provisions do not consider an employee's pre- and post-shift activities to be compensable work and therefore do not count such activities as part of the employee's "workweek." A97-105.

Plaintiffs appealed to the Seventh Circuit, challenging only the district court's IMWL ruling. The Seventh Circuit certified to this Court the question whether the IMWL—like the FLSA, as amended by the Portal-to-Portal Act of 1947 (PPA), 29 U.S.C. § 251 *et seq.*—"exclu[des] from compensation … employee activities that are preliminary or postliminary to [the employee's]

principal activities." A126. This Court accepted the certified question for review. No questions are raised on the pleadings.

INTRODUCTION

In 1971, the General Assembly enacted the Illinois Minimum Wage Law (IMWL), 820 ILCS 105/1 *et seq*. Five years later, the General Assembly amended the IMWL to add an overtime provision—one nearly identical to the overtime provision that had long been part of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 207(a)(1)—requiring employers to pay time-and-a-half wages to employees working more than 40 hours during a "workweek." 820 ILCS 105/4a(1). Although the legislature did not define "workweek," the amendment was not enacted in a vacuum. For nearly three decades, Illinois employers had been subject to, and Illinois employees had benefited from, the FLSA's parallel overtime provision.

The question presented here is whether the term "workweek" in the IMWL's overtime provision is coextensive with the term "workweek" in the FLSA's overtime provision, as amended by the Portal-to-Portal Act of 1947 (PPA), 29 U.S.C. § 254(a)(2). The answer is yes, as shown by the IMWL's text, purpose, and history.

Starting with text, the IMWL's overtime provision is virtually identical to the FLSA's. Both statutes provide in relevant part that "no employer shall employ any of his employees" for a "workweek" of greater than "40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he

is employed." 820 ILCS 105/4a(1); 29 U.S.C. § 207(a)(1). The statutes also seek to achieve the same purpose, namely, "the maintenance of the minimum standard of living necessary for the health, efficiency and general well-being of workers." 820 ILCS 105/2; *see* 29 U.S.C. § 202(a). The General Assembly's decision to closely pattern the IMWL's overtime provision on the FLSA's parallel provision is significant, particularly given the FLSA's history.

Congress enacted the FLSA in 1938. Over the next several years, the U.S. Supreme Court interpreted the statutory term "workweek" in the FLSA's overtime provision, 29 U.S.C. § 207(a)(1), more broadly than Congress had intended. Most prominently, in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the Court held that the term "workweek," and thus compensable working hours, could include pre- and post-shift activities. *Id.* at 690-91. *Anderson* and similar decisions provoked a "flood of litigation," threatening employers with potentially ruinous liability. *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 31 (2014).

Congress responded by enacting the PPA in 1947. Expressly finding the Supreme Court's rulings to be "in disregard of long-established customs, practices, and contracts between employers and employees," 29 U.S.C. § 251(a), and to have created an "emergency," *id.* § 251(b), Congress "clarified" the meaning of the statutory term "workweek." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 447 (2016). Pertinent here, Congress provided that "no employer shall be subject to any liability or punishment … on account of

the failure of such employer … to pay an employee overtime compensation … on account of … (2) activities which are preliminary to or postliminary to [the employee's] principal activity or activities." 29 U.S.C. § 254(a).

As the U.S. Supreme Court has consistently recognized, the PPA is an amendment to and clarification of the FLSA, not a standalone statute imposing its own obligations. *See, e.g.*, *Tyson Foods*, 577 U.S. at 447; *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 106 (2015); *Integrity Staffing*, 574 U.S. at 29; *IBP, Inc. v. Alvarez*, 546 U.S. 21, 26 (2005); *Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728, 738 n.13 (1981); *accord Porter v. Kraft Foods Glob., Inc.*, 2012 IL App (4th) 120258-U, ¶¶ 39-40. After all, Section 254(a)(2) expressly modifies the FLSA's preexisting overtime provision, *see* 29 U.S.C. § 207(a)(1), disclaiming employer liability for "the failure … to pay … overtime compensation" as to "activities which are preliminary to" an employee's "principal … activities." *Id.* § 254(a).

This clarified understanding of "workweek" is the one the General Assembly inherited when enacting the IMWL's parallel overtime provision nearly thirty years later in 1976. That decades-long understanding is the one on which Illinois employers—large and small, public and private—had built their employment practices and that employees had incorporated into their expectations. Thus, the correct interpretation of the term "workweek" in the IMWL is the one that prevailed in 1976, and the one that the General Assembly presumptively brought to the IMWL in light of the FLSA's distinctive history.

This conclusion is confirmed by the IMWL's legislative history and precedent from other jurisdictions. The House sponsor of the 1976 IMWL amendment characterized it as "a makeup bill" enacted "to catchup and make [Illinois] *even with* federal laws that cover most employees in Illinois." House Tr., at 169, 79th Gen. Assemb. (Ill. June 16, 1976), https://ilga.gov/Documents/House/transcripts/Htrans79/HT061676.pdf ("Ill. 79th Gen. Assemb. House Tr.") (emphasis added) (SA74). Not, as Plaintiffs would have it, "more extensive than" laws that already covered Illinois employees (i.e., the FLSA), but "even with" those laws. There are no contrary indications in the legislative history suggesting any intention to deviate from the FLSA's long-settled understanding of "workweek." And precedent from other states affirms that the "workweek" for state overtime compensation laws should, absent an indication that the state intended to deviate from the FLSA, follow the federal standard that prevailed when the law was enacted.

Plaintiffs' contrary arguments are unpersuasive. As their primary textual argument, Plaintiffs contend that "[t]he IMWL is silent as to the PPA and one law cannot incorporate another through silence." Pls.-Appellants' Opening Br. ("OB") 11. That argument rests on a false premise. The IMWL is not "silent"; to the contrary, it uses language virtually identical to the FLSA's overtime provision, and, as explained, the FLSA "workweek" had for decades excluded pre- and post-shift activities when the IMWL's overtime provision was enacted in 1976. Because, as the U.S. Supreme Court made clear, the PPA

(specifically, 29 U.S.C. § 254(a)(2)) "clarified" the meaning of the term "workweek" in the FLSA's overtime provision (29 U.S.C. § 207(a)(1)), *Tyson Foods*, 577 U.S. at 447, there was no need for the General Assembly to import into the IMWL the PPA's text along with the FLSA's. And Plaintiffs' argument ignores that the General Assembly's intent in enacting the IMWL's overtime provision was to "to catchup and make [Illinois] even with federal laws that cover most employees in Illinois." Ill. 79th Gen. Assemb. House Tr., at 169 (SA74).

Plaintiffs also argue that an Illinois Department of Labor ("IDOL") regulation, 56 Ill. Admin. Code § 210.110, defines "hours worked" in a manner inconsistent with the federal definition of "workweek." As Plaintiffs observe, the regulation's definition of "hours worked" partially parallels the U.S. Supreme Court's long-superseded formulation of "workweek" in *Anderson*. In Plaintiffs' view, the Section 210.110 definition of "hours worked" captures every moment that an employee is "on the employer's premises." OB20-21.

Contrary to Plaintiffs' submission, Section 210.110 is consistent with the FLSA's post-1947 definition of "workweek." Plaintiffs do not account for a neighboring IDOL regulation providing that "the Regulations and Interpretations of the Administrator, Wage and Hour Division, U.S. Department of Labor, administering the Fair Labor Standards Act of 1938, as amended" provide "guidance in the interpretation of the [IMWL]." 56 Ill. Admin. Code § 210.120. Moreover, Section 210.110 itself reinforces the

importance of looking to federal regulations to implement the IMWL. In particular, Section 210.110 references federal regulations implementing the FLSA, as amended by the PPA, to illustrate the scope of compensable work. As Section 210.120 instructs, the IMWL "workweek" should be read consistently with the FLSA "workweek."

Moreover, not even *Anderson*'s formulation of "workweek" was as broad as the "on the employer's premises" interpretation Plaintiffs advocate here. *Anderson* rejected compensation for "de minimis" work activities, holding that "[i]t is only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved." 328 U.S. at 692. Courts in the *Anderson* era applied this "de minimis" doctrine to pre-shift activities akin to the COVID-19 screenings at issue here. Today's courts, too, recognize that such pre-shift activities are not necessarily compensable—including at least one jurisdiction, Maryland, that Plaintiffs claim is on their side. In addition, *Anderson* recognized that employee activity was eligible for compensation only if it was "pursued necessarily and *primarily* for the benefit of the employer and his business." *Id.* at 691-92 (emphasis added). Before the Seventh Circuit, Amazon argued that the COVID-19 screenings are not "work" even under the broader *Anderson* standard, but the Seventh Circuit did not address that issue before certifying the present question to this Court.

Adopting Plaintiffs' interpretation of "workweek" would have serious implications for employers across Illinois. Employers of all sizes, public and

private, have relied on the PPA's understanding of "workweek" for decades. Retroactively imposing liability on them for mine-run health or security screenings—especially when conducted, as here, in a good-faith attempt to comply with state and federal COVID-19 guidance—would create unwarranted liability and significant uncertainty.

In sum, this Court should answer the certified question by holding that "workweek" as used in the IMWL is coextensive with "workweek" as used in the FLSA, and thus that the IMWL excludes from compensation employee activities that are preliminary or postliminary to their principal activities, including the COVID-19 screenings here. If this Court disagrees and holds that "workweek" under the IMWL is broader than "workweek" under the FLSA, it should nonetheless make clear that the question whether COVID-19 screenings are compensable work under the IMWL—or, rather, non-compensable "de minimus" activities or activities not undertaken "primarily for the benefit of the employer and his business," *id.*—should be addressed by the Seventh Circuit in the first instance.

ISSUE PRESENTED FOR REVIEW

This Court accepted the following question certified by the Seventh Circuit under Supreme Court Rule 20:

> Does the Illinois Minimum Wage Law, 820 ILCS 105/4a, incorporate the exclusion from compensation for employee activities that are preliminary or postliminary to their principal activities, as provided under the federal Portal-to-Portal Act 29 U.S.C. § 254(a)(2)?

A126. The IMWL's text, purpose, and legislative history make clear that the answer is yes.

STATUTES AND REGULATIONS INVOLVED

In addition to the statutes and regulations identified by Plaintiffs, OB4-5, Amazon identifies the following statutes and regulations pertinent to this appeal.

The FLSA's overtime provision, as originally enacted in 1938, states:

> Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. § 207(a)(1).

The PPA's "findings and declaration of policy" state in relevant part:

> (a) The Congress finds that the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of

> competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in; (6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created; (7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged; (8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and (10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.
>
> …
>
> (b) It is declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils (1) to relieve and protect interstate commerce from practices which burden and obstruct it; (2) to protect the right of collective bargaining; and (3) to define and limit the jurisdiction of the courts.

Id. § 251.

Plaintiffs' opening brief cited an IDOL regulation defining "[h]ours worked," OB4, but it did not quote the definition in full. The full definition of "hours worked" expressly references federal regulations implementing the FLSA:

> "Hours worked" means all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time the employee is required

> or permitted to work for the employer. In the context of domestic work, "hours worked" includes all time during which a domestic worker is not completely relieved of all work-related duties, regardless of the location where the domestic work is performed.
>
> An employee's meal periods and time spent on-call away from the employer's premise are compensable hours worked when such time is spent predominantly for the benefit of the employer, rather than for the employee.
>
> An employee's travel, performed for the employer's benefit (for example, in response to an emergency call back to work outside the employee's normal work hours, or at the employer's special request to perform a particular and unusual assignment, or as a part of the employee's primary duty, or in substitution of the employee's ordinary duties during normal hours) is compensable work time as defined in 29 CFR 785.33 – 785.41 (1994, no subsequent dates or editions), as amended at 26 FR 190.

56 Ill. Admin. Code § 210.110.

A separate IDOL regulation implementing the IMWL provides:

> For guidance in the interpretation of the Act and this Part, the Director may refer to the Regulations and Interpretations of the Administrator, Wage and Hour Division, U.S. Department of Labor, administering the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).

Id. § 210.120.

STATEMENT OF FACTS

A. The Fair Labor Standards Act and the Portal-to-Portal Act

Enacted in 1938, the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, establishes minimum wage and overtime compensation protections for employees. *See Integrity Staffing*, 574 U.S. at 31. The FLSA requires employers to pay a minimum wage for each "hour" worked during a given

"workweek." 29 U.S.C. § 206(a). And pertinent here, the FLSA has an overtime wage provision stating, subject to certain exceptions:

> [N]o employer shall employ any of his employees … for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Id. § 207(a)(1). The FLSA further defines "[e]mploy" to mean "to suffer or permit to work." *Id.* § 203(g). The FLSA does not define "work" or "workweek." *See Integrity Staffing*, 574 U.S. at 31.

In the 1940s, the U.S. Supreme Court encountered FLSA cases implicating the FLSA's terms "work" and "workweek." In 1944, the Court considered whether time workers spent traveling in iron ore mines was part of the statutory "workweek." *Tenn. Coal, Iron & R.R. Co. v. Muscoda Loc. No. 123*, 321 U.S. 590, 592-93 (1944). The Court held that "work" meant "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." *Id.* at 598. Based on this holding, the Court concluded that the "workweek" included the workers' underground journeys to and from the "portal" of the iron ore mines. *Id.* at 597-98. The following year, the Court extended this holding to time spent by workers navigating coal mines. *See Jewell Ridge Coal Corp. v. Loc. No. 6167, United Mine Workers of Am.*, 325 U.S. 161, 166 (1945).

In *Anderson*, the U.S. Supreme Court considered whether the term "workweek" in the FLSA included time that manufacturing employees spent

after clocking in walking to their work stations, putting on work clothes, and preparing their tools. 328 U.S. at 682-83. As in *Tennessee Coal* and *Jewel Ridge*, the Court held that "work" included activity an employee "pursue[s] necessarily and primarily for the benefit of the employer and his business." *Id.* at 691-92 (citation omitted). *Anderson* further held that "workweek" generally "includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." *Id.* at 690-91. The Court recognized, however, that "de minimis" time should be excluded and that "work" occurred "only when an employee is required to give up a substantial measure of his time and effort." *Id.* at 692.

As the U.S. Supreme Court recently observed, these decisions "provoked a flood of litigation." *Integrity Staffing*, 574 U.S. at 31. *Anderson*'s understanding of "workweek" "led to decisions requiring compensation for nearly every minute an employer required its employees to be on the employer's premises." *Vance v. Amazon.com, Inc. (In re Amazon.com, Inc., Fulfillment Ctr. Fair Lab. Standards Act (FLSA) & Wage & Hour Litig.)*, 852 F.3d 601, 608-09 (6th Cir. 2017). And as Congress recognized with concern, in the seven months after *Anderson*, almost 2,000 FLSA cases were filed in federal court alone, seeking billions of dollars in unpaid minimum wages or unpaid overtime compensation for time employees were "necessarily required to be on the employer's premises or at [their] prescribed work place." S. Rep.

No. 80-37, at 2 (1947) (SA2). In Illinois alone, 188 suits seeking nearly $600 million in damages were filed. *See id.* at 4 (SA4).

In 1947, in the immediate wake of *Anderson* and to address that concern, Congress enacted the Portal-to-Portal Act (PPA), 29 U.S.C. § 251 *et seq*. In a provision titled "[c]ongressional findings and declaration of policy," Congress characterized as an "emergency" the state of affairs created by the above-cited U.S. Supreme Court decisions. *Id.* § 251(b). Congress criticized the Court's broad "interpretations" of "work" and "workweek" as "disregard[ing] … long-established customs, practices, and contracts between employers and employees" and "creating wholly unexpected liabilities, immense in amount and retroactive in operation." *Id.* § 251(a). And Congress explained that if "permitted to stand," the Supreme Court's erroneous understandings of "work" and "workweek" "would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning powers of employees." *Id.*; *see* S. Rep. No. 80-37, at 2, 31-32 (SA2, 31-32) (documenting effects on small businesses). Congress further warned that greenlighting the Court's broad understanding of "workweek" would burden courts "with excessive and needless litigation" and encourage "champertous practices." 29 U.S.C. § 251(a).

Congress enacted the PPA "to cure the situation" and "to prevent a repetition in the future of such an avalanche of unexpected claims being

projected upon industry." S. Rep. No. 80-37, at 41 (SA41). Congress intended the PPA to "relieve[] an employer from liability" for failing to pay an employee minimum wages or overtime compensation for activities that "t[ake] place outside of the hours of the employee's scheduled workday." *Id.* at 44 (SA44). Specifically, Congress clarified that "workday"—and thus "workweek"—does not include time spent on activities involving:

> (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
>
> (2) *activities which are preliminary to or postliminary to said principal activity or activities*,
>
> which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

29 U.S.C. § 254(a) (emphasis added). The term "principal activity" means all activities that are "integral and indispensable" to the work "an employee is employed to perform." *Integrity Staffing*, 574 U.S. at 33. An activity is "integral and indispensable" if it is "an intrinsic element" of "the principal activities that an employee is employed to perform" and "one with which the employee cannot dispense if he is to perform his principal activities." *Id.*

As Congress made clear in its findings and declaration of policy, the PPA "correct[ed]" the Supreme Court's prior "interpretations" of the FLSA. 29 U.S.C. § 251; *see also* S. Rep. No. 80-37, at 1 (SA1). And as the Supreme Court later explained, Congress did so by "clarif[ying]" that "workweek" does not include time spent commuting or engaging in preliminary or postliminary

activities. *Tyson Foods*, 577 U.S. at 447; *see also Cent. Mo. Tel. Co. v. Conwell*, 170 F.2d 641, 644 (8th Cir. 1948) (The PPA "had the effect of clarifying the [FLSA] … as it had been construed in [*Anderson*].". Congress's clarification of the FLSA in the PPA is akin to what this Court has recognized the General Assembly can do, which is to enact an amendment that clarifies, rather than changes, the meaning of an existing statute. *See*, *e.g.*, *People v. Stewart*, 2022 IL 126116, ¶ 20 ("A reviewing court should consider the circumstances surrounding the amendment to determine whether the legislature intended merely to interpret or clarify the original act."); *K. Miller Constr. Co. v. McGinnis*, 238 Ill. 2d 284, 299 (2010) ("The circumstances surrounding the amendment should be considered and: 'If they indicate that the legislature intended only to interpret the original act, the presumption of an intention to change the law is rebutted.'" (citations omitted)); *Bruni v. Dep't of Registration & Educ.*, 59 Ill. 2d 6, 11-12 (1974) (similar).

Thus, the term "workweek" in the FLSA incorporates the PPA's clarification that preliminary and postliminary activities are not part of an employee's "workday" or "workweek."

B. The Illinois Minimum Wage Act

In 1971, the General Assembly enacted the Illinois Minimum Wage Law (IMWL), 820 ILCS 105/1 *et seq.*, to establish a state minimum wage. *See* Pub. Act No. 77-1451, at 2631 (1971) (SA51). The IMWL broadly defines "[e]mployer" to "include[] any individual, partnership, association, corporation, business trust, governmental or quasi-governmental body, or any person or

group … acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons are gainfully employed on some day within a calendar year." 820 ILCS 105/3.

In 1976—nearly thirty years after Congress clarified the FLSA in the PPA—the General Assembly amended the IMWL to harmonize Illinois law with federal law. The bill's House sponsor explained that the amendment was part of "a makeup bill" enacted "to catchup and make [Illinois] even with federal laws that cover most employees in Illinois." Ill. 79th Gen. Assemb. House Tr., at 169 (SA74). As part of its efforts to "make [Illinois's] minimum wage law a fair standard act which is what the federal act is called," *id.* at 170 (SA75), the legislature added an overtime wage provision to the IMWL—a provision not included in the IMWL as originally enacted in 1971. The IMWL's overtime provision mirrors the FLSA's overtime provision, providing, subject to certain exceptions:

> [N]o employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed.

820 ILCS 105/4a; *see* Pub. Act No. 79-1436, at 1367 (1976) (A34). Like the FLSA, the IMWL does not define "work" or "workweek."

C. Factual and Procedural Background

Amazon operates warehouses across the country, where it fulfills orders made on Amazon.com before they are delivered to customers. A76; A108. Amazon employs thousands of workers in its Illinois warehouses. A76-77.

Plaintiffs Lisa Johnson and Gale Miller Anderson worked as hourly, non-exempt employees in these warehouses from January 2019 to May 2021, and October 2017 to October 2021, respectively. A77. Their jobs included "moving boxes, stacking packages, and loading boxes." *Id.*

Plaintiffs' employment with Amazon overlapped with the height of the COVID-19 pandemic, which "infected over 100 million Americans and caused the death of over one million Americans." A76. During the pandemic, the Illinois Department of Public Health recommended, as a "best practice[]," that employers "conduct temperature and/or symptom screenings of all employees prior to their entry to the workplace." Ill. Dep't of Pub. Health, *Guidance for Employers and Employees on Workers' Rights and Safety During the Restore Illinois Plan* 1-2 (Dec. 9, 2020), https://dhr.illinois.gov/content/dam/soi/en/web/dhr/documents/guidance-on-workers-rights-and-safety-12-9-20.pdf. The federal Centers for Disease Control and Prevention ("CDC") similarly instructed employers that "no one with symptoms should be present at the workplace," and that employees "who have symptoms when they arrive at work or become sick during the day should immediately be separated from other employees, customers, and visitors and sent home." Ctrs. for Disease Control & Prevention, *General Business Frequently Asked Questions* 1, 8 (Apr. 20, 2020), https://stacks.cdc.gov/view/cdc/87267. The CDC further recommended that employers conduct "temperature screening[s]" of employees upon entry

into the workplace to prevent the spread of COVID-19 and comply with federal guidance. *Id.* at 8-9.

Consistent with state and federal guidance, and "to ensure the safety of Amazon's workers," Amazon, like many employers across Illinois and around the country, required all employees to screen for COVID-19 symptoms before clocking in each day. A82; *see* A78. The screening consisted of a temperature check and questions about their health. A78. Employees who passed both would be given a mask and could clock in for the day. *Id.* Plaintiffs allege that the entire screening, including time spent waiting in line and for results, took approximately ten to fifteen minutes. A78-79.

On December 22, 2022, Johnson filed this suit on behalf of herself and a putative class of "[a]ll current and formerly hourly paid employees of Amazon who underwent a COVID-19 screening during at least one week in Illinois" on or after December 22, 2019. Notice of Removal at 3, *Johnson v. Amazon.com Services, LLC*, No. 23-cv-685 (Feb. 3, 2023) ("Dist. Ct."), Dkt. No. 1. Amazon timely removed the action to federal court. *Id.* at 1.

The operative Second Amended Complaint ("SAC") added Anderson as a plaintiff. The SAC alleges, as pertinent here, that Amazon failed to pay overtime in violation of the IMWL and the FLSA. A90-94. The crux of those claims is that the time spent on COVID-19 screenings should have been compensable as time "worked" and thus counted as part of the "workweek."

The district court dismissed the SAC for failure to state a claim and entered judgment for Amazon. A97-105. The court held, in relevant part, that the FLSA does not require compensation for time spent completing COVID-19 screenings. A100. As the court explained, the FLSA (as amended by the PPA) applies only to "activities which are preliminary to or postliminary to" the "principal activity or activities which [the] employee is employed to perform." A99 (alteration in original) (quoting 29 U.S.C. § 254(a)). The court recognized that pre-shift COVID-19 screenings "enabled … the business[] to function more efficiently." A100. But the court concluded that those screenings were "neither integral nor indispensable" to "Plaintiffs' 'principal activities' [of] 'moving boxes, stacking packages, and loading boxes'" or otherwise "necessary for the business to function on any given day." A100 (explaining that time spent "undergoing post-shift security screenings" was not part of "their principal activity 'to retrieve products from warehouse shelves and package those products for shipment'" (quoting *Integrity Staffing*, 574 U.S. at 35)).

As to the IMWL claims, the district court observed that the Seventh Circuit and Illinois courts "'frequently'" "'analyze … FLSA and IMWL claims together,'" and that "[c]ourts in this District that dismiss FLSA claims under the 'integral and indispensable' standard also dismiss IMWL claims." A102 (first quoting *Mitchell v. JCG Indus., Inc.*, 745 F.3d 837, 845 (7th Cir. 2014); and then quoting *Chagoya v. City of Chicago*, 992 F.3d 607, 615 n.21 (7th Cir.

2021)) (collecting cases). Accordingly, because it had dismissed the FLSA overtime claim, the court dismissed the IMWL overtime claim as well. A103.

Plaintiffs appealed, challenging only the dismissal of their IMWL overtime claim. A106; A108. They did not dispute the district court's conclusion that pre-shift COVID-19 screenings are not "'preliminary or postliminary'" to Plaintiffs' "principal activit[y]" and are thus not compensable under the FLSA. A109 (citation omitted). Rather, Plaintiffs argued that the IMWL does not incorporate the FLSA's exclusion of preliminary work from compensable time and thus from the "workweek." A108-09. The Seventh Circuit acknowledged that the parties had presented "reasonable," "plausible," but "competing arguments." A122. And it noted that the question presented "likely carries implications beyond the overtime claims at issue here" because "the PPA excludes compensation for preliminary and postliminary activities whether paid at the minimum wage or overtime rate." A111 n.1. The Seventh Circuit thus certified the question to this Court "[a]s the final authority on matters of Illinois statutory interpretation." A125.

STANDARD OF REVIEW

"[I]ssues of statutory interpretation … are questions of law" reviewed *de novo*. *Cohen v. Chicago Park Dist.*, 2017 IL 121800, ¶ 17.

ARGUMENT

I. The IMWL Incorporates the FLSA's Understanding of "Workweek"

The goal of statutory interpretation is "to ascertain and give effect to the intent of the legislature." *Mercado v. S&C Elec. Co.*, 2025 IL 129526, ¶ 20. The "best indication of the legislature's intent" is the statutory text, which "must be given its plain and ordinary meaning." *Id.* That said, statutory text "should not be considered in isolation," but instead should "be interpreted in light of other relevant provisions and the statute as a whole." *State ex rel. Raoul v. Elite Staffing, Inc.*, 2024 IL 128763, ¶ 16 (citation omitted). Moreover, courts should "consider the purpose behind the law and the evils sought to be remedied, as well as the consequences that would result from construing the law one way or the other." *Id.* (citation omitted).

When "federal and state statutes incorporate substantially similar language," Illinois courts regularly "look to federal cases interpreting the federal statute in construing the similarly worded Illinois statute." *Better Gov't Ass'n v. Off. of the Special Prosecutor (In re Appointment of Special Prosecutor)*, 2019 IL 122949, ¶ 35. This is particularly true where, as here, "the state act was passed after the federal statute had been construed and both acts were intended to accomplish the same object." *Luken v. Lake Shore & Mich. S. Ry. Co.*, 248 Ill. 377, 383 (1911); *see also In re Appointment*, 2019 IL 122949, ¶ 54 (looking to federal case law construing FOIA for guidance in construing Illinois

counterpart); *Elite Staffing*, 2024 IL 128763, ¶ 27 (same, with Section 3(1)(a) of the Illinois Antitrust Act and Section 1 of the federal Sherman Act).

The IMWL's overtime provision does not define the term "workweek." But the IMWL's text and context warrant interpreting the term coextensively with the term as it is used in the FLSA. The IMWL's legislative history and precedent from other jurisdictions interpreting analogous state wage laws confirm this conclusion.

A. Text and Statutory Context Require that the Term "Workweek" in the IMWL Be Interpreted Coextensively with the FLSA's Usage of the Same Term

The IMWL's overtime wage provision states that "no employer shall employ any of his employees for a workweek of more than 40 hours" without paying overtime. 820 ILCS 105/4a(1). The IMWL does not expressly define "workweek." Nor has this Court.

The plain meanings of "work" and "workweek" do not, by themselves, provide that definition. "Work" means "[p]hysical and mental exertion to attain an end, esp. as controlled by and for the benefit of an employer; labor." *Work*, *Black's Law Dictionary* (12th ed. 2024); *see also Work*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/work (last visited Nov. 10, 2025) (defining "work" as "to perform work or fulfill duties regularly for wages or salary" or an "activity that a person engages in regularly to earn a livelihood"). "Work" thus means the duties that an employee was employed to perform. The "workweek" is "the hours or days of work in a calendar week." *Workweek*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/workweek

(last visited Nov. 10, 2025). The "workweek" accordingly comprises the time in a week that an employee spends on work.

The plain meanings of these terms do not clearly delineate when "work" hours begin or end. But the General Assembly enacted the IMWL against the backdrop of a settled federal overtime wage regime that had governed Illinois employers and employees for over three decades. Pertinent here, the IMWL's overtime provision uses language virtually identical to the language Congress enacted in the FLSA and then clarified in the PPA. Given this similarity and the FLSA's history, the statutory text shows that the General Assembly intended the IMWL "workweek" to be coextensive with the FLSA "workweek."

1. The IMWL's Overtime Provision Is Closely Patterned on the FLSA's Overtime Provision

The IMWL's and FLSA's overtime provisions use "substantially similar" language. *In re Appointment*, 2019 IL 122949, ¶ 35. The IMWL provides:

> Except as otherwise provided in this Section, no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than 1 1/2 times the regular rate at which he is employed.

820 ILCS 105/4a(1). And the FLSA provides:

> Except as otherwise provided in this section, no employer shall employ any of his employees … for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. § 207(a)(1).

As their legislative findings make clear, the two statutes were also enacted "to accomplish the same object." *Luken*, 248 Ill. at 383. In particular, both statutes were enacted for "the maintenance of the minimum standard of living necessary for the health, efficiency and general well-being of workers." 820 ILCS 105/2; *see* 29 U.S.C. § 202(a) (reciting the same legislative purpose); *see also Lewis v. Giordano's Enters., Inc.*, 397 Ill. App. 3d 581, 588 (1st Dist. 2009) (recognizing that the statutes' purposes are "similar" (citation omitted)).

"[I]n light of their substantial similarities," Illinois courts have regularly looked to the FLSA for guidance when interpreting the IMWL. *Kerbes v. Raceway Assocs., LLC*, 2011 IL App (1st) 110318, ¶ 25; *see also Lewis*, 397 Ill. App. 3d at 588 ("[F]ederal cases interpreting the FLSA, while not binding on this court, are persuasive authority and can provide guidance in interpreting issues under the [IMWL]."); *Haynes v. Tru-Green Corp.*, 154 Ill. App. 3d 967, 977 (4th Dist. 1987) (similar); *Bernardi v. Village of North Pekin*, 135 Ill. App. 3d 589, 591 (3d Dist. 1985) (similar). Consistent with that long-settled understanding, this Court recently recognized that the FLSA is "probative of the meaning of the [IMWL]." *Mercado*, 2025 IL 129526, ¶ 33. The IMWL's implementing regulations, too, provide that interpretations of the FLSA "as amended" may be used "[f]or guidance in the interpretation of the [IMWL]" and its regulations. 56 Ill. Admin. Code § 210.120. And the Illinois Attorney General and Department of Labor recently recognized, in the context of a different IMWL provision, that the legislature would have indicated a clear

intent—and reason—had it intended "to deviate from federal practice in this area." Amici Curiae Ill. Att'y Gen. Br. 27, *Mercado v. S&C Elec. Co.*, 2025 IL 129526 (No. 129526), 2023 WL 11916152 ("*Mercado* Amici Curiae Ill. Att'y Gen. Br.").

2. The IMWL's Overtime Provision Inherited a Settled Meaning of the Term "Workweek"

The history of the FLSA's overtime provision makes it particularly informative as to the meaning of the IMWL's parallel provision. The General Assembly enacted the IMWL in 1971. In 1976, decades after the FLSA and PPA were enacted, the General Assembly amended the IMWL to add an overtime provision. In enacting and amending any statute, the General Assembly "is presumed to act with full knowledge of all existing and prior statutory and case law." *People v. Johnson*, 2019 IL 123318, ¶ 42. The legislature thus would have been aware of the "flood of litigation" seeking millions of dollars in allegedly unpaid wages caused by the U.S. Supreme Court's expansive reading of the term "workweek" in the 1940s. *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 31 (2014). It would have been aware that Congress strongly criticized these rulings as inconsistent with "long-established customs, practices, and contracts between employers and employees" and for "creating wholly unexpected liabilities, immense in amount and retroactive in operation." 29 U.S.C. § 251(a); *see supra* at 14. And it would have known that Congress declared the resultant state of affairs an "emergency," 29 U.S.C. § 251(b), and swiftly enacted the PPA, which "clarified"

that "workday"—and thus "workweek"—does not include preliminary or postliminary activities, *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 447 (2016); *see also Cent. Mo. Tel. Co. v. Conwell*, 170 F.2d 641, 644 (8th Cir. 1948), i.e., activities that occur "prior" or "subsequent to" a "particular workday," 29 U.S.C. § 254(a).

