

Case No. S212704

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**TIM MENDIOLA, et al.,**

Plaintiffs and Respondents,

v.

**CPS SECURITY SOLUTIONS, INC., et al.,**

Defendants and Appellants.

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After a Decision of the Court of Appeal, Case No. B240519,  
Second Appellate District, Division Four

Appeal from the Superior Court of Los Angeles County,  
Case Nos. BC388956, BC391669, JCCP 4605, Honorable Jane L. Johnson

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**MOTION FOR SUPPLEMENTAL JUDICIAL NOTICE; MEMORANDUM OF  
POINTS AND AUTHORITIES; DECLARATION; PROPOSED ORDER**

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SUPREME COURT  
FILED

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Frank A. McGuire Clerk

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Clerk

Attorneys for Plaintiffs and Respondents, **TIM MENDIOLA, et al.**

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Attorneys for Plaintiffs and Respondents, **TIM MENDIOLA, et al.**

**MOTION FOR SUPPLEMENTAL JUDICIAL NOTICE**

Please take notice that, pursuant to Evidence Code §§ 459, 451, and 452, and California Rules of Court, rules 8.520(g) and 8.252(a), Plaintiffs/Respondents Tim Mendiola, *et al.*, hereby move for an order granting supplemental judicial notice of the following documents, attached hereto:

1. Exhibit A- Industrial Welfare Commission Order 15-2000
2. Exhibit B- Industrial Welfare Commission Order MW-2001
3. Exhibit C- Industrial Welfare Commission's Statement as to the Basis of Order MW-2001
4. Exhibit D- Official Transcript of Proceedings of Industrial Welfare Commission Public Hearing of October 3, 2000
5. Exhibit E- Official Transcript of Proceedings of Industrial Welfare Commission Public Meeting of October 23, 2000
6. Exhibit F- DLSE Opinion Letter Issued By State Labor Commissioner Jose Millan, dated May 29, 1998
7. Exhibit G- Introduction to 2002 Update of DLSE Enforcement Policies and Interpretations Manual
8. Exhibit H- DLSE Opinion Letter Issued By Acting Chief Counsel Anne Stevason, dated February 21, 2002

The motion is based on this notice, the memorandum of points and authorities, and the declaration, below.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The documents as to which Plaintiffs seek judicial notice are true and correct copies of official records of the Division of Labor Standards Enforcement (“DLSE”), or California regulations issued by the Industrial Welfare Commission (“IWC”), or official records of the IWC.

All of the materials for which judicial notice is sought are relevant to the interpretation of the IWC order that governs the employment of Plaintiffs in this case, and the issue of whether less protective federal regulations should be “imported” into the State’s wage and hour laws, or otherwise used to construe the IWC wage order’s requirements.

**II. JUDICIAL NOTICE IS PROPER AND SHOULD BE GRANTED**

Evidence Code § 459(a) provides that a reviewing court may take notice of any matter specified in Evidence Code § 452 and shall take judicial notice of each matter properly noticed by the trial court and each matter that the trial court was required to notice under Evidence Code §§ 451 or 453.



#### A. The IWC Wage Orders

The IWC wage orders attached as Exhibits A and B come within the scope of Evidence Code §452(b), which provides that judicial notice may be taken of “regulations ... issued by ... any public entity in the United States.” These exhibits were not the subject of judicial notice below, but are needed in order to fully present the legal issues to this Court with respect to the IWC’s intent as to the compensability of sleep time for employees working 24 hour shifts.

#### B. The IWC Statement as to the Basis of Its Wage Order

The IWC Statement as to the Basis of its wage order, attached as Exhibit C, comes within the scope of Evidence Code § 452(c), which allows for judicial notice of “official acts of the legislative, executive and judicial departments of .... any state.” The IWC must issue a statement as to the basis for any wage order that it adopts or amends. (Labor Code §1177(b).) This exhibit was not the subject of judicial notice below, but is needed in order to fully present the legal issues to this Court with respect to the IWC’s intent as to the compensability of sleep time for employees working 24 hour shifts.

#### C. The Official Transcripts of IWC Public Hearings and Meetings

The official transcripts of an IWC public hearing and an IWC public

meeting, attached hereto as Exhibits D and E, respectively, comes within the scope of Evidence Code § 452(c), which allows for judicial notice of “official acts of the legislative, executive and judicial departments of .... any state.” These exhibits were not the subject of judicial notice below, but are needed in order to fully present the legal issues to this Court with respect to the IWC’s intent as to the compensability of sleep time for employees working 24 hour shifts.

#### D. The DLSE Opinion Letters

The DLSE letters attached as Exhibits F and H come within the scope of Evidence Code § 452(c), which allows for judicial notice of “official acts of the ... executive ... department[] of .... any state.” These letters are relevant because they set out the DLSE’s interpretation of the compensability of sleep time for employees working 24 hour shifts and/or the inapplicability of less protective federal regulations to IWC orders in construing the provisions of those IWC orders, key issues in this matter. Exhibit H is the opinion letter that is referenced in the DLSE manual section attached as Exhibit C to CPS’s Motion for Judicial Notice previously filed in this matter. However, CPS did not include this opinion letter in its Motion for Judicial Notice. The opinion letter presents a much more complete account of the DLSE enforcement policy that is merely

summarized in the manual section as to which CPS seeks judicial notice. These exhibits were not the subject of judicial notice below, but are needed in order to fully present the legal issues to this Court with respect to the compensability of sleep time for employees working 24 hour shifts and the inapplicability of less protective federal regulations when construing provisions of the IWC orders.

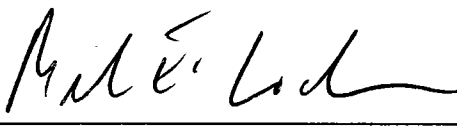
E. The Introduction to the 2002 Update of the DLSE Manual

The section of the DLSE Manual attached hereto as Exhibit G comes within the scope of Evidence Code § 452(c), which allows for judicial notice of “official acts of the ... executive ... department[] of .... any state.” This exhibit was not the subject of judicial notice below, but is needed in order to challenge CPS’s reliance on other sections of the DLSE manual which CPS attached to its previously filed Motion for Judicial Notice.

III. CONCLUSION

As the documents attached hereto are the proper subjects of judicial notice, Plaintiffs respectfully request the Court grant this motion and take judicial notice of the attached documents.

Dated: February 3, 2014

By:   
Miles E. Locker  
Attorneys for Tim Mendiola, *et al.*

## DECLARATION

I, Miles E. Locker, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and am co-counsel for Plaintiffs in these proceedings before the California Supreme Court.

2. I was employed as an attorney for the Division of Labor Standards Enforcement from 1990 to 2006. Throughout that time, I received copies of all opinion letters that were issued by DLSE.

3. The DLSE opinion letters that are attached hereto as Exhibit F and H true and correct copies of DLSE letters that were issued while I was employed at DLSE, which were made available to all DLSE staff upon their issuance, and which are now both available to the public through the DLSE's website.

4. The introduction to the DLSE Manual that is attached hereto as Exhibit G is a true and correct copy of the DLSE Manual that was issued to all DLSE staff in 2002, and that is currently available to the public through the DLSE website.

5. The various IWC documents attached at Exhibits A through E are all available to the public at the IWC website, and are archived by the DLSE. These documents are true and correct copies of the originals.

I declare under penalty of perjury that the above is true and correct.

Executed on February 3, 2014 at San Francisco, California.



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Miles E. Locker

**PROPOSED ORDER GRANTING PLAINTIFFS' MOTION  
FOR SUPPLEMENTAL JUDICIAL NOTICE**

The Motion for Supplemental Judicial Notice filed by  
Plaintiffs/Respondents Tim Mendiola, *et al.*, having been considered, and  
finding judicial notice warranted under Evidence Code sections 451, 452,  
and 459;

IT IS HEREBY ORDERED that said Motion is GRANTED in full,  
and the Court shall take judicial notice of all of the documents attached to  
the Motion.

Date:

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Chief Justice



10/13/00

**INDUSTRIAL WELFARE COMMISSION  
ORDER NO. 15-2000  
REGULATING  
WAGES, HOURS, AND  
WORKING CONDITIONS  
IN THE  
HOUSEHOLD OCCUPATIONS**

**(Effective October 1, 2000 as amended)**

§ 11150. Order Regulating Wages, Hours, and Working Conditions in Household Occupations.

**1. Applicability of Order.**

This order shall apply to all persons employed in household occupations, whether paid on a time, piece rate, commission, or other basis unless such occupation is performed for an industry covered by an industry Order of this Commission, except that:

- (A) Provisions of sections 3 through 12 of this Order shall not apply to persons employed in administrative, executive, or professional capacities. The following requirements shall apply in determining whether an employee's duties meet the test to qualify for an exemption from those sections:
- (1) Executive Exemption. A person employed in an executive capacity means any employee:
    - (a) Whose duties and responsibilities involve the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and
    - (b) Who customarily and regularly directs the work of two or more other employees therein; and
    - (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
    - (d) Who customarily and regularly exercises discretion and independent judgment; and

- (e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order 29 C.F.R. §§ 541.102, 541.104-111, 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.
- (f) Such an employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code § 515(c) as 40 hours per week.

(2) Administrative Exemption. A person employed in an administrative capacity means any employee:

- (a) Whose duties and responsibilities involve either:
  - (1) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers, or
  - (2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof; in work directly related to the academic instruction or training carried on therein; and
- (b) Who customarily and regularly exercises discretion



and independent judgment; and

- (c)
    - (1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section), or
    - (2) who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or
    - (3) who executes under only general supervision special assignments and tasks, and
  - (d) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order 29 C.F.R. §§ 541.201-205, 541.207-208, 541.210, 541.215. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.
  - (e) Such employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code § 515(c) as 40 hours per week.
- (3) Professional Exemption. A person employed in a professional capacity means any employee who meets all of the following requirements:
- (a)
    - (1) Who is licensed or certified by the State of

California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or

- (2) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:
- (i) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or
  - (ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or work that is an essential part of or necessarily incident to any of the above work; and
  - (iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given

period of time.

- (b) Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in paragraph (a).
- (c) Who earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.
- (d) Subsection (a)(2) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this Wage Order: 29 C.F.R. §§ 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.

(e) Notwithstanding the provisions of this subsection, pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this subsection unless they individually meet the criteria established for exemption as executive or administrative employees.

- (f) Subsection (e) above, shall not apply to the following advanced practice nurses:
  - (1) Certified nurse midwives who are primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.
  - (2) Certified nurse anesthetists who are primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.
  - (3) Certified nurse practitioners who are primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6

of Division 2 of the Business and Professions Code.

- (4) Nothing in this paragraph shall exempt the occupations set forth in subparagraphs (1), (2), and (3) from meeting the requirements of subsection 1(A)(3)(a)-(c), above.
- (g) Except as provided in subsection (h), an employee in the computer software field shall be exempt, if all of the following apply:
  - (1) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment, and the employee is primarily engaged in duties that consist of one or more of the following:
    - (i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.
    - (ii) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to, user or system design specifications.
    - (iii) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.
  - (2) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.
  - (3) The employee's hourly rate of pay is not less than forty-one dollars (\$41.00). The Division of Labor Statistics and Research shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the

percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

- (h) The exemption provided in subsection (g) does not apply to an employee if any of the following apply:
- (1) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.
  - (2) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.
  - (3) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.
  - (4) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.
  - (5) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for on screen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.
  - (6) The employee is engaged in any of the activities set forth in subsection (g) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

- (B) The provisions of this Order shall not apply to personal attendants.
- (C) Provisions of this Order shall not apply to any individual who is the parent, spouse, child, or legally adopted child or the employer.
- (D) Effective January 1, 2001, the provisions of this Order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

## **2. Definitions.**

- (A) "Commission" means the Industrial Welfare Commission of the State of California.
- (B) "Division" means the Division of Labor Standards Enforcement of the State of California.
- (C) "Household Occupations" means all services related to the care of persons or maintenance of a private household or its premises by an employee of a private householder. Said occupations shall include, but not be limited to, the following: butlers, chauffeurs, companions, cooks, day workers, gardeners, graduate nurses, grooms, housecleaners, housekeepers, maids, practical nurses, tutors, valets, and other similar occupations.
- (D) An "alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.
- (E) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.
- (F) "Employ" means to engage, suffer, or permit to work.
- (G) "Employee" means any person employed by an employer.
- (H) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

- (I) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.
- (J) "Personal attendant" includes baby sitters and means any person employed by a private householder or by any third party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child or person who by reason of advanced age, physical disability, or mental deficiency needs supervision. The status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required.
- (K) "Minor" means, for the purpose of this Order, any person under the age of eighteen (18) years.
- (L) "Primarily" as used in section 1, Applicability, means more than one-half the employee's work time.
- (M) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.
- (N) "Split shift" means a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.
- (O) "Teaching" means, for the purpose of section 1 of this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing.
- (P) "Wages" (See California Labor Code, section 200)
- (Q) "Workday" and "day" mean any consecutive 24-hour period beginning at the same time each calendar day.
- (R) "Workweek" and "week" mean any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

### **3. Hours and Days of Work.**

- (A) A LIVE-IN employee shall have at least twelve (12) consecutive hours free of duty during each workday of twenty-four (24) hours,

and the total span of hours for a day of work shall be no more than twelve (12) hours, except under the following conditions:

- (1) The employee shall have at least three (3) hours free of duty during the twelve (12) hours span of work. Such off-duty hours need not be consecutive, and the schedule for same shall be set by mutual agreement of employer and employee, provided that
  - (2) An employee who is required or permitted to work during scheduled off-duty hours or during the twelve (12) consecutive off-duty hours shall be compensated at the rate of one and one-half (1 ½) times the employee's regular rate of pay for all such hours worked.
- (B) No LIVE-IN employee shall be required to work more than five (5) days in any one workweek without a day off of not less than twenty-four (24) consecutive hours except in an emergency as defined in subsection 2(D), provided that the employee is compensated for time worked in excess of five (5) workdays in any workweek at one and one-half (1 ½) times the employee's regular rate of pay for hours worked up to and including nine (9) hours. Time worked in excess of nine (9) hours on the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) workdays shall compensated at double the employee's regular rate of pay.
- (C) The following overtime provisions are applicable to non-LIVE-IN employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work: such employees shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over forty (40) hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
- (1) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek; and



- (2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek.
  - (3) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as 1/40<sup>th</sup> of the employee's weekly salary.
- (D) One and one-half (1 ½) times a minor's regular rate of pay shall be paid for all work over forty (40) hours in any workweek except that minors sixteen (16) and seventeen (17) years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to subsections (A), (B), or (C) above.

(VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$500 to \$10,000 as well as to criminal penalties. Refer to California Labor Code sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws. Employers should ask school districts about any required work permits.)

- (E) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed thirty (30) and the total hours of employment in any one workday thereof do not exceed six (6).
- (F) The provisions of Labor Code §§ 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).
- (G) (1) Except as provided in subsection (D), this section shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than thirty (30)

percent more than the state minimum wage.

- (2) Notwithstanding Section (G)(1) above, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pertaining to the hours of work of the employees, the requirement regarding the equivalent of one (1) day's rest in seven (7) (see Section (F) above) shall apply, unless the agreement expressly provides otherwise.
  
- (H) If an employer approves a written request of an employee to make-up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that make-up work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of eleven (11) hours of work in one (1) day or forty (40) hours of work in one (1) workweek. If an employee knows in advance that he or she will be requesting make-up time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make-up work time for up to four (4) weeks in advance; provided, however, that the make-up work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make-up work time pursuant to this Section. While an employer may inform an employee of this make-up time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make-up the work hours within the same workweek pursuant to this Section.

#### **4. Minimum Wages.**

- (A) Every employer shall pay to each employee wages not less than four dollars and seventy-five cents (\$4.75) per hour for all hours worked, effective October 1, 1996; not less than five dollars (\$5.00) per hour for all hours worked, effective March 1, 1997; not less than five dollars and fifteen cents (\$5.15) per hour for all hours worked, effective September 1, 1997; and not less than five dollars and seventy-five cents (\$5.75) per hour for all hours worked, effective March 1, 1998, except:
  - (1) LEARNERS. Employees 18 years of age or over, during their first one hundred and sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than eighty-five

percent (85%) of the minimum wage rounded to the nearest nickel.

- (2) MINORS may be paid not less than eighty-five percent (85%) of the minimum wage rounded to the nearest nickel provided that the number of minors employed at said lesser rate shall not exceed twenty-five percent (25%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ three (3) minors at said lesser rate. The twenty-five percent (25%) limitation on the employment of minors shall not apply during school vacations.