Prior to the 1976 amendment, Illinois employers and employees were familiar with the FLSA's overtime regime. Illinois employers of all sizes, public and private, had long been regulated under the federal understanding of "workweek." And Illinois courts applied the FLSA standard to Illinois employers. *See, e.g.*, *Roth v. Lake Cnty. Ready-Mix Co.*, 1 Ill. App. 2d 288, 289-94 (2d Dist. 1954) (considering action for unpaid overtime under the FLSA). Because a legislature does not "hide elephants in mouseholes," the IMWL's overtime provision cannot be read to have intended to disrupt the FLSA's settled understanding of the "workweek" absent a clear indication of an intent to do so. *People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 228 (2005) (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001)).

3. Plaintiffs' Counterarguments Have No Merit

Plaintiffs fail in their effort to undermine this conclusion. As their primary argument, Plaintiffs contend that "[t]he IMWL is silent as to the PPA and one law cannot incorporate another through silence." OB11. That premise is incorrect because the IMWL is not "silent." The IMWL's overtime provision uses the same language as the FLSA's overtime provision. For decades, employers and courts understood the compensable "workweek" through the

prism of the FLSA's overtime provision as clarified by the PPA. *See supra* at 26-27. So, the fact that the IMWL does not copy language from the PPA is "unremarkable if we assume, as we must, that the General Assembly already knew the [federal] law and meant no change to it" when adopting wholesale the FLSA's overtime provision into the IMWL. *Johnson*, 2019 IL 123318, ¶ 42. In other words, as the Illinois Attorney General and IDOL recently observed—completely contrary to the position they take here—the legislature indicated no intention "to deviate from federal practice in this area." *Mercado* Amici Curiae Ill. Att'y Gen. Br. 27.

Plaintiffs next invoke the *expressio unius* canon, observing that the IMWL expressly references some FLSA provisions but not, among others, the PPA language that clarified the FLSA's overtime provision. OB16. In particular, the IMWL expressly references the FLSA in carving out certain categories of employees from the statute's coverage. Those carve-outs refer to FLSA provisions excluding employees who work on commission as defined under federal law, 820 ILCS 105/4a(2)(F), employees "whose union[s] ha[ve] contractually agreed to an alternate shift schedule" as permitted under federal law, *id.* 105/4a(2)(J), and certain "employee[s] of … governmental bod[ies]" excluded under federal law, *id.* 105/4a(2)(D); *see also id.* 105/4a(4) (exempting certain governmental bodies that provide "compensatory time" as permitted under federal law).

Plaintiffs' invocation of the *expressio unius* canon is mistaken. Under the canon, the legislature's "express inclusion of a provision in one part of a statute and its omission in a parallel section" can evidence "an intentional exclusion from the latter." *People v. Olsson*, 2011 IL App (2d) 091351, ¶ 9. The canon is "only a rule of statutory construction, not a rule of law," and it will not be applied to "defeat the ascertained legislative intent." *Sigcho-Lopez v. Ill. State Bd. of Elections*, 2022 IL 127253, ¶ 33 (citation omitted). The canon is properly applied only where the presence of one thing reliably implies the exclusion of another; for example, if only one section of a statute includes a private right of action, the legislature likely "did not intend to imply private rights of action to enforce other sections of the same statute." *Metzger v. DaRosa*, 209 Ill. 2d 30, 44 (2004).

Here, the *expressio unius* canon does not apply because the IMWL's overtime provision and employee carve-outs are not "parallel section[s]." *Olsson*, 2011 IL App (2d) 091351, ¶ 9. The carve-outs ensure that the coverage of certain employee categories is identical to coverage under the FLSA. So, if a separate IMWL provision defines an employee category without referencing the FLSA, then *expressio unius* might reasonably imply that the categories governed by the IMWL are different from those governed by the parallel FLSA provision. But the employee carve-outs can hardly inform the meaning of the term "workweek" in a section that does not address employee exclusions. *See Sulser v. Country Mut. Ins. Co.*, 147 Ill. 2d 548, 555 (1992) (rejecting invocation

of *expressio unius* where the two contrasting provisions "addresse[d] different circumstances").

In any event, the ultimate question here is the meaning of the "workweek" under the IMWL. As explained, the PPA merely clarified the meaning of the FLSA "workweek." Three decades after that clarification, the General Assembly patterned the IMWL's overtime provision on the FLSA's overtime provision. It did so nearly down to the letter. *See* 820 ILCS 105/4a(1); 29 U.S.C. § 207(a)(1). Those "substantial similarities" in themselves, *Kerbes*, 2011 IL App (1st) 110318, ¶ 25, show that the General Assembly would have understood the IMWL "workweek" to be coextensive with the FLSA workweek as clarified by the PPA. There was no need for the General Assembly to layer onto the IMWL's overtime provision a clarification that had been made three decades prior.

The IMWL's text evidences no intention to depart from the scope of the "workweek" as understood under federal law. To the contrary, the IMWL's overtime provision incorporated the FLSA's long-settled understanding as to the scope of compensable "workweek." The IMWL's use of the term "workweek" accordingly should be interpreted to mean what that term means in the FLSA.

B. Legislative History Confirms that the IMWL Incorporates the FLSA's Definition of "Workweek"

The IMWL's legislative history confirms that it incorporates the FLSA's understanding of "workweek." In 1971, the General Assembly enacted the IMWL to establish a state minimum wage. *See* Pub. Act No. 77-1451 (1971)

(SA51-57). As originally enacted, and unlike the FLSA, the IMWL had no overtime wage provision.

In 1976, the General Assembly amended the IMWL, including by adding the overtime wage provision. *See* Pub. Act No. 79-1436 (1976) (A31-35). As noted, the bill's House sponsor described the amendment as "a makeup bill" enacted "to catchup and make [Illinois] even with federal laws that cover most employees in Illinois." Ill. 79th Gen. Assemb. House Tr., at 169 (SA74). The legislative history is thus unambiguous: The IMWL was intended to make Illinois law "even" with federal law. The IMWL was not intended to create two regimes for calculating a compensable "workweek"—one under the FLSA excluding preliminary and postliminary activities, and the other under the IMWL including those activities.

This history reinforces the best textual reading of the IMWL—absent express intent to deviate from federal law, the IMWL should be presumed to be coextensive with federal law. As discussed above, nothing in the IMWL's text indicates an intent to deviate from the FLSA. *See supra* at 26-27. Nor does anything in the legislative history. The General Assembly amended the IMWL in 1976 against the backdrop of the FLSA and the body of case law interpreting the FLSA. And so the legislature knew of the FLSA's interpretive history—from the U.S. Supreme Court's expansive and erroneous interpretation of "work," to the ensuing "flood of litigation," *Integrity Staffing*, 574 U.S. at 31, and to Congress's "clarif[ication]" in the PPA of the FLSA to

correct the Supreme Court's error, *Tyson Foods*, 577 U.S. at 447; *see also Conwell*, 170 F.2d at 644.

Yet there is no express mention—positive or negative—of the PPA in the IMWL's legislative history. Nor is there any suggestion that the legislature intended to define "workweek" under the IMWL in a manner broader than the FLSA's understanding of the term. The Senate and House debates leading up to the 1976 amendment focused on whether certain industries, such as movie theatres, restaurants, and governmental entities, would be exempt from the IMWL's minimum wage and overtime compensation provisions. *See, e.g.*, House Tr., at 31-44, 79th Gen. Assemb. (Ill. June 14, 1976), https://ilga.gov/Documents/House/Transcripts/htrans79/HT061476.pdf (SA59-72); Senate Tr., at 54-56, 79th Gen. Assemb. (Ill. June 26, 1976), https://ilga.gov/Documents/Senate/Transcripts/strans79/ST062676.pdf (SA82-84). The debates did not discuss the meaning of a statutory "workweek," much less whether the IMWL would be broader than the FLSA's post-1947 understanding of the term.

Had the General Assembly intended to revert to the pre-1947 understanding of "workweek" and unleash on the wide array of public and private employers across Illinois the devastating consequences that the U.S. Supreme Court unleashed in *Anderson* and other pre-PPA cases, it would have done so explicitly given the well-established understanding of what activities were compensable under federal law at the time. And had the General

Assembly adopted the pre-1947 understanding of "workweek," that decision presumably would have provoked at least *some* mention in the run-up to the 1976 amendment. The absence of any such mention, let alone debate, is exceptionally strong evidence that the General Assembly intended to incorporate the FLSA's post-1947 understanding of "workweek."

C. Other Jurisdictions Have Reached the Same Conclusion

"[C]ase law from other states construing similar … statutes may [also] be persuasive" in determining the meaning of Illinois statutes. *In re Appointment*, 2019 IL 122949, ¶ 55. In states with similar wage statutes, courts have held that they incorporate the FLSA's post-1947 understanding of "workweek," even when those statutes (like the IMWL) do not copy language from the PPA. Those decisions rely primarily on the fact that the state wage laws were enacted after the FLSA and the PPA, with full awareness of the circumstances that necessitated the PPA's clarification of the FLSA. Had the state legislatures intended to deviate from federal law, they would have said so expressly—in either the statutory text or the legislative history.

For instance, in *Vance v. Amazon.com, Inc. (In re Amazon.com, Inc., Fulfillment Ctr. Fair Lab. Standards Act (FLSA) & Wage & Hour Litig.*), 852 F.3d 601 (6th Cir. 2017), the Sixth Circuit interpreted the Kentucky overtime wage provision—which, like the FLSA and IMWL, provides for "one and one-half (1-1/2) times the hourly wage rate" for the time an employee works "in excess of forty (40) hours in a work week," Ky. Rev. Stat. Ann. § 337.285(1). The plaintiffs there argued that "the absence of language referring to 'principal

activity' or 'preliminary' and 'postliminary' acts" in the Kentucky statute "demonstrate[d] the [Kentucky] General Assembly's intent to depart from the excluded terms." *In re Amazon.com*, 852 F.3d at 611. Rejecting this argument, the Sixth Circuit explained that "the Kentucky General Assembly was not 'working in a vacuum, building first principles of [wage and hour] law.'" *Id.* at 612 (alteration in original) (citation omitted). Rather, the legislature "drafted the [Kentucky wage law] in 1974, decades after Congress enacted the 1947 [PPA]," and thus with "an awareness of the conditions that precipitated the [PPA]—particularly the 'flood of litigation' provoked by the Supreme Court's early permissive rulings"—and the "'judicial construction of prior enactments.'" *Id.* (citations omitted). And so, "[i]f the Kentucky General Assembly intended to expose employers to the type of liability Congress foreclosed in the [PPA], one may reasonably assume it would have done so affirmatively." *Id.* "'[A]bsent a clear indication that the General Assembly considered the [PPA] and deliberately rejected it,'" the court concluded that the Kentucky wage law incorporated the FLSA's post-1947 understanding of "workweek." *Id.* (citation omitted); *see also Hughes v. UPS Supply Chain Sols., Inc.*, 677 S.W.3d 273, 281 (Ky. 2023) ("agree[ing] with the Sixth Circuit's analysis as to the [PPA's] applicability to [Kentucky's wage law]").

Similarly, in *Buero v. Amazon.com Services, Inc.*, 521 P.3d 471 (Or. 2022), the Oregon Supreme Court considered the definition of "work time" in Oregon's wage statute. *Id.* at 510. The statute provides that "[w]ork time

includes both time worked and time of authorized attendance." Or. Rev. Stat. § 653.010(11). Plaintiff argued that this definition "requires compensation for time spent in security screenings, because it is 'time of authorized attendance,'" i.e., that the statute does not incorporate the FLSA's post-1947 understanding of "work" and "workweek." *Buero*, 521 P.3d at 482. The court disagreed, reasoning that while "[t]he [statutory] text, viewed in isolation, could plausibly take on broad meaning," the statute's context and legislative history dictated the conclusion that it incorporated the FLSA in that respect. *Id.* at 483.

To support its holding, the court explained that "Oregon's wage statutes were an 'offspring' of federal law" and "drew in large measure from federal law." *Id.* at 483-84. So, "the well-established federal understanding of compensable time informs [the] analysis of [the Oregon's wage law's] definition of 'work time' and supports a construction in line with federal law," even though the statute did not "adopt word-for-word every portion of the FLSA." *Id.* at 484. In addition, "[n]othing in the legislative history of the bill indicates that the legislature intended to require compensation for activities that were not compensable under the FLSA, as modified by the [PPA]." *Id.* Because such a legislative decision "would have led to two different rules for determining compensable time," the court would have expected to see some discussion of the issue in the legislative history. *Id.* But just as with the Illinois General Assembly's consideration and adoption of an IMWL overtime provision in 1976, there was no such discussion, and without a clearer indication that the

"legislature had wanted to expand the scope of compensable time beyond the post-Portal-to-Portal-Act federal scope," the court refused to do so. *Id.*

In sum, when a state wage law that parallels the FLSA is enacted after the PPA's 1947 clarification of the FLSA "workweek," the state law is coextensive with the post-1947 FLSA, absent a clear indication that the legislature wanted to depart from the FLSA and expand liability under state law. As explained, no such indication exists in the IMWL. The IMWL thus incorporates the FLSA's understanding of "workweek," as clarified by the PPA.

Plaintiffs' cases from other jurisdictions are not persuasive. As explained, Illinois law and precedent reflect an intention to incorporate the federal standard for overtime compensation. *See Mercado*, 2025 IL 129526, ¶ 33; 56 Ill. Admin. Code § 210.120. The jurisdictions in Plaintiffs' cases, by contrast, indicated an intention to depart from the federal standard. In further contrast with Illinois, those jurisdictions had no legislative history indicating an intention to make their wage laws "even with federal laws." Ill. 79th Gen. Assemb. House Tr., at 169 (SA74).

For example, in *Frlekin v. Apple Inc.*, 457 P.3d 526 (Cal. 2020), the California Supreme Court addressed a California wage statute enacted *before* Congress enacted the PPA. "In response" to the PPA, California "revised its wage orders" to define "hours worked" more broadly than federal law. *Id.* at 532 (citation omitted). Thus, unlike Illinois, California "purposely abandoned" the post-1947 federal standard in favor of a broader conception of compensable

work. *Id.* at 532-33. Reflecting this purposeful abandonment, the California overtime statute is, unlike the IMWL's overtime provision, not patterned nearly verbatim on the FLSA. *Compare* 29 U.S.C. § 207(a)(1), *with* Cal. Lab. Code § 510(a).

The other jurisdictions cited by Plaintiffs likewise reflect an intention to depart from the federal standard. *See Heimbach v. Amazon.com, Inc. (In re Amazon.com, Inc., Fulfillment Ctr. Fair Lab. Standards Act (FLSA) & Wage & Hour Litig.)*, 255 A.3d 191, 201 (Pa. 2021) (explaining that multiple state supreme court precedents had "not follow[ed] the interpretation of similarly applicable provisions of the federal FLSA"); *Amaya v. DGS Constr., LLC*, 278 A.3d 1216, 1243 (Md. 2022) (observing that "[t]he purpose and language of the [Maryland Wage and Hour Law] are different from that of the PPA"); *Roberts v. State*, 512 P.3d 1007, 1014 (Ariz. 2022) (explaining that Arizona law presumptively deviated from the FLSA). And all those cases likewise concerned overtime statutes that are not closely patterned on federal law. *Compare* 29 U.S.C. § 207(a)(1), *with* 43 Pa. Stat. and Cons. Stat. Ann. § 333.104(c), *and* Md. Code Ann., Lab. & Empl. § 3-415(a), *and* Ariz. Rev. Stat. Ann. § 23-392(A).

Since Plaintiffs filed their opening brief, the Nevada Supreme Court held that Nevada's wage statutes do not incorporate the PPA. *See Amazon.com Servs., LLC v. Malloy*, No. 89314, 2025 WL 3032215, at *5 (Oct. 30, 2025). *Malloy* is inapposite because, like Plaintiffs' cited cases, Nevada law indicates

a clear intention to deviate from the federal standard. The Nevada overtime provision is—in contrast to the IMWL—not patterned nearly verbatim on the federal overtime provision. *Compare* Nev. Rev. Stat. § 608.018(1)-(2), *with* 29 U.S.C. § 207(a)(1). In addition to using different language, the Nevada statute mandates overtime for work over eight hours per day, which the FLSA (and IMWL) do not. *See* Nev. Rev. Stat. § 608.018(1)(b). And as with the legislative history of the other state statutes Plaintiffs invoke—and unlike the legislative history of the 1976 amendment to the IMWL—the Nevada statute's legislative history shows no intention to make the state wage law "catchup" and become "even" with federal law. Ill. 79th Gen. Assemb. House Tr., at 169 (SA74). Given these differences, it is no surprise that another court had previously recognized that "the Nevada Supreme Court 'has signaled its willingness to part ways with the FLSA.'" *Busk v. Integrity Staffing Sols., Inc. (In re Amazon.com, Inc., Fulfillment Ctr. Fair Lab. Standards Act (FLSA) & Wage & Hour Litig.)*, 905 F.3d 387, 398 (6th Cir. 2018) (citation omitted).

II. IDOL Regulations Confirm that the IMWL's Overtime Provision Aligns with the FLSA's Overtime Provision

The IDOL has issued regulations implementing the IMWL's overtime provision. Those regulations "must be construed under the same standards which govern the construction of statutes." *People ex rel. Madigan v. Ill. Com. Comm'n*, 231 Ill. 2d 370, 380 (2008). Pertinent here, "[r]egulatory provisions, like statutory provisions, must be read in concert and harmonized." *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 50.

Two IDOL regulations are pertinent here. Section 210.110 defines "hours worked." 56 Ill. Admin. Code § 210.110. As explained below, it does so in part by explicitly cross-referencing federal regulations implementing the FLSA and PPA. And the provision next door, Section 210.120, states that the IMWL and its implementing regulations should be interpreted in accordance with "the Fair Labor Standards Act of 1938, *as amended*." *Id.* § 210.120 (emphasis added). These regulations reinforce the conclusion that the scope of the IMWL workweek is coextensive with the FLSA workweek.

Plaintiffs contend that Section 210.110 supports their reading of the IMWL's overtime provision. But as explained below, Plaintiffs do not properly account for Section 210.110's full definition of "hours worked," and they ignore the neighboring Section 210.120. Moreover, Section 210.110's definition of "hours worked" is not as broad as Plaintiffs contend—even when it is (improperly) read selectively and in isolation. And to the extent the regulation is read more broadly, that reading would be inconsistent with the IMWL and therefore without legal effect.

A. Sections 210.110 and 210.120 Are Consistent with the FLSA's Post-1947 Understanding of "Workweek"

Section 210.120 provides: "For guidance in the interpretation of the [IMWL] and this Part, the Director may refer to the Regulations and Interpretations of the Administrator, Wage and Hour Division, U.S. Department of Labor, administering the Fair Labor Standards Act of 1938, *as amended*." 56 Ill. Admin. Code § 210.120 (emphasis added).

Looking to federal regulations—as Section 210.120 directs—reinforces the proper interpretation of the IMWL "workweek." Federal regulations state that, "[a]s a general rule," the term "hours worked" includes "[a]ll time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace" and "[a]ll time during which an employee is suffered or permitted to work whether or not he is required to do so." 29 C.F.R. § 778.223(a). Federal regulations *also* recognize that "workweek" under the FLSA excludes "preliminary and postliminary activities." *Id.* § 785.7. Thus, federal regulations should be used as "guidance," 56 Ill. Admin. Code § 210.120, to exclude preliminary and postliminary activities from the Section 210.110 definition of "hours worked."

The importance of federal regulations for interpreting the IMWL is reflected in the neighboring Section 210.110, which defines "hours worked." Section 210.110 explains the scope of compensable employee travel and commuting time using federal regulations as examples. Specifically, the regulation states in relevant part that "[a]n employee's travel, performed for the employer's benefit … is compensable work time." *Id.* § 210.110. It then cites federal regulations, 29 C.F.R. § 785.33 to § 785.41, that illustrate scenarios under which employee travel is compensable. *Id.* These federal regulations define the scope of the compensable workweek with respect to travel time under the FLSA, as amended by the PPA. *See, e.g.*, *id.* § 785.34 (explaining how the PPA limits compensation for employee travel time).

Moreover, Section 210.110 provides that compensable travel time includes travel that is "part of the employee's *primary duty*." 56 Ill. Admin. Code § 210.110 (emphasis added). This connection to an employee's "primary duties"—parallel to the focus on an employee's "principal activities" in the PPA—reaffirms what the IMWL itself and Section 210.120 require: the scope of the IMWL "workweek" should align with the FLSA "workweek." *See In re Amazon.com*, 852 F.3d at 613 ("Inclusion of the 'principal activity' language in Kentucky's administrative regulations strengthens the connection between [the Kentucky wage statute] and the Portal-to-Portal Act."); *Hughes*, 677 S.W.3d at 279-80 (similar).

In sum, Sections 210.120 and 210.110 mandate an IMWL "workweek" that is coextensive with the FLSA "workweek."

B. Plaintiffs' Interpretation of Section 210.110 Ignores Key Context and Is Overbroad Even Aside from That Context

For their contrary reading of the IMWL regulations, Plaintiffs focus solely on the portion of Section 210.110 defining "hours worked" in part as "all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time the employee is required or permitted to work for the employer." 56 Ill. Admin. Code § 210.110. As Plaintiffs observe, this language partially parallels the U.S. Supreme Court's long-superseded formulation of "workweek" in *Anderson*. A114; A117. Fixating on the phrase "on the employer's premises," Plaintiffs argue for a

broad reading of the regulation capturing every moment that an employee is present on her employer's property. OB20-21 (citation omitted).

Plaintiffs' argument ignores Section 210.120's directive to look to the federal regulations implementing the FLSA, "as amended." 56 Ill. Admin. Code § 210.120. As explained, Section 210.110 must be read harmoniously with this neighboring provision. *See supra* at 39-41.

Plaintiffs also argue that Section 210.110's references to federal regulations concerning travel time imply that the IMWL did not intend to "adopt[] the PPA compensability exclusions for preliminary and postliminary activities." OB22. But as explained, Section 210.110 itself defined compensable travel time and then referred to the federal travel time regulations to provide examples illustrating the compensability of specific employee travel scenarios. The fact that Section 210.110 refers to the federal regulations as illustrative examples reinforces that the IMWL "workweek" should be interpreted coextensively with the FLSA "workweek," and it certainly does not override Section 210.120's directive to lean on federal regulations generally.

Moreover, *Anderson* itself does not support a reading as broad as Plaintiffs advocate here. True enough, *Anderson* stated—incorrectly, as Congress quickly made clear—that "the statutory workweek includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." 328 U.S. at 690-91. But

Anderson did not actually hold that the statutory workweek necessarily includes *all* such time. Rather, like *Tennessee Coal* and *Jewel Ridge*, *Anderson* recognized that activity was compensable only if it was "pursued necessarily and *primarily* for the benefit of the employer and his business." *Id.* at 691-92 (emphasis added); *see Tenn. Coal, Iron & R.R. Co. v. Muscoda Loc. No. 123*, 321 U.S. 590, 598 (1944) (holding that work time must be "necessarily and *primarily* for the benefit of the employer and his business" (emphasis added)); *Jewell Ridge Coal Corp. v. Loc. No. 6167, United Mine Workers of Am.*, 325 U.S. 161, 165-66 (1945) (similar). *Anderson* further cautioned that "de minimis" activities were not compensable, holding that "[i]t is only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved." 328 U.S. at 692.

With those directions, *Anderson* remanded the case for the district court to determine what amount of walking, dressing, and tool preparation time, if any, was compensable under the FLSA. *Id.* at 694. On remand, the district court retried the case, determined that the time spent on these preliminary activities were "de minimis" and thus not compensable, and entered judgment for the defendant. *Anderson v. Mt. Clemens Pottery Co.*, 69 F. Supp. 710, 722 (E.D. Mich. 1947). Other contemporaneous cases applied the de minimis doctrine to bar compensation for "preliminary activities" lasting up to twenty minutes. *See Frank v. Wilson & Co.*, 172 F.2d 712, 716 (7th Cir. 1949) (holding that the FLSA did not mandate overtime compensation despite defendant's

rule requiring employees to arrive five minutes early, and collecting cases applying *Anderson* to reject compensation for "preliminary activities" lasting up to twenty minutes).

As this history shows, even pre-1947 FLSA decisions did not interpret *Anderson*'s "on the employer's premises" as broadly as Plaintiffs do here. Today's courts agree—including at least one of the jurisdictions that Plaintiffs argue requires compensation for pre-shift activities. *See Martinez v. Amazon.com Servs. LLC*, 338 A.3d 636, 654 (Md. 2025) (holding that *Anderson*'s "de minimis" doctrine applied to Maryland wage laws in a case brought regarding time spent in pre-shift security screenings). Without a de minimis exception, employers would potentially have to pay employees for pre- and post-shift activities ranging from walking from their cars, to waiting for an elevator, to going through routine security checks at government buildings. And employers would face practical difficulties in keeping accurate records of "hours worked" each "day" and each "workweek" as required by Illinois regulations. 56 Ill. Admin. Code § 210.700.

Congress feared that plaintiffs might interpret *Anderson* to subject employers to potentially ruinous liability. *See* S. Rep. No. 80-37, at 42-43 (SA42-43) (observing that many plaintiffs had continued pressing overtime compensation suits even amid the *Anderson* district court's judgment for the defendant). That is why Congress enacted the PPA to clarify that suits based on preliminary and postliminary activities should not succeed. The PPA's

clarification notwithstanding, even the pre-PPA definition of "workweek" was not as broad as Plaintiffs here contend. This Court accordingly should not read Section 210.110 so broadly here.[1]

C. A Broader Reading of Section 210.110 Would Be Inconsistent with the IMWL and Thus Invalid

If Section 210.110 truly means what Plaintiffs say, the regulation is invalid. The IDOL's administrative regulations are "entitled to weight and deference" only if they are "not inconsistent with the statute pursuant to which they are adopted." *Kerbes*, 2011 IL App (1st) 110318, ¶ 23. So "[w]here an administrative rule conflicts with the statute under which it was adopted, the rule is invalid." *Hadley v. Ill. Dep't of Corr.*, 224 Ill. 2d 365, 385 (2007).

The IMWL's overtime provision is not susceptible to the broad reading Plaintiffs ascribe to Section 210.110. As explained, *supra* at 17, 26-27, although the IMWL does not define "workweek," the General Assembly used that term three decades after Congress had clarified the same term in the

---

[1] Before the Seventh Circuit, Amazon argued that Plaintiffs had not stated an IMWL claim even under the *Anderson* standard because that standard is not as broad as Plaintiffs contend. Appellee Br. 31-33, *Johnson v. Amazon.com Servs. LLC*, 142 F.4th 932 (7th Cir. 2025) (No. 24-1028), ECF No. 19. As Amazon argued there, the minimal time spent on COVID-19 screenings was not primarily for Amazon's benefit. *See id.* The Seventh Circuit did not address this argument before certifying the present question to this Court. Thus, if this Court sides with Plaintiffs on the certified question, it should make clear that the question whether COVID-19 screenings are compensable work under the IMWL—or, rather, non-compensable "de minimus" activities or activities not undertaken "primarily for the benefit of the employer and his business," *Anderson*, 328 U.S. 691-92—should be addressed by the Seventh Circuit in the first instance.

FLSA. The General Assembly is presumed to have been aware of the onslaught of lawsuits employers faced immediately following *Anderson*. And for decades, Illinois employers had been regulated under the FLSA's standard.

In light of this context, the legislature could not have intended to compensate employees for a "workweek" that was broader than that under the FLSA—and it certainly would not have done so with no record of any contemporaneous objection or discussion. It thus necessarily follows that Section 210.110 is invalid insofar as it is read to adopt an understanding of "workweek" broader than the understanding expressed by the FLSA. *See Hadley*, 224 Ill. 2d at 385.

CONCLUSION

The Court should answer the certified question by holding that "workweek" as used in the IMWL is coextensive with "workweek" as used in the FLSA, as clarified in 1947 by the PPA, and thus that the IMWL excludes from compensation employee activities that are preliminary or postliminary to an employee's principal activities. If the Court holds otherwise, then it should make clear that it is not deciding whether the time Plaintiffs spent in pre-shift COVID-19 screenings is compensable under the IMWL.

Dated: November 14, 2025

Respectfully submitted,

/s/ Gary Feinerman

Gary Feinerman
LATHAM & WATKINS LLP
330 North Wabash Avenue
Suite 2800
Chicago, IL 60611
(312) 777-7110
gary.feinerman@lw.com

Sari M. Alamuddin
Kevin F. Gaffney
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive
Chicago, IL 60606
(312) 324-1000
sari.alamuddin@morganlewis.com
kevin.gaffney@morganlewis.com

S.Y. Jessica Hui
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
jess.hui@lw.com

Jeremy L. Brown
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC, 20004
(202) 637-2200
jeremy.brown@lw.com

Counsel for Defendant-Appellee Amazon.com Services LLC

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 47 pages.

/s/ Gary Feinerman
Gary Feinerman

PROOF OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing Brief of Defendant-Appellee Amazon.com Services LLC with the Clerk of the Court, on November 14, 2025.

I further certify that on November 14, 2025, an electronic copy of the foregoing Brief of Defendant-Appellee Amazon.com Services LLC is being served through the Court's electronic filing manager on all counsel on the attached Service List and is being sent via email to the email addresses listed on the Service List.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Gary Feinerman
Gary Feinerman

SERVICE LIST

Maureen A. Salas
Douglas M. Werman
John J. Framley
WERMAN SALAS P.C.
77 W. Washington St., Ste. 1402
Chicago, IL 60602
(312) 419-1008
msalas@flsalaw.com
dwerman@flsalaw.com
jframley@flsalaw.com

Don J. Foty
FOTY LAW GROUP
2 Greenway Plaza, Ste. 250
Houston, TX 77046
(713) 523-0001
dfoty@fotylawgroup.com

Counsel for Plaintiffs-Appellants Lisa Johnson and Gale Miller Anderson

SUPPLEMENTARY APPENDIX

TABLE OF CONTENTS

Calendar No. 32

80TH CONGRESS } SENATE { REPORT
1st Session } { No. 37

EXEMPTING EMPLOYERS FROM LIABILITY FOR PORTAL-TO-PORTAL WAGES IN CERTAIN CASES

FEBRUARY 24 (legislative day, FEBRUARY 19), 1947.—Ordered to be printed

Mr. WILEY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 70]

The Committee on the Judiciary, to whom were referred the bill (S. 70) entitled "A bill to exempt employers from liability for portal-to-portal wages in certain cases, and for other purposes," and an amendment offered by the senior Senator from Indiana (Mr. Capehart) on January 10, 1947 as a substitute for S. 70, having considered the same, now report the said bill with an amendment in the nature of a substitute for the text thereof, and an amendment to the title, and recommend that said bill, as so amended, do pass.

STATEMENT

THE PUBLIC INTEREST REQUIRES CORRECTION OF THE CONDITION NOW PRESENTED BY THE PORTAL-TO-PORTAL CLAIMS, INCLUDING THOSE IN PENDING SUITS, AND SAFEGUARDS AGAINST FUTURE REPETITION OF SUCH A CONDITION.

I

INTRODUCTION

In the recent past a great many lawsuits have been filed in courts throughout the Nation by employees against their respective employers, seeking compensation under the Fair Labor Standards Act of 1938, based upon the so-called portal-to-portal principle.

Official information as to the number of such actions which have been filed, the aggregate amounts which have been claimed, and related data in those actions has been made available to the committee by Henry P. Chandler, Director, Administrative Office of the United States Courts. A letter dated February 14, 1947, from Mr. Chandler, reads as follows:

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
SUPREME COURT BUILDING,
Washington 13, D. C., February 14, 1947.

Hon. FORREST C. DONNELL,
United States Senate, Washington, D. C.

DEAR SENATOR DONNELL: In accordance with your telephonic request I am submitting to you information secured from the clerks of the United States district courts including the territories and possessions with reference to the number of portal-to-portal cases filed. We have asked the clerks to include cases brought under Sections 7 and 16 of the Fair Labor Standards Act seeking compensation for unpaid minimum wages or unpaid overtime compensation in which the question is raised as to whether the employee's compensation has included pay for all time during which he was necessarily required to be on the employer's premises or at his prescribed work place.

The number of portal-to-portal cases filed in these courts from July 1, 1946 to January 31, 1947 was 1,913. In 1,515 of these cases a definite amount was claimed, the total of such claims in all districts aggregating $5,785,204,606, including liquidated damages. In most of the cases there is a prayer for liquidated damages in an amount equal to the wages claimed. In 398 cases a definite amount was not named in the complaint but the court was requested to give judgment for the amount found due.

In addition the clerks reported 27 cases brought under the Fair Labor Standards Act in which examination of the complaint did not reveal with certainty whether or not portal-to-portal pay was involved. Of these cases 20 named definite amounts in the complaints, the total of which was $6,074,263. In 7 of these cases a definite amount was not stated.

The majority of the portal-to-portal cases filed in the 7 months were commenced during the month of January. These totaled 1,186 of which 932 claimed definite amounts aggregating $3,087,095,003. Of the Fair Labor Standards Act cases which may be portal to portal but cannot be definitely classed as such, 6 were filed in January of which 4 claimed definite amounts aggregating $190,297.

The above information covers the 85 United States district courts in the United States proper, the United States district courts in Alaska, Hawaii, the Canal Zone, and Puerto Rico and the District Court of the Virgin Islands.

A break-down showing the number of cases and amounts claimed by district will be furnished this afternoon or Monday morning.

Sincerely yours,

(Signed) HENRY P. CHANDLER.

In connection with the statement of Mr. Chandler that the number of portal-to-portal cases filed in the United States district courts from July 1, 1946, to January 31, 1947, was 1,913, attention is directed to the Annual Report of the Wage and Hour and Public Contracts Divisions, Department of Labor, for the fiscal year ending June 30, 1946. Said report was submitted to Congress on January 2, 1947. On page 81 thereof the estimated number of covered establishments is stated to be 557,030. The number, 1,913, is less than seven-twentieths of 1 percent of 557,030.

According to the report of a subcommittee of the Business Advisory Council, Department of Commerce, dated January 20, 1947, the pending suits involve only 10 percent of the total number of employees subject to the act.

The break-down, showing the number of cases and amounts claimed by district, referred to in the February 14 letter of Mr. Chandler, was subsequently furnished, with letter of February 17, 1947, which last-mentioned letter and data enclosed with it read, respectively, as follows:

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS, SUPREME COURT BUILDING,
Washington 13, D. C., February 17, 1947.

Hon. FORREST C. DONNELL,
United States Senate, Washington, D. C.

DEAR SENATOR DONNELL: In my letter of February 14, I gave you information concerning the total number of portal-to-portal cases filed in the United States

district courts from July 1, 1946 to January 31, 1947, and the total recovery asked for in those cases. I am now sending you a break-down of those cases by district as well as a statement showing the cases filed in the same courts during the same period which may be portal-to-portal cases but which the clerks could not definitely identify as such.

Sincerely yours,

(Signed) HENRY P. CHANDLER.

Portal-to-portal cases filed in the United States district courts, July 1, 1946–January 31, 1947

District	Total No. of cases	No. of cases claiming definite amount	Amount claimed (including liquidated damages)	No. of cases not claiming definite amount
Total	1,913	1,515	$5,785,204,606	398
84 Districts	1,911	1,515	5,785,204,606	396
District of Columbia				
Territories	2			2
First Circuit	53	32	33,650,000	21
Maine	7			7
Massachusetts	34	20	29,650,000	14
New Hampshire	2	2	540,000	
Rhode Island	10	10	3,460,000	
Puerto Rico				
Second Circuit	374	306	694,145,602	68
Connecticut	37	33	75,414,900	4
New York, N	54	48	82,137,000	6
New York, E	52	48	30,050,698	4
New York, S	123	115	395,524,004	8
New York, W	107	61	109,919,000	46
Vermont	1	1	500,000	
Third Circuit	310	248	1,844,220,264	62
Delaware	2	2	7,600,000	
New Jersey	134	89	768,906,970	45
Pennsylvania, E	74	66	275,979,128	8
Pennsylvania, M	21	21	66,337,166	
Pennsylvania, W	79	70	725,397,000	9
Virgin Islands				
Fourth Circuit	41	26	65,256,453	15
Maryland	20	9	30,338,270	11
North Carolina, E				
North Carolina, M	2	1	13,000,000	1
North Carolina, W				
South Carolina, E				
South Carolina, W				
Virginia, E	9	7	1,085,370	2
Virginia, W	1	1	2,000,000	
West Virginia, N	2	2	2,482,813	
West Virginia, S	7	6	16,350,000	1
Fifth Circuit	74	54	245,641,014	20
Alabama, N	10	10	22,025,000	
Alabama, M				
Alabama, S	1	1	1,000,000	
Florida, N				
Florida, S				
Georgia, N	8	7	10,235,414	1
Georgia, M				
Georgia, S				
Louisiana, E				
Louisiana, W				
Mississippi, N				
Mississippi, S	1	1	1,500,000	
Texas, N	20	8	1,896,000	12
Texas, E	8	2	6,350,000	6
Texas, S	25	25	202,634,600	
Texas, W	1			1
Canal Zone, 1				

Portal-to-portal cases filed in the United States district courts, July 1, 1946–January 31, 1947—Continued

District	Total No. of cases	No. of cases claiming definite amount	Amount claimed (including liquidated damages)	No. of cases not claiming definite amount
Sixth Circuit	471	380	$1,593,319,210	91
Kentucky, E	10	6	16,031,072	4
Kentucky, W	5	3	11,546,230	2
Michigan, E	162	149	752,661,000	13
Michigan, W	50	50	121,046,000	
Ohio, N	160	124	463,498,748	36
Ohio, S	46	43	215,586,160	3
Tennessee, E	12	1	700,000	11
Tennessee, M	6			6
Tennessee, W	20	4	12,250,000	16
Seventh Circuit	264	230	903,408,444	34
Illinois, N	148	131	395,883,450	17
Illinois, E	13	9	20,666,000	4
Illinois, S	27	21	178,240,870	6
Indiana, N	32	29	236,690,000	3
Indiana, S	30	27	64,742,124	3
Wisconsin, E	7	6	606,000	1
Wisconsin, W	7	7	6,580,000	
Eighth Circuit	137	125	262,010,172	12
Arkansas, E	9	9	419,500	
Arkansas, W				
Iowa, N	10	9	21,500,000	1
Iowa, S	15	15	16,950,000	
Minnesota	38	33	8,066,092	5
Missouri, E	33	30	120,921,352	3
Missouri, W	22	22	60,447,296	
Nebraska	9	7	33,705,932	2
North Dakota				
South Dakota	1			1
Ninth Circuit	122	67	104,131,620	55
Arizona	6	6	3,795,000	
California, N	16	5	655,000	11
California, S	59	17	62,582,960	42
Idaho	20	20	17,540,058	
Montana	8	8	15,598,897	
Nevada	4	4	1,379,257	
Oregon	2	2	270,448	
Washington, E	5	5	2,310,000	
Washington, W				
Alaska, 1				
Alaska, 2				
Alaska, 3				
Alaska, 4				
Hawaii	2			2
Tenth Circuit	67	47	39,421,827	20
Colorado	6	6	13,794,440	
Kansas	21	14	7,249,781	7
New Mexico	12			12
Oklahoma, N	9	9	9,534,747	
Oklahoma, E	3	2	900,000	1
Oklahoma, W	6	6	44,205	
Utah	7	7	6,154,814	
Wyoming	3	3	1,743,840	

Fair Labor Standards Act cases filed in the United States district courts, July 1, 1946–January 31, 1947, in which complaint does not definitely indicate whether portal-to-portal pay is claimed [1]

District	No. of cases	No. of cases claiming definite amount	Amount claimed (including liquidated damages)	No. of cases not claiming definite amount
Total	27	20	$6,074,263	7
Second Circuit:				
New York, N	3	1	24,000	2
New York, S	3	3	594,803	
Fifth Circuit:				
Mississippi, N	1	1	180,743	
Texas, E	1			1
Sixth Circuit:				
Michigan, W	2	2	4,600,000	
Ohio, N	7	7	66,071	
Tennessee, M	3	1	3,677	2
Eighth Circuit:				
Arkansas, E	3	3	188,000	
Ninth Circuit:				
California, S	3	1	2,297	2
Oregon	1	1	414,672	

[1] Fair Labor Standards Act cases which clearly do not involve portal-to-portal pay are not included in this table.

No information is available to the committee as to what is the number of similar actions brought under the Fair Labor Standards Act of 1938 in State courts or as to the aggregate amounts claimed in such actions in State courts.

II

Background of Portal-to-Portal Problem

A. THE FAIR LABOR STANDARDS ACT OF 1938 AND ITS APPLICABLE PROVISIONS

Section 2 of the Fair Labor Standards Act of 1938 contains both a finding and a declaration of policy. The finding is set forth in section 2 (a), and reads as follows:

> The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

Section 2 (b) of the act provides a declaration of policy, as follows:

> It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as possible to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Attention is invited to three aspects of the act: (1) minimum wages, (2) maximum hours, and (3) "oppressive child labor."

This report is concerned primarily with aspect (2).

Section 6 (a) of the act provides:

Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hours, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8,

(5) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers.

Section 7 (a) of the act provides—

No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—(1) for a workweek longer than forty-four hours during the first year from the effective date of this section, (2) for a workweek longer than forty-two hours during the second year from such date, or (3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Section 16 (a) of the act provides:

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

Section 16 (b) of the act provides:

Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

B. COVERAGE UNDER THE ACT

The body of a letter, dated February 4, 1947, received by a professional staff member of the United States Senate Committee on the Judiciary, signed "Harry Weiss, Director, Economics Branch," which letter is on a letterhead of "U. S. Department of Labor, Wage and Hour and Public Contracts Divisions, 165 West 46th Street, New York 19, N. Y.," reads as follows:

In response to your request, estimates of the number of employees subject to Sections 6 and 7 of the Fair Labor Standards Act are presented below. These figures represent rough approximations of covered employment.

All industries, total	20, 510, 000
Manufacturing, total	13, 980, 000
Food products	1, 000, 000
Tobacco products	100, 000
Textile-mill products	1, 300, 000
Apparel and other finished textile products	1, 170, 000
Leather and leather products	370, 000
Rubber products	280, 000
Logging, lumber products, and furniture	1, 070, 000
Paper and allied products	420, 000
Printing, publishing, and allied industries	550, 000
Chemicals and allied products	600, 000
Products of petroleum and coal	200, 000
Stone, clay, and glass products	400, 000
Metals and metal products	6, 000, 000
Miscellaneous manufacturing industries	520, 000
Mining	730, 000
Construction	440, 000
Transportation and allied services	2, 150, 000
Communication and other public utilities	840, 000
Trade	1, 100, 000
Banking, finance, insurance, and real estate	670, 000
Services and miscellaneous industries	600, 000

C. MEANINGS OF TERMS USED IN THE ACT

The Fair Labor Standards Act of 1938 does not define the term "work" or the term "workweek." The term "employ" is defined by the act, as follows: " 'Employ' includes to suffer or permit to work."

In his testimony, L. Metcalfe Walling, Administrator, Wage and Hour and Public Contracts Divisions, Department of Labor, stated:

A fundamental weakness in the Fair Labor Standards Act—underlying the "portal-to-portal" problem and several others—is that the Act does not authorize the Administrator to issue binding interpretations of the law with protection for employers who comply with such interpretations.

Mr. Walling referred, however, to the issuance since the date of enactment of the act, of a series of "interpretations" concerning hours of work. Among the interpretations to which he referred is Interpretative Bulletin No. 13. It was originally issued in July 1938 and deals with the subject of "hours for which employees are entitled to compensation under the act."

The weight given by the Supreme Court to rulings, interpretations, and opinions of the Wage-Hour Administrator appears in the following excerpt from *Skidmore et al.* v. *Swift & Co.*, 323 U. S. 134, 140 (1944), as follows:

> We consider that the rulings, interpretations, and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

Notwithstanding the weight so given, the Court will declare invalid any such ruling, interpretation, or opinion if it deems the same to be legally untenable. Thus in the case of *Jewell Ridge Coal Corporation* v. *Local No. 6167, United Mine Workers of America et al.*, 325 U. S. 161 (decided May 7, 1945), the Court says (at p. 169):

> Nor can we give weight to the fact that the Administrator of the Wage and Hour Division in 1940 issued a public statement that he would not regard the practice of computing working time on a "face to face" basis in the bituminous coal industry as unreasonable in light of the prevailing customs and practices, supported by a long history of bona fide collective bargaining. This statement, being legally untenable, lacks the usual respect to be accorded the Administrator's rulings, interpretations and opinions. Cf. *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140.

See also *Addison et al.* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 611, 618. (Decided June 5, 1944.)

The following are excerpts from Interpretative Bulletin No. 13:

INTERPRETATIVE BULLETIN NO. 13

DETERMINATION OF HOURS FOR WHICH EMPLOYEES ARE ENTITLED TO COMPENSATION UNDER THE FAIR LABOR STANDARDS ACT OF 1938

1. * * * This bulletin is intended to indicate the course which the Administrator will follow with respect to the determination of employees' hours of work in the performance of his administrative duties under the Act unless he is directed otherwise by the authoritative rulings of the court or unless he shall subsequently decide that his interpretation is incorrect.

2. The Act contains no express guide as to the manner of computing hours of work and reasonable rules must be adopted for purposes of enforcement of the wage-and-hour standards. As a general rule, hours worked will include (1) all time during which an employee is required to be on duty or to be on the employer's premises or to be at a prescribed work place, and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the work day to the end with the exception of periods when the employee is relieved of all duties for the purposes of eating meals.[1] The following specific problems with respect to the determination of hours worked which have been presented for our consideration are not sufficiently answered by this formula, however, and more detailed discussions of these problems are, therefore, set out in the following paragraphs:

TIME CLOCKS

3. Neither the statute nor Regulations, Part 516 (Requirements for Keeping Records), require that time clocks be used or specify the manner in which an

[1] No opinion can be expressed at this time as to certain cases—e. g., employees engaged in mining or in working under high pressure—where by custom or agreement time spent eating meals is paid for as hours worked. (From Interpretative Bulletin No. 13.)

employer has to keep a record of the number of hours worked by his employees. Time clocks where used will be an appropriate basis for recording hours worked only when they accurately reflect the period worked by the employee. Whether or not time clocks accurately reflect the period worked by the employee is to be determined by the formula in the preceding paragraph. It should be noted also that if the employer requires the employees to punch a time clock and the employee is required to be present for a considerable period of time before doing so, such time will be considered hours worked. * * *

* * * * * * *

TRAVEL TIME

9. The problem of travel time, in relation to hours worked, arises in a great variety of situations and no precise mathematical formula will provide the answer in every case. The question is often one of degree; if the time spent by an employee in traveling is reasonably to be described as "all in a day's work," such time should be considered hours worked under the act. * * *

10. As a general rule it may be stated that an employer should treat time spent by an employee during regular working hours in traveling pursuant to the employer's instructions as hours worked. If an employer requests his employee to do a job during regular working hours which requires the employee to leave the place of business the traveling time of the employee should be included in hours worked, and this is true whether or not the particular job is within the employee's regular duties.

11. In many cases travel time outside of regular working hours is considered "part of the day's work" and, accordingly, should be treated as hours worked. * * * The same results, of course, would be reached if the employer requested his employee to report for work 2 hours earlier in the morning in order to make the one extra call.

12. If a crew of workers is required to report for work at a designated place at a specified hour and all the employees are then driven to the place where they are to perform work, the time spent in riding to such place should be considered hours worked. Similarly, the time spent returning from the place at the close of the day's work should be considered hours worked. * * *

13. In some cases an employee is required to travel continuously for more than a full working day during which time the employee is not engaged in actual productive work for his employer. * * *

14. Inquiries have been received with respect to employees who are required to travel continuously for several days and who perform active labor while traveling. * * *

The evidence clearly indicates that the definition of the terms "work" and "workweek" is no simple matter. The following is a self-explanatory excerpt from the testimony of Mr. Walling:

Senator CAPEHART. May I ask you this: Do you believe it is possible to write a definition of "work" and "hours worked" and "workweek," so that we may eliminate forever the Administrator having those duties, with issuing directives, and using his judgment? Can we get back, in this instance, to a matter of law where everybody knows exactly where he stands, rather than putting it to the whims of the Administrator and his staff? Not that you are not a good Administrator, but I am talking about a principle. Is it not possible to get away from the confusion we have had here over the past eight years with respect to this subject, as well as any other laws that we have? It is hard to get a decision and to know where you stand. * * *

Mr. WALLING. * * * it is extremely difficult, Senator, to spell out a definition in a congressional statute which will take into account all of the manifold variations of practice and custom and agreement and which will recognize the changing conditions which constantly occur in modern American industry in a way that will be satisfactory.

D. SUPREME COURT DECISIONS

Attention is directed to three cases decided by the Supreme Court of the United States. In each of these cases there were dissents.

The first of these three cases is *Tennessee Coal, Iron & Railroad Co. et al.* v. *Muscoda Local 123 et al.*, 321 U. S. 590 (1944). In this case the Court was confronted with the problem of determining, in part, what constitutes work or employment in underground iron-ore mines within the meaning of the act. Three iron-ore-mining companies had filed declaratory-judgment actions to determine whether time spent by iron-ore miners in traveling underground in mines to and from the working face constitutes work or employment for which compensation must be paid under the act. The Court explained that "working face" is the place in the mine where the miners actually drill and load ore, and that the "face to face" basis of compensation, advocated by the petitioners in the case, includes only the time spent at the working face. The Court further explained that the "portal to portal" basis, proposed by respondents in the case, includes time spent in traveling between the portal or entrance to the mine and the working face and back again, as well as the time spent at the working face (pp. 591, 592).

The following excerpt is taken from the majority opinion of the Court:

> It is sufficient in this case that the facts relating to underground travel in iron-ore mines leave no uncertainty as to its character as work. The act thus requires that appropriate compensation be paid for such work.

The second of the above-mentioned three cases is *Jewell Ridge Coal Corporation* v. *Local No. 6167, U. M. W.* (325 U. S. 161 (1945)). In this case the Court considered whether any result different from the holding in the Tennessee Coal Co. case that underground travel in iron-ore mines constituted work, and hence was included in the compensable workweek within the meaning of section 7 (a) of the act, must be reached as regards underground travel in bituminous-coal mines. The Court held that the underground travel in the two bituminous-coal mines, under the facts involved in the case, must be included within the workweek for purposes of section 7 (a) of the Fair Labor Standards Act regardless of any custom or contract to the contrary at the time in question. (See Jewell case, pp. 162 and 170.)

In a dissenting opinion, written by Mr. Justice Jackson, in the Jewell Ridge case, the following language appears:

> Employees in these mines first were organized as members of the United Mine Workers of America in 1933, following promulgation of the NIRA Code of Fair Competition for the industry. This code was drawn up by representatives of the Union and of the operators and was approved by the President of the United States. It provided for the "face to face" wage basis which makes no direct allowance for travel time, but, as has been pointed out on behalf of the Union, the wage scale was fixed at a level intended indirectly to compensate travel time. Basic wage agreements thereafter were entered into between the union and the operators as of April 1, 1934 (continued in effect by successive extension agreements from March 31, 1935 until October 1935); again as of October 1, 1935; and as of April 2, 1937; again as of May 12, 1939, when the Fair Labor Standards Act was nearly a year old and had been in effect for nearly six months, a new agreement was bargained which, like all the previous wage agreements, expressly provided for the "face to face" basis, necessarily excluding all travel time from the workweek. The last basic wage agreement reached by collective bargaining previous to the commencement of this action, dated April 1, 1941, and to extend for a period of 2 years, did the same. These agreements are admitted and, if valid, govern the dispute between the parties.

Among the grounds of dissent listed by Mr. Justice Jackson were the following:

(1) It [the decision] either invalidates collectively bargained agreements which govern the matter in difference between these parties or it ignores their explicit terms; (2) Neither invalidation nor disregard of collectively bargained agreements is authorized by any word of Congress, and legislative history gives convincing indications that Congress did not intend the Fair Labor Standards Act to interfere with them as this decision holds it does. * * * (See case, p. 170.)

The third of the above-mentioned three cases is *Anderson et al.* v. *Mount Clemens Pottery Co. et al.* (66 Sup. Ct. 1187), decided June 10, 1946, rehearing denied October 14, 1946. In the said case the Court, in referring to time necessarily spent by the employees of a pottery factory in walking to work on the employer's premises, following the punching of the time clocks, ruled that such time was working time within the scope of section 7 (a) of the act. With reference to such time the Court stated:

Such time was under the complete control of the employer, being dependent solely upon the physical arrangements which the employer made in the factory. Those arrangements in this case compelled the employees to spend an estimated 2 to 12 minutes daily, if not more, in walking on the premises. Without such walking on the part of the employees, the productive aims of the employer could not have been achieved. The employees' convenience and necessity, moreover, bore no relation whatever to this walking time; they walked on the employer's premises only because they were compelled to do so by the necessities of the employer's business. In that respect the walking time differed vitally from the time spent in traveling from workers' homes to the factory. (Cases cited.) It follows that the time spent in walking to work on the employer's premises, after the time clocks were punched, involved "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business" (*Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, 598; *Jewell Ridge Co.* v. *Local No. 6167*, 325 U. S. 161, 164–166).

The Court decided that walking and certain preliminary activities must be included in the statutory workweek and compensated accordingly, regardless of contrary custom or contract.

Mr. Justice Burton wrote a dissenting opinion, in which he stated, in part, as follows:

The amounts at issue * * * might not average as much as 5 to 10 minutes a day a person and would not apply at all to many of the employees. None of this time would have been spent at productive work. The futility of requiring an employer to record these minutes and the unfairness of penalizing him for failure to do a futile thing by imposing arbitrary allowances for "overtime" and liquidated damages is apparent.

While conditions vary widely and there may be cases where time records of "preliminary activities" or "walking time" may be appropriate, yet here we have a case where the obvious, long-established and simple way to compensate an employee for such activities is to recognize those activities in the rate of pay for the particular job. These items are appropriate for consideration in collective bargaining. * * *

In interpreting "workweek" as applied to the industries of America, it is important to consider the term as applicable not merely to large and organized industries where activities may be formalized and easily measured on a split-second basis; the term must be applied equally to the hundreds of thousands of small businesses and small plants employing less than 200 and often less than 50 workers, where the recording of occasional minutes of preliminary activities and walking time would be highly impractical and the penalties of liquidated damages for a neglect to do so would be unreasonable. Such a universal requirement of recording would lead to innumerable unnecessary minor controversies between employers and employees. "Workweek" is a simple term used by Congress in accordance with the common understanding of it. For this Court to include in it items that have been customarily and generally absorbed in the rate of pay but excluded from measured working time is not justified in the absence of affirmative legislative action.

The Supreme Court remanded the case for the district court's determination—

of the amount of walking time involved and the amount of preliminary activities performed, giving due consideration to the de minimis doctrine and calculating the resulting damages under the act.

E. THE PORTAL-TO-PORTAL LAWSUITS

In the introduction within this statement, it is shown that the number of portal-to-portal cases filed in the United States district courts, including the Territories and possessions, from July 1, 1946, to January 31, 1947, was 1,913.

As appears from the letter, dated February 14, 1947, above referred to, of Henry P. Chandler, Director, Administrative Office of the United States Courts, the aggregate amount claimed in 1,515 of said 1,913 cases exceeds $5,785,204,606, including liquidated damages and that in the remaining 398 cases a definite amount was not named in the complaint but the court was requested to give judgment for the amount found due.

Evidence demonstrates conclusively the existence of a very close connection between many of the suits and certain CIO affiliates. Some of the CIO affiliates, between which and some of the suits the evidence demonstrates a very close connection, are the United Steelworkers of America; Textile Union of America; United Automobile Workers of America; and United Electrical, Radio, and Machine Workers of America. Evidence also demonstrates conclusively the existence of a very close connection between certain of the suits and Lee Pressman, general counsel of the United Steelworkers of America, Philip Murray and David J. McDonald, president and secretary-treasurer of the United Steelworkers of America, Russ Nixon, Washington representative of the United Electrical, Radio, and Machine Workers of America (UE–CIO), Irving Richter, legislative representative of the United Automobile Workers of America, and some local officers of CIO affiliates.

If the doctrine enunciated by the Supreme Court of the United States in the Mount Clemens case is ultimately sustained, the likelihood is that, if the so-called portal-to-portal actions are not barred, employees generally will assert their rights under that doctrine. That assumption is made a great deal more certain by the fact that affiliates of a national organization, namely, the Congress of Industrial Organizations (CIO), have had the close connection above mentioned.

If the portal-to-portal actions are not barred we believe that the country will be involved in a flood of litigation, the extent of which it is impossible to estimate, in view of varying facts as to each company. Industrial discontent may be anticipated because persons in one industry or one company may receive more so-called portal-to-portal pay than persons in another industry or another company, as the case may be.

In the hearings was produced a document reading as follows:

INSTRUCTIONS ON PROCEDURE IN TRAVEL-TIME CASES

November 1, 1946

INTERNATIONAL UNION, UNITED STEELWORKERS OF AMERICA

1500 Commonwealth Building, Pittsburgh 22, Pa.

District officers, staff representatives, and local unions, United Steelworkers of America.

DEAR SIR AND BROTHER: This booklet contains detailed instructions on procedure for your use in connection with travel-time cases; that is, portal-to-portal or gate-to-gate pay, legal problems. It contains:

1. A general memorandum prepared by General Counsel Lee Pressman dealing with the problems which are raised in connection with preparing lawsuits.
2. An analysis of the Supreme Court case dealing with this issue and indicating how the case is applicable to the steel, aluminum, and fabricating industries.
3. Suggestions to district directors for guidance in making arrangements with local attorneys.
4. Bill of complaint.

We have printed the following documents, which are being sent to you in quantity. Additional copies may be obtained through my office from time to time as they are needed by you:

1. Authorization to prosecute wage-and-hour claims—Form No. TC–1.
2. Questionnaire on overtime pay—Form No. TC–2.

We are sending you a small supply of the following:

3. Power of attorney—Form No. TC–3.

Sincerely yours,

UNITED STEELWORKERS OF AMERICA.
(Signed) PHILIP MURRAY, *President.*
(Signed) DAVID J. MCDONALD,
Secretary-Treasurer.

The text of a general memorandum, prepared by General Counsel Lee Pressman, dealing with the problems which are raised in connection with preparing lawsuits, which are referred to in the above document, is set forth in the hearings, immediately following that document. It is entitled, "General Memorandum." The following quoted language appears in said general memorandum:

TRAVEL-TIME PAY RIGHTS UNDER WAGE-HOUR LAW

At the last executive board meeting, the recent decision of the Supreme Court applying the travel-time principle under the wage-hour law to manufacturing and industrial plants was discussed. I have been requested by the executive board to advise you as to the rights of the employees in the steel industry to travel-time pay and to make all arrangements necessary for the commencement of the lawsuits which are authorized by the employees in the industry. This memorandum is intended to give you the information which you need to start acting immediately on the program decided on by the executive board. * * *

THE PROGRAM OF ACTION ADOPTED BY THE EXECUTIVE BOARD

The executive board decided that there were certain cases which would be handled through the national office and others which would be handled by each district director for the plants in his own district. The division is as follows:

(*a*) *Cases to be handled by the national office*

The wage-hour claims in connection with all plants of the five major subsidiaries of the United States Steel Corp. (American Steel & Wire, National Tube, Carnegie-Illinois, Tennessee Coal & Iron, Columbia Steel), Republic Steel Corp., Bethlehem Steel Co., and the Aluminum Co. of America will be handled through the national office.

(*b*) *Cases to be handled by the district directors*

For all other plants where legal action is to be taken, the district director will make his own arrangements.

The following sections of this memorandum contain instructions and suggestions which may be helpful to you in carrying out the details of this program

STEPS TO BE TAKEN ON CASES WHICH ARE TO BE HANDLED THROUGH NATIONAL OFFICE

Where the cases are to be handled through the National Office, it will be necessary to secure from each worker appropriate authorization to bring the suit on his behalf and also appropriate information to help in preparing the legal papers. For this purpose, arrangements should be made for each worker in the plants of the United States Steel subsidiaries named above, Republic Steel and Bethlehem Steel, to do the following immediately:

(*a*) Sign an authorization in the form of TC–1. You will notice that it will be necessary in these forms to fill in your own name as district director and the names of the president and recording secretary (or such other local union official as you think would be appropriate) of the local to which the worker belongs.

(*b*) Fill out at the same time a questionnaire showing the facts on which his claim will be based. Form TC–2 is the questionnaire. If the answers to these questions are the same for an entire department, it may be possible for a grievance committeeman or a staff man to fill out the "Information on Working Time," from page 2 to the end, of a single questionnaire for a whole department, and attach to it a number of copies of page 1 of the questionnaire, one for each worker to whom the answers apply. If this procedure is followed, the man filling out the master questionnaire should be careful to give individual names of workers who have instances to give under such questions as 11, 12, 15, 25, 26, and 27.

Arrangements should be made to have these authorizations and questionnaires in these national cases forwarded to the district director and kept by him until further instructions are received from the national office. These files should be arranged by plants.

My office will make the necessary arrangements with the local attorneys whom we will use in these national cases. It is anticipated that there will be one lawsuit for each of the companies to be handled as national cases.

STEPS TO BE TAKEN IN CASES WHICH ARE TO BE HANDLED LOCALLY

In the case of all plants other than those named above, any legal action will be handled directly by the district director and the local attorney whom he selects. * * *

The General Memorandum states further:

The national legal department will be available at all times for advice and guidance on cases being handled locally.

All local attorneys should be requested to send to us copies of complaints and briefs when filed and, as far as possible, to keep us informed of developments in their cases. Whenever you retain a local attorney, please let my office know his name, the cases he is to handle, and the arrangement for fees which you have made with him. It is important for the local attorney to get in touch with my office in order to obtain our analysis of the legal issues. * * *

Under the heading, "Summary of Supreme Court decision in the Mount Clemens pottery case," the General Memorandum contained some discussion of that decision. Following the General Memorandum is a form of "bill of complaint" which in the memorandum was referred to "as a preliminary aid to district directors and local attorneys." With respect to said bill of complaint, the General Memorandum states:

Our experience with this type of lawsuit indicates that it is preferable to sue in a Federal court. This complaint will not, of course, fit any and all cases, and should be examined carefully and modified, adjusted, and completely rewritten, if necessary, by your local attorney, to fit particular cases.

Attached to the bill of complaint was an interrogatory to which reference is hereinafter made. Attention is invited to provisions contained in the form furnished by the steelworkers' union, as follows:

To institute suit, individually and on behalf of other employees similarly situated, as my trustee, agent, and representative, against the (----------) company to recover the amount due me because of such underpayment, plus an additional amount as liquidated damages. You are authorized to retain counsel to recover by legal action or otherwise the amounts due me, including liquidated damages and attorneys' fees to settle, adjust, or compromise such claims, or to issue releases on receiving payment or settlement of such claim. I am under no liability for payment of any counsel fee except to the extent of 20 percent of the total amount recovered against which is to be credited proportional share of any fee allowed by the court to counsel retained by you under this authorization.

With respect to the cases which it is stated in the General Memorandum of Lee Pressman were to be handled by the national office, attention is directed to his testimony and to his correspondence supplementing that testimony, particularly a letter, dated January 23, 1947, signed, "Lee Pressman, General Counsel," appearing on letterhead of Congress of Industrial Organizations.