**NOTE:** Under certain conditions, the full minimum wage may be required for minors. See Labor Code Section 1391.2 (b).

- (B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.
- (C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.
- (D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

## **5. Reporting Time Pay.**

- (A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.
- (B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.
- (C) The foregoing reporting time pay provisions are not applicable when:
  - (1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or
  - (2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

## **6. Licenses for Disabled Workers.**

A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any. A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division.

(See California Labor Code, Sections 1191 and 1191.5.)

## **7. Records.**

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.
- (C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.
- (D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

## **8. Cash Shortage and Breakage.**

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

## **9. Uniforms and Equipment.**

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

**NOTE:** This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

**NOTE:** This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

- (C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

**10. Meals and Lodging.**

- (A) **"Meal"** means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

**"Lodging"** means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

- (B) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective January 1, 1998	Effective March 1, 1998
<b>Lodging</b>		
Rooms occupied alone.....	\$24.25 per week	\$27.05 per week
Room shared.....	\$20.00 per week	\$22.30 per week
Apartment-two thirds (2/3) of the ordinary rental value, and in no event more than.....	\$290.80 per month	\$324.70 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than.....	\$430.20 per month	\$480.30 per month
<b>Meals:</b>		
Breakfast.....	\$1.80	\$2.05
Lunch.....	\$2.55	\$2.85
Dinner.....	\$3.40	\$3.80

- (C) Meals evaluated as part of the minimum wage must be bona fide meals

consistent with the employee's work shift. Deductions shall not be made for meals not received nor lodging not used.

- (D) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

## **11. Meal Periods.**

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee with a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

## **12. Rest Periods.**

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

**13. Filing Reports.**

(See California Labor Code, Section 1174(a))

**14. Inspection.**

(See California Labor Code, Section 1174)

**15. Penalties.**

(See Labor Code, section 1199)

In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

- (A) Initial Violation -- \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.
- (B) Subsequent Violations -- \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.
- (C) The affected employee shall receive payment of all wages recovered.

The Labor Commissioner may also issue citations pursuant to Labor Code § 1197.1 for payment of wages for overtime work in violation of this order.

**16. Separability.**

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be



held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

#### **17. Posting of Order.**

Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the work day. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this Order and make it available to every employee upon request.

#### **EXCERPTS FROM THE LABOR CODE**

**Section 98.6.** (a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his rights, which are under the jurisdiction of the Labor Commissioner, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any rights afforded him.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of such employment because such employee has made a bona fide complaint or claim to the division pursuant to this part shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration or hearing authorized by law, is guilty of a misdemeanor.

**Note:** Nothing in this act shall be construed to entitle an employee to reinstatement or reimbursement for lost wages or work benefits if such employee willfully misrepresents any facts to support a complaint or claim filed with the Labor Commissioner.

**Section 200.** As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

**Section 201.** If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

**Section 202.** If an employee not having a written contract for a definite period quits his employment, his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time

of quitting.

**Section 226.** (a) Every employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions; provided, that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

**Section 1174.** Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information which the commission requires to carry out this chapter. Such reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of such person to secure any information or make any investigation which they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of such person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to, employees employed at the respective plants or establishments, and which shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. (1937 ch. 90, 1945 ch.1431, 1972 ch. 1122, 1979 ch. 373, 1990 ch. 1379)

**Section 1191.** For any occupation in which a minimum wage has been established, the commission may issue to an employee who is mentally or physically handicapped, or both, a special license authorizing the employment of the licensee for a period not to exceed one year from date of issue, at a wage less than the legal minimum wage. The commission shall fix a special minimum wage for the licensee. Such license may be renewed on a yearly basis.

**Section 1191.5.** Notwithstanding the provisions of Section 1191, the commission

may issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to permit the employment of employees who have been determined by the commission to meet the requirements in Section 1191 without requiring individual licenses of such employees. The commission shall fix a special minimum wage for such employees. The special license for the nonprofit corporation shall be renewed on a yearly basis, or more frequently as determined by the commission.

**Section 1199.** Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

**Section 1391.2.** (a) Notwithstanding Sections 1391 and 1391.1, any minor under 18 years of age who has been graduated from a high school maintaining a four-year course above the eighth grade of the elementary schools, or who has had an equal amount of education in a private school or by private tuition, or who has been awarded a certificate of proficiency pursuant to Section 48412 of the Education Code, may be employed for the same hours as an adult may be employed in performing the same work.

(b) Notwithstanding the provisions of the orders of the Industrial Welfare Commission, no employer shall pay any minor described in this section in his employ at wage rates less than the rates paid to adult employees in the same establishment for the same quantity and quality of the same classification of work; provided, however, that nothing herein shall prohibit a variation of rates of pay for such minors and adult employees engaged in the same classification of work based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, or other reasonable differentiation, when exercised in good faith.

**Section 2800.** An employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care.



Amends General Minimum Wage Order and IWC Industry and Occupation Orders

Please Post Next to Your IWC Industry or Occupation Order



**OFFICIAL NOTICE**

**California  
Minimum Wage**

**MW-2001**

Minimum Wage - Every employer shall pay to each employee wages not less than the following:

**\$6.25**  
per hour beginning January 1, 2001

**\$6.75**  
per hour beginning January 1, 2002

To employers and representatives of persons working in industries and occupations in the State of California:

**SUMMARY OF ACTIONS**

TAKE NOTICE that on October 23, 2000, the Industrial Welfare Commission (IWC), having proceeded according to its authority in the Labor Code and Constitution of California, Article 14, § 1, amended Sections 1, 2, 3, and 5 of the General Minimum Wage Order, MW-98. Section 4, Separability, has not been changed. The IWC adopted increases to the minimum wage and to meals and lodging credits in this general minimum wage order and in all of the IWC's industry and occupation orders. The IWC also repealed and/or amended the following non-statutory full and partial exemptions from the minimum wage for certain employees that are contained in this order as well as in its industry and occupation orders: student nurses, professional actors, full-time carnival ride operators, employees of the State or local governments and any political subdivision thereof, personal attendants in private homes except for persons under the age of eighteen who are employed as baby sitters for a minor child of the employer in the employer's home, and minors paid not less than 85% of the minimum wage rounded to the nearest nickel. The present partial exemption for learners was amended to include minors. The IWC took these actions after holding investigative public hearings as required by Labor Code § 117B, considering the report of the Wage Board on the minimum wage selected pursuant to Labor Code § 117B.5, and subsequently holding public hearings according to the requirements of Labor Code § 1181.

This summary must be made available to employees in accordance with the IWC's wage orders. Copies of the full text of the amended wage orders may be obtained at [www.dir.ca.gov/IWC](http://www.dir.ca.gov/IWC) or by mail from the IWC.

**1. APPLICABILITY**

The provisions of this Order shall not apply to outside salespersons and individuals who are the parent, spouse, or children of the employer previously contained in this Order and the IWC's industry and occupation orders. The IWC has eliminated other exemptions from the minimum wage previously contained in this Order and in sections of the IWC's industry and occupation orders. (See Section 5, Amended Provisions, below.) Exceptions and modifications provided by statute or in Section 1, Applicability, and in other sections of the IWC's industry and occupation orders may be used where any such provisions are enforceable and applicable to the employer.

**2. MINIMUM WAGES**

Every employer shall pay to each employee wages not less than six dollars and twenty-five cents (\$6.25) per hour for all hours worked, effective January 1, 2001, and not less than six dollars and seventy-five cents (\$6.75) per hour for all hours worked, effective January 1, 2002.

**3. MEALS AND LODGING**

Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective January 1, 2001	Effective January 1, 2002
<b>LODGING</b>		
Room occupied alone .....	\$29.40 per week	\$31.75 per week
Room shared .....	\$24.25 per week	\$26.20 per week
Apartment – two-thirds (2/3) of the ordinary rental value, and in no event more than: ...	\$352.95 per month	\$381.20 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than: .....	\$522.10 per month	\$563.90 per month
<b>MEALS</b>		
Breakfast .....	\$2.25	\$2.45
Lunch .....	\$3.10	\$3.35
Dinner .....	\$4.15	\$4.50

**4. SEPARABILITY**

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Order should be held invalid, unconstitutional, unauthorized, or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

**5. AMENDED PROVISIONS**

This Order amends the minimum wage and meals and lodging credits in MW-98, as well as in the IWC's industry and occupation orders. (See Orders 1-15, Secs. 4 and 10; and Order 16, Secs. 4 and 9.) This Order also amends the following other provisions of the IWC's industry and occupation orders to be consistent with the IWC's actions regarding the elimination of certain exemptions from the minimum wage: Order 1, Secs. 1(B) and 4(A)(1) and (2); Order 2, Secs. 1(B) and 4(A)(1) and (2); Order 3, Secs. 1(B) and 4(A)(1) and (2); Order 4, Secs. 1(B) and 4(A)(1) and (2); Order 5, Secs. 1(A) and (C), and 4(A)(1) and (2); Order 6, Secs. 1(B) and 4(A)(1) and (2); Order 7, Secs. 1(B) and 4(A)(1) and (2); Order 8, Secs. 1(B) and 4(A)(1) and (2); Order 9, Secs. 1(B) and 4(A)(1) and (2); Order 10, Secs. 1(B) and (D), and 4(A)(1) and (2); Order 11, Secs. 1(B) and (C) and 4(A)(1) and (2); Order 12, Secs. 1(B) and (C) and 4(A)(1) and (2); Order 13, Secs. 1(B) and 4(A)(1) and (2); Order 14, Secs. 1(B) and 4(A)(1) and (2); Order 15, Secs. 1(B) and 4(A)(1) and (2); and, Order 16, Sec. 1(B). These amendments were adopted on October 23, 2000, in Sacramento.

**These Amendments to the Wage Orders shall be in effect as of January 1, 2001.**

Questions about enforcement should be directed to the Division of Labor Standards Enforcement. Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, Eureka, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, and Van Nuys.



**STATEMENT AS TO THE BASIS FOR  
THE GENERAL MINIMUM WAGE ORDER  
INDUSTRIAL WELFARE COMMISSION  
MW-2001**

**TAKE NOTICE** that the Industrial Welfare Commission (hereinafter the "IWC"), having proceeded according to its authority in the Labor Code and the Constitution of California, article 14, §1, has amended Sections 1, 2, 3, and 5 of the General Minimum Wage Order, MW-98. Section 4, Separability, has not been changed. The IWC began its review of the minimum wage in December 1999 and voted to convene a wage board on March 31, 2000. Following its receipt of the report of the wage board, the IWC held additional public meetings and public hearings pursuant to Labor Code §§ 1178.5(c) and 1181 during which it considered the recommendations of the wage board, proposed new minimum wage regulations, and received testimony and written materials regarding the proposed regulations. The only recommendation that received a two-thirds (2/3) or more vote of the wage board was that the IWC consider the appropriateness of continuing the existence of exemptions from the minimum wage for certain occupations and industries. Therefore, after consideration of all of the non-statutory full and partial exemptions from the minimum wage, the IWC included the elimination of some of these exemptions in its proposed regulations. The public hearings on the proposed regulations were held in September and October 2000.

The IWC adopted the amendments to the General Minimum Wage Order on October 23, 2000. They will become effective January 1, 2001, and will be included in the appropriate sections of the IWC's industry and occupations orders. The IWC considered all correspondence, verbal presentations, and other written materials that were submitted prior to the amendment of the Order. IWC submits the following statement as to the basis for the amendments to Sections 1, 2, 3, and 5 of the Order.

**1. APPLICABILITY**

This Order is applicable to all workers in the State unless specifically exempt.

The IWC received some testimony and information on exemptions from the minimum wage regarding personal attendants, carnival employees, public employees, professional actors, and shepherders. Employers of personal attendants, carnival employees, public employees, and professional actors, initially expressed concerns about the action contemplated by IWC. Once they were clear that the IWC proposed to make the employees at issue subject to minimum wage requirements, their concerns were alleviated. Employers in and attorneys for the sheep herding industry registered fervent opposition to the repeal of their exemption and presented some employees who supported their position. They argued that the federal H2a program covering this industry worked fine and did not need to be fixed. On the contrary, other employees and their legal representatives testified about abject living and working conditions. Based on that information, the IWC decided that it should conduct an investigation of hours and conditions of labor of shepherders in California.

In light of the information received, and in the absence of other public comment, the IWC determined that it should retain the exemptions from the minimum wage for outside salespersons, administrative, executive and professional employees, and any individual who is a parent, spouse, or child of the employer previously contained in this order and the IWC's industry and occupation orders. The IWC eliminated the following non-statutory full and partial exemptions from the minimum wage: employees of the State and local government and any political subdivision thereof, full-time carnival ride operators, professional actors, personal attendants in private homes except for persons under the age of eighteen who are employed as baby sitters for a minor child of the employer in the employer's home, student nurses, and minors paid not less than 85% of the minimum wage rounded to the nearest nickel. The IWC amended the present partial exemption for learners to include minors.

The IWC also amended the provisions in Section 1, Applicability, of Wage Order 14 to be consistent with Labor Code § 515(a). Thus the remuneration test set forth in subsection (A) is now increased from \$900.00 per month to a monthly salary equivalent to no less than two times the state minimum wage for full time employment.

## **2. MINIMUM WAGES**

The IWC received testimony and correspondence from, employees, labor organizations, private employers and their representatives, attorneys representing all these groups, and state and local legislators, as well as information from government and educational publications. As with the report from the wage board, there was no consensus regarding the adequacy of the minimum wage. Employees and their representatives and supporters testified as to the difficulty in finding safe and affordable housing, and in being able to otherwise provide for families and enjoy a tolerable standard of living. They urged the IWC to increase the minimum wage to at least \$8.00 per hour. Employers who testified primarily represented the restaurant, farming, movie theater, and manufacturing industries. They and their representatives testified that an increase in the minimum wage would result in an increase in costs to the public for products and services, the inability to provide adequate health care benefits for employees, the relocation of businesses from California to other states or abroad, and/or the complete failure of some businesses. The IWC determined that an increase in the minimum wage was appropriate. In light of the vast differences in the testimony it received, the IWC decided to adopt its proposal for an increase of fifty (50) cents for each of the next two years, such that on and after January 1, 2001 the minimum wage will be no less than \$6.25 per hour, and on and after January 1, 2002 the minimum wage will be no less than \$6.75 per hour.

## **3. MEALS AND LODGING**

The IWC increased the amounts for meals and lodging that may be credited against the minimum wage to amounts that are proportionate to the increase in the minimum wage. Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee.



**5. AMENDED PROVISIONS**

This order amends the minimum wage and meals and lodging credits in MW-98 as well as in the IWC's industry and occupations orders. Other provisions of the IWC's industry and occupations orders are also amended by this order so that they are consistent with the IWC's actions regarding the repeal of exemptions from the minimum wage for the types of employees set forth in Section 1, Applicability, above.



STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
INDUSTRIAL WELFARE COMMISSION

Public Hearing

October 3, 2000  
Edmund G. "Pat" Brown Building  
505 Van Ness Avenue  
San Francisco, California

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P A R T I C I P A N T S

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Industrial Welfare Commission

BILL DOMBROWSKI, Chair

BARRY BROAD

DOUG BOSCO

LESLEE COLEMAN (arrived at 10:44 a.m.)

HAROLD ROSE

Staff

ANDREW R. BARON, Executive Officer

MARGUERITE C. STRICKLIN, Legal Counsel

MICHAEL MORENO, Principal Analyst

NIKKI VERETT, Analyst

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P R O C E E D I N G S

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(Time noted: 10:12 a.m.)

COMMISSIONER DOMBROWSKI: If we could have everyone -- if we could have everyone take their seats -- could we have everyone take their seats, please?

I call the meeting to order. Let the record show Commissioner Rose, Commissioner Broad, Commissioner Bosco, and Commissioner Dombrowski present.

The first item today is going to be the minimum wage. And I'd like Mr. Pulaski to bring up his panel.

(Applause)

COMMISSIONER DOMBROWSKI: However you want to proceed.

MR. PULASKI: Very good. Thank you.

Chairman, members of the Commission, my name is Art Pulaski, from the California Labor Federation. I thank you for recognizing us today.

If I may simply begin by giving us some note of the geography here, we are in the Civic Center of perhaps the greatest city for tourists in the world. And tourists are warned, however, when they come to this city that though we are now in the Civic Center of this great city, tourists are warned, "If you come to the Civic Center of San Francisco, whatever you do, don't venture off on foot a few blocks to the west of here. And whatever you do, don't venture off on foot a few blocks east of here. And whatever you do, don't venture off on foot a half a mile or a mile south of here."

And it's because that we suffer in those areas some serious conditions of poverty. And along with the typical situation of serious poverty, we have the other associated problems, social problems and social ills related to poverty. Though we are in the Civic Center of this great city of the world, we know that if you take some time off during this lunch period, you can wander off any period of paces to the east, or any paces to the west, or even to the south. You'll see the kind of poverty the people in this city suffer.