The following excerpt is taken from the letter, dated January 23, 1947, mentioned next above:

4. The Committee requested me to submit to it the amounts of recovery sought in some seven lawsuits involving claims for travel time and other activities by employees against certain large national steel corporations.

In the suit against American Steel and Wire Co. the plaintiffs demand an accounting for sums due them under the Act and request payment of such sums which are estimated at $38,000,000.

In a suit against the National Tube Company the precise amount claimed is not specified. The plaintiffs state that they "are not informed as to the exact amount of overtime rendered by each of the employees or the wages still due and owing for overtime hours worked for which no payment was made, in violation of the Fair Labor Standards Act. Such information is not available to the employees who are represented in this action but the records are, or should be, under the provisions of the said Act, in the exclusive possession of the defendant herein." In the body of the complaint an estimate is made that there is in excess of $30,000,000 due and owing defendant's employees. In the prayer for relief the court is requested to determine the precise amounts due and to enter judgment against the defendant for those amounts.

In a suit against the Columbia Steel Company no claim for any specified amount is made. It is recited in the body of the complaint that "plaintiffs are not informed as to the exact amount of overtime rendered by each of the employees or the wages still due and owing for overtime hours worked for which no payment was made, in violation of the Fair Labor Standards Act." The complaint recites that "plaintiffs request the court to order that the defendant Columbia Steel Company make an accounting of said sums due to the employees who are represented in this action for overtime wages." In the prayer for relief the court is requested to determine the precise amount due for the labor performed and time spent by each employee and to enter judgment against the defendant for those amounts.

In a suit against the Tennessee Coal & Iron Corporation, the plaintiffs expressly state that they "are not informed as to the exact amount of overtime rendered by each of the employees or the wages still due and owing for overtime hours worked for which no payment was made, in violation of the Fair Labor Standards Act." The body of the complaint indicates that liability might amount to a sum in excess of $5,000,000. In the prayer for relief the court is requested to determine the exact amount of recovery which would be proper.

In a suit against Bethlehem Steel Company and Bethlehem Steel Corporation the complaint sets out that "subject to correction following an examination of the books and records of the defendants, plaintiffs are informed, and so allege, that there is in excess of $100,000,000 due and owing them for overtime work performed by them in defendants' employ but not paid by defendants, in violation of the act, and for wages not paid in accordance therewith, together with an additional equal amount for liquidated damages." In the plaintiffs' prayer for relief recovery is sought for this sum "or such other amount as the court may find to be due and owing plus an additional equal amount for liquidated damages."

In a suit against Republic Steel Corporation, the plaintiffs demand an accounting for sums due them under the Act and request payment of such sums which are estimated at $56,000,000.

In a suit against Carnegie-Illinois Corporation the prayer for relief requests no specific amount. It merely asks that the court determine the amount due the employees under the Act. In the body of the complaint the statement is made that "plaintiffs are not informed as to the exact amount of overtime rendered by each of the employees or the wages still due and owing for overtime hours worked for which no payment was made, in violation of the Fair Labor Standards Act. Such information is not available to the employees who are represented in this action but the records are, or should be, under the provisions of the said Act, in the exclusive possession of the defendant herein." An additional paragraph in the body of the complaint recites that "plaintifis are informed and so allege the fact to be that there is in excess of $90,000,000 due and owing to the employees of the defendant."

It is apparent that these actions are essentially actions for accounting. The purpose of naming a figure in the body of the complaint is merely for the guidance of the court in arriving at a proper accounting. As you will note, some of the local attorneys with whom I am associated met this problem by indicating in the body of the complaint the amount which might be owing and requesting in the prayer for relief that the court actually determine the amount. Other local attorneys with whom I am associated in these lawsuits indicated in the prayer for relief what the approximate amount of recovery might be but prayed that the court itself make the accounting of the compensation owing to the plaintiffs.

I should again like to remind the Committee that I receive no fee, contingent or otherwise, in connection with these actions. I should also like to remind the Committee that recovery is sought in these actions not merely for time spent in travel but for a host of other activities which have been held, both by the Administrator and the courts, to constitute "working time" within the meaning of the Fair Labor Standards Act.

In the hearings appears the following:

Senator EASTLAND. Are you in the Republic Steel suit?
Mr. PRESSMAN. That is correct.
Senator EASTLAND. One of the attorneys?
Mr. PRESSMAN. That is correct.

Attention is also directed to the testimony of Russ Nixon, Washington representative of the United Electrical, Radio, and Machine Workers of America (CIO). The following excerpts are taken from the hearings:

Mr. NIXON. * * *.
I should tell you we filed the national suits.
Senator DONNELL. By "we," whom do you mean?
Mr. NIXON. The union.
Senator DONNELL. The United Electrical, Radio and Machine Workers of America?
Mr. NIXON. The United Electrical, Radio and Machine Workers of America (CIO).
Senator DONNELL. Very well. How many such suits have you filed?
Mr. NIXON. Five suits from the International Union which apply to our companies with whom we bargain on a national basis.
Senator DONNELL. Would you tell us the names and the amounts?
Mr. NIXON. First is General Electric Corporation.
Senator DONNELL. For how much is that?
Mr. NIXON. We have stated the sum at $1,000,000. With the proviso, of course, that it is subject, as is the actual case, in every instance, to the specific adjudication of the court with regard to the amount.
Senator DONNELL. What is the next suit?
Mr. NIXON. Westinghouse Corporation.
Senator DONNELL. The amount?
Mr. NIXON. $1,000,000.
Senator DONNELL. The same reservation there?
Mr. NIXON. Yes, sir.
Senator DONNELL. The next suit?
Mr. NIXON. The General Motors Corporation, Electrical Division.
Senator DONNELL. How much?
Mr. NIXON. $1,000,000. The same stipulation or the same provision.
Senator DONNELL. Are there some others?

Mr. NIXON. Yes, sir; two more. General Cable.
Senator DONNELL. Yes, sir. And the amount?
Mr. NIXON. Exactly the same provisions.
Senator DONNELL. How much money?
Mr. NIXON. $1,000,000. And the Sylvania Electric Products.
Senator DONNELL. And how much is that?
Mr. NIXON. $1,000,000, with the same provision.
Senator DONNEL. And who selected the counsel in all those suits?
Mr. NIXON. The way we are handling that is that the general secretary-treasurer of our union is given the power of attorney by the individual workers. * * *
Senator COOPER. And here you have five suits against five companies, all of them for the exact sum.
Mr. NIXON. That is correct.
Senator COOPER. Would you consider those bona fide suits and claims against those companies?
Mr. NIXON. Let me say a word about the question. That is, the significance of the volume of money.
Senator DONNELL. I am wondering if, before you answer that, you would be kind enough to interpolate a comparison as to the number of employees who are represented in the suit against General Electric and the other companies. How many employees are in the suit against General Electric?
Mr. NIXON. About 100,000.
Senator DONNELL. How many in Westinghouse?
Mr. NIXON. About 75,000.
Senator DONNELL. General Motors?
Mr. NIXON. About 25,000.
Senator DONNELL. How many in General Cable?
Mr. NIXON. I think that is about 15.
Senator DONNELL. 15,000?
Mr. NIXON. Yes, sir.
Senator DONNELL. Sylvania Electric?
Mr. NIXON. About 20,000.

With respect to the provisions that were made for retention of counsel and for payment of counsel fees, it appears from the testimony of Mr. Caldwell that the forms furnished by the national officials of the steelworkers' union were in fact made available at the local level.

With respect to activities at the district and local levels of the United Steel Workers Union, attention is directed to two exhibits submitted by Charles R. Hook, president, American Rolling Mill Co. One of these was an "authorization to prosecute wages and hours claim" to one Al Whitehouse, district director, District No. 25, United Steel Workers of America. The copy, which is set forth in the hearings, of said authorization, was complete, except for blank spaces provided for the signature of the person conferring the authorization upon Mr. Whitehouse, the date of such authorization and the signature of two witnesses. Said exhibit, it should be noted, followed the form to which reference is above made which was furnished to the district directors by the national office of the United Steel Workers of America.

In connection with said activities at the district and local levels, attention is directed to section 16 (b) to which we have already referred, and which provides, insofar as is here relevant, as follows:

> Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and/in behalf of

all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

The other exhibit submitted by Mr. Hook was a circular entitled "Action Now Will Save Your Portal to Portal Back Pay." A subheading on the circular was: "Protect your pocketbook against plot to scuttle Wages and Hours Act." This exhibit was signed "Al Whitehouse, Director, District 25, United Steel Workers of America, December 21, 1946." The opening paragraph of said exhibit reads as follows:

Private advices from Washington, received in Middletown Wednesday, disclosed the startling information that a move is afoot to scuttle the Wages and Hours Act immediately after Congress convenes on January 3rd, and, if possible, to destroy the right of wage earners to collect Back Pay for Portal-to-Portal Time, recently awarded for the fourth time by the Supreme Court of the United States.

It then states:

Of course, it is possible that the plotters cannot muster enough votes to enact such diabolical legislation. And such legislation may be unconstitutional. It is also possible that Congress may not go the entire distance. But what Armco employee would risk that? It is now certain that a strong group of bipartisan reactionaries is determined to go the limit in undermining the Wages and Hours Act.

Under the circumstances, every steelworker at Armco should act before Congress acts. Otherwise, he may lose all of his Back Pay for Portal-to-Portal time, except the pitiful part a hostile Congressman and a predatory corporation would give him willingly.

Special attention is also directed to the testimony of Arthur Schusterman, Textile Workers Union, CIO, Cumberland, Md.

Attention is directed to the following excerpts from the hearings:

Senator CAPEHART. * * * why did you wait to file suits if you were thinking that the employer was violating the law? Why did you wait two, three, or four years?

Mr. PRESSMAN. I am just coming to that point and I am glad you asked that question because it is one of the crucial points in the matter.

The Mt. Clemens Pottery case was decided by the Supreme Court in June of 1946. I do not know the exact date when it was started in the court below because we were not involved in the court below, but I assume that it was two or two and a half years before 1946.

Now, let us get the dates before us. It was June 1946 when the United States Supreme Court decided that case. From June of 1946 until October of 1946 the Congress of Industrial Organizations and its affiliated unions were struggling with the problem of what to do with that decision.

We knew that the decision in some cases meant recovery of moneys for the employees and that it might run into an amount which we could not just approximate. We just had no idea of knowing because the employees have no records on this. They know the work they do but the records are with the employer.

Naturally, we were anxious, if we possibly could, to bring the issue into collective bargaining with our employers.

Now, a petition for reconsideration was filed with the United States Supreme Court, I think it was June or July, within a few weeks after which the decision came down. It was filed by the attorneys for the employer involved in that case.

That petition for rehearing was not ruled on by the United States Supreme Court until October—June until October * * *.

Now, even in October of 1946, when the petition for reconsideration was denied, and no interest yet demonstrated by industry, we still did not know what to do because we do not delight in filing lawsuits. Action of that type is no answer to industrial relations, and we discussed this problem very seriously in the executive board meetings of, I know, the Steelworkers Union, of which I am general counsel, and it was discussed at the board meetings of other unions.

Just the counsel for the various unions were talking about this problem of what to do, and then, just about that time, a public notice is given of a settlement arrived at between the Dow Chemical Co. and an American Federation of Labor union on portal-to-portal pay under the Mt. Clemens Pottery case.

I am highly amused when I see documents emanating from representatives from one organization stating that no lawsuits should be begun and the first settlement on the first threatened lawsuit in this matter involved an A. F. of L. Union. It so happened that it was the District 50, United Mine Workers Union which happened to have Dow employees on it. That settlement is published in a service called "Bureau of National Affairs," and that goes out to thousands of lawyers and local representatives of unions throughout the country, as well as, I may say, representatives of industry * * *.

Senator DONNELL. That settlement amounts to more than $4,500,000?

Mr. PRESSMAN. I do not know just the exact figure but it is something around $4,500,000, I guess.

However, that settlement was publicized throughout the country, and here is what happened: American Federation of Labor unions with their attorneys walked into the local areas, and, approaching the membership of CIO unions, said: "If you will just leave the CIO and come with the A. F. of L. we will file lawsuits for you, we will get settlement for you because the CIO unions and leadership are not representing your members."

That is why I am amused when I see the statements emanating from labor representatives that lawsuits should not be filed.

I have not gotten through with my answer to your question but I am wondering if I am giving you a picture of the situation.

I am incensed when charges are being made without full knowledge being known.

Senator EASTLAND. Is that the reason for the rivalry, because of the lawsuits?

Mr. PRESSMAN. No.

Senator CAPEHART. Mr. Pressman, you will admit that the American Federation of Labor, Mr. Green, sent out a letter in which he stated that these suits should not be filed?

Mr. PRESSMAN. That is a matter of record that he did send out a letter.

Senator CAPEHART. Yes.

Mr. PRESSMAN. All I am asking is that action be consistent with words * * *.

In the record of the hearings are set forth a letter to presidents of all national and international unions, dated January 14, 1947, of William Green, president of the American Federation of Labor, and a statement, dated January 13, 1947, of John P. Frey, who is president of the Metal Trades Department, an AFL affiliate. The statement of Mr. Green refers to "wide publicity" which—

has been given to court actions filed by certain labor unions in an attempt to recover back pay for their members for travel time and other time spent on employer's property, such as changing clothes and preparing for work, claiming this to be time worked within the meaning of the Fair Labor Standards Act of 1938.

Mr. Green further says:

Very few of these suits have been brought by unions affiliated with the American Federation of Labor. It is the long-established policy of the American Federation of Labor to rely upon collective bargaining through direct negotiations between unions and employers to settle differences between them regarding wages, hours and working conditions of the workers concerned. * * * Appeal to authority before all the voluntary means of resolving differences have been exhausted, invites invasion of the right of labor and management to contract about their affairs. Such untimely and unwarranted resort to administrative or judicial intervention is inconsistent with the mutual rights and responsibilities established by employers and unions through private contract in a free society.

All national and international unions affiliated with the Metal Trades Department of the A. F. of L. and a number of other A. F. of L. affiliates have officially declared it to be their policy to make the definition of time worked, within the meaning of the Fair Labor Standards Act or otherwise, subject to collective bargaining negotiation in preference to litigation. * * *

The statement of John P. Frey reads in part as follows:

To now inject the question of back pay, for "portal-to-portal" time, would be an admission that when wage agreements were signed by trade union representatives, they had been insincere during the negotiations, and had held mental reservations

which they were unwilling to discuss with employers while seated at the conference table.

Our trade union movement has no assets more valuable than its agreements with employers, and the integrity which is involved.

There is nothing to prevent the discussion of "portal-to-portal" pay when existing agreements with employers are negotiated, and the inclusion of this form of payment in the new agreements. But as to existing agreements with employers, many of them entered into with the same corporation for a generation or more, the Executive Council definitely recommends that existing collective bargaining agreements must not be dishonored by now entering into legal suits to secure a form of wages which were not provided for when the existing agreements were negotiated.

Attention is directed to the following further excerpts from the hearings:

Mr. PRESSMAN. * * * We still do not know what to do with that determination. When I say: "we," I do not mean the unions because they are not in these lawsuits.

Senator CAPEHART. The unions are not in these lawsuits?

Mr. PRESSMAN. That is correct. The unions are not parties to the lawsuits.

At that time we approached counsel for many large corporations, and, in the light of this entire background, asked whether we could not sit down in collective bargaining to address ourselves to this issue, and the only answer we got from these gentlemen was consistently the same answer, "there is no need, there is no need for our sitting down with you to discuss this matter in collective bargaining."

Senator DONNELL. From whom was this information obtained?

Mr. PRESSMAN. From counsel of many corporations who were contacted.

"We have no need for sitting down with you because we have discussed this problem with Representatives of Congress and we feel quite certain that there will be legislation amending the Fair Labor Standards Act and depriving you, or the employees, of any rights that you may be entitled to under that Act by virtue of the decisions of the Supreme Court."

Senator EASTLAND. Who made those statements?

Mr. PRESSMAN. Those were said in conferences and I have not named the Representatives in Congress because the names were not given me, nor, sir, can I give you the names of the counsel for the corporations whom I met because our conferences in the course of collective bargaining are all in confidence.

Senator EASTLAND. Did you meet with their representatives on this score?

Mr. PRESSMAN. I did, sir.

Senator EASTLAND. They told you this?

Mr. PRESSMAN. Correct, sir * * *

Senator EASTLAND. How many members of industry told you that?

Mr. PRESSMAN. I spoke with one * * *

Senator EASTLAND. Were conferences of this nature had between other representatives of the CIO and industry?

Mr. PRESSMAN. I am sorry, I did not get that question.

Senator EASTLAND. Other representatives of the CIO besides yourself, did they tell you they had received that same information from representatives of industry?

Mr. PRESSMAN. There was one of my colleagues, sir, who received the same impression from a statement made to him.

Senator EASTLAND. You got an impression?

Mr. PRESSMAN. Yes, sir * * *

* * * * * * *

* * * Here was the problem that confronted the leaders of, the officers of, the steelworkers union, speaking just for that in October.

If we did not apprise our members of their rights under the law, and Congress did pass a statute prior to February barring future claims, let us say, which had not been started by that time, the membership of that union could well say to the officers, "By what right did you not apprise us of our rights under the law as stated by the Supreme Court?"

That was the issue that confronted the officers of these organizations.

After discussing that problem I was authorized as an attorney for that organization to prepare a memorandum analyzing the rights of the individual worker under the Wages and Hour Law.

I repeat, as expressed and stated by the United States Supreme Court. In the course of that preparation we prepared also other documents that in the event they desired to start a suit which required their individual authorization, the form of the bill of complaint as required under all the rules of the court, and the Administrator, and so forth.

Now, sir, that material was sent out to the local unions of the Steel Workers' union, and, I am speaking just of that organization.

Now, may I say at the outset so there will be no misunderstanding on this issue as to where I clearly stand.

There are no retainer fees to me as an individual under any of these lawsuits, absolutely not a single one. The individual employees have to retain their own counsel * * *

I repeat, and I submit in all sincerity, that the action that was taken by this one organization, I am not fully acquainted with the action taken by the others, I think it is pretty much the same, we were doing nothing more than advising individual employees of their rights under the law as expressed by the United States Supreme Court.

Senator DONNELL. You are not urging them to file suits?

Mr. PRESSMAN. Insofar as our national officers were concerned, we were not urging them to file suits. We informed them that the matter was in their hands. However, I cannot speak for the thousands and thousands of local officials. We were advising these workers of what their rights were and we were doing nothing more than what is done every week when bulletins emanate from the National Association of Manufacturers and the United States Chamber of Commerce, advising employers what their rights are and interpreting some decision. They are told what they may do and still not be in violation of the law, and, certainly, you cannot ask that the trade union organization is not entitled to the same rights to explain to its own members as to what their rights are under the law as interpreted by the Supreme Court.

Now, I am sure as this matter was wending down to the local unions from October to November to December, what you find was an accelerated case of lawsuits which in my humble judgment was aggravated in part by the statements, whether it be Representatives in the House or Senators in Congress, that legislation was required.

The repetition of that statement that legislation was required, all that that did was to aggravate the situation by accelerating the pace further because individuals felt that if they did not start their lawsuits immediately the law would prevent them later on.

I am completely convinced that if this talk had not happened you would not have had these lawsuits, and they would have waited. We had on the one hand this matter of lawsuits and on the other hand these statements, and between the two it started this avalanche.

That was the background which led up to the situation which you have here before us today, and I repeat, sir, in all sincerity that it is thoroughly unfair to accuse our organization of taking any step inconsistent with the interest of anyone or any group, and a step which was not consistent with the public interest, and, as a matter of fact, it was a step which we had to take to protect the interests of our own membership. * * *

Mr. PRESSMAN. * * * These unions that appeared here today, and the others, the unions that did not appear, they have taken a single position and a very clear position. They have endeavored to advise their membership what their rights are under the law as determined by the United States Supreme Court. There is no hesitancy, no reluctance on the part of any union of the CIO or any official of the CIO to explain it very definitely. We have not been hesitant or reluctant to say that we have explained to our membership precisely what their rights are. In telling them what their rights are, we have indicated to them that they have had to sign individual authorizations before any suits could be started. The union as such, the officials as such, could not start a lawsuit on their behalf unless the individuals first executed these individual authorizations. That has been our consistent policy. We do not feel ashamed in any way of the fact that we have so advised our membership, and I point out to you gentlemen that the position which we have taken is absolutely no different from the position that is taken daily and weekly by representatives of organizations of employers which communicate with their respective members, namely, corporations or companies, advising them what the law is, what their rights are, and what their obligations may be. * * *

One additional point which has come out here in the course of the discussion of these various witnesses. Union officials, whether local or national union officials, their names may appear in the case of the bill of complaint. Their names so appear because in the authorizations, you see, which the individuals have signed, they have named the union agent as their agent to bring their lawsuit, all in accordance with section (b) of the law. There has been no violation of any description. They have done that following the procedure that we have advised them to follow.

When I say "we," I as an individual attorney have advised my clients that that is the procedure that can be followed, and, for reasons which I will indicate in a moment, should be followed. That is why you will find union officials named as parties plaintiff, but they are so named as agents of the individual employees who have executed the authorizations that the lawsuit be started in their behalf. * * *

One of the reasons we had in mind in suggesting to these individuals that they start their lawsuits and do it through the officials of the union was in an endeavor to correlate the work so we would have it in some degree of control. I personally know of some situations where the local unions of the international organization decided that they would not start lawsuits, or would not even tell their members of what this whole thing is about. Bedlam and chaos has broken out in the union because a local attorney, representing some rival organization, has actually gone in there and not merely started lawsuits but has used it as a battering ram for breaking up the local union and getting it to secede, and getting it into another union. That has occurred in case after case, and I know personally where it has occurred in Ohio.

It was to avoid that situation in an effort to correlate this work that our union stepped into it in the way which I have described. I might add to you that in the steel industry, for example, sir, the officials of that organization advised the steel organizations that that was our intent, namely, to correlate this work to see to it that chaos did not develop in the local plants. We did that rather than to use it as some sort of club to destroy the American economy, it was an endeavor to straighten out a situation which stems not from something that we created but something that stems from decisions of the United States Supreme Court. * * *

In the hearings appears, as an exhibit to testimony of Senator Homer Capehart, of Indiana, a partial list of suits filed under section 16 of the Fair Labor Standards Act, as follows:

EXHIBIT A.—*Partial list of suits filed under sec. 16 of the Fair Labor Standards Act*

Company and location	Union	Employees	Amount
Allied Chemical & Dye Corp., Buffalo, N. Y.	United Mine Workers (AFL)		
American Smelting & Refining Co. (14 plants)	International Union of Mine, Mill and Smelter Workers (CIO).		$25,000,000
E. I. du Pont de Nemours Co., Inc., Kentucky	Rubber Workers		7,000,000
Carnegie-Illinois Steel Corp. (10 plants)	United Steel Workers of America (CIO).		90,000,000
National Tube Co. (4 plants)	do		30,000,000
Tennessee Coal, Iron & R. R. Co	do		5,000,000
American Steel Foundries			3,000,000
General American Transportation Corp	United Steel Workers of America (CIO).		13,600,000
Allegheny-Ludlum Steel Corp., Brackenridge and West Leechburg, Pa.	do		16,000,000
Allis-Chalmers Manufacturing Co., Norwood, Ohio.	United Electrical, Radio and Machine Workers (CIO).	2,200	2,000,000
American Liberty Oil Co., Texas City, Tex	International Union of Mine, Mill and Smelter Workers (CIO).	150	350,000
American Radiator & Standard Sanitary Corp., Litchfield, Ill.	do	455	4,000,000
American Steel & Wire Co	United Steel Workers of America (CIO).	30,000	38,000,000
American Zinc & Chemical Co., Langeloth, Pa.	International Union of Mine, Mill and Smelter Workers (CIO).	800	1,600,000
Bethlehem Steel Co. and Bethlehem-Hingham Shipyard, Inc.		70,000	50,000,000

EXHIBIT A.—*Partial list of suits filed under sec. 16 of the Fair Labor Standards Act*—Continued

Company and location	Union	Employees	Amount
Briggs Manufacturing Co., Detroit, Mich	United Automobile Workers (CIO).		$18,000,000
Buckeye Steel Castings Co	United Steel Workers (CIO)	1,300	2,000,000
Chase Brass & Copper Co	International Association of Machinists.		20,000,000
Chicago Pneumatic Tool Co., Cleveland, Ohio	do	1,400	6,000,000
Cleveland Graphite Bronze Co	United Automobile Workers (CIO).	6,500	2,000,000
Crown Central Petroleum Corp., Houston, Tex.	International Union of Mine, Mill and Smelter Workers (CIO).	130	325,000
Elwell Parker Electric Co	United Electrical, Radio and Machine Workers (CIO).	400	600,000
Ford Motor Co., Willow Run bomber plant	United Automobile Workers (CIO).	300,000	(Millions)
Formica Insulation Co	United Electrical, Radio and Machine Workers of America (CIO).	1,200	1,900,000
General American Transportation Corp	United Steelworkers (CIO)		13,600,000+
General Conveyor Co., Detroit, Mich	do		600,000
General Motors Corp., Chevrolet division, Flint, Mich.	United Automobile Workers (CIO).	12,000	2,000,000
General Motors Corp., New Departure division.	do		16,250,000
Houston Pipe Line Co., Houston, Tex	International Union of Mine Mill, and Smelter Workers (CIO).	67	245,000
Inland Steel Co	United Steelworkers of America (CIO).		62,000,000
International Conveyor & Washer Corp	United Steel Workers		200,000
International Harvester Co	United Farm Equipment and Metal Workers Union (CIO).	35,000	50,000,000
International Nickel Co., Huntington, W. Va.	United Mine Workers, District 50 (AFL).	2,000	3,000,000+
Jarvis B. Webb Co	United Steel Workers (CIO)		400,000
J. H. Day Co	United Electrical, Radio and Machine Workers of America (CIO).	275	600,000
Jones & Laughlin Steel Corp., Aliquippa, Pa., and Cleveland, Ohio.	United Steel Workers of America (CIO).	19,000	37,400,000
Lufkin Rule Co., Saginaw, Mich	United Automobile Workers (CIO).		818,000
Mount Clemens Pottery Co	United Pottery Workers (CIO)	1,200	2,000,000
National Biscuit Co	Bakery and Confectionery Workers International Union (AFL).	28,000	25,000,000
Ohio Crankshaft Co	United Automobile Workers (CIO).		12,500,000
Oliver Corp., South Bend, Ind., and Charles City, Iowa.	United Farm Equipment and Metal Workers Union (CIO).	2,000	6,000,000
Pan American Gas Co., Houston, Tex	International Union of Mine, Mill and Smelter Workers (CIO).	8	13,600
Pan American Pipe Line Co., Houston, Tex	do	90	267,000
Pan American Refining Corp., Texas City, Tex.	do	1,200	3,500,000
Park Drop Forge Co., Cleveland, Ohio	United Automobile Workers (CIO).	560	5,000,000
Philadelphia (Pa.) bakeries (51 firms)	Bakery and Confectionery Workers (AFL).	5,000	10,000,000
Pipe Machinery Co	International Association of Machinists.		3,000,000
Republic Oil Refining Co., Texas City, Tex	International Union of Mine, Mill and Smelter Workers (CIO).	450	2,000,000
Republic Steel Corp	United Steel Workers (CIO)	57,000	56,000,000
Service Conveyor Co	do		60,000
Sheffield Steel Corp	do		1,000,000
Standard Oil Co. of Ohio	Oil Workers International Union		22,000,000
Stockholm Pipe Fittings Co	United Steel Workers (CIO)	198	500,000
Texas Mining & Smelting Co., Laredo, Tex	International Union of Mine, Mill and Smelter Workers (CIO).		540,000
United States Rubber Co., Detroit, Mich	United Rubber Workers (CIO)	7,000	
Universal Atlas Cement Co	International Union of Mine, Mill and Smelter Workers (CIO).	300	600,000
Van Dorn Iron Works Co., Cleveland, Ohio			1,000,000
Western Electric Co	Western Electric Employees Association.	30,000	25,000,000
Youngstown Sheet & Tube Co., The	United Steel Workers of America		42,000,000
Allis-Chalmers Manufacturing Co., La Porte, Ind., and Springfield, Ill.	Farm Equipment Workers (CIO)	3,400	11,000,000
American Brake Shoe Co., Chicago Heights, Ill.	United Steelworkers	269	16,400,000
American Hair & Felt Co., Newark, N. J		291	600,000

EXHIBIT A.—*Partial list of suits filed under sec. 16 of the Fair Labor Standards Act*—Continued

Company and location	Union	Employees	Amount
Armour & Co., Boston, Mass	Packinghouse Workers Union (CIO).		$120,000
Atlas Powder Co., Giant, Calif	Mine, Mill and Smelter Workers (CIO).		200,000
Bethlehem Steel Co	United Steelworkers of America (CIO).	13,000	200,000,000
B. F. Goodrich Co., Akron, Ohio		15,000	23,625,000
Boston Sausage & Provision Co	Packinghouse Workers Union (CIO).		250,000
Briggs Manufacturing Co. (second suit)	United Automobile Workers (CIO).		10,000,000
Campbell Soup Co., Camden, N. J	Food, Tobacco, Agricultural and Allied Workers (CIO).	5,500	46,000,000
Catalin Corp. of America		410	1,000,000
Caterpillar Tractor Co., Peoria, Ill	United Farm Equipment Workers (CIO).	1,365	15,000,000
Cheseborough Manufacturing Co			
Chicago Screw Co	United Automobile Workers (CIO).	1,500	4,000,000
Chrysler Corp., Detroit, Mich	do		71,540,000
Colonial Provision Co., Boston, Mass	Packinghouse Workers Union (CIO).		120,000
Curtiss-Wright Airplane Corp	Employees		29,000,000
Darling & Co	do	570	
Dravo Corp	do		20,000,000
Ford Motor Co., Detroit, Mich	United Automobile Workers (CIO).		190,000,000
General Electric Co	United Electrical, Radio, and Machine Workers of America (CIO).		1,000,000+
General Motors Corp.:			
Detroit Gear and Axle Plant	United Automobile Workers (CIO).	8,500	17,000,000
Electromotive Diesel Engine Division	do	7,500	30,000,000
Detroit, Mich	do		143,120,000
Linden, N. J		41	200,000
Glenn L. Martin Aircraft Co	Employees		
Granity City Steel Co	United Steel Workers of America (CIO).		12,000,000
Great Lakes Steel Corp	United Automobile Workers (CIO).	10,000	20,000,000
Hegeler Zinc Co		805	1,000,000
Houdaille-Hershey Corp., Oakes North Chicago Division.	do	500	4,000,000
Kelsey-Hayes Wheel Co	do	500	4,000,000
Lehigh Foundries, Inc	United Steelworkers of America (CIO).		2,000,000
M. M. Mades Co., Inc., Somerville, Mass	United Packinghouse Workers (CIO).		50,000
N. E. Provision Co., Boston, Mass	do		120,000
New York Shipbuilding Corp., Camden, N. J	Industrial Union of Marine and Shipbuilding Workers (CIO).		
Omaha Packing Co., Boston, Mass	United Packinghouse Workers Union (CIO).		50,000
Ore Refraction Co., Inc., Pittsburgh, Pa	United Electrical, Radio and Machine Workers of America (CIO).		120,000
Perfection Gear Co., Harvey, Ill	United Steelworkers of America	187	1,000,000
Phelps Dodge Corp. and Phelps Dodge Refining Corp.	International Union of Mine, Mill and Smelter Workers (CIO).		5,000,000
Portable Products Corp., Pittsburgh, Pa	United Electrical, Radio and Machine Workers of America (CIO).		60,000
Remington Rand, Inc:	Employees		6,000,000
Revere Copper & Brass, Inc., and Rome Manufacturing Co. (a subsidiary).	United Electrical, Radio and Machine Workers of America (CIO).		1,350,000
Rockwell Manufacturing Co	Employees		6,000,000
Royal Typewriter Co	United Electrical, Radio and Machine Workers of America (CIO).		12,000,000
Spaulding Bakery, Norristown, Pa	Bakery and Confectionery Workers' Union (AFL).		1,000,000
Stackpole Carbon Co	United Electrical, Radio and Machine Workers of America (CIO).		600,000
Standard Oil Co. of New Jersey	Independent Petroleum Workers		
W. A. Jones Foundry & Machine Co	United Auto Workers (CIO)		4,000,000
Wolverine Tube Co	do	900	1,000,000

EXHIBIT A.—*Partial list of suits filed under sec. 16 of the Fair Labor Standards Act*—Continued

Company and location	Union	Employees	Amount
Youngstown Sheet & Tube Co., The, Youngstown, Ohio.	United Steelworkers of America (CIO).	15,000	$30,000,000
Struthers & Campbell plants			
Wright Aeronautical Corp.	United Auto Workers (CIO)		52,650,000
Trailmobile Co.	do		1,468,000
Ford Motor Co., Louisville, Ky.	do		5,775,000
American Can Co.			
Cawbrook Steel Casting Co.	United Steelworkers of America (CIO).		300,000
General Electric Co., Jackson, Miss.	International Brotherhood of Electrical Workers.	300	750,000
Federal Shipbuilding & Drydock Co., Newark, N. J.	Industrial Union of Marine and Shipbuilding Workers (CIO).		250,000,000
Goodyear Aircraft Corp., Akron, Ohio			28,500,000
Bell Aircraft Corp.		248	2,480,000
Sherwin-Williams Paint			
General Chemical			
Addressograph-Multigraph Corp.			20,000,000
Aluminum Co. of America, Cleveland, Ohio			4,000,000

Commenting upon said exhibit, Senator Capehart stated:

May I say that this is only a small number of the suits that have been filed. My attention yesterday was called to the fact that in Chicago the unions are filing suits against companies on mimeographed forms, merely filling in the names of the corporations that they are suing. In other words, this thing has taken on the aspects of a wholesale business. In Illinois they are literally filing dozens and dozens of cases each day.

We observe, finally, that we have found no evidence that any of the material distributed by union leaders herein mentioned has contained any comment or statement (a) informing the membership that in the Mount Clemens case the Supreme Court, immediately following its language reading "Thus we remand the case for the determination of the amount of walking time involved and the amount of preliminary activities performed," used the following language, namely, "giving due consideration to the de minimis doctrine and calculating the resulting damages under the act" or (b) indicating to the membership that the application of a de minimis rule was not precluded by the Supreme Court where the minimum walking time is such as to be negligible, that the Supreme Court stated that the de minimis rule can doubtless be applied to much of the walking time involved in the Mount Clemens case or that said court pointed out that in connection with the preliminary activities mentioned by the court which the employees pursued after arriving at their places of work it is appropriate to apply a de minimis doctrine.

III

EFFECT OF PORTAL-TO-PORTAL ACTIONS

A. EFFECT UPON COMPANIES BEING SUED

1. By institution of the suits

(a) Impairment of financial position

It was brought out during the course of the hearings that some of the pending suits brought by employees for portal-to-portal pay ask for amounts which are so large that they exceed in some instances the working capital of firms being sued and in other instances the net worth of firms being sued.

For example, Mr. Hook, president of the American Rolling Mill Co., testified that in the steel industry, pending portal-to-portal suits at the time of his testimony totaled an estimated $1,000,000,000. This is, he stated—

> a considerably larger amount than the amount of cash which the entire industry has on hand and in banks. At the end of 1945 the cash position of the combined industry was less than $700,000,000. One billion dollars is a larger amount than the entire net earnings of all companies in the steel industry for the 5 years 1942 to 1946, inclusive.

From testimony of Howard I. Young, president of American Zinc, Lead & Smelting Co., we understand that (a) portal-to-portal suits previously filed against his company total $7,279,872 and (b) this sum is considerably in excess of the company's net working capital as of the end of November 1946, to wit, $6,600,000.

From testimony, including that of representatives of the War and Navy Departments and the Department of Commerce the committee is of the opinion that, regardless of the outcome of such actions, the credit position of companies being sued is or may be adversely affected.

The following is an excerpt from the testimony of Eugene E. Wilson, chairman of the board of governors, Aircraft Industries Association:

> I am really here today to present to this committee the industry's conviction that unless there is really some prompt action in Congress to relieve the threat of disaster that is posed by portal-to-portal pay suits that our industry just really faces destruction.

Your committee has had called to its attention two instances, mentioned by Senator Baldwin, of Connecticut, of what happened in his State merely by institution of suit. After stating that it may well be that other States have the same situation he wrote:

> In Connecticut, when a suit is instituted in the State courts, a writ of attachment is issued by virtue of which the sheriff can make attachment on the property or funds of the defendant. In two instances in Connecticut—that is, suits against the Allison Co. of Bridgeport, and the Seymour Manufacturing Co. of Seymour—attachments were made which very seriously affected the company's business. One company had to close its doors and the other had to borrow money to meet its pay roll because its funds in the bank were under attachment. This illustrates the serious effect upon employment generally that such suits may have unless some remedial action is immediately forthcoming.

Reference to these two instances was also made by witnesses who testified.

Furthermore, we should not underestimate the effect, particularly upon those in industry who are subjected to these pending suits, of the uncertainty which is created by reason of the possibility that ultimate judicial determination of the portal-to-portal problem may take a great many years.

(*b*) *Retarding future programs including expansion plans*

Certain testimony relates to the effect of the pending suits upon future plans of industry. In this connection, attention is invited to the statement of Mr. Hook, president of American Rolling Mill Co., as follows:

> * * * we have under construction and under way, under authority of our Board of Directors, improvements and things of that kind—which amount to $58,432,810, and against that program we have still to spend $36,236,121. Well

now, with the possibility of liability overhanging our heads for an indeterminate amount which may reach $60,000,000 or what not, we have got to seriously stop, look, and listen and think of what we are going to do about that, Senator, at our next board meeting. * * *

We conclude that the uncertainties created by the pending suits retard future planning essential to the maintenance of national prosperity.

(c) *Burden on management in preserving and examining employment records—Costly and wasteful*

In its opinion in the Mount Clemens case the Supreme Court commented, with reference to a situation where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes, as follows:

> * * * an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work, as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result may be only approximate.

A requirement of this nature imposes upon the employer the duty of reviewing all employment records in which may be contained entries concerning employees who have brought portal-to-portal actions. In our opinion, the employer, in many cases did not anticipate, and could not reasonably have anticipated, that such entries in his records would be needed.

It is our understanding that, pursuant to the record-keeping requirements of section 11 (c) of the act, the Wage-Hour Administrator has issued regulations making it incumbent upon employers to preserve basic pay-roll records for 4 years. Some, however, of the more detailed records must be kept for but 2 years. Thus, some of the records, upon which certain claims in some of the pending suits are based, possibly may no longer be in existence.

Attention is directed to the form of interrogatory, which form was included in material to which reference is above made, sent by the national office of the steelworkers' union to its district directors. That this form of interrogatory was used is evidenced in material submitted by Robert T. Caldwell, general counsel, Associated Industries of Kentucky, including what purports to be a copy of a complaint, in the case of *Robb et al.* v. *Henry Vogt Machine Co.*, filed in the United States District Court for the Louisville Division of the Western District of Kentucky. There was attached to said copy of this complaint an "Interrogatory," from which we quote, as follows:

> Give for each employee named in Schedule A (2) attached to the Complaint for each week subsequent to October 24, 1938, and down to the date of this Complaint, the job classification, the scheduled starting and quitting times, the total number of hours for which compensation was paid, the regular hourly rate, the number of hours compensated at overtime rates, the number of hours shown on the time card between punching in and punching out.[2]

[2] This language is identical with the language of the form suggested by the national office of the steelworkers union. See p. 62 of the hearings.

The various difficulties thus occasioned to the employer, in view of the requirements that he produce information of the nature requested in the interrogatory, might best be pointed out by illustrations from testimony and correspondence. Thus, in a letter appearing in the appendix of the hearings, which letter is dated January 24, 1947, from Bryan, Cave, McPheeters & McRoberts, attorneys at law, St. Louis, Mo., the following-quoted appears:

> As you undoubtedly know, the form of petition used in most of the suits brought by the CIO has attached to it an interrogatory which calls upon the company to prepare from its records and furnish to the plaintiffs certain information needed by the plaintiffs to support the allegations of their petition and to prove, in part, their cases. The Comptroller of one of our clients has made an estimate of the work which would be involved in, and the cost to the company of, answering this interrogatory with respect to the approximately 1500 names of employees listed in the petition. He estimates that the company would have to examine 4,333,500 separate time tickets, clock cards, and other payroll records, that this task would require 235,521 hours of accounting and clerical work, that it would require a staff of 100 people in excess of one year to accumulate and report the detailed information requested, and that it would cost approximately $295,000 in wages alone. While the petition in question covers only approximately 1500 employees, this particular company, during a substantial part of the period covered by the suit, had more than 10,000 employees, so that the potential cost of answering this one interrogatory, if all eligible employees should join in the suit, would be far in excess of the estimate of $295,000.
>
> This is cited as an illustration of the prohibitive expense to which the defendants in these suits will be put merely for the purpose of supplying the plaintiffs with information needed to prosecute their claims. The additional cost to the defendants of preparing these cases for trial, regardless of the ultimate outcome, will be staggering.

Mr. Iserman, an attorney for the Chrysler Corp., testified that the Dodge Plant in Detroit has 500 departments, distributed through about 80 buildings; that during the last 6 years, a majority of its employees worked in at least two, and in thousands of cases four or five, different departments; that each employee's "walking time" in each department differed from what it was in the others; and that during the same 6 years, each employee has earned at least three different rates of pay, and in most instances, because of promotions and transfers, he has earned four or five different rates of pay.

From the testimony of Mr. Iserman we understand that the Chrysler Corp. has found that clerical work involved in preparing for trial and calculating the company's alleged liability for each employee was nearly $100 per employee.

Some of the difficulties in responding to such an interrogatory are brought out in the testimony of Mr. Caldwell. He pointed out that the employer's records may fail completely to reflect the activities of an employee for which compensation is sought. Thus, attention is directed by Mr. Caldwell to—

> the general custom in the steel industry [which] permits its employees, for their own convenience, to punch the clock and enter the plant an unnecessary period of time before their shift is due to start. In this particular company, many of the employees voluntarily enter as much as 50 minutes to 1 hour before work time, whereas the maximum possible walking time and "make ready" time for the same employee might be not over 5 to 15 minutes * * *. However, the only evidence which the employer has or can have is the time clock record.

Another case, testified to by Mr. Waterhouse, is that of a Connecticut firm with 18,000 or more workers. These workers have been transferred—

from job to job, department to department, and machine to machine in such numbers that it is practically impossible to compute the walking and waiting time for each individual as required by the recent Supreme Court decision.

It is evident from the testimony that a bona fide dispute may exist as to what is the amount of time consumed by the employees in the activities involved in the portal-to-portal pay suits. Whether or not in such cases the act permits compromise settlements is in our opinion debatable. See *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697 (1945).

2: Effect upon companies sued, if suits are successful

We have above considered the effect that the mere institution of an action has upon a company which is sued. We next consider the effect of such suits, assuming they are successfully prosecuted by the employee.

Certain testimony of Mr. Wilson, chairman of the Board of Governors, Aircraft Industries Association, is summarized as follows:

Pending suits against the 12 largest aircraft companies now total $461,000,000. These exceed the net current assets of these companies which are $366,365,000. The net worth of these companies is $423,000,000. From forty-fourth place in 1939 on the list of the American industries, the aircraft industry skyrocketed into first place during the war. Employment increased from 48,639 in 1939 to 1,250,000 in 1944. If those engaged in subcontracting work are also counted, the total in 1944 would approximate 2,000,000 people. At the present time, total employment in the industry is approximately 200,000. Total claims for portal-to-portal pay are, however, potentially those of wartime employment rather than the present employment. During the war the profits of the industry were closely supervised by the Government. Earnings in 1944 approximated $57,000,000 on total sales of around $576,000,000. With 7 of the 12 companies reporting losses for all or a substantial portion of 1946, earnings have practically reached the vanishing point. During the war a voluntary renegotiation policy was introduced by the United Aircraft Corp. The industry has no reserves, it "cannot assume any new liabilities, whatever they may be." New developments, if of a speculative nature, are abandoned.

In this connection, Mr. Wilson directed particular attention to the relationship of the aircraft industry to our national security and national defense. He also pointed to the unfairness of these pending suits in that the greater the production by the company, which production was necessitated and occasioned by the war, the greater the potential liability.

Pending suits against the lumber industry of the Pacific Northwest afford another example. With a potential liability of $175,000,000 involving over 1,000 companies, it was asserted by James P. Rogers, executive secretary of Western Woods Employers, that it would be a bankrupting proceeding. His organization represents substantially all the Douglas fir and western pine industry of the Pacific Northwest, comprising about one-third of the Nation's lumber production.

Attention is directed to the following quoted portion of the testimony of Mr. Rogers:

In addition, if we had to go to an eight-hour day, and assuming that we could survive these suits, the loss to the lumber production in the Pacific Northwest would be approximately 2 billion feet less logs each year if we had to go on an eight-hour day, camp-to-camp, as we call it, and that would be a loss of about 95,000 houses that would not be built in the United States that will be built under the present system.

Certain testimony of Julian D. Conover, secretary, American Mining Congress, may be summarized as set forth, after this sentence, in this paragraph. During the war, the mining industry was required to exploit whatever resources were at hand in aid of the war effort. The industry was required to abandon substantially all plans for new exploration and development. Consequently, we are now confronted with a serious depletion of our natural resources in the United States. Indeed, from a "have" nation we have become a "have not" nation. Should the pending portal-to-portal claims against the mining industry prevail, the result, among other things, would be a complete stoppage in exploration and development which are necessary both in war and peace, in the national interest, if we are to remain free from reliance upon foreign markets as a source of supply. Moreover, since these claims threaten to bankrupt the mining industry, they threaten also the communities in which many of the companies operate. If these are closed down whole communities which depend entirely upon the mining industry would be adversely affected.

During the course of the hearings, it appeared from the testimony that in furtherance of internal security requirements at war plants, there were certain regulations issued by the War Department. These regulations required, in effect, among other things, that there be suitable fencing provided around each manufacturing and explosive-storage area. Pamphlet No. 32–2, dated September 1, 1943, entitled "Internal Security Inspection" with respect to "prevention of unauthorized entry to facility," states in part as follows:

Facilities engaged in war work of highest importance should be completely enclosed by a man-proof fence. * * * The number of gates should be kept at a minimum * * *.

Obviously the requirement that the number of gates should be kept at a minimum would, if it had any effect whatever, result in increasing the amount of necessary walking time of some employees. Mr. Sanborn, who was engaged in plant protection for the War Department during a portion of the war, testified (referring to possibly 100 examinations which he made of plants in Wisconsin, Illinois, and Michigan between April 1942 and January 1943) as follows:

Senator DONNELL. Of these 100 plants, what proportion, if you are able to recall, during April 1942 to 1943 were reduced by reason of this fencing, the number of entrances to the plant from what it had been prior to the installation of the fences to which you refer?

Mr. SANBORN. That is a hard one.

Senator DONNELL. Of course, you could not remember exactly, but could you tell us whether it was reduced to half, two-thirds, or one-fourth, or what?

Mr. SANBORN. I would say that one out of three plants probably reduced at least one to two exits, depending on the size of the plant, of course. * * *

Mr. Sanborn further testified as follows:

Senator DONNELL. Here is a plant which prior to the putting in of the fencing around it had, we will say, half a dozen entrances to which employees could come in and go to start their work at their machinery. After the installation of the fencing, what proportion of the plants, as nearly as you can recall, reduced the

number of entrances from the half dozen, we will say, which they had into the plant originally to a smaller number of entrances into the fence?

Mr. SANBORN. I change my ratio to say at least half of them.

Senator DONNELL. In other words, you think that in at least half of the plants the number of entrances through the fence that was thrown around the plant was less than the number of entrances which the employees had been previously permitted to enter into the plant itself?

Mr. SANBORN. Yes, sir.

It seems clear that many companies will ultimately have, insofar as concerns their liability, if such exists, for portal-to-portal pay, a right of recourse against the United States Government. This alleviation will, however, not extend to subcontractors, except by way of tax credit in some cases.

Thousands of concerns, located not only in the larger cities but in the smaller cities, towns, and villages, throughout the Nation engaged in subcontracting in furnishing materials to the Government during the war and it is reasonable to assume that many of them may be sued upon the portal-to-portal claims. The vast number of subcontractors is graphically indicated in the testimony of Brig. Gen. Maurice Hirsch, Chairman, War Contracts Price Adjustment Board. He stated that he knows of one instance where one contractor had over 25,000 subcontractors, scattered widely. He mentioned also that one small contractor had 2,200 subcontractors and "the prime contract did not amount to more than $3,000,000, I think."

Many subcontractors may not secure complete reimbursement from portal-to-portal liability, if established against them, since many of them may not be entitled to any of the tax credits allowable by the Internal Revenue Bureau and, as to those who obtain the benefit of such tax credits, the said tax credits may not exceed 60 percent of such liability. The widespread ramifications of this liability further indicate the tremendously wide scope of injury to the Nation, including the employees of such of said subcontractors as may not be able to expand or in some instances may be bankrupted, the merchants with whom the employees deal in their respective localities and the farmers and other persons or industries who or which produce food or other products for such employees.

In each of the 1,913 suits now pending and in each of the future suits which may be filed against any others of the estimated 557,030 establishments which are subject to the Fair Labor Standards Act, it is obvious that judgments rendered against the employer would adversely affect him, the extent depending upon the varying degree of the financial stability of the employer and the amount of the judgment.

B. EFFECT ON SMALL BUSINESS—BOTH OF THE INSTITUTION OF SUITS AND SUCCESSFUL PROSECUTION OF SUITS

In discussing implications of the portal-to-portal problem, its effect on small business merits exceedingly careful study and attention. In testifying in behalf of the National Small Business Men's Association, Arthur W. Kimball placed in the record a statement made by H. B. McCoy, of the Department of Commerce, before the Senate Small Business Committee in 1942. Mr. McCoy stated that in 1939, enterprises accounting for 97 percent of the total number of

manufacturing establishments employing not more than 250 workers each, furnished jobs to 48 percent of all workers in the country and accounted for 47 percent of the value of all production in manufacturing.

Great numbers of small enterprises participated in war production and during the war extended their operations far in excess of those in which they engaged in peacetime. It is common knowledge that many of these companies have now returned to their normal peacetime volume. Inasmuch, however, as the portal-to-portal liability asserted against them would be based in part on abnormally large operations engaged in during the war, the resultant claims against these companies would be out of all proportion to their probable present peacetime capacity to pay.

Attention in this connection is directed to the above-mentioned report, dated January 20, 1947, of a subcommittee of the Business Advisory Council, Department of Commerce. The report has the following to say:

> The problems faced by industrial concerns, of course, vary widely. Some small companies extended their employment vastly to engage in war work. Shrunk to prewar size, payrolls, and resources, it is utterly impossible for these small concerns to meet the retroactive wage claims made against them. It is even impossible for them to hire enough clerical workers to examine the old time cards and determine their potential liability. It is said on good authority that in the Northwest lumber industry only three concerns would remain solvent if presently filed claims became payable.

Subcontracting was in considerable part engaged in during the war by small concerns. Mr. Wilson, of the Aircraft Industries, stated that the Army Air Forces estimated that more than 12,000 subcontractors worked on AAF contracts alone. General Hirsch stated that—

> our thumbtacks of concerns engaged in the war effort literally covered the country. * * * They were in every city and town of any consequence and a tremendous number of villages, running into many thousands.

The testimony of both Mr. Caldwell and Mr. Rogers included references to or examples of small companies that had been sued for portal-to-portal pay.

C. EFFECT OF THE PENDING SUITS ON THE FEDERAL GOVERNMENT

During the course of the hearings, witnesses testified with reference to the effect on the Federal Government of the portal-to-portal claims. This effect follows, in part, from the facts that (*a*) a great many employers will, if required to pay these claims, be eligible to receive tax rebates, and (*b*) certain employers who were war contractors will be entitled to reimbursement from the Government in the full amount of any such claims as they may be required to pay. In addition to such reimbursement, other claims, for which there is, at present, no legal liability on the Government, might be asserted by former war contractors against the Government, and payment of such claims might be sought through congressional action. In any event, where judgments are rendered against them, and in many other instances, numerous employers may reasonably be expected to turn for relief to the Internal Revenue Bureau. Contractors who had cost-plus-a-fixed-fee contracts (or, in some instances, other types of contracts)

with the Government may reasonably be expected to turn for relief to the Government agencies with which they had such contracts.

From the testimony of the Under Secretary of War Kenneth Royall and the Assistant Secretary of the Navy W. John Kenney we conclude that claims (other than for tax credit) based upon legal liability of the Government are, with possibly minor exceptions, limited primarily to cost-plus-a-fixed-fee contracts and, to an extent impossible to determine presently, fixed-price contracts with escalation clauses, but that in addition, in connection with contracts which may be taken into consideration in renegotiation not yet closed, other than cost-plus-a-fixed-fee contracts and fixed-price contracts with escalation clauses, contractors may be entitled to have reduced by the amount of their portal-to-portal liability the sums which would otherwise be recoverable by the Government on renegotiation with said contractors.

Cost-plus-a-fixed-fee contracts entered into with the War Department total between $40,000,000,000 and $45,000,000,000. Estimating that about $11,000,000,000, or 25 percent, of the total amount represents the cost of direct labor, Under Secretary Royall agreed that the maximum liability on the part of the Government, based on such contracts, would be between approximately $1,210,000,000 and $1,430,000,000, though he stated that "We do not think it will amount to that * * *" He also testified "* * * we think that the amount of claims asserted against the War Department will probably exceed $300,000,000 as a total and may reach $400,000,000 to $500,000,000 on the cost-plus-fixed-fee contracts." We understand from the testimony of Under Secretary Royall that there have been asserted against the War Department, by cost-plus-fixed-fee contractors, claims amounting to approximately $200,000,000 as of January 21, 1947. In letter, dated February 14, 1947, from Under Secretary Royall to the chairman of the subcommittee of this committee, occurs the following:

> When I testified before your Subcommittee I stated that claims had been asserted against War Department cost-plus-a-fixed-fee contractors in this class of case in the approximate amount of $200,000,000. When I subsequently testified before a Subcommittee of the House Committee on the Judiciary I stated that that figure of reported claims had increased to approximately $280,000,000, further indicating the practical impossibility of attempting to give actual figures. Evaluating the situation as best we can, however, I stated that it seemed reasonable to conclude that the amount of these claims asserted against cost-type contractors might reach $400 to $500,000,000. In the past few days, and as of February 12, thirty newly reported cases of the type considered herein have increased the amount claimed in this type of case to an amount now in excess of $600,000,000.

From testimony of W. John Kenney, Assistant Secretary of the Navy, we understand that the aggregate total, for the war period, of cost-plus-fixed-fee contracts of the Navy Department represent a total expenditure of approximately $18,000,000,000, and that there exists a potential liability of $720,000,000 on the Navy Department under this type of contract.

From the testimony of Mr. Kenney we understand that the Navy Department also had fixed-price contracts totaling something in the neighborhood of $50,000,000,000. He doubted if the fixed-price contracts which contained escalation clauses exceeded $5,000,000,000. In subsequent letter Mr. Kenney expressed the view that it is ex-

tremely doubtful whether under some of the forms of escalation provisions which were extensively used a contractor would be entitled to recover on portal-to-portal liability. From Mr. Kenney's testimony we understand that if the fixed-price contracts which contained such escalation clauses as would entitle a contractor to recover on portal-to-portal liability aggregated as much as $4,000,000,000, the potential liability of the Navy Department for portal-to-portal pay on said $4,000,000,000 of fixed-price contracts would be about $180,000,000.

Mr. Kenney discussed also the field of terminated contracts of the Navy Department and pointed out that only a small percentage of said terminated contracts have not been settled "so that very little liability is represented in this field."

The testimony of Mr. Kenney also is to the effect that as of January 15, 1947, cases numbering 16,693 aggregating $50,875,000,000 of renegotiable gross sales had been assigned to the Navy Department for the determination of possible excessive profits under the Renegotiation Act, and of said number of cases 16,175 had been finally disposed of by the Navy Department of which cases so disposed of 69 were pending in The Tax Court; 518 cases, aggregating an estimated $6,821,843,000 of renegotiable gross sales, of the 16,693, had not been completed in the Navy Department as of January 21, 1947. Mr. Kenney stated that in a few of these 518 cases the contractor has raised the question as to possible liability for portal-to-portal pay. Mr. Kenney further states that even here it is doubtful if complete recovery can be afforded to the contractor. The committee does not have sufficient information to enable it to estimate the amount, if any, of liability of the Navy Department for portal-to-portal pay in these 518 cases.

The subcommittee of this committee was informed by Mr. Kenney, under date of February 11, 1947, that the Navy Department had already received notice of the filing of portal-to-portal claims from contractors totaling $170,454,000, "including many representative actions which set forth only the minimum $3,000 prayer for jurisdictional purposes."

In connection with the potential liability of the United States Maritime Commission on account of portal-to-portal claims which may be established against employers with whom said Commission had war contracts, the following quoted is the body of a letter of February 5, 1947, from Mr. W. W. Smith, Chairman of the United States Maritime Commission, to the chairman of said last-mentioned subcommittee:

> In connection with the consideration which is being given to several bills relating to portal-to-portal pay claims by the Subcommittee of the Senate Judiciary Committee you have requested that the Maritime Commission furnish information concerning the effect of such claims on its activities. Effort has been made to determine or estimate the potential liability of the Commission on these portal-to-portal claims. The difficulty of determining this liability with any reasonable degree of accuracy became more and more apparent as the matter was studied.
>
> To give any fair estimate would probably involve an examination of each contract and the employment practices of each contractor. Even then, the assumptions and conjectures that would have to be made, such as, for example, the number of persons who might file suit, the amount of compensable time involved, the application of the de minimus doctrine, etc., would virtually preclude the establishment of a basis for arriving at an estimate of potential liability with any assurance of accuracy. Any estimate that might be made would be nothing more than an informative guess.

Liability would doubtless arise to the greatest extent under the Commission's ship construction contracts. To a lesser degree liability would be involved under ship repair contracts, stevedoring contracts, terminal contracts, and miscellaneous other contracts of a cost-plus-a-fixed-fee nature. As a rough estimate, potential liability under these contracts might fall somewhere between $50,000,000 and $150,000,000. These high and low figures represent, however, merely an informative guess and are exclusive of any administrative expense that would undoubtedly be imposed on the Commission in connection with determining liability to employees and making reimbursements in the event of liability. These figures are also exclusive of attorneys' fees both for the plaintiffs, as provided by the Fair Labor Standards Act, and for defense of the suits. These expenses would be tremendous.

Generally speaking, the same problems will confront the Commission as a result of the portal-to-portal pay claims as those concerning which the Subcommittee has already received testimony from other Government Departments.

Under Secretary Royall testified that—

* * * there would be very many situations where there was no legal right to reimbursement by the Government but where in fairness there ought to be an adjustment.

Under Secretary Royall also testified:

But I feel very strongly that there is a great equity in favor of a contractor who made a settlement or adjusted his price or entered into a negotiation without taking into account the portal-to-portal pay, because he did not know about it. I think there is great equity in his favor.

Attention is further directed to the following excerpt from the testimony of Under Secretary Royall:

Senator DONNELL. It is at least entirely possible, is it not, Mr. Secretary, that advocates of the respective contractors asserting moral liability might, in the first place, assert that they are entitled to a legal liability, and in the second place fall back upon the moral liability and assert such liability in a much larger sum indeed, than would be characterized by a legal liability?

Mr. ROYALL. Oh, yes, sir; I think that is true.

Senator DONNELL. Yes, sir. And you are not able, and I do not want to ask you to express an opinion if you are not, to state even approximately how many dollars of alleged moral liability would be asserted by contractors?

Mr. ROYALL. It would depend entirely on the standard of moral liability we fixed. If we took the renegotiation cases, the escalator-clause cases, the periodic-price-adjustment cases, it would be considerably less than that on portal-to-portal payments of 140 billion dollars' worth of contracts, but how much less I do not know because we have not made that analysis.

It would be foolish to make it until we knew what sort of a moral liability was to be permitted.

Senator DONNELL. And, Mr. Secretary, can you tell us approximately the entire amount of the first amount of contracts? Not the possible liability, but the first amount of the contracts comparable with the 40 to 45 billion figure of the total amount of contracts upon which the contracts might be asserted, in your judgment, to have either moral or legal liability which would exist on the part of the Government?

Mr. ROYALL. The total amount of supply contracts of the Government from 1941 to 1946, inclusive.

Senator DONNELL. This is just the War Department?

Mr. ROYALL. I mean the War Department. I am sorry.

Senator DONNELL. Yes, sir.

Mr. ROYALL. That is $132,000,000,000.

Senator DONNELL. $132,000,000,000?

Mr. ROYALL. And the total amount of the construction contracts of the War Department during that same period is something in excess of $11,000,000,000, making a total of between $143,000,000,000 and $144,000,000,000.

Senator DONNELL. Yes, sir.

Now, are there any contracts in any other category than those you have mentioned—namely, the cases aggregating $143,000,000,000. to $144,000,000,000—as to which, in your judgment, either a legal or moral liability might be reasonably asserted?

Mr. ROYALL. I think that would include them all, and of course, as to some of those, there might be no portal-to-portal pay at all.

Senator CAPEHART. This is, plus the 40 to 45 billion dollars?

Mr. ROYALL. No. The 40 to 45 billion is included in the 140 billion dollars.

Senator DONNELL. Yes, sir.

The following are excerpts from the testimony of Mr. Kenney:

Senator DONNELL. Yes, sir. Taking a case, however, of a contractor who has settled his contract and thus is legally without further remedy, but that it now develops that in fact his labor costs were 10 percent greater because of the portal-to-portal item, greater than he had anticipated, or the Government had anticipated, you and I would readily concede, at least from the standpoint of the contractor, that he has made a poor bargain in settling his contract and might have some moral claim?

Mr. KENNEY. I do not think there is any doubt of that, Mr. Chairman.

Senator DONNELL. That is to say, Congress would be easily justified in considering that even though the man be barred as a matter of law, that he might have some right to an equitable cause on the part of Congress in making an endeavor to give relief to him. You would agree with that, would you not?

Mr. KENNEY. I would agree with that view, Mr. Chairman, because there is no doubt that the contracts were settled on that basis, without regard to possible portal-to-portal pay liability.

* * * * * * *

Senator DONNELL. Yes, sir. And I take it you would agree, Mr. Secretary, that as to the contracts which have been renegotiated and finally disposed of, that Congress would be equally justified as in the case of the terminated contracts, with considering the moral phase, and that the contract under renegotiation cases would be, in general, the same as far as equitable considerations in favor of those contracts, as would exist in the case of the terminated contracts?

Mr. KENNEY. I am in complete agreement with that. There is no doubt that we have taken money back from those contractors without considering as an item of cost any possible liability for portal-to-portal pay.

Senator DONNELL. Yes, sir.

Mr. KENNEY. I would like to pass this word of caution: If Congress should adopt any such regulation, that it is not done in the form of a reopening of all renegotiation agreements. That would create a dreadful administrative burden.

Senator DONNELL. Yes, sir.

Mr. KENNEY. It might possibly be done by providing for an arbitrary adjustment in the same manner in which adjustment is provided in the act for accelerated amortization.

To indicate the extent of the possible liability of the Government, should recognition be given to moral claims, we refer to the testimony of Brigadier General Hirsch. He stated that gross renegotiation recoveries of all departments of the Government conducting renegotiations were $10,086,058,000 through December 31, 1946. He testified to the effect that since tax liability would have recovered approximately 70 percent of this, the net recoveries to the Government by renegotiation approximated $3,025,817,000.

General Hirsch further testified as follows:

General HIRSCH. * * * Now, we have no means of knowing to what extent that will apply across the board, but until we determine that, there is certainly a possibility that the portal-to-portal claims will completely eliminate, if you allow it to eliminate, the total amount of excessive profits that our activity has achieved during the whole course of the war.