And so, what we come to you today about is the burden that you have, as the five who must choose what the minimum wage of this state shall be in the future. Look around. Look around right here, in the environs of the Civic Center of this great city, and you'll see that -- and what our proposals will lead you to today -- is that we have lost ground in terms of the quality of life, the cost of living, compared to what it was in 1968.

And the only way that we can gain that ground back is by looking at the cost-of-living increases that have happened from 1968 to now. And you'll



see that raising the minimum wage from \$5.75 to \$6.75 is not enough, and that, in fact, the minimum wage must be at least \$8.10 or more, if we are to merely keep ground with the costs of living from twenty-five years ago.

I bring to your attention the issue of *Business Week Magazine* dated October 9. And again, I say this is the issue of *Business Week Magazine*, October 9. And on Page 36, it says, "Minimum wage: A hike won't hurt." And the question was, "Would an increase by at least a dollar an hour hurt the economy and affect inflation?" And they went to none other than Goldman Sachs and Company, on Wall Street. And they said, "No, it will not hurt inflation very much." That in *Business Week Magazine*, because we know you'll have representatives of some of the business community that will say, "We can't afford a hike in the minimum wage." The fact is, even Goldman Sachs says that we can take a hike in the minimum wage.

And so, what I'd like to do now, with no further ado, is to introduce to you a distinguished panel of both representation of the religious community, the elected community, the employer community, and the worker community. And I'd like to begin by acknowledging and recognized the distinguished Assembly majority leader from here in San Francisco, Kevin Shelley.

Mr. Shelley.

And through the chair, thank you.

(Applause)

ASSEMBLYMEMBER SHELLEY: Thank you very much, Art, for your introductory comments. I think they're appreciated by those in attendance, and certainly, hopefully, by the members of this panel, who have to make a decision.

Members, I come to you wearing two hats: one, obviously, is an advocate, joining Mr. Pulaski and his panel in recommending an increase in the minimum wage to you individuals who make that decision, and secondly, my role as a policymaker I really can't separate or distinguish from my role as an advocate today. And it's the role as a policymaker I'd like to talk about, because really, in essence, that's the same role that you're serving and playing in making these decisions over the upcoming weeks and months.

And as we make those decisions as policymakers, I think we have to ask ourselves a couple of questions. One is, first, to acknowledge that we are experiencing currently a moment in time, a moment in time in California's history with literally the most successful economy in the world, that has been surging for some years now, and, by all economic forecasts, will continue to surge. And so, as we remember this moment in time, what do we want to remember it for? Just a successful economy? Just high-wage, well-paid executives? Or do we want to remember this moment in

time as the moment that policymakers in this state seized the moment and chose to extend that prosperity to those who don't have it. And that's far more Californians than any of us would like to acknowledge, the single moms, the single parents, moms and dads, the people who are barely able to make it, no matter what city they live in. Art spoke of San Francisco; it applies to cities even where there's less cost of living, a lower cost of living. One can't make it on the current and, I would suggest respectfully, even the proposed increase in the minimum wage.

So, as, hopefully, at some point we'll look back on this moment in time, I would hope that we would look back and say that we seized it and chose to do the right thing. And the right thing is to ensure that we pay our workers a sufficiently reasonable wage, such that they can support themselves and their families, not necessarily in great comfort, but to meet the basic subsistence, as it were, in life.

Now, as I think all of us know, by initiative both Oregon and Washington have already raised their minimum wage well above California. If California is to be competitive with those states, to not lose our workforce, we need to ensure that we pay a reasonable minimum wage.

Now, the argument will be that, well, we in California, we can't afford the same minimum wage that those states can because we have a lower-wage workforce. And we also know what that means. That means sometimes, by reference, but it's not stated, unskilled minority workers, workers just arriving, new immigrants. But the term "lower-waged" workforce is just that; they're only a lower-wage workforce if we choose to pay them a lower wage. If we as policymakers and you, as members of this Commission, elect to pay them a higher wage, we not only will be competitive, but these families will have the resources to succeed for themselves and their future generations.

Now, two years ago at this time, in 1998, I had a bill in the Legislature that would have increased the minimum wage. That bill we had on the Assembly floor on the last night of the session. That bill was not put before the members because there was concern by the members that they didn't want to go up on a bill that they thought might cost them politically in the election -- Mr. Pulaski will remember, painfully too well -- given that Governor Wilson would have, of course, just vetoed it, so why expose themselves to that risk?

So, we said, "Okay, we'll wait. We'll wait with the hopeful arrival of Governor Davis." And we're very pleased that he's arrived. We're very pleased with what we've been able to accomplish working in conjunction with him -- I speak on behalf of the Legislature in saying that

-- and we're very pleased that this Commission has recommended a dollar increase for the minimum wage.

But what we envision at the legislative level is a much more significant increase, in the form of two to three dollars, as Mr. Pulaski referenced,

\$8.10 being an appropriate minimum. And while we very much want to work with this Commission, while we are very deferential, appropriately, to the wishes of our Governor and his representatives, who each of you are today, I also want to use this moment in time to assure you that we stand prepared, as the Legislature, to raise the minimum wage to the appropriate level if this Commission chooses not to do so. So I encourage you to do the right thing.

Thank you very much.

(Applause)

MR. PULASKI: Chairman, members of the Commission, I'd like next to introduce to you Ruthie Lindsay. Ruthie is a minimum wage worker in Contra Costa -- a student at Contra Costa College and a member of Californians for Justice.

Ms. Lindsay.

MS. LINDSAY: Good morning.

MR. PULASKI: Pass the mike.

MS. LINDSAY: Good morning. My name is Ruthie Lindsay. I live in Richmond, California. I'm a member of

-- I'm 49 years old, and 32 years of those 49 years, I've worked for minimum wage. Places I've worked at is hotels, hospitals, nursing homes, and private homes. The quality of that life has been very poor. When I try to make a transition, I come up homeless, not enough money to pay my rent. I was also diagnosed with paranoia in the mental health system, so the quality of living from all of that was very poor. The time I had to spend with my family was very poor. As a result of all of this, I've ended up on disability.

MR. PULASKI: Thank you.

Next, it is clear that whenever we meet with, see, observe, and work with minimum wage workers, it becomes very clear to us that this is a booming economy, but it's a bust for hundreds of thousands of workers in California.

Next, through the chair, we recognize Father Peter Sammon, from the religious community here in San Francisco, active in the community and pastor of St. Theresa's Catholic Church.

Father Sammon.

FR. SAMMON: Good morning. I come as the pastor of a Catholic church in San Francisco. I come speaking on behalf of the people who are my

parishioners, the people who live in my neighborhood, and the people in San Francisco that I've worked with closely over the years.

I have been one of the co-chairs of the Living Wage campaign for the last two years, a campaign that recently achieved some notable success in this city.

I would like to just briefly share with you some of the stories of my parishioners. Sometimes people wonder why somebody with a Roman collar is seen in public halls. It's because we believe that the values that we find in our Judaic-Christian tradition, many of which are explicitly laid out for us in the Bible, have something to contribute to the quality of public life.

And it struck me because last Sunday, I guess, at the large preparation for this, in the readings we had, which we share with many of our Protestant brethren who follow the same lectionary, they were the words of St. James that talked about religion and life, a message to those who think those two aren't connected. He said, "The wages you have withheld from your workers who harvested your fields are crying aloud, and these cries have reached the ears of God." And so, I come out of that tradition.

It is strange that all sectors of government encourage us to care about our neighbor and approve the works of charity that we do through religious organizations. But there is not the same enthusiasm when the church comes and says, "We don't need charity here; we want to see that people working full-time jobs get justice."

I think of Maria, who comes to our place for food once every month. She has a full-time job. She has a teen-aged daughter. She's a single mother. And she can't make it through the month, even though she works 40 hours a week and sometimes a little overtime, because of the fact that she is not getting her just wage.

A couple of months ago, I got off the plane at San Francisco Airport, and one of our party had a broken foot. And a little Filipino grandmother came up with -- to the United Airlines gate there with a wheelchair. So, being involved in the living wage, I asked her what she was getting. She was getting \$6.25 an hour. She had not gotten an increase for a year. They used her to do baggage-checking, for which she was not trained, and didn't pay her the \$7.00 those people got. And talked about the difficulty she had of helping to support her family.

Another story there: her cousin, a 60-year-old man, has to work two jobs in order to support his family and can only sleep a few hours each day.

We in the living wage got an agreement that said \$9 or \$10 an hour. We are not proud of that. We are proud that we have taken a step, but to say that \$9 or \$10 an hour is sufficient for anybody to live other than a poverty-level life in this city is not true. \$9 or \$10 won't do it. In

this city, it's between \$14 and \$17. And as you've heard, in the state, it has to be over \$8.

Just to -- and one of the -- in looking at the scripture references that I referred to, the Jews were complaining to God. They said, "We fast, and you don't listen to us." And He said, "I'm not listening to your fast because you exploit your workers." That's a very harsh word that is used by the Lord, exploiting workers. And I submit to you that all of us in our society are exploiting our workers. We are telling them, "We cannot pay you a just wage because we can't afford it and keep up the standard of living that we have ourselves."

And so we come today to say not that we can give poverty-level wages. The people that give those wages are not bad people. In one of the television debates, I talked to a man who's heading up an agency that does all kinds of good in the city. And yet, he said, "We just can't afford to pay those wages." What he's saying is, "We can't help the poor unless we exploit other poor so we can help these poor over here." And, of course, it wasn't his problem; basically, it was a problem of funding by the City of San Francisco, which was partly answered in the living wage ordinance.

And so, today I speak to you on behalf of the religious community. I speak to you on behalf of my parishioners, of the people in San Francisco who are making life possible for all of us. And I ask you to be people of vision, people of courage, and people of justice.

And I thank you for this opportunity.

(Applause)

MR. PULASKI: Chairman, members of the Commission, while we've now heard from workers and the religious community of San Francisco, we now take pleasure in introducing to you a couple of representatives of the business community. And first is Cliff Waldeck, who is the owner and manager of a small business in San Francisco, Waldeck's Office Supplies.

Mr. Waldeck.

MR. WALDECK: Good morning, commissioners. As Mr. Pulaski pointed out, my name is Clifford Waldeck, and I own Waldeck's Office Supplies here in San Francisco. It's a second-generation, 45-year-old business.

And the minimum wage is something that I feel very strongly about, and that's one of the reasons why I had signed up to be part of the minimum wage board. I was not selected for that, so that's why I'm here now.

I've been an active member of the San Francisco Chamber of Commerce Public Policy Committee, and in 1999 I was awarded the Goodwill Industry Employer Showcase-of-the-Year Award. So I feel very good about that.

From a very real and pragmatic sense, I've always paid my employees much higher than minimum wage. I have very little turnover of my -- of my employees. The investment in employees will always pay off because turnover is something that drags all business down.

And from a societal point of view, I feel increasing the minimum wage is one of the best opportunities to bridge the gap between rich and poor, the haves and the have-nots. I want to echo these sentiments of our esteemed Senate (sic) majority leader, Kevin Shelley. We must seize the moment. I mean, now is the time to do it. And phasing the minimum wage to \$6.75 is a good first step. I urge you to take it even higher. It won't hurt. And let's do it because we have the opportunity.

Thank you.

(Applause)

MR. PULASKI: And finally, chairman, from our panel is Barry Hermanson, from Hermanson's Employment Services, another employer in northern California.

MR. HERMANSON: Thank you, commissioners. It's a pleasure to be here today. I'm very honored to be asked to speak.

I not only operate a temporary employment service here in San Francisco, but for the last two and a half years have been co-chair of the Living Wage Coalition as we have developed legislation and passed legislation here.

I wanted to tell you a little bit about how paying a better wage has been good for my business. In fact, if it was not for that, I doubt that I would be in business today.

I started business twenty years ago, here in San Francisco, with the dream of possibly being able to change the temporary industry. At that time, I, in fact, was doing a little bit of temporary work, and clerical workers were paid very low wages, and the temp agencies used to mark up those wages a lot. They still do. Mark-ups tend to be around 50 percent on top -- or more -- on top of wages. And I thought, "Well, I could start a business and raise the wages of the temporary workers and not charge anything more to my clients, take less for myself." And I thought that with a little bit of volume, I could still do this.

And I operated for about ten years out of my house, until things got too big and I had to go and rent a storefront.

I went out to try to sell the business to every single business -- I think I walked into every single office in downtown San Francisco at the time -- left literature saying, "I've got better people to work for you because I'm paying them a better wage; and what's more, I won't charge you anything more for the same service." And I was paying people two,

three, and four dollars an hour better to do the same job as what they would get from another temporary service.

Strangely, the business community didn't seem to get that concept: better work means a better job done for you, because people want to continue to work for me rather than to have to go back to work for one of my competitors and make a lower wage.

Well, I took that same message out to the streets and had a little flyer that I handed out to temp workers when they went to get their paychecks from other temp agencies. My business started to boom. And why is that? Because in the temporary industry, business is based on relationships. And I didn't have the relationship to go to you as an employer, to say, "Hey, come use my service," because they'd say, "Who are you? Everybody says they've got better employees." But the temp workers, because they had the relationship with the employer, and they said, "You know, next time you need me in a job, give Barry a call, and I'll make more money and you won't have to pay anything more." So, throughout the '80's, my business was growing by 50 to 100 percent per year.

And what did that do for me? I still made money. I'm one of the lucky people to own a house here in San Francisco. I am an employer, homeowner, member of the Chamber of Commerce. My employees brought me everything. I saved a lot in marketing dollars. I didn't have to spend a lot on advertising, on going back to the employers again and trying to sell, to sell, to sell. My employees became my sales department. And today it's a thriving business, continuing to generate a very comfortable income for me.

I believe that paying people a better wage is good for business. It also means for me there is a dramatic reduction in turnover, there is tremendous loyalty that is developed, and there is better customer service. All of these things, I believe, are very important.

With the Living Wage Coalition, we asked for a much higher rate initially. As you well know, it -- you could pay a person \$17 to \$20 an hour to live in the Bay Area, and they would just be getting by. The proposal to raise up only a dollar, in the Bay Area -- in fact, anywhere in California -- is not a livable wage. I encourage you to consider a higher rate. I know there is another proposal on the table for \$8.00 an hour. That, within the Bay Area and any of our major cities, is not even a livable wage. I encourage you to do this.

(Applause)

MR. PULASKI: Chairman, if I may, by conclusion -- in conclusion, to acknowledge the comments that were made here today, your charge as the Industrial Welfare Commission is to determine a wage that meets the needs of the workers of California. We've seen today, by Father Peter Sammon and others, that in San Francisco, this city has determined that \$9 to \$10 at a minimum is what it costs to live, and, in fact, is not enough.

And so, therefore, let me share with you a story in the *San Francisco Chronicle* of nine days ago. And it quotes the Secretary of the federal Housing and Urban Development Agency, Andrew Cuomo, in discussion of a story that came out of research in Washington that addressed the cost of living around the country. And in San Francisco and Marin and San Mateo, in order to have a modest two-bedroom apartment, a family here, in this portion of California, must have a wage of \$28.00 an hour for a modest apartment. In Santa Clara County nearby, it's \$25.00 an hour. And the average around the state for a modest apartment for a family to live is \$15.22 an hour.

This Commission considers now small amounts of increase. The fact is, if we -- if you are to keep workers of California above the poverty level, or even to the poverty level, it would be incumbent upon you to raise the minimum wage not to \$6.75, not to \$7.75, and, in fact, not even to \$8.75, but yet higher. And so, we call upon you today to vote your conscience as you look at what it will cost to protect the lives of working families in California. Vote your conscience. Vote the facts. Vote what you see to make this California work for the people who make it work.

Thank you very much.

(Applause)

COMMISSIONER DOMBROWSKI: One second. One second -- one second, Art. I think Commissioner Bosco has a question.

COMMISSIONER BOSCO: Thank you, Mr. Chairman.

I think that was an extremely impressive panel in every respect, and especially to have Assemblyman Shelley here to take his time to express his thoughts and -- hopefully, on behalf of many members of the Legislature.

I think, Mr. Shelley, you referenced --

AUDIENCE MEMBER: (Not using microphone) Louder!

COMMISSIONER DOMBROWSKI: They can't hear you.

COMMISSIONER BOSCO: I can't talk any louder into this.

COMMISSIONER DOMBROWSKI: There's not a very good sound system here.

COMMISSIONER BOSCO: Testing. Can you hear me now? All right.

I just said that I wanted to thank the panel, and especially Assemblyman Shelley for his very poignant testimony.

And I wanted to ask, you mentioned the livable wage ordinance in San Francisco, and I know that other cities in the state have such



ordinances. Is there any indication that those cities have suffered financially or economically from having passed what would really be much more sizable minimum wages than we're considering here?

ASSEMBLYMEMBER SHELLEY: Thank you very much, Mr. Bosco. I probably am not the best person to answer that. There are members of the coalition who've been studying these various living wage ordinances that have passed in the East Bay, other portions of the Bay Area, one or two in southern California, and could answer.

I will tell you this. From the statistics that we see -- and when I say "we," I mean in the Legislature, as we consider our own legislative response to underpaid workers in this state, we have noted that those communities who have put living wages in effect have thrived economically. I mean, their communities are experiencing, as are all communities throughout the state currently, budget surpluses. And to the extent that one puts additional resources, obviously, in the hands of, you know, a purchasing public, the statistics, once again, that I have seen demonstrate that the commercial benefits to the local communities have been extraordinary.

So, you know, the by-product, obviously, we need to acknowledge and understand, of paying workers a living wage is not only that you do right by those men and women and their families and themselves in allowing them to live at a -- if not comfortable, at a subsistence level, but we are improving the economic condition of the community.

So, the concerns that were often raised, as far as I know -- others can comment on this -- by local communities who opposed living wages going into effect, that it would somehow -- you know, certain employers couldn't afford to pay the wage, that it would put companies out of business -- I think that's what you're getting at with your question -- as far as I know, and the statistics that I have not, it has not done that. But others may wish to expand on that or comment.

FR. SAMMON: This morning I was just looking at -- there's a book done by a Dr. Pullen, who did the research for the living wage. He was against it in Los Angeles and did the research. He was, at that time, I think, at UCLA. And he came out with -- he -- as a supporter. And then he's now at the University of Massachusetts at Amherst, and he and -- with a woman by the name of Luce, put out a book called *The Living Wage*. He first dealt with the general thing, minimum wage will always hurt business, and deals very well in that book with the fact that that's not true. But his research on the living wage shows definitively in the places where it was put into place, at the time that book came out, which was about a year and a half ago, that there had been no bad effects. In fact, there have been a lot of good effects. It's now in 51 cities. Probably when he wrote the book it was in about 25. So there's all that

-- the research that he puts out, and I've seen other research. It helps the economy rather than hurts the economy. And what you have to do is, if

there are people who are going to be pinched by this, you have to find ways, perhaps through public subsidy, of helping them get over the hump so they can get to that, because we don't want to put anybody out of business.

COMMISSIONER BOSCO: Do you know, or does anyone on the panel know, if, for instance, in San Francisco that has a living wage ordinance, does that require every business in the city to pay that wage, or are there exemptions to it or exceptions to it?

MR. HERMANSON: I would -- as co-chair of the Living Wage Coalition, I'd certainly enjoy seeing every business being required to pay that. Unfortunately, politically that's not realistic. I would work very hard to make that happen.

Currently, in the city, it is people who are doing business with the city or, most notably, out at the airport we had tremendous success in getting airport workers raised to \$9, and then up to \$10 an hour. And even at that point, that is clearly not a living wage.

So, I wanted to address a point. I'm past president also of the Merchants of Upper Market and Castro. And within our merchants association, we have employers that they can't find employees. And they're paying much more than minimum wage. I've had employees that would be living out of their cars because they cannot find housing that is affordable. I have merchants that are working seven days a week because they can't take a day off because their employees have quit to go elsewhere. And these are people who are paying \$9, \$10, \$11, \$12, \$13 an hour for doing sales work. Clearly, within the Bay Area here, minimum wage is just something that doesn't even apply. People say, you know, "I haven't dealt with that for eons." In fact, I've never paid minimum wage. There's no way, even twenty, thirty years ago, that minimum wage was enough to live on.

MR. SHELLEY: Mr. Bosco, if I may, I'd just like to add to that briefly, Congressman.

The question, I thought, was a very good one, but I hope that the answer to the question is well understood. And that is, to the extent that San Francisco, for example, does not have an across-the-board living wage -- and I think that's fairly reflective of a number of the cities, the majority of those cities that having living wage ordinances in place -- it's not across the board. It does have numerous exemptions, it does apply only in specified circumstances and to certain entities, whether it's doing business with the city or otherwise. That's why it's so important to raise the minimum wage to a reasonable level, because if the argument in part would be, "Well, a great many of these communities are pursuing living wages, and so perhaps we should have an approach whereby, you know, the state should only be involved where it could most importantly be involved, and if a certain local community chooses to pay its workers a higher wage because they have a higher cost of living in that community, then let them do that, but we as a state shouldn't

necessarily raise that because the local communities are choosing to do that themselves."

Well, two things. One, they're not doing it across the board. And two, the local communities don't have the resources to do it. And God forbid, we at the state level haven't made it easy for them by taking all their damn tax dollars up to Sacramento, at the cost of \$3.5 billion per year. So there's less and less money at the local level to pursue appropriate levels of living wage ordinances. And so, that's why it's compellingly urgent that we at the state level, and you as commissioners, raise the minimum wage at least two to three dollars.

Thank you.

MR. PULASKI: Mr. Chairman, if I may add one other brief to that, and that is, we find time and time again -- and every study will verify it, I believe -- that though when the Commission considers an increase in the minimum wage, many will stand before you as employers and say they will lay people off, the fact is, we see time and time again, when the minimum wage goes up, there is not a dramatic impact -- in fact, there is not a negative impact

-- on employment at all, either here in California or around the country. And so, that supports our proposal that not only you raise the minimum wage, but that you index it as well so that we can continue to address the issues of inflation for those workers.

Thank you.

COMMISSIONER BROAD: Assemblyman Shelley, I wanted to direct a question to you because we have a certain piece of this policy issue and, of course, the Legislature has another piece, and local government has another piece. What concerns me as I listen to the gentlemen representing business in San Francisco, what concerns me as I've listened to his debate is that the cost of living is the cost of living. People live, one way or another. They get sick, one way or another. They need housing, one way or another. And in this sort of hodgepodge way we go about it, we somehow make healthcare available to those people, we somehow make housing available to those people -- not very nice housing --

ASSEMBLYMEMBER SHELLEY: Or not.

COMMISSIONER BROAD: -- or not, depending on where they are and what programs they might -- what concerns me is that, in effect, when the minimum wage is too low, that we create a situation where, in effect, all the businesses that pay higher than the minimum wage, and all the individual taxpayers, all the middle-class taxpayers that pay their income tax, and all the working poor that pay their sales tax and income tax, and everybody else, in effect, is subsidizing the substandard wages of those employers so that then they can send their workers over to some

state or county or federal program to receive what other employers have to pay.

And while I am here representing workers, I just happen to own a small business, as these gentlemen do. I don't -- I pay my lowest-paid employee four times the minimum wage, so it's not even close to relevant in my circumstance. But I'm certain that through the health insurance that I pay for my employees and through the taxes that I pay for my employees, that somehow I'm managing to subsidize someone who feels compelled to pay someone, you know, the minimum wage with no benefits. And I'd like you to comment on that, because I think it's placing a burden on the rest of society, and it's sort of a hidden burden. But it's a benefit, if you will, it's a subsidy, if you will, that those kind of employers are gladly willing to accept from the rest of us.

ASSEMBLYMEMBER SHELLEY: Well, thank you for the question, and let me answer it. First of all, the premise, as you initially stated, that, you know, somehow we find a way to provide health insurance, somehow we find a way to provide housing, I know what you were -- what you meant by that is that somehow people find a place to live. But when I, of course, interjected and said, "Or not," I'm trying to make a point, which is that in the context of the debate on increasing the minimum wage, one can't, of course, ignore the fact that there are millions and millions of Californians that don't have health insurance. There are hundreds and hundreds of thousands, hundreds and hundreds of thousands of Californians, that either, a) are homeless, or, b) can't afford a reasonable place to live. And by "reasonable," I mean, you know, a studio with no windows and working plumbing, because --

(Applause)

ASSEMBLYMEMBER SHELLEY: Now, you know, we in the Legislature, we in government, bear some responsibility for this, because to the extent that we can't address these other ills in finding ways to provide for health insurance for the poor and those uninsured, particularly the kids and their parents, finding ways to promote affordable housing, then it is all the more crucial that we increase the minimum wage. I mean, Mr. Pulaski and others cited the cost of living for housing, for example, in San Francisco or in the Bay Area. Well, you know, it's expensive all over the state. I mean, this state is becoming increasingly a very expensive place to live. And one shouldn't be forced to move into the furthest regions of the state, where one could not find a job, in order to find an affordable place to live.

(Applause)

ASSEMBLYMEMBER SHELLEY: So, as we create more and more low-level jobs, particularly in the Bay region, more and more entry-level jobs, and we don't have affordable housing for folks to live in who make those wages, much less the insurance component, they can't stay in those jobs. And

they become homeless, and they cost the state more. They become sick, and they cost the state more.

And so, if we're talking about a cost-benefit analysis, let's take aside the human element and talk pure cost-benefit analysis, as most businesses do, and using a cost-benefit analysis, it is not in the state's economic benefit interest to not increase the minimum wage. It is costing us more if we don't.

Thank you.

(Applause)

COMMISSIONER DOMBROWSKI: Thank you. Thank you.

MR. PULASKI: Thank you very much.

COMMISSIONER DOMBROWSKI: We're going to bring up a second panel.

Mr. Kaye?

After this panel, I have eleven cards for other people who want to speak on the minimum wage. I'm just going to take them in order as they were handed in. I'm estimating that will probably run us up till just after noon.

MR. DUNLAP: Good morning, Mr. Chairman and Commission members. My name is John Dunlap. I'm the president of the California Restaurant Association. The CRA is a statewide organization who represents some 70,000-plus businesses in the state.

The restaurant industry is the largest retail employer in California, providing jobs to some 911,000 Californians. As you well know, restaurants are one of the largest employers of workers earning at or near the minimum wage. Therefore, our members have a strong interest in this issue, as has been evidenced by our participation at all of our meetings, workshops, hearings, and the like.

Furthermore, many of the so-called minimum wage workers in the restaurant industry are actually tipped employees, such as waiters and bussers, who earn well above the minimum wage. Although CRA understands that the IWC has no legal authority to set a tipped employee wage, it is still important to understand it is often the nontipped, back-of-the-house employees, the ones that proponents of this increase claim they are trying to help, who are most negatively impacted by a minimum wage increase.

As you've conducted your review of the adequacy of the minimum wage over the past several months, I know you have heard from our association, the restaurateurs, on this subject, and we've provided you with economic data, quoted studies that point to the negative effects of a minimum wage

increase, and spoken of how the proposed increase will impact our membership.

I won't rehash the testimony you've already heard from our association. However, with me today is a local restaurateur from the San Francisco area who would like to speak to the issue, not as a professor of economics or a paid lobbyist, but as an individual who has provided numerous jobs, provided opportunities to Californians employed in our industry. Our industry -- again, I cannot overstress this -- is greatly concerned that their ability to provide such opportunities will be hindered by the proposed increase, and I hope you will take a few moments to listen to Mr. Puccini's concerns.

Thank you.

MR. PUCCINI: Good morning.

First of all, I want to tell you --

COMMISSIONER DOMBROWSKI: Please identify yourself for the transcript.

MR. PUCCINI: My name is Bob Puccini.

COMMISSIONER DOMBROWSKI: Thank you.

MR. PUCCINI: I started in the restaurant business when I was 16 as a dishwasher when I moved out of my home, and for the first five years, actually, was a union employee as a busboy and a bartender. It paid for my college, it paid for my life. I lived in a boarding house until I was 18 and then finally was able to afford an apartment with roommates.

And I guess my story today is this, is that I grew up in the restaurant business because I had to. It was my means of taking care of myself. I enjoyed it. I -- it paid for college, and I moved on with various companies until, thirty years later, I was finally able to afford to develop my own restaurant.

I currently employ about a hundred people in California and about another 150 in Oregon. I've developed restaurants all over the Bay Area and I've got about six more under development in the Bay Area. So my roots in San Francisco and the Bay Area are very strong. I'm on the board of San Francisco State, University of San Francisco.

And I'm here to tell you not that I'm going to lay off anybody; that's not going to happen, because, at the end of the day, I have to take care of my customers. I've got three groups I've got to take care of: my customers, my employees, and my investors. My customers, without those folks, I'm really out of business. And I can't have no one taking care of them. So, am I going to lay people off? No.

Where the squeeze is going to come is two ways. One, it's going to come through raising prices, and the other is by cutting benefits. We have -- because of my background and what the business has done for me, in terms of my personal growth, my ability to create a living, it has been a great factor in education, in training me. And so we -- I take that very seriously. We spend a lot of money on training our employees. We take -- we have a policy in my company of compensating up to 50 percent of all college or university expenses for advancement in whatever segment, whether it's bookkeeping or culinary or service training. Those are the kinds of things that are actually going to get cut.

In our business, people work up. People start as dishwashers, like I did, to become bussers or cooks, and they sort of move up through the system. We, as most people do in my business today, have a system of promoting from within. It's the best way to do it. There is no -- there is no incentive for me to have turnover in my restaurant in today's labor market. There is a high -- and the people who make the minimum wage are really the service staff, the tipped employees. Those people, by and large, are making way more than minimum wage simply in tips. So the people that end of suffering are the people who are in the back of the house. It becomes more pressure on the costs for those folks, from my standpoint. I can't raise them as much, I can't provide the benefits.

We currently provide full benefits, which is all medical, dental, vision, for people of 30 hours and more. We're considering changing that. Those are the kinds of things that are going to happen.

And sadly, the educational part -- we spend a lot of time with our people. We bring in folks to talk to them, we do field trips. This is to advance their careers. Ultimately, everybody wants to either be a chef or a server or a manager, but I have a hard time hiring managers today because the people who are servers don't want to move up into that position and take a pay cut.

So I don't -- I don't know if necessarily, in my segment of the restaurant industry, if raising the minimum wage is going to help anybody but those folks that are already highly compensated through tips. The back-of-the-house people, the cooks, they all are making well above minimum wage anyhow.

That's my testimony.

COMMISSIONER DOMBROWSKI: Thank you.

MR. DUNLAP: I might add, as an industry rule, about 32, 35 percent of a restaurateur's expense is through wages. Generally speaking, depending upon the restaurant, it's between 2 and 7 percent of the gross is what is potential profit. And what we're talking about here, the wage -- any wage movement would come out of that 2 to 7 percent.

COMMISSIONER DOMBROWSKI: Go ahead.

COMMISSIONER ROSE: Excuse me. Could you tell me roughly how many people in the industry do get paid just minimum wage, if any?

MR. DUNLAP: I don't know. There may --

MR. PUCCINI: Sir, I can tell you, just in my restaurants.

COMMISSIONER ROSE: Okay.

MR. PUCCINI: It's about 50 percent.

COMMISSIONER ROSE: Fifty percent, five-zero?

MR. PUCCINI: Right. It's roughly -- you have one server for four to five tables, and every two servers has a busser. And those are typically minimum wage people. Depending on the size of the dining room, they far outnumber, let's say, the kitchen staff, which is maybe three to four cooks and maybe a prep or two and some -- a couple of dishwashers, at most two, even in a busy restaurant.

COMMISSIONER ROSE: But they also get tips.

MR. PUCCINI: No, the back of the house doesn't get tips. It's true that we have taken -- more and more industry folks, at least that I know, are trying to spread tips out among hostesses and everybody they can. And I know of, in fact, some people that spread the tips out even to cooks, but that's not generally the rule right now.

But 50 percent of it is easily -- is minimum wage employees.

COMMISSIONER ROSE: And they get no other compensation, just the minimum wage?

MR. DUNLAP: They get minimum wage and benefits.

COMMISSIONER ROSE: Oh, okay.

MR. DUNLAP: Commissioner, I'll get back to you with a rule of thumb. There's a few statistics that have been cited, but I'll come back to you with that.

COMMISSIONER ROSE: Thank you.

COMMISSIONER BOSCO: Yeah. I don't want to be argumentative, because I appreciate the fact that you've been in business so long and have created so many jobs here locally. But, you know, every single sector of our state's economy is thriving, and we've had testimony here that a stone's throw away in Silicon Valley, thousands of millionaires have been created in the last few years, not just a few like when we were growing up, where there were very few millionaires, period, but thousands of them. I'm a partner in a law firm. We have never had so much business. We put together IPOs and -- every day we have people coming in to our trust



department, 25 years old, multimillionaires, \$30 and \$40 million made. I don't think anyone could claim that this state isn't going through the most burgeoning success that we've ever had.

How is -- now, doesn't that help the restaurant industry? I mean, you know, don't more people eat out? Aren't you able to charge higher prices? I mean --

(Applause)

COMMISSIONER BOSCO: I'm asking that seriously. I mean, isn't there any elasticity here that --

MR. PUCCINI: No, no. It's a valid question.