Senator CAPEHART. In other words, this $3,000,000,000 that you have already saved for the taxpayers may be wiped out?

General HIRSCH. There is a possibility that that may be eliminated completely.

Senator CAPEHART. It may be completely eliminated?

General HIRSCH. Right.

From the testimony of General Hirsch we understand that 73.6 percent of the contracts assigned to the War Contracts Price Adjust-

ment Board were canceled or credited as showing no excessive profits and that some showed no profit. Attention is called to the following excerpt from the testimony of General Hirsch:

> We have found, apart from those who have paid in dollars for renegotiation—we have found a very substantial part of this 73.6 percent of the contractors who have had no refunds in renegotiation. The reason for their having no refunds, the reason being that they, looking closely at their costs, held their prices down on urging of the Government, and those contractors who are not among those who have paid dollars in even in renegotiation refunds, are the ones, in the event that any ultimate relief is granted, following up the idea presented by Senator Capehart as to the relative merits of the contractors, those are the ones who, above all, I personally feel, and I voice the sentiment of those in the War Contract Board, should be relieved.
>
> Senator CAPEHART. You mean the lump-sum contractors?
>
> General HIRSCH. All contractors who did not have excessive profits * * *.

General Hirsch's testimony shows that pending portal-to-portal pay suits are definitely hindering settlements, by renegotiation of pending open cases.

Based upon evidence of Government witnesses we understand that a nearly impossible administrative burden would devolve upon the Government if it were required to recompute renegotiated contracts.

Interminable problems would be presented, as for illustration in the case of the manufacturer who had produced both renegotiable and nonrenegotiable products. Of this situation, General Hirsch said:

> Now, in order to meticulously or even approximately come to any correct conclusion as to how you could allocate those rebates, I do not think you could find enough accountants and industrial experts in the United States to do the job. I just do not think it is possible to do it. * * *

General Hirsch also comments on the at present almost hopelessly overburdened situation in the Legal Section of the War Department and points out that from a practical standpoint those personnel cannot go into the merits of portal-to-portal cases. From the testimony of Colonel Brannon, who is now Procurement Judge Advocate, we understand that neither in the district attorneys' offices throughout the country, nor in the Washington office of the Department of Justice, is the personnel sufficient to handle hundreds of cases involving billions of dollars of portal-to-portal claims without utilizing the service of private counsel of defendants.

Attention is further called to the fact that Mr. Kenney, in a letter dated February 11, 1947, in referring to what he terms the tremendous expense and administrative burden which would be entailed in reassembling and reviewing pay-roll records and supporting data in order to compute the amount of recovery to be paid under the portal-to-portal doctrine, said:

> This expense, which would generally be reimbursable to the same extent as the actual recoveries made by employees, could well equal in many cases the aggregate of the portal-to-portal claims themselves.

The subject of potential tax losses, which the Treasury of the United States may suffer, from the payment of portal-to-portal claims asserted by employees, was discussed by John P. Wenchel, chief counsel, Bureau of Internal Revenue, and others in his office.

At the commencement of his testimony, Mr. Wenchel stated:

> My appearance before you is on behalf of the Bureau of Internal Revenue. My statement and remarks in relation to the matter of portal-to-portal wages,

you have under consideration will have to do briefly with the allowances, which must be made by way of deduction from the taxable incomes of taxpayers in respect of the amounts that are paid by them on account of retroactive wages and liquidated damages under the decision in the case of the Mt. Clemens Pottery Company in computing their Federal income and excess profits tax liabilities, and with a rough estimate of the impact this may have on the Federal revenues collected by the Bureau of Internal Revenue. The employers of the country have made many inquiries of us as to the taxable year or years for which the payments they make will be allowable by the Bureau as deductions in determining their tax liabilities.

With respect to the year or years to which deductions for portal-to-portal claims paid by employers may be attributed in determining the tax liabilities of such employers, Mr. Wenchel stated that in January 1947, the Bureau had made the following ruling:

> Taxpayers may be permitted to allocate the amounts of overtime pay and liquidated damages for prior taxable years necessitated by the decision in Anderson v. Mt. Clemens Pottery Co., supra. to the year or years in which the services to which such payments relate were rendered.

Selecting the manufacturing industries as "those primarily concerned with the pay adjustments under discussion," Mr. Wenchel gave estimates of the tax consequences of portal-to-portal payments upon three groups within the industries: (1) Those employers having no tax liability, (2) those employers with income tax liability only, (3) those employers with both income and excess profits tax liability. He stated that those in the first class, namely, employers having no tax liability—

> will not benefit tax wise from the added pay roll nor will the Government suffer any tax loss, except insofar as adjustments which may possibly be effective as carry-overs against possible profit in future years.

Testifying further, as to tax adjustments necessitated by portal-to-portal payments, he stated:

> By giving effect to the various tax rates and the distribution of employers among the three classes distinguished above, it is estimated that for each dollar of wage adjustment spread evenly over the open statute period 1943–1947, the overall tax consequence is 60 cents. Under the same circumstances the estimated tax consequence of each dollar of wage adjustment spread over the entire period to which the adjustments are applicable, 1938–1947, is 48 cents. If the entire wage adjustment is concentrated in 1947, the effect would be approximately 37 cents on each dollar.
>
> This estimate does not take into account prior effects of the present relief provisions relating to tax adjustments which have already been made or which will be made prior to the wage adjustments in respect to carry-backs, respread of amortization, and relief claims under section 722. Downward adjustments in tax resulting from these provisions will necessarily lower the effective rates of 60, 48, and 37 cents, respectively. It is not possible at this time to make an estimate in respect to this feature of the problem.
>
> The tax consequences relating to the employees due to the additional income received by them are in general 17 cents for each one dollar of wage adjustment.

The testimony of Mr. Wenchel leads the committee to the conclusion that tax adjustments by the Treasury will be necessitated in the cases of those employers, who pay portal-to-portal claims, and who cannot secure reimbursement from Government agencies, and that the tax loss to the Treasury in such cases will be offset only to the extent of additional taxes which employees may be required to pay on account of the receipt by them of portal-to-portal pay.

From the estimates of Mr. Wenchel, we think it reasonable to conclude that (*a*) the aggregate of employers who are permitted to spread over the years 1943–47 portal-to-portal claims paid by them

will recover from the Treasury, by way of adjustment on their tax liability, an over-all sum of 60 cents on each $1 of portal-to-portal claims paid by them, and (*b*) the aggregate of employees receiving such payments, if the entire payments should be made in the year 1947, will be required to pay, as income tax to the Treasury, 17 cents of each $1 received by them in portal-to-portal payments. In such a case, the net loss in tax adjustments to the Treasury would be 43 cents on each $1 of portal-to-portal payments.

From the testimony of Mr. Wenchel, it is the conclusion of the committee that employers who secure complete reimbursement from agencies of the Government for portal-to-portal claims paid by them to employees will not be able to recover refund or secure tax adjustment from the Treasury.

A graphic comment on the effect on the Federal Government of the portal-to-portal suits is contained in the report of the above-mentioned subcommittee of the Business Advisory Council, Department of Commerce, dated January 20, 1947, as follows:

> While the plight of the armed services and the Treasury is not a direct responsibility of industry, it is a matter of high concern to any citizen. The economic stability of the Nation is closely woven into fiscal policy, Government expenditures, and taxation. Even if a moderate percentage of potential portal-to-portal claims become payable, the tax revenues of the Federal Government would decline very sharply and appropriations would rise. This would occasion another substantial Federal deficit with its inflationary consequences. At a time when goods are still scarce and spending power is high, this could have disastrous results.

D. EFFECT OF THE PENDING SUITS UPON STATE AND LOCAL GOVERNMENTS

That the injurious impact of portal-to-portal claims on government will not be confined to the Federal Government but will also be felt by State and local governments throughout the Nation is clear. Successful prosecution of these suits by employees against employers can reasonably be expected to result in efforts by employers to secure, from some of the State and local governments, rebates of taxes previously paid on the basis of business expenses smaller than those actually incurred, in view of the additional liability adjudicated by these suits against the employers. Moreover, with the injury to various industries which would result from successful prosecution of portal-to-portal suits, might come the closing of business establishments with resulting decreases in taxes for the benefit of State and local governmental units. These governmental results are, of course, in addition to the general harmful economic results to the respective communities consequent upon financial stringency or the closing down of local industries.

E. EFFECT UPON LABOR-MANAGEMENT RELATIONS

Delay in the conclusion of collective-bargaining agreements will be likely to occur if the portal-to-portal principle is allowed to become established. If the portal-to-portal problem is not settled in the reasonably near future it is probable that large segments of industry will be operating on temporary extension of labor contract basis because the employer will be in poor position to negotiate specific matters with respect to wages and working conditions over the coming

year so long as there impends the threat of heavy portal-to-portal liabilities.

Delay, thus occasioned, may reasonably be expected to create dissatisfaction among employees culminating, possibly, in strikes and labor disturbances in addition to ill-will engendered on the part of the employees against the employers because of the fact that collective bargaining agreements will not have been effected. Moreover, a strong tendency toward the creation of ill-will on the part of the employers against the employees is likely to develop because of the insistence of employees upon the recognition of claims which the employers deem to be ill-founded. Ill-will on both sides may well impede negotiations and interfere with a friendly and harmonious settlement, by collective bargaining, of matters which normally could be agreed upon without difficulty. The consequent effect upon the public, arising from increased lack of harmony between employer and employee, is obvious.

It must also be remembered that these suits do not cover specific benefits for labor groups as a whole such as a general wage increase, but rather they go to the amounts claimed by each individual worker for his own "walking time," "make-ready time", "clean-up time," and so forth. Hence their disposition could involve countless individual judgments for amounts that will vary from worker to worker. The possibilities for dissatisfaction between employees in such a situation are very great. Those who receive amounts smaller than are received by their fellow workers are likely to be disgruntled in many instances. The net effect could well be very unsettling upon labor peace and productivity.

In such cases, if any, of portal-to-portal claims as may be legally susceptible of settlement through collective bargaining, it is difficult to conceive of the labor union being able to compute, with reasonable satisfaction to all employees, the respective participations of the several employees in the recoveries effected by the collective bargaining. In such cases, therefore, dissatisfaction among some employees whose claims shall have been adjusted by such bargaining is not unlikely and may reasonably be expected to foment unrest within the labor union itself.

Moreover, in such cases, if any, of portal-to-portal claims as may be legally susceptible of settlement through collective bargaining there may presently exist or arise in the future a very considerable temptation both to the employees and to their employer to negotiate, without litigation, if practicable or, if necessary, through litigation settlement with respect to such claims on the theory that the employer may (in view of his ability to recover either tax refund or complete reimbursement from the Federal Government on account of any sums he may pay in settlement of such claims) be able to effect a settlement with his employees at little or no expense to himself (the bill being paid either in great part or whole by the Government, i. e., the taxpayers), thereby enabling him to ingratiate himself, with little, if any, ultimate expense to himself, with his employees—perhaps in addition securing, as a part of the consideration of the settlement, a favorable labor contract with the employees.

The claim of employees to the ownership of rights of the portal-to-portal variety is a likely and fruitful source of champertous activity among those who, for expectation of financial profit to themselves, may

desire to stir up litigation between employee and employer. Not only is such a champertous tendency likely but, in addition, there is apt to exist a strong rivalry between labor unions, each striving to secure members by holding out the bait of the activities which the unions will put forth for the benefit of their respective members in the recovery of portal-to-portal sums. Up to this time it appears that the American Federation of Labor, for example, has taken very little affirmative action in the assertion of the portal-to-portal claims. If the portal-to-portal principle shall be permitted to prevail, it is logical to expect that in self-defense, and as a means of holding its own membership, the American Federation of Labor may be forced to enter into activities, in connection with portal-to-portal suits, such as those activities in which certain CIO affiliates have already been engaged. Thus it is that vast quantities of litigation, clogging the courts, creating strife among employer and employee and between employees themselves, as well as creating a condition of uncertainty as to the financial position of employers—thus discouraging expansion, development, and increasing employment—are likely results of a failure on the part of the Congress to enact legislation correcting the portal-to-portal situation.

IV

Action Should Be Taken by Congress in the Public Interest

Facts before the committee demonstrate conclusively that action should, in the public interest, be taken by Congress to remedy the portal-to-portal situation. The conditions which have developed by reason of pending portal-to-portal suits, and the consequences reasonably to be anticipated in the event Congress should not take action with respect to future accruing portal-to-portal liabilities, demonstrate conclusively that action should be promptly taken by Congress, both to cure the situation which has arisen from the previous filing of portal-to-portal suits and to prevent a repetition in the future of such an avalanche of unexpected claims being projected upon industry.

To summarize certain of the probable future consequences which would arise from inaction by Congress as to future accruing liabilities, attention is called to the fact that in the absence of action by Congress employers and employees would be (1) unable to determine, without extensive, expensive, and prolonged litigation to final judgment in a court of last resort, the amounts owing to employees for such activities hereafter engaged in by employees; and (2) in many cases unable to make voluntary settlement, compromise, release, or adjustment of claims of employees arising out of such activities. Further likely results of such inaction by Congress would be (*a*) the promotion of increasing demands for payment to employees, for engaging in other activities no compensation for which had been contemplated, by either the employer or employee at the time they were engaged in, to be paid; (*b*) the stirring up of champertous practices and congestion of courts; (*c*) extended and continuous uncertainty to be experienced by industry, both employer and employee, as to the financial condition of productive establishments, with consequent (1) halting of expansion and development and (2) retardation of employment; (*d*) the infliction of hampering restraints and restrictions on commerce and on the development thereof; (*e*) Nation-wide industrial conflict,

unrest, and disputes between employees and employers and between employees themselves; (*f*) inequality of competitive conditions between employers and between industries; and (*g*) serious and adverse effects upon the revenues of the Federal, State, and local governments—all with effects injurious to the national prosperity of the United States of America.

In addition to the foregoing, attention is directed to the facts that (*a*) the Fair Labor Standards Act of 1938 contains no limitation provision and (*b*) the State statutory periods of limitation vary (according, as is hereinafter pointed out, to the Wage and Hour and Public Contracts Divisions, United States Department of Labor) as of 1938, from 1 year to 12 years, and, as of 1945, from 6 months to 8 years. The committee believes that these varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, has given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The committee submits that facts and conditions hereinabove set forth constitute, and if permitted to continue will hereafter constitute, a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce, contrary to the purposes of the Fair Labor Standards Act of 1938; and that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce that said act be amended, and in part repealed, as set forth in S. 70, reported on February 24, 1947, to the United States Senate.

EFFECT OF FEBRUARY 8, 1947, DECISION OF JUDGE PICARD

We are mindful that, on February 8, 1947, Judge Picard, the United States district judge to whom the Mount Clemens case had been sent for retrial, dismissed the case. He found to be de minimis all the walking time and preliminary activities time consumed by the employees for which overtime compensation was sought under the act.

Judge Picard was, however, careful to point out that his dismissal of the Mount Clemens case should not "be understood as holding that all portal-to-portal suits should be dismissed." He further said:

> There may be, and perhaps are, many instances where walking and the preliminary activities time consumed is of such an amount as to call for compensation that the worker is not now receiving. But this is not one.

Judge Picard's decision is (1) limited to the facts of that case only and (2) not a final decision and doubtless will not be accepted as such but, in our judgment, will be taken to the Supreme Court.

Moreover, we understand from an Associated Press report in the Washington Sunday Star for February 9, 1947, that the United Automobile Workers' (CIO) attorney, Maurice Sugar, said the auto union would not withdraw any of its suits. Suits by this union alone reportedly total nearly $1,000,000,000. Mr. Sugar also was reported by the Associated Press to state that Judge Picard's decision "wouldn't necessarily apply to other cases."

Furthermore, attention is directed to a news item from the New York Times, Tuesday, February 11, 1947, which is as follows:

UAW SUES AGAIN DESPITE PORTAL BAN

[Special to the New York Times]

DETROIT, Feb. 10.—Despite the dismissal on Saturday by Judge Frank A. Picard in the Federal District Court of the portal-to-portal and make-ready pay claims of employes of the Mount Clemens Pottery Workers Union, the United Automobile Workers, CIO, charged back into the legal fray today with a suit demanding more than $200,000 on behalf of 148 members of Local 155 against the Vincent Steel Process Company, an automotive parts manufacturer.

In connection with the filing of the suit, Ernest Goodman, counsel for the UAW, said that the union took the position that the organization disagreed with the opinion of the judge who held that the time claims in the Mount Clemens were too trivial to recognize.

Union leaders still were silent, although Mr. Goodman said that the last of the suits had not yet been filed and that there would be a fresh wave as a result of the judge's decision.

Mr. Goodman said that "we disagree with some of the important aspects of the decision, particularly with reference to retroactivity."

"Judge Picard's decision," he added, "is inconsistent with the decision of the Supreme Court."

It is evident that an imperative need for legislation on this subject exists, notwithstanding the decision of the district judge in the Mount Clemens case.

PREVIOUS ACTION BY THE SUPREME COURT JUSTIFIES THE CONCLUSION THAT LEGISLATION CAN BE CONSTITUTIONALLY ENACTED TO PREVENT MAINTENANCE OR INSTITUTION OF THESE SUITS

Prevention of the accrual in the future of liability of the employer for pay under the act, based upon the portal-to-portal principle, is clearly within congressional power. Congress can at any time alter, amend, or repeal any provision that it may have enacted in the past.

As to the power of Congress over rights hitherto accrued, various considerations are of importance. In the first place, Congress clearly has power to alter, at will, procedural provisions of law even if by so doing it shall terminate rights previously accrued by virtue of such provisions. The judicial precedents for such authority include the cases of *Norris* v. *Crocker et al.*, 13 Howard 429 (1851) and *Ex parte McArdle*, 7 Wallace 506 (1868).

In the first-named case an action of debt had been brought under the penalty provisions of a statute "respecting fugitives from justice and persons escaping from the service of their masters." While this action was pending, the Congress repealed the penalty provisions. Thereafter, when the case came before the Supreme Court for its determination, the Supreme Court held such repeal of the penalty provisions to be a bar to the action.

In the McArdle case, while an appeal was pending before the Supreme Court on a petition for habeas corpus, Congress passed an act repealing the provisions of a statute which had conferred appellate jurisdiction upon the Supreme Court in habeas corpus cases. The Supreme Court, thereafter, dismissed the appeal for want of jurisdiction.

Furthermore, previous action of the Supreme Court of the United States justifies the conclusion that Congress has power to forbid (*a*) the maintenance of all portal-to-portal suits that are now pending in the courts and (*b*) the enforcement of any portal-to-portal claims which shall have accrued prior to the enactment of said legislation, in addition to those embraced in said suits. The existence of such

power is, under the previously mentioned action of the Supreme Court, not inconsistent with the fifth amendment to the Constitution of the United States, which requires that no person shall be deprived of property without due process of law. We do not, in this report, discuss the question as to whether rights which have already accrued to persons under the portal-to-portal principle constitute vested rights. Whether such accrued rights are vested or not, the Court's decision in *Norman* v. *Baltimore and Ohio Railway Company* (294 U. S. 240 (1935)) amply justifies the conclusion that the accrual of said rights is subject to and may be extinguished by action taken at this time by Congress under its commerce power and its power to legislate with respect to national defense. In the Norman case Chief Justice Hughes wrote:

> Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.
>
> * * * There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt.
>
> * * * The power of the Congress in regulating interstate commerce was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy.

In this connection attention is also called to the case of *National Carloading Corp.* v. *Phoenix-El Paso Express, Inc.* (142 Texas 141, 176 S. W. (2d) 564 (1943)), certiorari denied (322 U. S. 747 (1944)).

DETAILED EXPLANATION OF THE BILL

FINDINGS AND POLICY

Section 1 contains the findings and declaration of policy of the Congress on which the proposed legislation is based.

EXISTING CLAIMS

Section 2 relates to claims based on portal-to-portal activities accruing prior to the date of enactment of the bill. For the purposes of clarity, this report uses the term "scheduled work day" to mean that period between the commencement, by the employee, and the termination, by the employee, of activities which are compensable by contract. This section relieves an employer from liability or punishment under the Fair Labor Standards Act on account of the failure of such employer to pay an employee minimum wages, or overtime compensation, for activities of an employee engaged in prior to such date, if such activities took place outside of the hours of the employee's scheduled workday. Activities of an employee which took place during the scheduled workday are not affected by this section and such activities will continue to be compensable or not without regard to the provisions of this section. Activities which took place outside of the scheduled workday which were compensable pursuant to the terms of a contract are also not affected and such activities will continue to be compensable without regard to the provisions of this section.

This section does not attempt to define what constitutes work but limits that period (outside of the scheduled workday) during which activities are not to be considered compensable except by contract. The rule laid down is that activities which took place either prior to the time when such employee commenced, or subsequent to the time when such employee terminated, those activities for which the employer is required to pay him pursuant to contract are activities (which may be called portal-to-portal activities) which are not compensable except by contract. Walking to his lathe, workbench, reporting station for his assignment for the day, or to other particular work locations, is not to be considered an activity which is compensable under the Fair Labor Standards Act, unless compensable by contract. Nor is waiting time outside of the scheduled workday, such as waiting in line to receive pay checks, to be considered as a compensable activity, unless by contract. This section also relieves an employer from liability for travel time from the portal of a mine to its face unless such time is compensable by contract. Since the present collective bargaining contract of the United Mine Workers provides for compensation for such travel time, liability of the employer to pay for such time is not affected by this section.

Any activity occurring during a scheduled workday will continue to be compensable or not compensable in accordance with the existing provisions of the Fair Labor Standards Act. For example, if a rest period during that time is now considered a compensable activity under the act, it will remain so. If a timber worker who is employed to chop down trees finds it necessary during the scheduled workday to clear away underbrush in order to get at the trees to be felled the time spent in clearing away such underbrush will continue to be compensable or not compensable in accordance with the provisions of the Fair Labor Standards Act. If a lunch period during the scheduled workday is compensable or not compensable under the provisions of the Fair Labor Standards Act, it will continue to be compensable or not compensable in accordance with that act; and the same will be true as to waiting periods during a production break-down and to other waiting periods during the scheduled workday.

This section does not attempt to cover by specific language the many thousands of situations that do not readily fall within the pattern of the ordinary scheduled workday. To do this would be an impossible task and one that your committee believes to be unnecessary to attempt. The problem which has arisen from the portal-to-portal suits, will, in large measure, be met by the proposed bill.

Subsection (b) of this section provides that in determining whether an activity is compensable under a contract, it must first be determined whether it is expressly made so by the contract itself. If the contract does not expressly cover the situation, then the custom or practice at the establishment or other place in which the duties of the employee are performed is to be used in determining whether the activities in question are compensable; except that a custom or practice which is inconsistent with the terms of any such contract shall not be so used. This subsection also provides that in interpreting any such contract neither the Fair Labor Standards Act nor any judicial decision interpreting the act, or any part thereof, shall be deemed to be a term of such contract unless the contract itself expressly states that it is.

Subsection (c) of this section provides that if payment would, if not made pursuant to an interpretation or ruling of the Administrator of the Wage and Hour Division of the Department of Labor or

to a final judgment of a court of competent jurisdiction, constitute a practice or custom, the fact that such payment was made pursuant to such interpretation, ruling, or judgment shall not cause the payment to lose its character as a practice or custom. This subsection does not attempt to state what may or may not be a practice or custom. Neither does it attempt to state whether payment made pursuant to an interpretation or ruling of the Administrator or pursuant to a final judgment of a court may or may not constitute a practice or custom. It merely provides that such payment shall or shall not constitute a practice or custom irrespective of the fact that it was made pursuant to such an interpretation, ruling, or judgment.

Subsection (d) of this section declares to be null and void and unenforceable all claims existing on the date of enactment of this bill which are based on activities with respect to which an employer is relieved from liability or punishment.

EXISTING CLAIMS OTHER THAN PORTAL-TO-PORTAL CLAIMS

Section 3 of the bill is a saving provision which affirmatively provides that section 2 will not release or extinguish any penalty or liability incurred under the Fair Labor Standards Act of 1938 prior to the date of enactment of this bill which is based upon activities other than the portal-to-portal activities which section 2 provides shall not be a basis of liability or punishment under such act of 1938. Section 3 does not change in any manner the status of any claim.

SPECIAL SEPARABILITY PROVISIONS

Section 4 of the bill is designed to take away certain remedies and preferential treatment accorded employees or their representatives by the Fair Labor Standards Act of 1938 with respect to portal-to-portal claims which accrued prior to the date of enactment of the bill, if any claim barred under section 2 of the bill remains, for any reason, valid and enforceable after the date of enactment of the bill. In such case it is provided that—

(*a*) There shall be no recovery, with respect to any such claim, of any amount as liquidated damages.

(*b*) There shall be no right to bring or maintain any representative action with respect to any such claim by any agent or representative of employees. This prohibition does not apply to collective actions brought by an employee or employees (a real party in interest) for and in behalf of himself or themselves and other employees similarly situated.

(*c*) Every such claim with respect to which suit has not been brought on the date of enactment of the bill and which accrued prior to such date, shall be forever barred unless, within 90 days after such date, suit to enforce such claim is commenced in a court of competent jurisdiction. This provision is also applicable to claims which are included in a representative action which is banned by subsection (b). The employees in such latter base may file individual suits within such 90-day period or may join with other employees similarly situated and file a collective suit within such period. Any suit (individual or collective) filed within such period will be subject to the applicable State statute of limitations.

(*d*) No court shall require the defendant to pay the whole or any part of the attorney's fee of the plaintiff in any action on any such claim.

(*e*) The claimant is required to bear the burden of proof in any action on any such claim, which shall include proving the precise extent of such claim, without the benefit of inference. In this connection it will be recalled that in the Mount Clemens case the court says:

> When the employer has kept proper and accurate records the employee may easily discharge his burden by securing the production of those records. But where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes a more difficult problem arises. The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated by the Fair Labor Standards Act. In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate. (See note, 43 Col. L. Rev. 355.)

It is also prescribed in this subsection that the burden of going forward with the evidence of the precise amount of activities claimed by the employee to have been engaged in is, under no circumstances, to be shifted to the employer. This provision is necessary because in our opinion in the great majority of the pending portal-to-portal claims, the employer did not realize until the decision of the Supreme Court in the Mount Clemens case that portal-to-portal time of the kind in issue in that case was working time, and therefore, in the great majority of cases he did not keep records of such time. It is also prescribed in this subsection that if the employee fails to carry such burden of proof, the court shall award judgment to the employer. Nothing in this subsection prevents or limits any right of the plaintiff in any action on any such claim to subpena the books and records of the employer.

(*f*) Settlement, compromise, release, or satisfaction of any such claim before this bill becomes law shall be a defense thereto and any other appropriate legal or equitable defense may be pleaded in defense of such claim.

(*g*) All such accrued claims may be settled, compromised, released, or satisfied, after the date the bill becomes law.

FUTURE PORTAL-TO-PORTAL CLAIMS

Section 5 of the bill amends the Fair Labor Standards Act by inserting a new section after section 7 of the Act. This section lays down the same rule with respect to portal-to-portal claims arising on or after the bill becomes law as is laid down in section 2 of the bill with respect to portal-to-portal claims accruing prior to the day on which the bill becomes law. In general, time spent in the future by an

employee in activities engaged in before the commencement of and after the termination of his scheduled workday will not be compensable working time unless compensable by reason of a contract.

FUTURE REPRESENTATIVE ACTIONS BANNED

Section 6 of the bill amends section 16 (b) of the Fair Labor Standards Act by repealing the authority now contained therein permitting an employee or employees to designate an agent or representative to maintain an action for and in behalf of all employees similarly situated. Collective actions brought by an employee or employees (a real party in interest) for and in behalf of himself or themselves and other employees similarly situated may continue to be brought in accordance with the existing provisions of the Act. The amendment made by this section is to be applicable only with respect to claims which accrue on or after the date the bill becomes law. Representative actions which are pending on such date, if not banned by section 4 (b), are not affected.

STATUTE OF LIMITATIONS

Subsection (a) of section 7 of the bill amends the Fair Labor Standards Act by adding a new subsection to section 16 of that Act, setting up a 2-year statute of limitations with respect to claims accruing prior to or on or after the date when this bill becomes law.

Paragraph 2 of this subsection permits suit on any claim accruing prior to the date this bill becomes law, if it is commenced within 90 days after such date and if such claim is not barred, at the time of commencing suit, by any other statute of limitations. In other words, if a State statute of limitations, applicable to any such claim, has run, no action on such claim may be commenced within such 90-day period. If the State statute of limitations has not run, action may be so commenced within such 90 days. The following table shows the State statutes of limitation in the various States. It is a reproduction of page 92 in the Annual Report, Wage and Hour and Public Contracts Divisions, United States Department of Labor, 1946, submitted to Congress January 2, 1947:

TABLE H.—*Summary of State statutes of limitation believed applicable to suits under section 16 (b) of Fair Labor Standards Act*

State	Period of limitation (years)		State	Period of limitation (years)	
	As of 1938	As of 1945		As of 1938	As of 1945
Alabama [1]	6	1	Nebraska	4	4
Arizona	1	1	Nevada [1]	6	2
Arkansas	5	5	New Hampshire	6	6
California	3	3	New Jersey	6	6
Colorado [1]	6	1	New Mexico	4	4
Connecticut	3	3	New York	6	6
Delaware	3	3	North Carolina	3	3
District of Columbia	3	3	North Dakota [1]	6	1
Florida [1]	3	1	Ohio [1]	6	3
Georgia [1]	6	2	Oklahoma	3	3
Idaho	3	3	Oregon [1]	6	[2] ½
Illinois	5	5	Pennsylvania	6	6
Indiana	6	6	Rhode Island	6	6
Iowa [1]	5	2	South Carolina [1]	6	[3] 1
Kansas	3	3	South Dakota	6	6
Kentucky	5	5	Tennessee [1]	6	3
Louisiana	1	1	Texas	2	2
Maine	6	6	Utah	4	4
Maryland [1]	12	3	Vermont	6	6
Massachusetts	6	6	Virginia	3	3
Michigan	6	6	Washington	3	[4] 3
Minnesota [1]	6	2	West Virginia	5	5
Mississippi	3	[5] 3	Wisconsin	6	6
Missouri	5	5	Wyoming	8	8
Montana	2	2			

[1] Period reduced since 1938.

[2] 6-months statute of limitations held unconstitutional as applied to bar a suit for overtime pay and damages under the Fair Labor Standards Act by Oregon Supreme Court (*Fullerton* v. *Lamm et al.*, Nov. 20, 1945; 8 WHR 1175). Decision upheld by Ninth Circuit Court of Appeals (*Clarke Lumber Co.* v. *Kurth*, Dec. 6, 1945, 8 WHR 1214).

[3] State statute for 1-year period of limitation on filing of actions for wages claimed under Federal statute or regulation declared unconstitutional by Federal District Court of the Western District of South Carolina (*Davis et al.* v. *Rockton & Rion Railroad*, March 29, 1946, 9 WHR 343).

[4] Washington Supreme Court states that action under act is not governed by 3-year Washington statute of limitations applying to actions upon contract or actions upon statute for penalty or forfeiture, since such action is not based on liability created by contract and overtime compensation and liquidated damages are not a penalty. Action under act to recover overtime compensation, liquidated damages, and attorney's fees is based on liability created by statute since, in the absence of statute, there would be no obligation upon employer to pay such amounts. Therefore, suit is governed by 2-year "catch-all" statute governing actions not otherwise provided (*Cannon* v. *Miller et al.*; Jan. 26, 1945; 8 WHR 216).

[5] Mississippi 1-year statute of limitations for "all actions and suits for any penalty or forefeiture on any penal statute" held applicable to claim under act for liquidated damages for failure to pay overtime and other wages by the Mississippi Supreme Court, such damages being in the nature of a punishment without reference to the damage sustained by the employees by reason of delay in payment (*Southern Package Corp.* v. *Wilson*, June 6, 1944, 7 WHR 658).

Subsection (b) of this section excepts from the provisions of the amendment made by subsection (a) any claim based on activities which section 2 of the bill provides shall not be a basis of liability or punishment under the Fair Labor Standards Act. The statute of limitations with respect to such claims is contained in section 4 (c) of the bill and permits filing of suits on those claims for a period of 90 days only after the date the bill becomes law.

DEFINITIONS

Section 8 provides that the terms "person," "commerce," "employer," "employee," and "wage" shall have the same meaning as when used in the Fair Labor Standards Act of 1938.

REPEAL OF INCONSISTENT PROVISIONS

Section 9 repeals any provisions of the Fair Labor Standards Act of 1938 which are inconsistent with any provision contained in the bill.

SEPARABILITY CLAUSE

Section 10 contains the usual separability clause.

SHORT TITLE

Section 11 contains the short title "Portal-to-Portal Act of 1947."

The committee recommends that the title be amended to read: "A bill to amend the Fair Labor Standards Act of 1938, as amended, to repeal certain provisions thereof, and for other purposes."

C

PUBLIC ACT 77-1451.

EMPLOYMENT.

MINIMUM WAGE LAW—CREATES.

(House Bill No. 3. Approved September 6, 1971.)

AN ACT to provide for the establishment of a fair labor minimum wage in employments in the State of Illinois, and providing penalties for violations thereof.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act is known and may be cited as the "Minimum Wage Law".

§ 2. The General Assembly finds that the existence in industries, trades or business, or branches thereof, including offices, mercantile establishments and all other places of employment in the State of Illinois covered by this Act, of conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well-being of workers, leads to labor disputes, and places of burdens on the State, and all other subordinate political bodies thereof, to assist and supply necessary moneys and goods to workers and their families to aid them to exist on a minimum budget for their needs, and thus places an unnecessary burden on the taxpayers of this State. Therefore, it is the policy of this Act to establish a minimum wage standard for workers at a level consistent with their health, efficiency and general well-being; to safeguard such minimum wage against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and to sustain purchasing power and increase employment opportunities.

It is against public policy for an employer to pay his employees an amount less than that fixed by this Act. Payment of any amount less than herein fixed is an unreasonable and oppressive wage, and less than sufficient to meet the minimum cost of living necessary for health. Any contract, agreement or understanding for or in relation to such unreasonable and oppressive wage for any employment covered by this Act is void.

§ 3. As used in this Act:

(a) "Director" means the Director of the Department of Labor, and "Department" means the Department of Labor.

(b) "Wages" means compensation due to an employee by reason of his employment, including allowances determined by the Director in accordance with the provisions of this Act, for gratuities and, when furnished by the employer, for meals and lodging actually used by the employee.

(c) "Employer" includes any individual, partnership, association, corporation, business trust, governmental or quasi-governmental body, or

---

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons are gainfully employed on some day within a calendar year. An employer is subject to this Act in a calendar year on and after the first day in such calendar year in which he employs one or more persons, and for the following calendar year.

(d) "Employee" includes any individual permitted to work by an employer in an occupation, but does not include any individual permitted to work:

(1) For an employer employing fewer than five full-time employees;

(2) As an employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, (B) if such employee is the parent, spouse or child, or other member of the employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year, (D) if such employee (other than employee described in clause (C) of this subparagraph (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over 16 are paid on the same farm.

(3) In domestic service in or about a private home;

(4) As an outside salesman;

(5) As a member of a religious corporation or organization; or

(6) Any usher, candy counter attendant, ticket-taker and cashier employed by an establishment which is a motion picture theatre.

(7) Any employee who is covered under the provisions of the Fair Labor Standards Act of 1938, as heretofore or hereafter amended.

The above exclusions from the term "employee" may be further defined by regulations of the Director.

(e) "Occupation" means an industry, trade, business or class of work in which employees are gainfully employed.

(f) "Gratuities" means voluntary monetary contributions by an employee from a guest, patron or customer in connection with services rendered;

(g) "Outside salesman" means an employee, the major portion of whose work is performed away from a central place of business and the major portion of whose compensation consists of commissions on sales.

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

§ 4. (a) On and after January 1, 1972, every employer shall pay to each of his employees in every occupation, wages of not less than $1.40 per hour, or in the case of employees under 19 years of age wages of not less than $1.15 per hour, except as provided in Sections 5 and 6 of this Act. On and after January 1, 1973, every employer shall pay to each of his employees in every occupation, wages of not less than $1.60 per hour, or in the case of employees under 19 years of age wages of not less than $1.25 per hour, except as provided in Sections 5 and 6 of this Act.

(b) No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he pays wages to employees of the opposite sex for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on any other factor other than sex.

(c) Every employer of an employee engaged in an occupation in which gratuities have customarily and usually constituted and have been recognized as part of the remuneration for hire purposes is entitled to an allowance for gratuities as part of the hourly wage rate provided in Section 4, subsection (a) in an amount not to exceed 50% of the applicable minimum wage rate, provided the employee received in gratuities the amount claimed. The Director may require each employer desiring an allowance for gratuities to provide substantial evidence that the amount claimed, which may not exceed 50% of the applicable minimum wage rate, was received by the employee, and no part thereof was returned to the employer.

§ 5. The Director may provide by regulation for the employment in any occupation of individuals whose earning capacity is impaired by age, or physical or mental deficiency or injury at such wages lower than the minimum wage rate provided in Section 4, subsection (a), as he may find appropriate to prevent curtailment of opportunities for employment, to avoid undue hardship, and to safeguard the minimum wage rate of this Act, except that no person who maintains a production level within the limits required of other employees may be paid at less than the minimum wage. No employee shall be employed at wages fixed pursuant to this Section except under a special license issued under applicable regulations of the Director.

§ 6. (a) For any occupation, the Director may provide by regulation for the employment in that occupation of learners at such wages lower than the minimum wage provided in Section 4, subsection (a) as the Director may find appropriate to prevent curtailment of opportunities for employment and to safeguard the minimum wage rate of this Act.

(b) Where the Director has provided by regulation for the employment of learners, such regulations are subject to provisions hereinafter set forth and to such additional terms and conditions as may be established in sup-

---

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

plemental regulations applicable to the employment of learners in particular industries.

(c) In any occupation, every employer may pay a subminimum wage to learners during their period of learning. However, under no circumstances, except those provided in Section 4, subsection (a), may an employer pay a learner a wage less than $.90 per hour.

(d) No person is deemed a learner in any occupation for which he has completed the required training; and in no case may a person be deemed a learner in that occupation after 6 months of such training, except where the Director finds, after investigation, that for the particular occupation a minimum of proficiency cannot be acquired in 6 months.

§ 7. The Director or his authorized representatives have the authority to:

(a) Investigate and gather data regarding the wages, hours and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof) at reasonable times during regular business hours, not including lunch time at a restaurant, question such employees, and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of this Act.

(b) Require from any employer full and correct statements and reports in writing, including sworn statements, at such times as the Director may deem necessary, of the wages, hours, names, addresses, and other information pertaining to his employees as he may deem necessary for the enforcement of this Act.

§ 8. Every employer subject to any provision of this Act or of any order issued under this Act shall make and keep for a period of not less than 3 years, true and accurate records of the name, address and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each employee, the hours worked each day in each work week by each employee, end such other information and make such reports therefrom to the Director as the Director may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act or of the regulations thereunder. Such records shall be open for inspection or transcription by the Director or his authorized representative at any reasonable time as limited by paragraph (a) of Section 7 of this Act. Every employer shall furnish to the Director or his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the Director. Each worker employed at the learner rate must be designated as such on the payroll record kept by the employer, with the learner's occupation shown.

§ 9. Every employer subject to any provision of this Act or of any regulations issued under this Act shall keep a summary of this Act approved by the Director, and copies of any applicable regulations issued under this

---

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

Act or a summary of such regulations, posted in a conspicuous and accessible place in or about the premises wherever any person subject to this Act is employed. Employers shall be furnished copies of such summaries and regulations by the State on request without charge.

§ 10. (a) The Director shall make and revise administrative regulations, including definitions of terms, as he deems appropriate to carry out the purposes of this Act, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage established by the Act. Regulations governing employment of learners may be issued only after notice and opportunity for public hearing, as provided in subsection (c) of this Section.

(b) In order to prevent curtailment of opportunities for employment, avoid undue hardship, and safeguard the minimum wage rate under this Act, the Director may also issue regulations providing for the employment of handicapped workers at wages lower than the wage rate applicable under this Act, under permits and for such periods of time as specified therein; and providing for the employment of learners at wages lower than the wage rate applicable under this Act. However, such regulation shall not permit lower wages for the handicapped on any basis that is unrelated to such person's ability resulting from his handicap, and such regulation may be issued only after notice and opportunity for public hearing as provided in subsection (c) of this Section.

(c) Prior to the adoption, amendment or repeal of any rule or regulation by the Director under this Act, except regulations which concern only the internal management of the Department of Labor and do not affect any public right provided by this Act, the Director shall give proper notice to persons in any industry or occupation that may be affected by the proposed rule or regulation, and hold a public hearing on his proposed action at which any such affected person, or his duly authorized representative, may attend and testify or present other evidence for or against such proposed rule or regulation. Rules and regulations adopted under this Section shall be filed with the Secretary of State in compliance with "An Act concerning administrative rules", as now or hereafter amended. Such adopted and filed rules and regulations shall become effective 10 days after copies thereof have been mailed by the Department to persons in industries affected thereby at their last known address.

(d) The commencement of proceedings by any person aggrieved by an administrative regulation issued under this Act does not, unless specifically ordered by the Court, operate as a stay of that administrative regulation against other persons. The Court shall not grant any stay of an adninistrative* regulation unless the person complaining of such regulation files in the Court an undertaking with a surety or sureties satisfactory to the Court for the payment to the employees affected by the regulation, in the event such regulation is affirmed, of the amount by which the compensation such employees are entitled to receive under the regulation exceeds the compensation they actually receive while such stay is in effect.

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

*Probably should read "administrative."

§ 11. (a) Any employer or his agent, or the officer or agent of any private employer who:

(1) Hinders or delays the Director or his authorized representative in the performance of his duties in the enforcement of this Act; or

(2) Refuses to admit the Director or his authorized representative to any place of employment; or

(3) Fails to keep the records required under this Act or to furnish such records required or any information to be furnished under this Act to the Director or his authorized representative upon request; or

(4) Fails to make and preserve any records as required hereunder; or

(5) Falsifies any such record; or

(6) Refuses to make such records available to the Director or his authorized representative; or

(7) Refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this Act; or

(8) Fails to post a summary of this Act or a copy of any applicable regulation as required by Section 9 of this Act; shall be fined not less than $50, nor more than $200, and each day of such failure to keep the records required under this Act or to furnish such records or information to the Director or his authorized representative or to fail to post information as required herein constitutes a separate offense.

(b) Any employer or his agent, or the officer or agent of any private employer, who pays or agrees to pay to any employee wages at a rate less than the rate applicable under this Act or of any regulation issued under this Act is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $200, or by imprisonment of not less than 10 nor more than 90 days, or both such fine and imprisonment, and each week on any day of which such employee is paid less than the wage rate applicable under this Act constitutes a separate offense.

(c) Any employer or his agent, or the officer or agent of any private employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his employer, or to the Director or his authorized representative, that he has not been paid wages in accordance with the provisions of this Act, or because that employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this Act, or because that employee has testified or is about to testify in an investigation or proceeding under this Act, is guilty of a misdemeanor and upon conviction thereof, shall be fined not less than $50 nor more than $500.

(d) It is the duty of the Department of Labor to inquire diligently for any violations of this Act, and to institute the action for penalties herein provided, and to enforce generally the provisions of this Act.

§ 12. (a) If any employee is paid by his employer less than the wage to which he is entitled under the provisions of this Act, he may recover in a civil action the amount of any such underpayments together with costs and

---

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

such reasonable attorney's fees as may be allowed by the Court, and any agreement between him and his employer to work for less than such wage is no defense to such action.

(b) At the request of any employee paid less than the wage to which he is entitled under the provisions of this Act, the Director may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs.

§ 13. Any standards relating to minimum wages, maximum hours, overtime compensation or other working conditions in effect under any other law of this State on the effective date of this Act which are more favorable to employees than those applicable to such employees under this Act or the regulations issued hereunder, are not amended, rescinded, or otherwise affected by this Act but continue in full force and effect and may be enforced as provided by law unless and until they are specifically superseded by standards more favorable to such employees by operation of or in accordance with regulations issued under this Act.

§ 14. Nothing in this Act is deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards of the provisions of this Act.

§ 15. If any provision of this Act or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons, employers, occupations, or circumstances are not affected thereby.

Passed in the General Assembly June 30, 1971.

Approved September 6, 1971.

PUBLIC ACT 77-1452.

VENUE.

CHANGE OF VENUE—SETS LIMIT FOR TIME OF PRESENTATION—SECTIONS REPEALED.

(Senate Bill No. 159. Approved September 7, 1971.)

AN ACT to amend Sections 1, 3, and 8 of and to repeal Sections 6, 7 and 9 of "An Act to revise the law in relation to change of venue", approved March 25, 1874, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

JUN 14 1976

Doorkeeper: "All persons not entitled to the House floor, please retire to the gallery."

Speaker Redmond: "Second Special Session will come to order, Members please be in their seats. We will be lead in prayer by Reverend Kruegar, the House chaplain."

Reverend Kruegar: "In the name of the Father, the Son and the Holy Ghost. Amen. O Lord bless this House to Thy service this day. Amen. Let us again remember in our prayers those who are ill and especially for the continued recovery of Governor Daniel Walker, Representative John David Jones and Representative Peter Peters. Let us pray, All mighty God, our heavenly Father, we beseech Thee graciously to comfort Thy servants... Daniel, John and Peter, in their suffering and bless the means of they have used for their cure, fill their hearts with confidence that tho they sometime be afraid, they may yet put their trust in Thee and be restored to health of body and mind, through Jesus Christ Our Lord. Amen. Irving Harris, chief of the "Chotacho" tribe said, what have we got to celebrate, should we celebrate the broken treaties and broken promises, should we rejoice over slaughter of our people and the spoiling of our lakes and forests. Let us pray. O Lord, let us ever remember that in this vast society in which we live there are those who do not always agree with our ideas and our choices, yet good Lord do not let us ever be persuaded from the path that is pleasing to Thee and for the good of all Our children, so that all which we do here, in this House of Representatives may serve well... all the people when the record is written and graph within our hearts that perfect gift of charity which alone comes from Thee and is the greatest gift of all, through Jesus Christ Our Lord. Amen."

Speaker Redmond: "Roll Call for attendance. Representative Shea."

classification of minerals."

Leverenz: "Do you have any idea what type of revenue then, the Amendment would generate."

Schraeder: "Fifteen cents a ton on all minerals."

Leverenz: "Fifteen cents a ton, I think it's a very good Amendment. Thank you."

Speaker Redmond: "Representative Dunn."

Dunn: "I would like leave to take the Bill out of the record a little bit and perhaps I can talk to Representative Schraeder."

Speaker Redmond: "Any objections? Out of the record. 3318... 3318."

Clerk O'Brien: "House Bill 3318, a Bill for an Act to amend the Minimum Wage Law. Second Reading of the Bill, three Committee Amendments. Amendment #1, amends House Bill 3318, on page 3, line 16, by deleting 'January' and so forth."

Speaker Redmond: "Representative Hanahan."

Hanahan: "Mr. Speaker and Members of the House. Amendment #1, indicates the change in the date as the Bill is introduced, it was introduced with the intent of January 1st, 1976, a change in the rate of minimum wage would take place and we would change that until July, because January having passed and inspection to the Act this amendatory of 1976, takes affect upon becomming law and I move for the adoption of Amendment #1."

Speaker Redmond: "Any discussion? The question is on the Gentlemans motion to the adoption of Amendment #1, all in favor say 'aye', opposed 'no'. The 'ayes' have it and the Amendment is adopted. Any further Amendments?"

Clerk O'Brien: "Committee Amendment #2, amends House Bill 3318, on page 3, line 24, and so forth."

Speaker Redmond: "Representative Hanahan."

Hanahan: "Amendment #2, is at the request of both the motion

picture industry, the motion picture theaters that are not cover by the Federal Act, are now going to be covered under the State Act... under this Amendment and is at their request for following language that was put in and that the full time students over the age of 18, would be covered at the reduced fee of $1.95 cents an hour and that also, that the three provisions of coverage that are in the Federal Act for restaurant employees receiving one and one half times... or their rate of pay after... .forty -six hours for the hotel, motel industry... the custodial employees to receive time and a half after forty-four hour, up until next May 1, 1977. And, for the food service cafeteria workers to receive time and a half after forty-five hours until next May 1, 1977, which is in direct compliance with the Federal coverage and the Fair Standard Act of the Federal Law. I move for the adoption of Amendment #2."

Speaker Redmond: "Representative Madigan."

Madigan: "Will the Sponsor yield?"

Speaker Redmond: "He will."

Madigan: "Mr. Hanahan, how does this Bill affect governmental units?"

Hanahan: "That will be Amendment #3, where they are completely excluded."

Madigan: "Which unit will be excluded?"

Hanahan: "Any governmental body."

Madigan: "Would that mean a local governmental body?"

Hanahan: "Any governmental body."

Madigan: "What about a home rule unit, would they be excluded?"

Hanahan: "Any governmental body."

Madigan: "Thank you."

Speaker Redmond: "Representative Leinenweber."

Hanahan: "But, that's Amendment #3, Mr. Madigan. We didn't get that yet."

JUN 14 1976

Leinenweber: "I have a question for the Sponsor."

Speaker Redmond: "Proceed."

Leinenweber: "Representative Hanahan, if Amendment #2, was not adopted... what would a full time student employer of the motion picture theater would have to be paid, under your Bill? If we didn't adopt the Amendment, what would we..."

Hanahan: "If we didn't adopt the Amendment and the Bill passed into law, a full time student over the age of 18, would get $2.30 an hour."

Leinenweber: "So, this is a reduction.... this permits a theater to hire a full time student and pay less than..."

Hanahan: "Yes, because the uniqueness in the Federal Act, exempt full... movie theaters... motion picture theaters are totally exempt in the federal law and to get some sort of stability in the State law, we have... both the industry and myself meet and agreed that $1.95, would be a reasonable mimimum wage for a employee... a full time student employee."

Leinenweber: "All right, with reference to the second part of the Amendment, if we didn't adopt Amendment #2, employees in restaurants custodial employees in hotels and so forth, would they have to be paid, time and a half after forty hours?"

Hanahan: "Yes, they would. So, this Amendment brings into line... it's a reduction into line with the Federal Act, this makes it identical to those employers that are now covered in the Federal Fair Standard Act."

Leinenweber: "Thank you."

Speaker Redmond: "Representative Geo-Karis."

Geo-Karis: "Will the Sponsor yield to a question?"

Speaker Redmond: "He will."

Geo-Karis: "Tom, you said that the time and a half will be paid for people working forty-five hours, is that right? Until 1977?"

Hanahan: "For those in food service employment which is defined under the Federal Employment Act, as those working in cafeteria or restaurants that have no regular license, that is three or four other definitions to get in line with food service. They are considered different types of employees than those working in restaurants that serve liquor and those people under Fair Standard Act, the Federal Act, come under the forty-six hour work week."

Geo-Karis: "Now, but you said up till 1977, didn't you."

Hanahan: "Just for the food service..."

Geo-Karis: "What happens after..."

Hanahan: "Which is the same as the Federal..."

Geo-Karis: "All right now, what I would like..."

Hanahan: "They reduce down to forty hours a week, just like the Federal Act."

Geo-Karis: "As for 1977."

Hanahan: "May 1, 1977."

Geo-Karis: "And still only time..."

Hanahan: "Right."

Geo-Karis: "Okay, thank you."

Speaker Redmond: "Representative Grotberg."

Grotberg: "Yes, will the Sponsor yield?"

Speaker Redmond: "Says, he will."

Grotberg: "Representative Hanahan, what... you're the House expert on this whole thing and I must ask you again, I remember we went over this last year, Tom. What is the existing minimum hours before time and a half in the restaurant industry now?"

Hanahan: "Forty-six hours, right now. Exactly what this Amendment calls for, that is the Federal Act."

Grotberg: "And, that's the way it stands now?"

Hanahan: "That is the way it stands as of this date, yes."

Grotberg: "And..."

Hanahan: "But, not as when I introduced the Bill, May 1, there

was a change."

Grotberg: "I see, but if you have a liquor license..."

Hanahan: "If you have a liquor license, and you're serving food... the employees under the Federal Fair Standard Act, if you're covered under the provisions of a quarter million dollars and doing inner state business which most restaurants do, you would then have to pay time and a half after forty-six hours. That is the law... the Federal Law."

Grotberg: "With the liquor license, it's still forty-six?"

Hanahan: "Forty-six, without a liquor license then if you come unto the definition of food service employment, it come up forty-five hours, after forty-five hours you would have to pay time and a half."

Grotberg: "The whole industry is above forty hours, whether or not you have liquor?"

Hanahan: "Yes, up until May 1, 1977."

Grotberg: "Whether we adopt this or not?"

Hanahan: "Whether we adopt it or not, May 1, 1977... food service employees, hotel, motel employees, custodial employees come under the forty hour, time and a half law, Federal Act."

Grotberg: "All right..."

Hanahan: "I'm just giving a ten month, you know, compliance with the Federal Act with this Amendment."

Grotberg: "Okay, but either you've answered my question and I don't understand it or I haven't asked it correctly, Representative Hanahan. My question again is, are any restaurant employees under the forty hour week, now with or without liquor?"

Hanahan: "Are they under... I'm not getting..."

Grotberg: "The forty hour week.... In Illinois law, are any restaurants now at time and a half for everything over forty hours?"

Hanahan: "Yes, under the Federal Act."

Grotberg: "Under the Federal Act."

Hanahan: "Under the Federal Law, which covers every restaurant doing inner state commerce... every restaurant that does a quarter million dollars a year gross business, which almost every restaurant does, they would be covered right now with time and a half, after forty-five hours if they were food servers and forty-six hours if they were with liquor license and that the provisions of being classified as a restaurant."

Grotberg: "Well, does inner state commerce, is that... those change that you're talking about?"

Hanahan: "No."

Grotberg: "Restaurant change..."

Hanahan: "No, anyone that purchases liquor from another state or food or beef or anything across the stateline, any kind of linens or anything that crosses the stateline put it under the Federal provisions. There are very few restaurants that could claim under law a exemption from the federal standard."

Grotberg: "Okay, I'll come and talk to you after this Amendment. Thank you."

Hanahan: "Move for the adoption of this Amendment."

Speaker Redmond: "Representative Schraeder."

Schraeder: "Well, Mr. Speaker, let me say from the outset that I'm going to oppose the Amendment, and I'm going to oppose the Bill as well. And, I say it without any hesitation, I have been in the restaurant business for eleven years and for eleven years I have had a contract with no grievances filed or pending. And, now we're going to tell someone that has been in the labor market, have good employees, a good labor record in the industry and now, we're telling in this case, myself and any other ones in the business that we are going to force you to do something that the local unions haven't even requested

themselves. And, I say to you, somewhere along the line state government and federal government has got to cut off the hanky-panky and give business a chance to survive on their own rights. I have eleven employees and if we keep raising the prices mandatorily nor the workmens' comp., unemployment comp., minimum wage, health insurance, pension, you're going to drive small business out and believe me, after eleven years in business as a small businessman, serving the general public food, you're just about at that stage. Now, not kid yourselves if you're talking about giving employment then think about it, do you want people to have restaurants which as mine, with eleven or twelve employees to lose their rights to negotiate a contract and then be on the unemployment roll. I think now, I say let us business people that have good relations with the labor unions and call up local 329, and see what they think about this measure, I say this ought to be defeated."

Speaker Redmond: "Anything further? Representative Skinner."

Skinner: "Yes, Mr. Speaker, a question on the Hanahan, Unemployment Act of 1976, if the Gentleman would yield."

Speaker Redmond: "He indicate that he will."

Skinner: "How much will I have to pay my employees, as a State Representative?"

Hanahan: "I don't know, what employee are you talking about, are they cover under federal commerce or... you know you have to get into a definition of an employee, what type of work are they going to do..."

Skinner: "Somebody who will do filing for me, what is the minimum that I will be able to pay."

Hanahan: "I believe right now, it would be $2.30 an hour. That's an awful lot of money up in the Crystal Lake, I know a lot of people that would be standing in line to get a job for $2.30 an hour."

Skinner: "You're certainly correct."

JUN 14 1976

Speaker Redmond: "Representative Hanahan, to close."

Hanahan: "Mr. Speaker, and Members of the House. This is an Amendment that comes into compliance with the Federal Act, it certainly by far a reduction in what this Bill would call for if the Amendment was not adopted and I move for the adoption of Amendment #2, to House Bill 3318."

Speaker Redmond: "The Gentleman has moved for the adoption of the Amendment, all in favor indicate by voting 'aye', opposed vote 'no'. Have all voted who wished? Have all voted who wished? The Clerk will take the record. On this question there are 49 'ayes' and 35 'no', and the motion carries, the Amendment is adopted. Any further Amendments?"

Clerk O'Brien: "Amendment #3, amends House Bill 3318, on page 4, by deleting lines 25 through 34, and so forth."

Speaker Redmond: "Representative Hanahan."

Hanahan: "Mr. Speaker and Members of the House. This Amendment #3, would exempt any governmental body from coverage of the first standard provision of paying overtime provision for its employees. In most governmental bodies do either give compensatory time off or have a contract calling for specific amount of hours. It's view as a something that government should have, its employees covered by the strict forty hour week and I have no objection because the Federal Act which is in the courts, U.S. Supreme Court, is momentarily about to rule at least they have been trying to, for two years... on the applicability of time and a half for government bodies and we'll wait until the Federal Act is ruled on in the Supreme Court, before covering by a State Act. So, I move for the adoption of the exemption of any governmental body, by Amendment #3, to 3318."

Speaker Redmond: "Representative Leinenweber."

Leinenweber: "I have a question for the Sponsor."

Speaker Redmond: "Proceed."

Leinenweber: "Is it your contention that reason for the need of Amendment #3, is to insure that this Bill would Constitutional?"

Hanahan: "Yes, there's... no, not so much Constitutional but not in conflict with Federal Act. Right now, the Federal Fair Standard Act of the United States calls for in the Act, time and a half provisions for governmental bodies to pay its employees, except for policemen, which is rated at forty-eight hours and firemen which is rated at fifty-six hours. After those amount of hours those all of the governmental employees under the Federal Fair Standard Act, are to receive either time and a half in compensatory time off or time and a half in real wages. The munic pal legue in the United States went to court and the case is now before the United States Supreme Court, it has been there for a year and a half they have advocated their going to make the ruling any day now, but in the mean time so that we're not in contradiction of the federal standard, this Amendment is being offered to remove any government bodies from coverage. Once the Supreme Court rules and if they do rule in favor of the Constitutionality of the Federal Act, they would automatically cover all governmental bodies in the State of Illinois. So, it's is really not... it's a move question if they rule in favor but, if they rule against and I have this in the Act, then the State Act would take precedence."

Leinenweber: "Well, I don't understand how this could be held to be in conflict if we extend these rights to governmental employees, even though the Federal Act doesn't extend those rights, I don't see how you can say that it would be conflict, the reverse would be true, I could see but I how you can say that this would be in conflict."

Hanahan: "No, not in conflict... not in consert, in other words it would not be applicable to same types of employees and what I'm trying to do is bring the State minimum wage into a Fair Standard Act.... same as the Federal, we cover those employees that the federal government does not cover and if the Supreme Court rules that the Act is constitutional... all the governmental employees in Illinois will be covered, if the Supreme Court rules that they are covered or that the Federal Act does not Constitutional that would mean then that the State Act would be then... be act in the law of Illinois and would not in consert with what the Federal Law would be."

Leinenweber: "I have one more question, if we do not adopt Amendment #3, would our employees.... and I say our Legislative Assistance and so forth, would they be considered to be employees of the governmental body and be entitled to the time and a half."

Hanahan: "Right, those that are not working in their contractual services, yes."

Leinenweber: "All right, Mr. Speaker, I would like briefly to address Amendment #3. I thought what's sauce for the goose is sauce for the gander and if we're going to inflict these types of governmental controls over the employee and employer relationships and private industry, I don't see why we should exempt ourselves just because we feel that we're better off without it. I think as Representative Skinner, pointed out, this is not a good Bill to began with and if we're going to pass this type of Bill... I don't see, I think that this is another step which will down grade the Legislature in the eyes of the general public because we're not willing to saddle ourselves with the same type of regulations and interference in the contractual relationships

between individuals and employers, so I would urge a 'no' vote on Amendment #3."

Speaker Redmond: "Representative Dunn. John Dunn."

Dunn: "Thank you, Mr. Speaker, will the Sponsor yield for a question?"

Speaker Redmond: "He indicates he will."

Dunn: "Is this the Amendment that I have been receiving a lot of correspondance about with regard to fire fighters and payment of them for more than forty hour week, you know they customary work something like a fifty-six week and..."

Hanahan: "No, this is nothing to do with that... they're position on this, no... because the Federal Act even calls for fifty-six hours for them."

Dunn: "Okay, this does not affect..."

Hanahan: "I have not worked that out with the fire fighters of any but, what I'm doing here is... removing the governmental coverage on the time and a half provision waiting for the Supreme Court ruling and that will cover the fire fighters. I think they are more interested in that Supreme Court ruling."

Dunn: "Okay, this does not affect them in any way then."

Hanahan: "No."

Dunn: "Thank you."

Speaker Redmond: "Representative Schraeder."

Schraeder: "Mr. Speaker and Members of the House. I'm not going belabor this particular topic but, it seems to me we've got the greatest labor leader in the State of Illinois, here proposing an Amendment to hurt the employees that work for government... how can anyone who represents labor come back now and say that we should take out these people for even this one day... there is no reason for that, what is fair for the business community is fair for the government. There's no difference... they're people who are feeding their families

JUN 14 1976

and how the Representative who represents labor can come back now and say, since these people work for government... they're not entitled to these benefits. If this is the inconsistance... then I don't know what the word consistency means. If you're going to be for the guy in the shop and the factory and the office, you've got to be for all them, you don't take picks and you don't drop governmental employees. This is a terrible terrible Amendment... well, this is just a terrible Amendment."

Speaker Redmond: "Anything further? Representative Hanahan, to close."

Hanahan: "Well, Mr. Speaker and Members of the House. Very simply... the employees of the Legislature by an agreement of the Speaker of the House and the President of the Senate, I'm sure could easily extend the time and a half provision for our employees, if fact I encourage them to do so. Number 2, for governmental employees, I'm a long advocate of collective bargaining which would include, not time and a half minimum provision but double time in some cases where those who work overtime. I could just say this, that I am not advocating that governmental employees do not get time and a half... I'm saying that in order to have this Bill, to be in concert with the Federal provisions of the law as they are now applicable to governmental employees, this Amendment is necessary... once the Federal Supreme Court rules, I am sure that governmental employees will be covered by the Act... by the Federal Act and all State employees and cities and municipal employees and special district employees will be getting time and a half, minimum for compensatory... for compensation for overtime. Right now, the State Act does not need to get into that kind of bailiwick of debate of whether or not

a governmental employee should or should not get the time and a half provision and that is the reason why the Amendment is offered, it is offered in a realistic sense... that we don't have to get into this thicket until the Supreme Court rules and I urge an 'aye' vote on Amendment #3, to House Bill 3318."

Speaker Redmond: "The question is on the Gentlemans motion to adopt Amendment #3, those in favor vote 'aye', opposed vote 'no'. Have all voted who wished? Representative Skinner."

Skinner: "We're voting now on what will be known as the workmens' comp and unemployment comp Bill for this Session... this will have the same reaction when we get home that the other ones did and it is appropriate that Representative Hanahan, be sponsoring it. Now, for those of you who haven't heard him talk on Bills like this enough, you may not know what he is really saying, what he's really saying, is he's selling out local governmental employees. Workmens' comp would not have passed in the form that it did last year... had local government known how they would have really chaps put to them. A lot of them have found it out and a lot of them are in the unemployment... the uninsured risk pool this year and they're going to find out next year, that they are not going to be able to hire kids during the summer because they are going to have to pay to much to them. Well, if they are able to hire kids... they won't be able to hire enough. I would suggest that we ought to be voting 'no' on this Amendment, so that we can make all of the animals on the animal farm equal."