Well, let me answer your question this way. First of all, two things happen. People can only eat one meal -- three meals a day, which is generally the case, so no matter how much you make, you can only eat out so much.

Two, as much as there's a lot of people making a lot of money, that is clearly not necessarily very broad because average family income, as I understand it, is still relatively -- less than \$100,000 a year. It's probably half of that.

And third is most restaurants have only so many seats. Like I have about a hundred seats in my dining room. If half of those are tables for two, I can only seat about eighty people at a time. So, if everybody wants to eat between 7:30 and 8:30, which is what the case is, you can only seat so many people.

I'm not going to argue with you that before minimum wages were applied several years ago, you could buy a meal in San Francisco easily under \$20. For those of you who live here, just remember those days. I ask you to go into a restaurant today and find a meal under \$20. It is generally not the case in white-tablecloth restaurants. It is \$20 to \$30 or more. So, it is true what has happened is because there's a little bit of an auctioning of tables at prime times, or generally, in restaurants price has gone up. But that has in no way covered the cost. The cost is a percentage, because it takes more people longer to serve those tables.

And -- and I just simply want to say this -- that the minimum wage only benefits those people that get the compounding benefit of the 15 percent tip times the new check average.

COMMISSIONER BOSCO: Well, what about this person in the back that I guess is washing dishes, or the people that aren't tipped, cleaning up the kitchen? I mean, you need those people anyway, don't you? I mean, you're not going to have them not come to work.

MR. PUCCINI: Oh, I'm not saying --

COMMISSIONER BOSCO: Who's going to wash the dishes if they're not there?

MR. PUCCINI: Oh, I'm not saying -- I said before we're not going to lay anybody off. We have to have them.

And by the way, they don't make minimum wage now; they make above minimum wage, and they get benefits, and they get meals. So --

COMMISSIONER BOSCO: Well, what do they make now? Actually, that's a good way to start. If they make above the minimum wage now, then you surely couldn't complain if we raise the minimum wage to wherever we wanted.

(Applause)

MR. PUCCINI: Well, I will say this. I -- we take care of those people. But the people that wages are going to be increased are the front-of-the-house tipped employees. For those people, who are the majority of our employees, a minimum wage increase is -- most of these people don't even -- sometimes they don't even pick up their checks because most of their checks go to taxes from their tips. The people that it's going to hurt -- it's not that we're going to lay anybody off, not that we're going to cut salaries -- but what we're going to do is cut benefits because we can't afford to have it all for everybody, because there's only so much you can move prices up.

MR. DUNLAP: If I could add too, commissioner, one of the things that --

COMMISSIONER DOMBROWSKI: Could we please respect all the speakers, please?

MR. DUNLAP: Commissioner, one of the things I know you're well aware of, the restaurant industry is highly competitive. As a matter of fact, there was a study that's been cited in our industry not long ago, within the last eighteen months or so, put out by the U.S. Chamber of Commerce that talks about restaurants as a small business failing in excess of 25 percent more frequently than other small businesses -- very competitive industry. You all know there isn't a street corner, it seems, in our state where there aren't restaurant choices. There are a lot of -- there's been a lot of 99-cent hamburgers offered in our state, for example, for years, as they are throughout the country. There's a lot of price pressure. There's a lot of competition. There's also a lot of consumer choice.

So I don't want -- Mr. Puccini represents a wonderfully successful business approach and has done very well, cares about his employees, works to promote from within, and I think is representative of the best of our industry.

However, I don't want you to lose fact of the matter that it is competitive, it is difficult. We happen to be in San Francisco, but there are a lot of -- a lot of folks living outside of this region as well.

So, you also should know that minimum wage in our industry has been traditionally a starting wage. And there's also been some anecdotal examples that I could share with you, but some statistics also prove that about 35 to 40 percent of folks that work in our industry, over the first six months or so are able to move up beyond a minimum wage. They're rewarded because they want to be kept. We don't benefit from high turnover.

But there is an economic impact. It can be profound and it can cause people not to make it, not to be economically successful. And we want to make that point here today.

COMMISSIONER DOMBROWSKI: Any other questions?

COMMISSIONER BROAD: I have to say that there's been a notable lack of interest in the employer community on this issue, other than the restaurant industry. They're just not here, and they weren't around when the minimum wage initiative was on the ballot -- was it four years ago? We have roughly 20 million employees, of which you say you represent 900,000. Those employers don't seem to be very concerned, of the other 19 million workers, about this issue.

And you're asking us to not give minimum wage workers a raise because of the implicit threat that you'll cut benefits and do exactly what -- for those employers that are actually providing them in your industry, which -- I think you've brought the best here today, an employer who is -- but implicitly, it's saying they're going to cut those benefits and they're going to send those workers off -- just as I asked Assemblyman Shelley -- off to San Francisco General Hospital in order to get their healthcare when they're sick, at great cost to the taxpayers.

Why should all the other employers and all the workers and all the taxpayers and everybody else subsidize the restaurant industry?

(Applause)

COMMISSIONER BROAD: You told me it was a soft-ball question the last time, so I'm trying it again.

MR. DUNLAP: Commissioner, I want you to know -- and I know you have great respect for this democratic process and the process by which --

AUDIENCE MEMBER: (Not using microphone) Louder!

MR. DUNLAP: I said I know the commissioner has great respect for this process, and we're here, and why we've been consistently involved is we want you to know about our industry. We want to play a constructive role in the discussions here. We understand that you have great weight upon your shoulders. You have some things you have to deal with here, and we respect that. But we want you to understand how it affects our industry.

Anecdotally, again, you should know that there are some 43 states of the 50 in the country that have a tip credit for those tipped employees. We want you to know that too. We know you don't have the authority to deal with that here at this point. We want you to know that.

It will have an impact on our industry. I -- you know, I've been with the Restaurant Association for two years. I have been absolutely stunned by how thin the profit margins are for the vast majority of our members. I can tell you of folks that join our association, this past year we go to renew them again for the next year, and they're not in business. That happens at an increasingly alarming rate to us. We want you to be aware of the impact on our industry. And whether or not it sways you for your ultimate decision-making or not, we want you to know about it, and that's why we're here.

COMMISSIONER DOMBROWSKI: Thank you.

MR. DUNLAP: Thank you.

COMMISSIONER DOMBROWSKI: I noticed you had some other names for the panel.

MR. DUNLAP: Yeah. We decided, in the interests of time, we wanted to make it very small and brief.

COMMISSIONER DOMBROWSKI: Okay.

MR. DUNLAP: You've got a lot of people you need to hear from --

COMMISSIONER DOMBROWSKI: All right.

MR. DUNLAP: -- and we're appreciative of your time.

COMMISSIONER DOMBROWSKI: Thanks.

Okay. All right. I'm going to bring up people who submitted cards in the order they were submitted. I have Libby Kiser --

(Applause)

COMMISSIONER DOMBROWSKI: -- Bianca Henry, Agar -- I believe it's Jaickes -- Jaickes, Richard Ow. Please take a seat at the table.

MS. KISER: Oh, take a seat.

COMMISSIONER DOMBROWSKI: Richard Ow?

MR. OW: Yes.

COMMISSIONER DOMBROWSKI: Go ahead. Please identify yourself for the transcript.

MS. KISER: Okay. I'm Libby Kiser, with POWER.

And should it go down --

COMMISSIONER DOMBROWSKI: Just -- no, go ahead.

MS. KISER: Okay. POWER stands for People Organized to Win Employment Rights. And we organize around low- and no-wage workers, and right now we're focusing on people on welfare and GA. And I'm also a mother on Cal WORKS myself.

And what I've seen in the Cal WORKS program so far has been parents being pushed into doing job training programs which lead to low-wage jobs. And if they can't find one of those low-wage jobs, they have to be -- they have to be forced into doing community service in exchange for the little check that they get from welfare. And even if they do get a low-wage job, usually they have no benefits and they can't afford the childcare, and so they end up being even worse off being in a low-wage job than on Cal WORKS. And so, they -- and usually then end up going back on Cal WORKS after they've been with a low-wage job.

And \$5.75 an hour is not enough for even a single person in the city, let alone a family. And what we really need to do is raise the minimum wage to \$20.00 an hour --

(Applause)

MS. KISER: -- to survive.

Thank you.

MS. HENRY: Hi. My name is Bianca. I'm with the Coalition on Homelessness.

AUDIENCE MEMBER: (Not using microphone) Louder! Can't hear you!

MS. HENRY: And I'm here --

COMMISSIONER ROSE: Speak into the mike -- right into the mike, please.

MS. HENRY: Okay.

Hi. My name is Bianca Henry, and I'm here with the Coalition on Homelessness. And I'm also a Cal WORKS mother.

And for the last two years I have been a Cal WORKS mother, but before then I was working. I always worked. Even now I'm working. And it's like I'm still one paycheck away from homelessness. I mean, I can't use my benefits because I can't use the surplus pay when I go to the -- when I go to the doctor. I can't afford to pay the \$15 or the \$10 to go to the place because the minimum wage is too low.

I mean, I'm looking for options to get into a homeowner buying trust -- land trust, but it's like I can't afford it. I mean, I work 40 hours a week -- I done even working 80 hours a week, and only got \$400 every two

weeks. So, it's not -- it's not like there's people out there not trying to work, not trying to make it; it's just no way out.

I'm representing the little people from everywhere, the streets. And this is not funny. This is not nothing to be played with.

(Applause)

MS. HENRY: We're getting ignored. I mean, you always talk about crime and different stuff like this. You're all forcing the crime because you all are not looking at us as people and recognizing that we need a way out. I mean, people down where we live, we'd rather sell drugs than to get a job because there's no way you're going to make it out. At least you can dream and hope, I mean, if you sell drugs. I mean, I know it seems bad, but this is reality.

And it's like if I go out there -- I've been clean and sober, haven't sold drugs or whatever, for five years, and I've been trying to make it, but I just cannot make it. And my -- my two kids, I see them, they're going to jail when they get 18. They don't have no options. There ain't nothing out there for young men, no way to get no living wage to make it.

I mean, I'm trying to work with you all.

Thank you.

(Applause)

MR. JAICKES: My name is Agar Jaickes.

COMMISSIONER DOMBROWSKI: One moment, please.

COMMISSIONER ROSE: I have a question. You said that when you go for medical care, that you have to co-pay. Is that what you're talking about, the \$15 or \$20?

MS. HENRY: I can't afford the co-pay.

COMMISSIONER ROSE: But you can't afford the co-pay.

MS. HENRY: I cannot afford co-pay. I have got jobs that pay benefits, but I cannot afford the co-pay because I don't make enough. I have two boys to raise.

COMMISSIONER ROSE: Thank you.

(Applause)

MS. HENRY: So I have to stay on your MediCal for those people.

COMMISSIONER DOMBROWSKI: Go ahead.

MR. JAICKES: My name is Agar Jaickes. I'm a candidate for supervisor in San Francisco in District 5.

I just wanted to reaffirm what the previous speaker has said. If you go down Haight Street at seven o'clock in the morning, you'll see people sweeping the street there. There are homeless people sweeping the street, earning a living, but they're still homeless.

If you're a -- if you're a resident in San Francisco and in District 5, and you have a moderate income, lower than -- at the -- at the minimum wage, you're in danger of losing your place of domicile. And you can't be a good parent and be worried about losing your place of living. You can't be a good parent while you're not sure you can put food on your children's table. And you cannot be a child that is healthy and looking forward to a productive life if you're not sure of the food you get, you're not sure where you're going to school.

I've been a volunteer in the Haight-Ashbury Hamilton Shelter, where there's a childcare center for the homeless. Children of the homeless are in deep trouble. It's a whole generation that you're bringing into this world that you're going to have to deal with later that is not getting both the emotional and the physical and the educational care that is necessary for a decent life in this community.

We need a living wage.

(Applause)

MR. OW: Commissioners, my name is Richard Ow. I'm a retired postal worker. I'm a lifetime union member.

(Applause)

MR. OW: Five years ago, I walked the streets to ask people to sign up to the California -- increase the California -- California minimum wages. And the voters passed, without much help by your former panel.

(Applause)

MR. OW: Today, proudly, California has a \$5.75 minimum per hour. We have 60 more cents than the national.

I often testify in our city supervisors. Any employer in San Francisco is not paying a living wages, we're going to kick the employer out of town.

(Applause)

MR. OW: Today I say to this panel, if any employer in California fails to pay a living wages to their workers, we're going to kick them out of California.

(Applause)

MR. OW: Now, I want to add a personal word. When I was in high school, I have to go to work in a sweatshop. And before that, I have very good grades. But my pay was much less than \$1.00 per hour. That was a long time ago, when I went to high school. And I failed -- my grades failed me.

And fortunately, I worked in the post office, and we have bargaining -- binding arbitration, and I do make a standard living. And today I'm retired now. The only difference is that when I go to work, I got two paychecks every month; now I -- I can live on one paycheck.

Thank you. I hope that you will increase the minimum wage in the increments of \$8.00 and \$10.00 for everybody in California.

Thank you.

(Applause)

COMMISSIONER DOMBROWSKI: Thank you. Thank you.

MR. OW: That's it?

COMMISSIONER DOMBROWSKI: You're done.

(Applause)

COMMISSIONER DOMBROWSKI: George Mann, Anthony Sacco, Diane Verze -- I'm sorry about this -- it's Reeler or Reeher, John Haggerty.

Please. Mr. Mann?

MR. MANN: Yes. Yes, my name is George Mann. I'm with Signature Theaters. We're a company that's based out of Oakland, California. We operate motion picture theaters in California, Hawaii, and Montana.

Currently we provide about a thousand jobs during the peak season in California. About half of those are minimum wage or within roughly a dollar of minimum wage.

There was a mention earlier that every sector in California is thriving. That is not true. Our industry in particular is being hit very strongly right now. Within the top ten theater companies in the nation, three have, I believe, declared bankruptcy. Within California, two long-time firms, Mann Theaters out of California -- which happens to be no relation to me, although the last name is the same -- and Edwards Cinemas, have filed for bankruptcy. So, not everybody is thriving.

The number one expense that is controllable for us is the labor expense. Our highest expense is film, which goes to the film companies. The second



and third expenses are, depending on the location, either the rent for the location or the labor.

We would not expect to cut the number of jobs that we have should the minimum wage go up, but we will be forced to make decisions in order to try and remain profitable. And where that squeeze will come is in the number of hours that we can have people working. And as we reduce the number of hours, we will be cutting back on service, which isn't a benefit to us in the industry because we would prefer our patrons to have a better experience when they come to the theater, but it will be forced upon us if we want to stay in business.

Many people here are talking about the minimum wage and supporting a family. We heard from a number of speakers who talked about single mothers supporting families. And, yes, they are in an extremely difficult bind if they are in a job that only pays the minimum wage. But there's a whole class of individuals out there who are not trying to support their families. They're trying to get their first jobs, and we are one of those industries that provides those jobs to that entry-level employee.

One person mentioned a mother with a high-school-age daughter. Well, if that high-school-age daughter is looking for a job, one of the places she's likely to go is to her local movie theater to get that job. And that job provides a stepping stone for future employment.

Our industry has, for a long time, hired from within. Many people who I work with started out somewhere in the theater industry, generally at a minimum wage job.

Within our own company, the vice president of film, who actually works with the film companies to acquire the films for the theaters, started out as an assistant manager and projectionist at minimum wage in Texas. Our vice president of operations, who's in charge of the management of each one of the theaters, began as an usher changing marquees in Billings, Montana. And our construction manager, who's in charge of maintaining the theaters and working with the contractors on new construction, got his start as an usher at a theater in Klamath Falls, Oregon. And within our own home office, besides those people, we have numerous people who came up from the theaters, who started earning minimum wage and are now anywhere in our offices, going from information technology to advertising.

But those people have to get their start somewhere. We provide thousands of opportunities every year, and it all begins at the first job with the minimum wage. And we'd just like you to consider, as you're thinking of raising the minimum wage, what that does to the many people who are trying to get that first job, and what opportunities are available to them, and that by raising the minimum wage, you may be squeezing that door a little bit tighter.

Thank you.

COMMISSIONER BOSCO: Thank you.

COMMISSIONER ROSE: I'd like to ask you --

COMMISSIONER BOSCO: Just a second, please. I'm going to ask that there be no comments from the audience. Our Commission prides itself on allowing everyone to speak, and we will sit here till each person has a chance to speak. But that means that you speak when you're asked to and that you're polite to everyone else. So, please, if you're going to comment, go outside and you can comment all you want, but not in here.

Commissioner Rose?

COMMISSIONER ROSE: Yes. Those movie theaters that went out of business, I don't know whether it was due

-- what caused it, but was it minimum wage that caused them to go out of business, paying their employees?

MR. MANN: That was not the only reason, no.

COMMISSIONER ROSE: Okay. But it was part of the reason?

MR. MANN: Wages, as I say, is the number one controllable expense. So it runs enough so that the minimum wage is affecting the ability to stay in business. But it is not the number one reason, no.

COMMISSIONER ROSE: Do you go to the movie industry to ask more for a cut of the movie to help balance your budget?

MR. MANN: We have -- we're at disadvantageous position --

COMMISSIONER ROSE: I don't know how that works.

MR. MANN: -- to the film companies. And they have increasingly, over the years, taken a greater and greater percentage of the box office gross.

As it stands right now, the industry is changing, and what is occurring is that the film companies tend to advertise up front, and you get a huge rush at the opening of the film. And the way the industry is structured is, the -- in the first week of a film, you pay a much higher percentage of that box office; anywhere from 70 to 80 to 85 percent of every dollar that comes in at the box office goes to the film company. And then, as the weeks stretch out, depending upon the location, in a major market like San Francisco, you might have three weeks at 70, three weeks at 60, three weeks at 50, and then it works itself down to about 35 percent of the box office. That's against a percentage. And if the percentage that the film company is seeking is higher than the percentage that's just a flat percentage, then the film company gets that.

So, what the effect is, is that you get a box office hit, like the "Star Wars" coming out, and it did over \$400 million across the U.S. And it did over \$100 million of that in the first five days. And what that created is, film rental is the highest that the industry has seen, probably about 83 to 85 percent of that first week's gross.

COMMISSIONER ROSE: But that also benefits your business.

MR. MANN: No, it does not benefit our business at all, because -- because that money is going to the film companies.

COMMISSIONER ROSE: Yeah, but you still get 20 percent of \$400 million, compared to --

MR. MANN: That's correct, but we have to have the people there to handle, you know, the crowds that are coming in. But that does, in -- twenty years ago, that film percentage was probably at 35 percent. And if we could make the film percentage flat at 35 percent, we wouldn't have any problem raising the minimum wage.

COMMISSIONER ROSE: Thank you.

COMMISSIONER BOSCO: Okay, the next witness.

MR. SACCO: Good morning, members of the Commission and honored guests. My name is Anthony Sacco.

And I'll preface my short statement with the fact that \$6.75 an hour in the year 2001 is really not -- is not realistic and is really unacceptable. The figure of \$8.10, while it is a compromise, even that figure, it should be raised. But you should try and concentrate on the figure \$8.10 an hour today.

I represent FORUM, co-chair of FORUM. FORUM stands for Federation of Retired Union Members. We represent the building trades, we represent city workers, and we represent the other fields there.

Actually, we're all retired. We know the effects of collective bargaining, and we know that collective bargaining is the way that you receive increased wages, hours, and work conditions, especially work conditions. Unfortunately, the people that we are talking about today do not have the advantage of collective bargaining. Their only collective bargaining is public opinion. And so, we're here to try and single out public opinion in favor of this group that is not receiving the benefits that they should be entitled to.

So, I do hope that when you look this over and try to come to a realistic approach, \$8.10 an hour, while it's not ideal, seems to be a reasonable compromise. And I think that as you leave today, that -- or at the next meeting -- \$8.10 an hour is the figure that you should target in on.

Thank you.

(Applause)

MS. VERZE-REEHER: It's still morning. Good morning. My name is Diane Verze-Reeher. I'm a member of the orders for preachers laity, and I'm employed in the music industry.

Some values are eternal and some are not. Why should we increase the minimum wage to \$8 an hour? Members of the Commission, fellow citizens, the California State Labor Commission has said that in order to keep up with inflation, the absolute lowest minimum wage should be \$8.10 an hour.

Consider what our constitution says: every citizen is entitled to life, liberty, and the pursuit of happiness. These necessities are in their natural order. Without having life, one is unable to have liberty to pursue happiness. Without food, clothing, medical care, or shelter, it is ludicrous to talk about having the liberty to pursue happiness. Food, clothing, medical care, and shelter have an increasingly high price tag in our society. The gap in California is widening rapidly between poor and rich.

Our forebears recognized the responsibility of the state to uphold the God-given rights of the person. Would that we who follow after them might do as much.

Thank you.

(Applause)

MR. HAGGERTY: Good morning. I'm John Haggerty. First, I want to say that I'm not here to speak against the minimum wage, but rather for the retention of the personal attendant exemption for homecare workers.

As I said, I'm John Haggerty. I'm the human resources managers for the Means Home Health Organizations. We have two companies, one which provides skilled medical services to eligible Medicare and MediCal patients, and the other which provides homecare services to all but Medicare and MediCal patients. We're a small, locally owned firms with offices in San Jose and Gilroy. Both companies are licensed by the State of California Department of Health Services, and one, of course, is Medicare-certified.

Our objective is to provide quality, caring homecare services which meet our clients' -- that is, our patients -- needs and are affordable. We spend considerable money to recruit, screen, hire, train, and remotely supervise individuals we believe will be highly successful homecare workers that our agency sends into someone's home. We charge patients on an hourly basis for many services, such as escorts, drivers, light housekeeping, among other things, and, of course, employees performing these duties are paid considerably above the minimum wage.

However, many of our most in-need patients, that is, those who are most frail, utilize something called live-in services or sleep-over services, which allow them to remain in their homes instead of being institutionalized. These services are offered on a contractual basis versus an hourly basis, which the personal attendant exemption, under Wage Order 15 and the Fair Labor Standards Act, allows, making the service affordable, since the patient is not paying a high hourly rate while our employee is there sleeping.

Please retain the personal attendant exemption for Californians. I can tell you that neither the agencies, their owners, nor their employees are getting rich with the current system. Eliminating the personal attendant exemption will increase our costs, which will have to be passed on to our patients in the form of a higher bill. Since many of our patients can barely afford us now, any increase in their bill will likely result in them not being able to afford our services at all. The net impact is that many of these people will be forced out of their homes and into institutions, such as nursing facilities, at taxpayers' expense, or they'll elect to remain at home and die alone. This would be a real shame for many of our senior citizens who plan their remaining days in their own homes.

We don't have to cause this to happen. We can still pass the minimum wage but leave the personal attendant exemption in place.

Thank you.

COMMISSIONER BROAD: I have questions.

COMMISSIONER DOMBROWSKI: Let's start with Barry.

COMMISSIONER BROAD: For the people that you charge for contractually, they're covered by the exemption now?

MR. HAGGERTY: They're exempt from both the minimum wage and the overtime provisions.

COMMISSIONER BROAD: And the people hourly, are they exempt from minimum wage?

MR. HAGGERTY: No. No, no. No, no. No, they're paid -- they are covered by minimum wage and both Fair Labor Standards Act and California's new AB 60 regulations.

COMMISSIONER BROAD: Okay.

MR. HAGGERTY: It's just people involved in a narrow piece that was originally defined by the Fair Labor Standards Act as personal attendants, and it's also in Wage Order 15 for California.

COMMISSIONER BROAD: Can I have our counsel -- what is the range of the exemption? I'm curious.

MS. STRICKLIN: In Order 15, those people, for example, the definition includes --

AUDIENCE MEMBER: (Not using microphone) Louder! Louder!

MS. STRICKLIN: -- includes babysitters, people doing light housework -- well, I can read it to you: babysitters -- and it means,

"Any person employed by a private householder or by any third party employer recognized in the healthcare industry to work in a private household to supervise, feed, or dress a child or a person who, by reason of advanced age, disability, or mental deficiency, needs supervision. The status of personal attendant shall apply when no significant amount of work other than that described earlier is required."

And they're exempted from the entire Order 15.

COMMISSIONER BROAD: Okay. So, it's everything.

MR. HAGGERTY: Correct.

COMMISSIONER BROAD: All right. Now -- so, in theory, you can pay them 10 cents an hour.

MR. HAGGERTY: In theory.

COMMISSIONER BROAD: Okay. So let's talk about practice. You charge someone -- we're talking about live-in people -- you charge what to the client?

MR. HAGGERTY: It's going to depend on who the caregiver is that's with them. But for a 12-hour sleep-over, it's normally going to be about \$110 to \$115, and then the employee may be paid \$60, \$65, maybe \$70 on a contractual basis for that same thing.

COMMISSIONER BROAD: Well, isn't that more than the minimum wage?

MR. HAGGERTY: In some instances, it is. In some instances, it is.

COMMISSIONER BROAD: So -- I don't understand. If you're getting \$115, why can't we pay that worker the minimum wage --

MR. HAGGERTY: Well --

COMMISSIONER BROAD: -- for 12 hours?

MR. HAGGERTY: -- the first thing you have to look at is -- and part of the time they're there is sleep. Secondly, the -- sure, they're sleeping.

And the question is, do you want to pay and do you want to charge a person either minimum wage and/or overtime while someone is sleeping in your home?

COMMISSIONER BROAD: Well, see, let me ask you a question.

MR. HAGGERTY: In an agency, 75 to 85 percent of the cost is the labor cost.

COMMISSIONER BROAD: Okay. I get that. But let's say the minimum wage was seven bucks an hour.

MR. HAGGERTY: Um-hmm.

COMMISSIONER BROAD: For 12 hours, that's \$84. And you're getting \$115.

MR. HAGGERTY: Um-hmm.

COMMISSIONER BROAD: But you're not making enough of a profit between \$84 and \$115?

MR. HAGGERTY: No, we're not. No. No, we're not. What you have to look at, as far as one of our largest expenses in addition to the issue of a person's wage, is our workers' compensation costs, which are extremely steep for that particular industry.

COMMISSIONER BROAD: What are they?

MR. HAGGERTY: As I recall, I think it's five-something per payroll hour, five dollars and something per payroll hour. We're insured with the state --

COMMISSIONER BROAD: But that's more close to the bottom.

MR. HAGGERTY: We're insured with the state compensation fund.

COMMISSIONER BROAD: Well, that's close to the bottom of workers' comp costs, not the top. I mean, workers' comp, the lowest is, I don't know, around 4 or 5 percent, that I'm aware of.

MR. HAGGERTY: I know. I said dollars per hour.

COMMISSIONER BROAD: Percent of payroll. I understand how workers' comp works; I pay it on my own employees. And I'm at the lowest end for clerical employees, and it's about 5 percent. So I don't -- you're at the low end.

Do you have a lot of workers' comp claims?

MR. HAGGERTY: Not really.

COMMISSIONER BROAD: I mean, I don't -- you know, what we're talking about here is that your -- these people get no overtime pay, and we're not even talking about them getting overtime pay.

MR. HAGGERTY: That's correct.

COMMISSIONER BROAD: If we eliminate the exemption, we're talking about them getting the minimum wage.

MR. HAGGERTY: That's correct.

COMMISSIONER BROAD: And that's all.

MR. HAGGERTY: That's correct.

COMMISSIONER BROAD: At straight time.

MR. HAGGERTY: That would be correct. And the question is our ability as an agency to pass that on to our clients or absorb it. And that particular piece of the agency is barely breaking even, the way we are today.

COMMISSIONER BROAD: I understand that, and I --

MR. HAGGERTY: And so, you can't pass -- you can't very well pass the costs on to seniors who can barely afford our services as they are.

COMMISSIONER BROAD: Now, let me ask a question about the way this -- your industry works. Who are the 75,000 home healthcare workers represented by SEIU, as opposed to your --

(Applause)

COMMISSIONER BROAD: Are you -- are they -- are they -- are you competing with them?

MR. HAGGERTY: I don't believe so.

COMMISSIONER BROAD: I mean, are they providing the same service? That's what I --

MR. HAGGERTY: I don't know the answer to your question, sir.

COMMISSIONER BROAD: So, you don't know what market -- what all those -- and they --

AUDIENCE MEMBER: (Not using microphone) We can. We can answer.

MR. HAGGERTY: I know the market in San Jose and Gilroy where we work. Am I familiar with the market in San Francisco? No, I'm not.

COMMISSIONER BROAD: Okay. In Gilroy, who comes



-- you provide some of this -- you provide some of this to people, and it's obviously -- the government, at some level, is also providing this service through in-home healthcare workers, right?

MR. HAGGERTY: No. There's -- there's two distinctions. One is -- we have two companies, as a matter of fact, one which does Medicare and Medicare services, which really only provide services where medical improvement can be shown or demonstrated. Personal attendants are not Medicare-eligible. They get no assistance. It's a misunderstanding people have of Medicare law; they just don't cover it. It may be necessary, but not under Medicare.

COMMISSIONER BROAD: So, who are, then --

MR. HAGGERTY: Individual people.

COMMISSIONER BROAD: No, I understand that. But they're not -- they're not eligible for this to be paid for by Medicare.

MR. HAGGERTY: Correct.

COMMISSIONER BROAD: So, what -- what sort of person are they? What is it that -- what is their problem that it isn't covered? They're just --

MR. HAGGERTY: Well, some of them -- I'm just thinking of one that I was particularly looking at -- her particular affairs are being handled by the public guardian. She's someone from Gilroy. I think she's frail of health, and the public guardian for Santa Clara County handles her financial matters and so forth. But if the lady is to stay in her home, she needs to have a personal attendant there. Otherwise, she would have to be institutionalized. Now, we're --

COMMISSIONER BROAD: Okay. So then she would be sent to a nursing home? Is that correct?

MR. HAGGERTY: Yeah.

COMMISSIONER BROAD: Okay. And if she goes in a nursing home, though, the nursing home workers are going to be paid the minimum wage and overtime.

MR. HAGGERTY: And the state will absorb the cost.

COMMISSIONER BROAD: So the public guardian is absorbing the cost out of her bank account, is what you're saying.

MR. HAGGERTY: That's correct. The public guardian is a public entity that's appointed by the court to administer somebody's affairs who is, for one reason or another, not capable of handling their own financial affairs. If someone perhaps became mentally disabled or something like that, that would be a matter that would be handled by the public

guardian. I'm sure there's a similar one in San Francisco County for elderly people or people who are disabled mentally.

COMMISSIONER BROAD: Okay.

MR. HAGGERTY: But those services that the personal attendant speaks to, they are not covered by Medicare at all, never have been, and from the look of the debates going on over Medicare in the Congress, they won't be. So it's -- it's a -- it's a very sad situation. We have the same thing going on in the Medicare side that you have in the private side. A lot of people think that personal attendants, someone to take an elderly person to their doctor's appointment, to the store to get groceries, to get their prescriptions filled, if someone thinks that's necessary -- and I'm one who does think it's necessary -- unfortunately, it's not covered by Medicare. And it's taken care of in one of several ways: a family member comes and does it if they're nearby, they get volunteers perhaps from a church or other community group where they live, or they're fortunate enough to be able to employ a homecare agency to do that for them. But that's it.

And I don't see any change in that coming. And I certainly don't see any change in the Medicare provisions being broadened to expand any kind of coverage in that area. But it's very important for seniors, if they're to stay in their own homes and live a dignified life in their last days.

COMMISSIONER BROAD: No, I understand that, and -- but, you know, we also have to balance the need for the people that are taking care of people in that situation --

MR. HAGGERTY: That's correct.

COMMISSIONER BROAD: -- to live a dignified life every day.

MR. HAGGERTY: That's correct. I couldn't agree with you more.

COMMISSIONER BROAD: I mean, and that is our charge, to make sure that they're getting what they need to live on.

MR. HAGGERTY: Correct.

COMMISSIONER BROAD: Let me ask you this question. In this economy, are you having difficulty attracting people to these jobs?

MR. HAGGERTY: Well, it's interesting. We're having probably less difficulty attracting people to those jobs, for the sleep-overs, than we are to highly paid nurses' jobs.

COMMISSIONER BROAD: Why do you think that is?

MR. HAGGERTY: Well, many of the people who work as a sleep-over, some of them are students, some of them are second jobs, and so forth. And so,

some of the skilled professions, like the RNs and the physical therapists, are more in demand. They make much, much more money, and they're in shorter supply.

But are both difficult to recruit and expensive? Yes, they are.

MS. VERZE-REEHER: Can I just make a comment?

COMMISSIONER BROAD: Thank you.

COMMISSIONER DOMBROWSKI: Go ahead.

MS. VERZE-REEHER: Something that may be masked here is the fact that many healthcare workers -- when I was an ombudsman for San Francisco County, I saw that many healthcare workers were doing second and third shifts. So the quality of work and the number of citations was outrageous. That's for institutions. That's for SNFs. But, I mean, the same kind of situation applies. So, if people are not receiving the adequate wage, then, yes, they're going to do that, and that kind of situation will, and that affects workers' comp. It's a vicious cycle.

MR. HAGGERTY: But since she brought that point up, I will mention that two months ago, we just had a Department of Health's full survey. The surveyors were there from the State of California for -- I believe it was twelve days, going through all of our personnel records and our charts and so forth to ensure that we were, in fact, in compliance with not only state guidelines, but they also audit for Medicare.

Any other questions?