Speaker Redmond: "Have all voted who wished? The Clerk will take the record. On this question there are 69 'ayes' and 48 'no', the Gentlemans motion carried and

JUN 14 1976

the Amendment is adopted. Any further Amendments?"

Clerk O'Brien: "no further Amendments."

Speaker Redmond: "Third Reading. Representative Kozubowski."

Kozubowski: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House. On the Calendar under the order of concurrence appears House Bill 2435, being the chief Sponsor, I would move at this time for leave of the House to Table House Bill 2435."

Speaker Redmond: "Any objections? Hearing none, 2435, is Tabled. House Bill, order of Third Reading appears House Bill 3972, Representative Neff."

Clerk O'Brien: "What was the number?"

Speaker Redmond: "3972.

Clerk O'Brien: "House Bill 3972, a Bill for an Act to amend the Civil Administrative Code. Third Reading of the Bill."

Speaker Redmond: "Representative Neff."

Neff: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. House Bill 3972, will authorize I.D.O.T. to inter contract for intercity railroad passenger service and would validate any such contracts made before the Bill would become a law. As you folks know, the State Comptroller recently stopped payments made by D.O.T. for State subsidy, saying the D.O.T. lacks the proper authority to make contracts with Amtrak. Following this cutoff funds from Amtrak announced it would discontinue service from Chicago to Quincy, Champaign, Dubuque,, Iowa and St. Louis. On June 30th, if the State did not pay the subsidies owed them at this time. Now, there would also be two other subsidize routes that would be affected, the Rock Island Lines, Chicago to Peoria and Chicago to Quad Cities would also be affected if this Legislation is not approved. Now, this is something that we've heard discussed and read in the newspapers and it's a difference of opinion

JUN 16 1976

Doorkeeper: "All persons not entitled to House floor, please retire to the gallery."

Speaker Redmond: "House will come to order, Members please be in their seats. Be led in prayer by Reverend Krueger, the House Chaplain."

Reverend Krueger: "In the name of the Father, the Son and the Holy Ghost. Amen. O Lord bless this House to Thy service this day. Amen. Your prayers are requested for the continued improvement of Governor Daniel Walker and Representative John David Jones. Let us pray. O Heavenly Father watch with us we pray Thee over Thy sick servant Daniel and John David for whom our prayers are offered and grant that they may be restored to that perfect health which is Thine alone to give, through Jesus Christ Our Lord. Amen. Benjamin Franklin said many foxes grow brae but few grow good. Let us pray. Make us of quick and tender conscience O Lord that understanding we may obey every word of Thine this day and discerning may follow every suggestion of Thy indwelling Spirit for the good of this state and the people who live therein. Speak, Lord, so Thy servants may hear through Jesus Christ Our Lord. Amen."

Speaker Redmond: "Roll Call for attendance. House Bills Third Reading. Representative Washburn."

Washburn: "Thank you, Mr. Speaker, as the Chaplain indicated Representative Jones continues to be hospitalized, for the record."

Speaker Redmond: "Any objection to the...Representative Jones'... being excused because of illness? Hearing none the record will so show. House Bills Third Reading appears House Bill 1815. The question is, shall this Bill pass? All those in favor vote aye; opposed vote no. On this question 1 aye, 5 no, maybe we better take this one out of the record. ...Reduction veroes appears House Bill 3363, Representative Shea."

Shea: "Mr. Speaker, Ladies and Gentlemen of the House, House Bill 3363 was amendatorally vetoed by the Governor. This Bill originally left the House it was the additional expenses for the Comptroller's

JUN 16 1976

Mr. Collins here? Take it out of the record. Mr. Hanahan, for what purpose do you arise?"

Hanahan: "Yes, 3318, Mr. Speaker, you skipped it. You went from 3313 to 3322."

Speaker Shea: "Oh, I've got that marked 'held'."

Hanahan: "For who?"

Speaker Shea: "On the order of House Bills Third Reading appears House Bill 3318. Read the Bill."

Clerk O'Brien: "House Bill 3318. A Bill for an act to amend the minimum wage law. Third Reading of the Bill."

Speaker Shea: "For what purpose does the Gentleman from Cook, Mr. Walsh, seek recognition?"

Walsh: "For the purpose of finding out if you're calling things in the proper sequence, Mr. Speaker. We're on House Bills Third Reading and I'm looking for the expiration date of..."

Speaker Shea: "I'm calling them in numerical order starting with House Bill 1815 and going right down the list, Mr. Walsh."

Walsh: "All right. Then my observation, Mr. Speaker, that you've been calling them by expiration date, may I suggest that's a better way to call them because we're nearing the end of the Session.

Speaker Shea: "Well, I'm calling them right down the Calendar." Proceed, Mr. Hanahan."

Hanahan: "Mr. Speaker, Members of the House, House Bill 3318 is the catch-up minimum wage bill that had we not gotten into a constitutional question on whether or not the Amendatory Veto of the Governor had taken precedent and needed a three-fifths vote in the House and the Senate in order to change an effective date this Bill would not even be before this House because we have prior to this already passed this Bill and...in fact this Bill is just a makeup bill to catchup and make us even with federal laws that cover most employees in Illinois. Now we've passed a lot of bills in this House that was going to need a minimum wage increase in order for some of the constituents back home to pay the bills and pay the high interest rate that's going to take place if they ever need a mortgage. I could say that the Minimum Wage Law of Illinois, first of all, covers about 90,000

employers in Illinois and it affects about 200,000 employees that we're now going to say that in 19...July 1st 1976 that their rate of minimum pay would be $2.30 an hour; and for those under 18 years of it'll be a $1.95 an hour. We have a learner provision for training and that is a subminimum rate of a $1.50 an hour that by approval of the Department of Labor a employer can request that kind of allowance. In the tip credit we continue with the 50% credit for those employees such as cab drivers, waitresses, busboys and bellhops, those that would depend primarily on tip credit as being a primary part of their earnings that 50% of their earnings would be credited with tips. So that the minimum wage for that type of employee would really and truly be a $1.15 an hour as long as they were being tipped at the rate of at a $1.15 for the work period that they were covered by. In the areas of employment and time-and-a-half provisions to make our minimum wage law a fair standard act which is what the federal act is called we come into the overtime provisions and we make certain exceptions in the overtime provisions that time-and-a-half after 40 hours covers most people except for those outlined specifically in the Bill. Those would be governmental employees would be completely eliminated. Automobile, truck and farm implement salesmen and mechanics and salesmen of trailer boats of aircraft would be exempt and agriculture employees would be exempt from coverage of the overtime provisions. There'd be also some exemptions for the service...for the custodial employees and the personnel working in hotel-motel industries that would comply with the federal act of 46...44...45 hours this year and self destruct next May 1st. The same thing is true of those working in cafeteria type of employment. For those that are in the food service restaurant employment it would be 46 hours before they receive time-and-a-half for overtime. For those people working in the movie theatre industry and the motion picture industry it would be 45 hours before time-and-a-half takes place for their overtime. It's a good Bill. It's a Labor Bill. It's a Bill that labor is very proud to stand up for because it doesn't really affect our Members. No union members needs a minimum wage law for protection but we come before the

General Assembly with the idea that you, and only you, could protect those people who could be exploited by greedy employers that don't believe that in this day and age somebody deserves a minimum of $2.30 an hour. I seek a favorable vote. I think it's an important Bill to the many people back home that need your protection and the protection of this law."

Speaker Shea: "Are there questions? The...the question is, the Gentleman moves for the passage...House Bill 3318 on the question the Gentleman from Will, Mr. Leinenweber."

Leinenweber: "...Thank you, Mr. Speaker, Members of the House, once again I feel compelled to rise in opposition to this Bill knowing full and well that my words will be going unheeded. One of the previous speakers at Second Reading called this Bill the Hanahan Unemployment Act of 1976. I would suggest the gentleman hit the nail exactly on the head and that's exactly what this is going to do and I think it's probably only fitting and just that we did raise the unemployment rate...unemployment compensation rate last term. What you're doing, I don't know how many...how many of you get complaints from your...your constituents regarding the fact that they can't get jobs for their teenage sons and daughters and what you're doing, you're putting them right smack out of work and guaranteeing that next year there'll be even less jobs than there are this year. This is pure and simple price fixing. It doesn't work in the commodities field. It doesn't work in the money field and it sure doesn't work in the labor field. What you do is you just price the...those in the lower...lower echelons of the economic ladder right smack out of work. It creates unemployment, it does not create employment. It's a bad Bill and for the several...of time I think it should be defeated."

Speaker Shea: "The Gentleman from Stephenson, Mr. Brinkmeier."

Brinkmeier: "Yes, Mr. Speaker, would the Sponsor yield?"

Speaker Shea: "He indicates he will."

Brinkmeier: "Tom, I'm concerned agriculture workers, are they...how does this affect them?"

Hanahan: "In the overtime provision agriculture is exempt. There

is no coverage whatsoever for them. In the minimum wage agriculture has been covered by the state and federal minimum wage law and they are covered if they have 500 man days a year, let me get right to the...if there's more than 500 man days of...of agriculture in a year reduced to more than 250 man days per quarter, calendar quarter. So you're talking about a farm would not even have to pay the minimum wage of, and first of all the family is exempt, and if you had an average of four employees you would be exempt. That would be the break off on the farm. So it really doesn't affect the family farm."

Brinkmeier: "Okay. Thank you."

Speaker Shea: "The Gentleman from Lake, Mr. Griesheimer."

Griesheimer: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House, I think this is another strike at the small businessman in Illinos at a time we can least afford it. And I think it's worthy of our consideration that the Sponsor of this Bill most eloquently stated just a few minutes ago when we were considering the interest, the rolling interest rate for banks that the banks were the money grabbing people that was causing everything to go up in price. Well, I think the fact of the matter is is that there is a cause in this country today, almost a subversive cause, that is causing all of our prices to go right through the roof. And it is the unbelievable strong labor movement in this country. There is no end to the avarice of labor at the present time and what's even more interesting is that generally the people that are speaking for labor are speaking for those rich labor bosses who are putting away salaries considerably larger than our corporate officers. The average individual at the bottom end of the scale would be willing to work for $2.00 an hour just to have a job. The teenager who is at home who would very well be willing to work for $2.00 an hour in exchange for part-time work and those type of things are going to be cut out of their jobs because of this type of government direction. This is very bad law. If anything I could say it's basically anti-American law and will ultimately go to the destruction of our economic system. I think this Bill should be put down and put down

very soundly."

Speaker Shea: "Gentleman from Cook, Mr. Totten."

Totten: "Well, thank you, Mr. Speaker, Ladies and Gentlemen of the House, I couldn't concur with Representative Leinenweber and Griesheimer more. This...this Bill in its present form and of course most minimum wage bills does nothing more than provide really for a direct appropriation for the cost of welfare in the state of Illinois. These Bills will force unemployment, something which we're all concerned with and will force people out of jobs. Certainly it's not in the best interest of healthy economy in the state of Illinois as it is in no other state. And I believe that this Bill should receive a resounding no vote."

Speaker Shea: "The Gentleman from...DeKalb, Mr. Ebbesen."

Ebbesen: "Mr. Speaker, I move the previous question."

Speaker Shea: "The question is shall the main question be put. All those in favor will say aye; those opposed nay. In the opinion of the Chair the ayes have it. Mr. Hanahan to close."

Hanahan: "Well, Mr. Speaker, at $2.30 an hour I hardly consider that money grabbing or very...I'd say hungry because they probably can't afford to purchase proper food but certainly far from money hungry in comparison...in comparing this Bill with the greed of the money lenders. I could just say that for those workers, maybe some of the Members have overlooked the fact that those workers under 18 it is a reduced rate of a $1.95 an hour so that if that teenager wants work for $2.00 an hour it's fine with the law as proposed here in this Bill. The arguments that it's going to dry up the employment picture for people at the bottom of the economic ladder let me point out that that argument was used at 75¢ an hour, at a $1.10 an hour, a $1.60 an hour and at $2.00 an hour and at 2.30 an hour. It just isn't so. The fact remains that teenage employment, teenage employment at these rates a lot of offers are made. People can't afford to work at $2.30 an hour. We're talking about the bare minimum. I'm not advocating people should work at 2.30 an hour, I hope they get 5 and 6 and maybe even make as much as some Legislators and make 20,000 a year. But $2.30

an hour is far from money hungry minimum wages. This is a basic need bill of people who can't help themselves, their hope is with you and on your shoulders and at your desk rests their hope on... at least a $2.30 minimum wage and I ask for a favorable vote."

Speaker Shea: "The question is shall House Bill 3318 pass. All those in favor will vote aye; those opposed will vote nay. The Gentleman from Livingston, Mr. Ewing, to explain his vote."

Ewing: "Mr. Speaker, Ladies and Gentlemen of the House, in explaining my vote I would like to say that the argument put forth here about this drying up the jobs for the lower end I think has a great deal of merit. Each year this body struggles with ever increasing welfare costs and one of the reasons that we have more welfare is we have less jobs for the lower end of the scale because people can't afford to pay them and they only can get money from welfare. And I would ask for a yes vote on this. I think it's important I think it's...I'm sorry, a no vote. Well, I really wanted to ask for a yes vote 'cause I thought I'd get a lot of no votes. Thank you, Mr...."

Speaker Shea: "The Gentleman from Cook, Mr. Porter, to explain his vote."

Porter: "Well, just a minute ago, Mr. Speaker, Ladies and Gentlemen of the House, it seems to me that at least a majority of the Members of the House understood that the price of money cannot set by the state neither can the value of a man's work be set by the state in a free economy. It seems to me that this is an anachronistic concept and one that is really so outmoded that the only thing that organized labor can do here is to make sure that it follows rather than leads the market so that the only ones that are hurt are the students and the young people who aren't union members anyway. Labor leaders have used this concept for years to make their members believe that they're really doing something for them for the working people to earn their overblown salaries of $156,000 or more. It seems to me that this Bill is not in the interest of the workingman, it's not in the interest of providing jobs, it's not in the interest of business and it's not in the interest of the consumer. I urge you to understand the same concept applies here..."

JUN 16 1976

Speaker Shea: "Bring your remarks to a close, will you, Sir? The Gentleman from Moultrie, Mr. Stone."

Stone: "Mr. Speaker, Ladies and Gentlemen of the House, Representative Hanahan made a statement a while ago that was not correct. I'd like to correct it just a little. He said that this argument that raising minimum wages would dry up the labor market since wages were 75¢ an hour. Well, he's wrong. It started long, long before that. When I got out of high school I started working at a shoe factory for 12¢ an hour, 60 hours a week. I made $7.20 a week and I was glad to get it. Franklin Roosevelt was elected president and he passed a bill called the NRA and my wages immediately went up by federal edict from 12¢ an hour for 60 hours, $7.20 to 35¢ an hour, $14.00 a week for 40 hours a week. The labor market didn't dry up, Ladies and Gentlemen, the..."

Speaker Shea: "Will you bring your remarks to a close, Sir?"

Stone: "The people that had a job started making a little bit more money. They started buying products so that manufacturers could manufacture more products so that more people could be put to work. It didn't start, Mr. Hanahan, when the minimum wage was 75¢ an hour it started many, many years before that. For me it started when my wage was 12¢ an hour."

Speaker Shea: "The Gentleman from McHenry, Mr. Skinner."

Skinner: "The Sponsor of this Bill has pointed out that people can't afford to work for less than $2.30 an hour. It might be more accurate, perhaps, to say people won't work for wage commensurate with their lack of skill with the workmen's comp and the unemployment benefits as high as they are. Perhaps we ought to go back and change that rather than changing the minimum wage. For that reason I'm voting no."

Speaker Shea: "Have all voted who wish? Have all voted who wish? Take the record, Mr. Clerk. On this question there are 106 ayes, 50 nays, 2 Members voting present. House Bill 3318 having received the constitutional majority is hereby declared passed. On the order of House Bills Third Reading 3122, you don't want to call that, appears House Bill 3555 and on that question the Gentleman

79th GENERAL ASSEMBLY

REGULAR SESSION

JUNE 26, 1976

PRESIDENT:

The hour of ten having arrived, the Senate will come to order. Will our guests in the gallery please stand as we have prayer by Father Kevin B. Sullivan, Cathedral of Immaculate Conception, Springfield, Illinois.

FATHER SULLIVAN:

Almighty and eternal Father, You know the longing of men and women's hearts and You protect their rights. Accept the prayers we offer You this day for our State and our Nation by the wisdom of our leaders in government and the integrity of our citizens. May we serve You with justice and honor. Long may our land be bright with freedom's holy light. Protect us by Your might for You are our great God and our King. Amen.

PRESIDENT:

Reading of the Journal. Senator Johns.

SENATOR JOHNS:

Mr. President, I move that reading and approval of the Journals of Friday, June the 11th, 1976, Monday, June the 14th, 1976, Tuesday, June the 13th...15th, 1976, Wednesday, June the 16th, 1976, Thursday, June the 17th, 1976, Friday, June the 18th, 1976, Monday, June the 21st, 1976, Tuesday, June the 22nd, 1976, Wednesday, June the 23rd, 1976, Thursday, June the 24th, 1976 and Friday, June the 25th, 1976 be postponed pending arrival of the printed Journals.

PRESIDENT:

You've heard the motion. All in favor say Aye. Opposed Nay. The Ayes have it. The motion carries. Committee reports.

SECRETARY:

Senator Donnewald, Chairman of Assignment of Bills, assigns the following bills to committee: Labor and Commerce, Senate Bill 2013.

Rules Committee met on June the 25th, 1976 pursuant to notice. The following members were present: Senators Partee, Rock, Donnewald, Howard Mohr and Harris. By unanimous vote

PRESIDENT:

Senator Glass moves to Table. All in favor say Aye. Opposed Nay. The Ayes have it. Now, on the order of House Bills that appear on the Calendar on 3rd reading on page three, we will go to House Bill 3318 which is on the order of 2nd reading. Amendments have been offered. Amendment No. what, Mr. Secretary?

SECRETARY:

Amendment No. 1 offered by Senator Harber Hall.

PRESIDENT:

Senator Harber Hall.

SENATOR HARBER HALL:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. This amendment...this amendment provides...it puts back into the law which was taken out this year, that employers with fewer than five employees would be exempt, that is their employees would be exempt from the minimum wage bill. That's all the amendment does and I'd appreciate your support for this amendment.

PRESIDENT:

Senator Lemke.

SENATOR LEMKE:

As sponsor of the bill, I must resist this amendment.

PRESIDENT:

Senator Savickas.

SENATOR SAVICKAS:

No, I would join Senator Lemke in resisting this amendment. There's no reason why someone that employs five or less people can't put them on their...the minimum wage law. It's good for more than five, it's good for less than five. It exempts all Ma and Pa businesses, if it's your own son or daughter working in your business, that's not covered under this. This is all outside employees, so I would ask your assistance in resisting this amendment.

HB 5316
6/26/76

PRESIDENT:

Senator Harber Hall.

SENATOR HARBER HALL:

Unless there are any other further arguments, I would just point out to the members of the Body that it's been under five that we have exempted and this bill passed, even if you would support this amendment, makes many, many liberal changes to the Minimum Wage Act. The small businessmen have trouble as it is keeping track of paper work and I...I think they hire young people, they hire students, they hire older people who are better off working even at no salary than not working. So, I...I think, Mr. President, that we have a good amendment here. It puts, in respect to the small employer, it puts the bill back where it is...it is been up till now and I don't think we need to make this change that we're making if we don't put this amendment on now. So, I...I respectfully solicit your support, but prior to that, I would relinquish whatever time I have to Senator Graham.

PRESIDENT:

Well, Senator Graham.

SENATOR GRAHAM:

Mr. President and members of the Senate. Despite what Stanley Johnson and his crowd say, without the adoption of this amendment, we're going to run the risk, very serious risk, that are depriving many young people of an opportunity to make a living, make some money, and probably more importantly... probably more importantly, we're going to deprive some senior citizens of a place to work some part time, do the things that they want to do, keep their minds and body active and help preserve their life. Gentlemen, I think...I think that organized labor has done enough to destroy the business climate in the State of Illinois in the last couple of years. I don't think it's asking too much for them to put their mind where their mouth has been and give the poor little people a chance and adopt this amendment.

JHB 6/6/76

PRESIDENT:

Senator Lemke, you desire to speak again? Senator Lemke.

SENATOR LEMKE:

Well, what we're talking about here, I don't know how people are going to go out of business. You're talking about ten cents an hour. You might be talking about two dollars a week. I mean, a business is going to go out of...a guy...a small business is going to go out of...out of...out of business cause he's got to pay two dollars a week more in wages. It's...it's absurd. I mean, ten cents an hour. We...we...we're cutting our higher education budget and the kids have to go out and earn a little more money for their college education, so this will just give them a little more money. Two dollars a week, a twenty hour week, Jesus...it's very little for crying out loud... I can't understand this. If the guy works forty hours, it's only four...four dollars. I can't see a business going out for...in a year, that's what, four dollars...about two hundred bucks. If you're going to go out of business, then you shouldn't be in business in the first place. I mean, for...if you can't operate because of two hundred dollars, you waste more than that in paper.

PRESIDENT:

Senator Soper.

SENATOR SOPER:

It seems to me that Senator Lemke is talking about two different things. We're talking about an exemption for five or under. Now, there are many businesses and I have senior citizens in my district that...that go and watch a store during a lunch hour and...and they do this so that the store can be open or they take messages at certain hours and it gives them a little something to do. Now, the storekeeper that has the place or the place that they take or the babysitting they do for a few hours, couldn't afford to pay the amount of money that...that the minimum wage would require. But, they can pay a certain amount of money

#183318
6/26/76

that the senior citizen or the student is willing to take. Now, you're in a competitive market. Nobody's going to hire somebody that...that just wants to make a living on...on this... on this basis. This is just something to do and take their time to do...to do it and gives the employer a chance to employ somebody for a...for a...for amount of money that he is willing to work for and it's not slave labor and it's not two dollars a week or two hundred dollars a year and nobody's going to go out of business. They're just not going to hire these people. They're doing somebody a favor. I've had people watch a newsstand while the fellow that owns the newsstand goes out to lunch. The fellow sits around, watch the newsstand, he gives him a buck or two and...and that's the end of it. Now, if he's got to pay him a minimum wage, he...he...he won't...he either has to close the newsstand, or forget about hiring anybody, and people are willing to do this. That's what we're talking about.

PRESIDENT:

Senator Savickas.

SENATOR SAVICKAS:

Well, I think Senator Soper's again trying to cloud the issue. He knows darn well that anybody that might hire...not hire...use to answer the phone while the businessman is out, he doesn't even put him on the record as an employee. He'll give him a dollar or two, doesn't want to pay any taxes or put him on for Workman's Comp, he's trying to hide the guy anyway, so he's not going to pay him...the minimum wage anyway. He's going to give him a buck, a buck and a half, maybe buy his lunch while he's watching the store, so that argument is strictly a...a phony one, just like all these other issues that are raised when you're talking about minimum wage. We're talking about someone that is going to actually work at a job and he's going to get ten cents an hour for a twenty hour week, two dollars

HB 3318
6/26/96

and not someone that watches a newsstand while you go and get a cup of coffee. You bring him back a cup of coffee, you don't put him on the payroll, so whose kidding who on...in this instance?

PRESIDENT:

The question is on the adoption of Amendment No. 1 to 3318. Those in favor will say Aye. Opposed Nay. The Nays have it. The amendment fails. Seek a roll call? Fine. Very good. The question is on the adoption of Amendment No. 1 to House Bill 3318. Those in favor will vote Aye. Opposed Nay. The voting is open. Have all voted who wish? Take the record. On this question the Ayes are 27, the Nays are 25 with none Voting Present. Amendment No. 1 is adopted. Any further amendments?

SECRETARY:

Amendment No. 2 offered by Senator Harber Hall.

PRESIDENT:

Senator Harber Hall.

SENATOR HARBER HALL:

Mr. President, this amendment places back in the exemption for farming activities. We take out...we change agriculture so that we would not exempt agriculture associated businesses such as seed companies, et cetera and we define it as "any farming activity" which we believe would cover just farms, and farmers. I move for adoption of this amendment.

PRESIDENT:

Senator Lemke.

SENATOR LEMKE:

Mr. President, as sponsor of this amendment, I've talked to people concerned and I must resist the amendment.

PRESIDENT:

Any further discussion? The question is on the adoption of Amendment No. 2 to House Bill 3318. Those in favor of adopting Amendment No. 2 will say Aye. Opposed Nay. In the

HB 3318
6/20/16

opinion of the Chair, the Nays have it. Roll call is requested. You always get a roll call if you ask for it. On this... the question is on the adoption of Amendment No. 2 to House Bill 3318. All in favor will vote Aye. Well, they said the Ayes have it. That's it. You're withdrawing the...all right, the Ayes have it. Any further amendments?

SECRETARY:

Amendment No. 3 offered by Senator Regner.

PRESIDENT:

Senator Regner.

SENATOR REGNER:

Yes, Mr. President, I discussed this amendment with the sponsor, Senator Lemke, and it's a technical amendment. It puts some wordage back in that was in the bill that did pass last year regarding the Federal law and I would move the adoption of Amendment No. 3.

PRESIDENT:

Senator Regner...Senator Lemke.

SENATOR LEMKE:

I was looking over last year's bill that we passed and I don't know why this langauge was taken out cause it was put on in the Senate. All it does is at...at...it says "at no time shall the minimum hour wages established by this Act exceed those specified under Federal law." So, I...I...I see nothing wrong.

PRESIDENT:

Question is on the adoption of Amendment No. 3. Senator Savickas.

SENATOR SAVICKAS:

Well, I see nothing wrong with that if it also added that it would not go below the Federal minimum standard. I think that...that wording should be added in.

PRESIDENT:

HB 5316
6/26/76

Senator Harber Hall. Oh, pardon me, Senator Regner.

SENATOR REGNER:

Well, all I did is have the amendment prepared to conform it to the same bill and the same language in that area from last year and I still move the adoption of this amendment.

PRESIDENT:

Senator Savickas.

SENATOR SAVICKAS:

Well, Senator, would you agree, then, that we could add those words, also, that it would not go below the Federal minimum or the Federal standard?

PRESIDENT:

Senator Regner.

SENATOR SAVICKAS:

It shall not exceed and shall not go below?

SENATOR REGNER:

Well, I would suggest that you do that in a separate amendment, Senator Savickas. I'd just as soon adopt this one and that's another theory and if you want to offer that, fine.

PRESIDENT:

Senator Netsch.

SENATOR NETSCH:

Mr. President, just a question of the sponsor of the amendment, if I might.

PRESIDENT:

He indicates he'll yield.

SENATOR NETSCH:

I have two versions on my desk, one of which goes...

PRESIDENT:

Senator Regner is going to clear that up for you.

SENATOR NETSCH:

Okay.

PRESIDENT:

HB 3318
6/26/96

Senator Regner.
SENATOR REGNER:
Yes, I originally had intended to offer that the longer version, if you want to call it that, taking out the time and a half provision. I did not offer that amendment. I didn't put it on the Table, but it was passed out along with the others. So, the one that's being offered right now amends on page three, by deleting...by adding lines twenty-seven through twenty-nine, "however, at no time shall the minimum hourly wage as established by this Act exceed those specified under Federal law." So, the long version you have, put in the wastebasket.
PRESIDENT:
The question is on the adoption of Amendment No. 3 to House Bill 3318. Those in favor say Aye. Opposed Nay. The Ayes have it. Amendment No. 3 is adopted. Any further amendments?
SECRETARY:
No further amendments.
PRESIDENT:
Senator Harber Hall.
SENATOR HARBER HALL:
Point of clarification, Mr. President. I...when there was some discussion and...and some mix-up on Amendment No. 2, did I hear you say the amendment is adopted?
PRESIDENT:
You did.
SENATOR
Thank you.
PRESIDENT:
Any further discussion? 3rd reading. On the order of House Bills on 2nd reading, page five of your calendar, House Bill 3810, Senator Carroll.
SECRETARY:
House Bill 3810.

HB3810
6/26/76

(Secretary reads title of bill)
2nd reading of the bill. Committee on Elections and Reapportionment offers two amendments.
PRESIDENT:
Senator Carroll.
SENATOR CARROLL:
Thank you, Mr. President. I move adoption of Committee Amendment No. 1 which deletes the obsolete reference of 1972 and makes an immediate effective date.
PRESIDENT:
Any further discussion? Senator Carroll moves the adoption of Amendment No. 1 to House Bill 3810. All in favor say Aye. Opposed Nay. The Ayes have it. Amendment No. 1 is adopted. Any further amendments?
SECRETARY:
Committee Amendment No. 2.
PRESIDENT:
Senator Carroll.
SENATOR CARROLL:
Thank you, Mr. President. I move adoption of Committee Amendment No. 2 which relates to the purchase of new electronic voting machines.
PRESIDENT:
Any further discussion?
SENATOR CARROLL:
...favorable roll call.
PRESIDENT:
Senator Carroll moves the adoption of Amendment No. 2 to House Bill 3810. All in favor say Aye. Opposed Nay. Ayes have it. Amendment No. 2 is adopted. Any further amendments?
SECRETARY:
No further amendments.
PRESIDENT:
3rd reading. House Bill 3831, Senator Carroll. Senator Fawell,

4HB3318
6/16/76

you were not on the Floor when we called 3062 on 2nd reading. You have no desire to move it? On the order of Concurrences, on the Secretary's Desk, page six of your Calendar. Senator Lemke.

SENATOR LEMKE:

3318, could we have that on...be read?

PRESIDENT:

We've had intervening business.

SENATOR LEMKE:

...voted on?

PRESIDENT:

We can indeed. On the order of 3rd reading, on your Calendar, page three. House Bill 3318. Read the bill.

SECRETARY:

House Bill 3318.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDENT:

Senator Lemke.

SENATOR LEMKE:

I ask for a favorable vote on this bill.

PRESIDENT:

The question is, shall House Bill...post...post the number. Post the number, Mr. Secretary. Senator Smith.

SENATOR SMITH:

I merely want to say that I've remained here until the very last minute to yet have an opportunity to get started toward the airport to meet my wife, who is returning. I'm grateful for the fact that during the discussion with reference to this bill, that the bill was not trampled upon too much. I take it that members here, your memory is as retentive as is mine. So happened that Illinois was the last industrial state, large industrial state to enact the Minimum Wage Act. At the time that

HB3318
10/26/76

I brought this bill before the Body, all sorts of arguments made, the time was not right, you'd close down the businesses, they have moved from the State, none of which has happened. Saying that conditions as such, I may not be here much longer, in fact, I know I won't be, but I want to thank members on that side of the aisle for the fact that you didn't decimate this bill overly much and as I stand here, I recall when I caused this bill to be enacted into law and I want to thank two men, one of whom I don't see, the Minority Leader, Senator Harris, and you, my friend, Senator Knuppel. You sat over there at that time. You aided me much. We had twenty-six votes only, and it seemed that even though the very clouds and the condition...atmospheric conditions were against us. But, you, Sir, and Senator Harris came to my rescue and Illinois became the last large industrial State to enact the Minimum Wage Law. I want to thank you for giving me the opportunity to say that and as well as you, Mr. President, and may I now, cast my vote for this bill as it is. You would move...

PRESIDENT:

The question is, shall House Bill 3318 pass? Those in favor will vote Aye. Opposed will vote Nay. The voting is open. Have all voted who wish? Take the record. On that question the Ayes are 45, the Nays are none with 10 Voting Present. House Bill 3318 having received a constitutional majority is declared passed. For what purpose does Senator Demuzio arise?

SENATOR DEMUZIO:

You want to go to House Bill 3403, the conservation appropriation. There's a couple of amendments that, I think Senator Fawell and Senator Johns would like to offer, so like to have leave of the Body to go to that order of business.

PRESIDENT:

Is there leave? Leave is granted. House Bills on 3rd reading, page three of your Calendar, House Bill 3403. Leave has been granted