MR. BARON: I have a -- I'd like to first make -- again, clarify, and then I do have a question.

Again, the exemption for personal attendants is across the board; it is not just live-in. It is all personal attendants, as the definition that was read by counsel, are totally exempt from the order.

So, if I could just ask you a question, is your looking to preserve the exemption, is that therefore just relevant to the live-ins?

MR. HAGGERTY: Yes.

MR. BARON: Would you say, therefore, in terms of those who are not live-in, would you support them getting the minimum wage?

MR. HAGGERTY: Oh, sure. They're already paid more than that. You know, individuals -- some individuals have a dual rate. For instance, if they work 4 hours -- a 4-hour shift someplace, and we have some of those, they're paid an entirely different rate. If they accept a sleep-over, they're paid a different rate, a contractual rate. And so one rate is considerably different than the other.

So, yeah, absolutely. I think I mentioned in the beginning I was not here to speak against the minimum wage at all.

MR. BARON: No, I understand. I was just looking to separate out the discussion in terms of live-in and non-live-in.

COMMISSIONER BROAD: Well, let me ask that question. I mean, you're not -- when you say the term "live-in," either you, Mr. Baron, or you, sir, really they're not living -- actually living in there because they're not living there 24 hours a day. They're just -- they're on a 12-hour shift at a workplace.

MR. HAGGERTY: Yeah. Well, they're there. They're either there 24 hours or for 12 hours. And they are living there. That's where they're sleeping.

MS. VERZE-REEHER: They're paying rent somewhere else, though.

MR. HAGGERTY: But, no, if you're implying is that their primary residence as you would imply an apartment or perhaps your house or something, the answer is no. The home belongs to the patient. They are there --

MS. STRICKLIN: Working.

MR. HAGGERTY: Yeah, they're there working.

COMMISSIONER BROAD: Are they there every night?

MR. HAGGERTY: Some are there five nights a week, and then someone else is seven. It depends on what the client wants and can afford. Some would like to have that, can't afford it, and have just limited services, which are paid very differently. They're paid on an hourly basis because we pay the employees on an hourly basis, which are in excess of minimum wage. As I say, that's why -- we have no -- we have no disagreement with the minimum wage per se. And I want to be very clear I am not here to speak against that. I'm only here to speak for the preservation of the personal attendant exemption. That's all.

COMMISSIONER BOSCO: Could I ask a very brief question of Marguerite?

Are we able, under the proceedings that we're now engaged in, to -- assuming we want to greatly limit this exemption, can we do that too?

MS. STRICKLIN: Yes. The proposal was the elimination or keeping, but within that there's a gray area of restricting it or not. So --

COMMISSIONER BOSCO: So if we wanted to, for instance, limit it to people that literally sleep on the job, to allow them to have a different wage, we could?

MS. STRICKLIN: That's within your realm of possible actions.

COMMISSIONER BOSCO: I know that really it's all industries -- but people that are specifically paid for a time period where they are expected to be able to sleep for the most part, we could limit it to that and still keep everyone else that's there during the day or performing other duties on the minimum wage.

MS. STRICKLIN: That's correct, yes.

COMMISSIONER BROAD: Let me throw out this thought. There's also the provision that deals with ambulance drivers or ambulance -- or, I guess -  
-

MS. STRICKLIN: Ambulance drivers, right.

COMMISSIONER BROAD: -- ambulance drivers, where, if they're on 24 hours a day, they don't have to be paid for the -- if they get -- for the 8 hours of uninterrupted sleep, if they get 8 hours of uninterrupted sleep. But if their sleep is interrupted, they then have to be paid for the 8-hour period. Is that correct?

MS. STRICKLIN: That's correct.

COMMISSIONER BROAD: Well, we might model it after that type of thing.

But even so, even in that situation, the ambulance drivers are getting the minimum wage. So the question is, can we then set a minimum wage? I mean, are we saying it could be, you know, a buck an hour for the other times? I mean, we're talking about an exception here. We're talking about an exception from the minimum wage, which, you know, the ambulance people don't have. So it's a more complicated question.

But I think that that's a possibility to deal with sleep time, because we do have some precedent for that, and it's been working for a period of time. And it's people that are on a 24-hour shift where they're sleeping there. And we would relieve them of the obligation to pay for 8 hours of uninterrupted sleep if it remains uninterrupted.

I do think someone -- you know, as any of us who have children knows, two or three nights of interrupted sleep by a young child or a sick, elderly person could make -- is a lot of work, and probably worth way more than the minimum wage after a couple of nights.

(Applause)

COMMISSIONER DOMBROWSKI: Any other questions?

(No response)

COMMISSIONER DOMBROWSKI: All right. Thank you.

MR. HAGGERTY: Could I leave these with you, the written statements?

Thank you.

COMMISSIONER DOMBROWSKI: Rebecca Vilkor -- I'm sorry about this -- Vilkomerson.

(Applause)

COMMISSIONER DOMBROWSKI: Mary Jane Mikuriya, Virginia Pinkerton, Patricia Baeslin -- Breslin?

MS. BRESLIN: Breslin.

COMMISSIONER DOMBROWSKI: -- Breslin, Michael Wolf.

Go ahead.

MS. VILKOMERSON: Good morning. My name is Rebecca Vilkomerson. I'm here today representing the Homeless Prenatal Program here in San Francisco.

And if you want to see a growth industry, you should come to our office. All the talk we've been hearing today about how well the economy is doing, that's not what we see from where we sit.

We are going to service here over 1,000 homeless families who will come in needing our services. So, what I want to talk about is the fact that most of those families are working families who are looking for housing, not just one parent working, but two parents working. So people -- you know, it's just the math does not add up. And somebody mentioned earlier the report that it takes \$28 an hour to earn enough to make -- to rent a two-bedroom home in San Francisco and the entire Bay Area now. Obviously, even the minimum wage which we're asking for does not come close to having people reach that. So it's only common sense to take that first step.

One of the main problems we're seeing, most of you probably know that we had welfare reform start a few years ago, which forces people off of welfare. The jobs that people are being pushed into are the very jobs that the gentleman was talking about before: homecare workers, childcare workers, nurses aides, jobs that pay in the \$6 to \$7 range. In San Francisco, the average wage that people leaving welfare are making right now is about \$7 an hour. And again, this does not add up for families at all, and that's why we're seeing so many homeless families.

So, to sort of talk about this -- you know, things like the personal attendant exemption and that sort of thing, to me, is just ludicrous. If we have people who are being forced off of welfare into jobs that generally do not pay benefits, they have to get childcare for their kids, they're away from their kids and not home with their kids, the fact that people want a minimum exemption because they might be sleeping just doesn't make any sense to me. So it's just --

(Applause)

MS. VILKOMERSON: -- we have to think about the workers who are earning the wage, not just the companies that are having to pay them. And if we're -- you know, it's a shame that we even have an organization known as the Homeless Prenatal Program if we're talking about such a time of plenty. And so we should be thinking about people making enough to raise their families if they're working, which many of them are. And they're working, you know, often more than 40 hours a week to attempt to make ends meet and still failing to do that every day.

Thanks.

(Applause)

MS. MIKURIYA: Hello. My name is Mary Jane Mikuriya, and I'm a member of the First Unitarian Church of San Francisco. We have a program to help the homeless, but we're only one of the several churches that does this.

It's unfortunate that our program serves 90 men every year, and it's been doing this for the past four years. It really shouldn't have to be that way because we get our food from the Food Bank, we volunteer to make breakfast, another church volunteers to make dinner, the Mayor's Office provides the bedding, the beds, and an overnight person at the church. The men, the 90 men, are prescreened. They're the working poor.

There seems to be something wrong with this picture, that these are working individuals that have to stay overnight at our church because they cannot find a living wage. And the living wage, of course, in San Francisco, as you've heard, has to be more than \$8 an hour. And it is really unfortunate, when you get up at 5:30 in the morning and you have meet everybody there who is well dressed, and nobody would know, in many, many cases -- I would say in 90 percent of the cases -- that these are homeless men, because they do have a job and they are very, very kind, nice, hardworking people. But they shouldn't have to be living in a church and go from one church to another. And the government shouldn't have to be saying, "It's okay, because we'll provide the beds, and the food will come from the Food Bank." There's something wrong with this picture, and we need your help. And we appreciate that you're listening.

As a mother, I'd like to make one comment. My son is a teenager, and he's trying to leave home. But he works in the food industry as a cook, and he can't make it. He can't make it on minimum wage and be independent. It's very nice that the previous owner was able to start at all these levels and make it and move up, but that's not possible any more, certainly not in this system, not in this city.

So, we -- it's very essential that we're looking at a different era. And you want young people and you want people who are working hard getting off welfare -- they need to have more than \$8 an hour to -- they need

healthcare, they need that attached to a minimum wage. I hope you consider it.

Thank you.

(Applause)

MS. PINKERTON: Good morning, commissioners. My name is Virginia Pinkerton. I'm with a company called Accent Care. We're a homecare aid organization in California. We provide services to seniors, for example, respite care for a family caregiver for someone who's ill or dying, for seniors who need assistance to be able to remain at home independent, things like shopping and errands, through very heavy personal care, people with Alzheimer's, people who are completely bed-bound and depend completely on us for their care. We provide both hourly and live-in services.

And I'm actually speaking here today on behalf of the California Association for Health Services at Home, which is CAHSA. And CAHSA is a nonprofit association which represents homecare and supportive services throughout -- homecare and supportive service providers throughout the state. And so, our members provide services to the ill, the elderly, and the disabled in their homes.

And I did want to make a couple of comments about the things that were said by the previous gentleman about Wage Order 15. And I, with Mr. Baron, agree that this pertains to anyone who meets the criteria of a personal care attendant, whether they are hourly or live-in.

This wage order was originally developed to meet the needs of the elderly who want to remain at home. And the nature of the homecare business is that you must provide continuous care. There have been many studies that show when that care is interrupted, when you have inconsistency in caregivers, that there are undermet and unmet needs of the elderly which cause them to either not be able to stay at home or end up in the emergency room because they aren't getting proper nutrition or they aren't getting something as simple as someone reminding them to take their medications.

I would disagree with his issue about the caregiver shortage. We have a huge caregiver shortage, not only in this state, but across the country. So we are competing for the same labor pool that many of the other industries, such as the food industry and so on, are competing for.

We have huge workers' comp claims because of the nature of this business. Our workers' comp average, I think, for the industry is probably more like 11 percent.

The SEIU was organized in response to the In-Home Supportive Services program, which is state money and administered by each county for low-



income seniors and the disabled. They're administered by counties and not by agencies such as mine.

And I also wanted to make a clarification about live-in. You know, there were some comments made that it sounded like this person is sleeping on the job. This person is not sleeping on the job. This person is there to provide care, 24-hour supervision, for a person who is not able to care for themselves at home. Their only other option is to be in a facility or an institution.

I would also like to say that the average wage in our industry is not \$6 and \$7 an hour. Across the state, it averages more between \$8 and \$12 an hour.

And it's also -- on behalf of this elderly population and the organizations that provide the personal care to these clients, this is vital care that allows them to remain at home and independent.

CAHSA does oppose any repeal, deletion, or restriction of the exemption for personal care attendants. As you are aware, the provisions of Wage Order 15 allow homecare organizations to keep services affordable and available for the frail and elderly.

In the homecare industry, there are several skill levels of homecare workers. As in most industries, we have our more skilled, certificated employees, such as certified nurse assistants and certified home health aides, that are being paid well above the minimum wage. There also are entry-level workers that may be initially paid at a minimum wage.

And I'd like to address this entry-level homecare provider. These are typically people who have had some experience in homecare, or perhaps in the homemaking field, for example, raising their own family, caring for an ill or elderly parent or relative. Others are those going from welfare to work who have an interest in homecare but don't have the skills and no formal training. Homecare organizations are currently able to attract this level of homecare worker into the industry by providing them with training, supervision, and a career path to the more skilled levels of their profession.

Raising the minimum wage will have a direct impact on these people and the industry in several ways. We'll be limited in our ability to hire entry-level employees due to the costs the employer has to bear in terms of hiring, training, and supervising. I know of companies who have discontinued their training programs. This will limit the supply of employees (\*GAP\* @ 100 from end of BU 1B) caring for or arranging for care for an elderly parent or relative. And if haven't, you probably will be at some point.

There is a varied need for this type of care, and it will only continue to grow. By 2005, the need for homecare workers will increase by 119 percent from 1994. This is in direct correlation to the aging of America.

Therefore, it's essential that we continue to address this need by attracting people into the industry and providing them with the skills and an increased ability to earn a living.

An increase in the minimum wage will also impact the recipients of our services. For example, in San Diego we have a contract with the county to provide homecare services for seniors who qualify based on their income. The services provided are dependent on the ability of organizations like mine to provide services at the rate specified by the contract. In addition, providing services at the contract rate enables us to provide more hours of service for those requiring respite or companion care, care that is generally able to be provided by an entry-level worker.

Before the minimum wage was raised in the mid-'90's, we were able to provide this needy senior population with 12 hours of service per week. At the current minimum wage, we are only able to provide 10.2 hours of service per week, a decrease of almost 9 hours per month. Now, this isn't based on our ability to pay; it's based on our reimbursement.

And at that, we are barely making a 5 percent margin. As a result, many homecare organizations are having to give up or severely limit their participation in contracts that allow them to provide these needed services to their communities. Although there are state and local agencies that do have some limited funds to provide homecare services, it's important to note that payment for these services is provided out of our clients' pockets. This is a private pay industry. This is not reimbursed by government agencies. This is not reimbursed by Medicare. It's a completely different industry. Many of our seniors are on fixed incomes, and any increase in wage is passed on directly to them because there is no reimbursement.

The biggest concern we have about any change in our exempt status under Wage Order 15 is its potential of limiting access to care and impacting the safety of the frail and elderly that we serve. For example, a senior who is unable to bear the cost of homecare may lose the ability to remain in the residence of choice, which is his or her own home. In addition, seniors may out of necessity hire an unknown caregiver privately. These seniors are easy prey for those caregivers not affiliated with an organization that is accountable for hiring, training, and supervising their homecare aides.

So, in closing, I would again just reiterate that we want to preserve the integrity of Wage Order 15, and I urge you to retain it.

Thank you.

COMMISSIONER BROAD: I have a question. If the employees are getting between \$8 and \$11 an hour, as you testified to, then what's the problem with a raise -- with covering them by the minimum wage?

MS. PINKERTON: Well, as I testified in my testimony, the issue we're concerned about more is bringing in entry-level people into the industry because of the need to train, hire, supervise, and so on. We're having a very difficult time attracting people into the industry. So we want to be able to bring people in who don't have skills. We can't afford to pay people without skills and train them top dollar. We want to be able to train them and then provide them with a career path into the higher-paid skill levels, of which there are several. We're working on developing a career path for these folks.

COMMISSIONER BROAD: How many hours of training do you give them?

MS. PINKERTON: To become a certified home health aide is 120 hours.

COMMISSIONER BROAD: Okay. Well, I believe our wage order now allows a training wage for the first 160 hours.

Is that correct?

MR. BARON: Yes.

COMMISSIONER BROAD: Of 85 percent of the minimum wage. Is that correct?

MR. BARON: That's correct.

COMMISSIONER BROAD: So, you're covered.

MS. PINKERTON: Right. Right. Yeah, that's if they -- if they go through the 120 hours. Some elect only to go through 40 hours, and they wait on the rest of the 120 because they wish to work for a while before proceeding.

COMMISSIONER BROAD: But, I mean, if you want to pay them less than the minimum wage, that's something that exists as a possibility now, anyway.

MS. PINKERTON: Right. You're right, right. We don't have a huge issue with the minimum wage. I would agree with the gentleman who was up here earlier that the primary interest is in maintaining the integrity of the wage order.

COMMISSIONER BROAD: Right. But doesn't -- wouldn't you agree, then, that that argues for us to have a very finely crafted rule, not one which exempts everybody? I mean, what -- why would we -- it's -- the current exemption is everyone who does this kind of work, from the minimum wage. They could theoretically be paid whatever they're willing to take, down to the lowest amount above zero, I guess. I mean, it's -- so why would -- if you're not really concerned with this and you can't exactly pinpoint the circumstance in which they shouldn't be getting the minimum wage, and we have another rather more specific rule that deals with people getting trained, and that's your major issue, I don't see what's left to -- for us to keep this exemption. I mean --

MS. PINKERTON: The exemption includes more than just minimum wage. It also includes the ability to provide --

COMMISSIONER BROAD: But only the minimum wage -- excuse me -- but only the minimum -- I'm sorry, but I just want you to know so you relax -- the minimum wage is the only issue before us today, not overtime or anything else.

MS. PINKERTON: Okay. Well, I am glad to hear that, because what I heard you mention earlier was that, in this process, you would also be able to restrict, eliminate, et cetera, the provisions of the wage order.

COMMISSIONER BROAD: No.

MS. PINKERTON: So perhaps I misunderstood.

COMMISSIONER BROAD: Okay. With that understanding, that we're only talking about minimum wage, do you still have an issue?

MS. PINKERTON: No, I have -- no, you're right. I don't.

COMMISSIONER BROAD: Okay. Thank you.

(Applause)

COMMISSIONER DOMBROWSKI: Mr. Wolf, you may want to move some chairs so you're closer to a mike.

MR. WOLF: Yeah. I'll move.

COMMISSIONER DOMBROWSKI: Ms. Breslin, go ahead.

MS. BRESLIN: Thank you. Good afternoon. My name is Patricia Breslin. I'm the executive director of the Golden Gate Restaurant Association, representing restaurants throughout the San Francisco Greater Bay Area.

(Audience hissing)

MS. BRESLIN: Yes, I can hear the hisses.

I am here to --

COMMISSIONER DOMBROWSKI: I apologize.

MS. BRESLIN: Thank you.

COMMISSIONER DOMBROWSKI: And I would ask people to show some respect.

COMMISSIONER BROAD: And I would reiterate that. Everybody's got a right to be here --

COMMISSIONER DOMBROWSKI: That's inappropriate.

COMMISSIONER BROAD: -- and say their piece.

MS. BRESLIN: Thank you very much.

I am here today out of the great concern of the unintentional consequences a minimum wage increase could bring to our industry. Minimum wage increases are meant to help those earning a low income. The question before all of us today is whether or not a minimum wage increase will help the people you are trying to help or hurt the very people you are trying to help.

The restaurant industry has a unique wage structure. Restaurant employees are classified in three ways. We have directly tipped employees, employees who receive tips directly from the customer in addition to the hourly wage. Those are our servers and bartenders. We have indirectly tipped employees, employees who receive tips indirectly from the customer through the servers in addition to the hourly wage. Those are our bussers and our hosts. And then we have our nontipped hourly employees, those employees who receive hourly wages only, our dishwashers, our cooks.

Our minimum wage employees are our tipped employees, and their total income, their real income, far exceeds the current minimum wage. According to a 1999 survey of our member restaurants, tipped employees earn an average of over \$23 an hour. Indirectly tipped employees earn an average of almost \$13 an hour. All of the dollars of each minimum wage increase -- four increases since 1996

-- have gone into the pockets of our tipped employees, employees who are earning up to \$23 an hour, and have left us unable to increase the wages of our nontipped employees, as you just heard from a previous speaker, the employees who make more than the proposed minimum wage, but far less than the \$23 an hour. Blanket minimum wage increases do a disservice to our nontipped employees.

There are only so many dollars available for increasing wages. There is only so much of the pie to go around. And if we keep on giving slices of the pie to those who are already well fed, we will not have a slice for those who are yet to get a taste.

Since tipped employees take up most, if not all, of the funds available for raises with each minimum wage increase, each minimum wage increase ends up literally taking dollars out of the pockets of our nontipped staff, those who work in the back of the house, the dishwashers, the line cooks, the prep cooks, and it leads to an unfavorable employee morale.

Until this inequitable wage issue is addressed, the Golden Gate Restaurant Association cannot support any recommendation to increase the current minimum wage.

One solution is to consider what over 43 other states have acknowledged, that an hourly wage is not the only compensation earned by a tipped

employee, and implement a tip credit, allowing the tips declared by employee, taxed -- the employers pay taxes on it -- to be counted as part of any future minimum wage increase. Freeze the minimum wage at \$5.75 for tipped employees; apply a tip credit to the difference between the current minimum wage of \$5.75 and any future proposed minimum wage increase. Or consider the applicability of this increase to tipped employees of the restaurant industry and create an exemption. While it may not be your direct charge, on behalf of our members, I am requesting that you recommend a tip credit as part of any minimum wage increase and refuse to recommend any minimum wage increase until this segment of industry in California is protected.

A blanket minimum wage increase does not provide for the general welfare of our employees. Help create a wage plan that will really reach the people you are trying to help.

Thank you very much for your consideration.

COMMISSIONER COLEMAN: Can I just ask a clarifying question?

It's my understanding that we don't have the authority to enact any sort of tip credit. Do we?

MS. STRICKLIN: That's correct. California courts have ruled against that.

AUDIENCE MEMBER: (Not using microphone) Louder!

MS. BRESLIN: May I add?

While you don't have the authority to ask for a tip credit, I believe that the minimum wage increase recommendations can include recommendations that are certain industry-specific, can they not?

MS. STRICKLIN: These will be regulations, not recommendations.

COMMISSIONER BROAD: I think it's a statutory provision --

MS. STRICKLIN: Right.

COMMISSIONER BROAD: -- that bars it flat-out. I guess we could write a letter to the Legislature on your behalf saying that we should -- there should be a tip credit. But personally, I'd be more comfortable if you wrote that letter --

MS. BRESLIN: I would be --

COMMISSIONER BROAD: -- because I don't agree with you.

(Laughter)

MS. BRESLIN: I would be comfortable if we all wrote that letter, because until this is recognized, our industry is at a disadvantage.

COMMISSIONER DOMBROWSKI: Thank you.

Mr. Wolf.

MR. WOLF: Basically, I think I'm here to give kind of a real-world example of what Patricia just said, because the restaurant that I operate is probably on the high end of those estimations that she made. I mean, I do believe my bussers and food runners and so forth make at least -- was it 13 or --

MS. BRESLIN: The bussers are now at \$13 an hour.

MR. WOLF: I would say that's easily -- easily what they make. And I know my waiters easily make \$23 an hour. And they're not looking for an increase. They're very satisfied with their income, and -- and, you know, if they get it, fine, they'll get the dollar raise, but --

AUDIENCE MEMBER: (Not using microphone) (Inaudible).

MR. WOLF: I'm sorry. A question?

AUDIENCE MEMBER: (Not using microphone) Who pays them --

COMMISSIONER DOMBROWSKI: All right! All right!

Officers --

MR. WOLF: So, you know, I'm saying, obviously, yes. They make their -- they make their income from tips, and the restaurant I run gives them the opportunity to do that, because of either reputation or quality of food or whatever.

We start all our back-of-the-house people at a minimum of seven bucks an hour, and within a year they're usually past eight. You know, the woman whose son made only seven -- whatever, minimum wage, to be a cook, it's surprising to me. Our cooks, with experience, start at \$10.25 an hour. You know, inexperienced cooks would easily be above \$8, \$9 an hour.

So, I'm not here to say that I'm trying to -- you know, to pay less than that. All I'm saying is if you do, let's say, raise the minimum wage to \$8 an hour or more, my back-of-the-house people will still make that. But they won't be making more. Meanwhile, these employees we're talking about will be making \$26 an hour, or \$16 an hour. And again, we have that big inequality.

The money that I have available for raises, I try to channel all of that into those back-of-the-house jobs that really will benefit from it. The people that are making the tip income are making a great deal of money and are very happy with the jobs that they have and the money that they make. And they can work part-time and be single

-- you know, parent -- you know, and be able to afford to feed their family.

So, it's a situation where I'm trying to create a situation that doesn't lead to me to take the budget I have available to increase my lower -- my lesser paid employees and channel it into the employees I have that are making a great deal of money. That's the only thing I would bring -- that's the only reason -- the only opposition I have to this wage increase at all. I cannot put the money where it should go.

Thank you.

COMMISSIONER DOMBROWSKI: Thank you.

I have six more -- six more cards on minimum wage: Leila Soraya Salazar, Denise D'Anne, Karen Olander, Daisy Anarchy.

MS. SALAZAR: Hi. My name is Leila Salazar, and I work at Global Exchange, which is an international human rights organization based out of San Francisco, here in the Mission District. And I particularly work on the Gap campaign, which is a corporate accountability campaign putting pressure on The Gap to stop their sweatshops and pay their workers all over the world a living wage, including their workers here in San Francisco.

What's happening here in this discussion about a minimum wage is happening all around the world. And that's why I want to start off with a brief example. Corporations around the world always, always claim that they are paying their workers fairly. And they say that they are paying the workers the minimum wage, and that's enough. If that's enough, then why are workers in Mexico, in Tehaucán particularly, still living in extreme poverty? They work 10, 12, 14 hours a day for 28 cents an hour to make Gap clothes. And they say they just need \$1.00 an hour to live decently. Is this too much to ask? It's not when the CEO of Gap is making \$90,000 an hour.

And why do I give this example? Well, because employers can afford to pay their workers better. It is the state's responsibility to increase the minimum wage so that, in turn, employers will be mandated to pay their workers better.

With an increase in the state's minimum wage, workers in our state's garment industry, which employs over 100,000 garment workers in Los Angeles, Oakland, and San Francisco, will benefit. These workers work at or below the minimum wage because they are mostly immigrant women who cannot speak English. This is the excuse that the industry gives.

With an increase in the minimum wage, garment workers and all low-wage workers will maybe be able to live with a little big more dignity. Currently, there's no respect and dignity for workers who work 10, 12, 14 hours a day in sweatshops, and then have to work a second or third job.



It's time that the economic boom, the so-called economic boom, starts to benefit all working people. And it shouldn't just benefit the one percent or all the new millionaires in the Silicon Valley.

(Applause)

MS. SALAZAR: California, as a state that's always paving the way for new ideas and new laws, should set an example, not only in the United States, but for the world, and really increase the minimum wage. And this minimum wage should be a living wage.

Personally, I think that the increase should be at least \$15 an hour, especially thinking about the cost of living here in San Francisco and what's happening in the Mission District because of the economic boom for the millionaires in Silicon Valley. We know what's happening in the Mission, and that's a whole different issue.

So, I would urge you to increase the minimum wage.

(Applause)

MS. D'ANNE: I'm here to speak generally about the minimum wage. Number one, I think it needs --

COMMISSIONER DOMBROWSKI: Wait. Excuse me. Please identify yourself.

MS. D'ANNE: I'm sorry. I'm Denise D'Anne, and I'm here to speak generally about the minimum wage. I'd like to encourage raising the minimum wage. And frankly, I think that it's totally inadequate and we really need what they call a living wage, something like \$15 an hour.

You know, I've been listening about merchants talking about how they can't survive without -- because the minimum wage would be too high. Well, I was a merchant in the past. I owned a restaurant. And at that time, I paid more than the minimum wage because I believe that people need to survive, and you needed to pay more than the minimum wage at that time. I still believe that. And I think that if you can't afford to pay more than the minimum wage, you shouldn't be in business, number one.

And I think --

(Applause)

MS. D'ANNE: -- I think we are all diminishing our humanity here, because I'm -- most of us, you know, I would presume that most of you people up there are making more than the minimum wage. And how you can sit here and debate whether one group or not should get the minimum wage is -- is kind of ludicrous and outrageous.

We are all of the same flesh, and we need to -- to think about, you know, maybe taking a quote from the Bible: "Do unto others as we would do -- as

we would have done unto ourselves." I mean, I think that's the important issue, that we need to provide adequate living for people. We shouldn't be in a position of practically, you know, determining who's to live and who's to die, because that is actually happening. And people that are on the streets, they will die. Many of them will die. Children will not be able to -- who are on the streets are not able to function properly when they grow up. So, we have a big responsibility to people, and I think we need to consider that and we need to do more than raise the minimum wage.

And we need to not -- quit debating whether -- who's going to live and who's going to die and who -- what way -- which we're put in the position of doing at this moment.

Thank you.

(Applause)

MS. ORLANDO: Hi. My name is Karen Orlando, and I'm here representing the homecare workers in Alameda County who are represented by the Service Employees International Union, Local 616.

And in Alameda County alone, there are 7,500 low-income homecare workers. But in the State of California, there are approximately 200,000 homecare workers who provide services to vulnerable seniors and people with disabilities through the state's In-Home Supportive Services program.

And I was really motivated to testify today based on statements that I heard from previous folks who spoke. So I'm here to rebut some of those statements to put forward the information that I do know. I don't claim to be an expert on the homecare industry, but I know that the Service Employees International Union would be very happy to get back to you with any written testimony or any information that you might need in addition to what I'm about to say.

And what we've found is that one of the most effective tools in retaining a quality workforce is in increasing wages. And in this city and county alone, wages have been increased, and we have seen that that has led to a better result for the seniors and the people with disabilities that receive the services, as well as the workers that provide the services. So, it's really a win-win situation. There are approximately 220,000 seniors and people with disabilities in the State of California that receive services through this program, so we're talking about a sizable number of people that would be positively impacted by increasing the minimum wage.

The gentleman -- I believe his name was Mr. Haggerty -- basically, we figured it out, and it looked like he would be paying his workers approximately \$5.41 an hour to care for people with physical and mental disabilities, doing live-in overnight work, and claiming that, you know, folks are sleeping during that time. And the way that somebody gets hired to do live-in overnight work is only if the consumer, the senior or the

person with disability, is unable to care for themselves. So they're often someone who has a physical or a mental impairment, like Alzheimer's or dementia, where you're being sleep-deprived. I mean, you're not -- you can't count on being able to sleep at night. So you're getting paid because you don't know what kind of services are going to be required of you during those hours. So it's not like you just get to sit around and sleep and you're not working. You are definitely working, and you are working hard.

So, the other thing is, is that the statement that without, you know, the privately funded programs, those such as Mr. Haggerty runs, that there is no safety net and seniors and people with disabilities will be forced to die alone at home or be forced into institutions, this is not true. The In-Home Supportive Services program has been in existence since the 1970's, making sure that low-income seniors and people with disabilities can live with dignity in their own homes, retaining control and autonomy over their own lives. And, you know, this is what people with disabilities and seniors want. They want to be able to stay in their own homes. And they choose this model of being able to, you know, select who comes into their house to care for them, over private agencies that send people out and they don't have any say over. And that's the model that comes through the public authority for In-Home Supportive Services.

So, right now, we are faced with a situation that we have to go county by county to convince different boards of supervisors to create an employer of record for people that care for seniors and people with disabilities. And we will continue to do that if we need to. I mean, we will continue to go and make sure that, you know, workers and consumers get the dignity and the respect that they deserve, in the form of a living wage.

But you have the opportunity here today to make a great impact, that you can affect the entire state system here. And so that's what I'm calling on you to do, is to raise the minimum wage to a living wage standard.

Thank you.

(Applause)

COMMISSIONER BROAD: Can I ask you a question?

MS. ORLANDO: Um-hmm.

COMMISSIONER BROAD: Your people, when they get hired, you know, that are covered by your collective bargaining agreement, what -- how are they paid when they're on a 24-hour sleep-over type of shift?

MS. ORLANDO: Well, the maximum number of hours for this program is 283 a month. So, even if they are live-in, they're not getting fully paid for those hours. It's impossible to have a 24-hour job through In-Home Supportive Services.

COMMISSIONER BROAD: For a whole month.

MS. ORLANDO: Right, for a whole month.

COMMISSIONER BROAD: Right. But are they paid on an hourly basis?

MS. ORLANDO: They are paid on an hourly basis, yes.

COMMISSIONER BROAD: So if they work 24 hours, they get 24 hours of pay.

MS. ORLANDO: No. It's not possible. There's a maximum number of hours -- at least in Alameda County, there's a maximum number of hours that a worker can work per month.

COMMISSIONER BROAD: I get that. But if they -- if they use it up working 24 hours a day, they're paid for 24 hours of work. Is that correct or not? In other words, if the first -- let's say that they work up to that amount, but they do it continuously, from the first hour of the first day of the month. Are they paid -- what did you say? 280 hours, is that what it is?

MS. ORLANDO: The maximum number that a consumer can have is 283 --

COMMISSIONER BROAD: Okay.

MS. ORLANDO: -- and the maximum that a worker can have is 299.

COMMISSIONER BROAD: Okay. So you work 280 hours, whatever it is, straight through, from the first day to the end of 280 hours. Are they paid for 280 hours of work even if they're sleeping at someone's house?

MS. ORLANDO: If they've been approved for that, if the consumer has been approved for that activity, yes.

COMMISSIONER BROAD: So, on a 24-hour shift, they generally are paid -- where they are approved for that, they're paid for the whole 24 hours.

MS. ORLANDO: If they're approved for that, yes.

COMMISSIONER BROAD: Does that happen very often?

MS. ORLANDO: Not to my knowledge.

COMMISSIONER BROAD: Okay. Let me ask you this question, because I asked the other witness who operates one of these businesses or services or whatever you call it, that -- we have something -- it relates to overtime, but it deals with this question of people who are -- who work on 24-hour shifts in at least an analogous kind of situation. I'm going to read you some language that I've sort of scribbled here, and I want to get your reaction to it.

And I'm not asking -- you know, if you want to think about it, that's fine too --

MS. ORLANDO: Um-hmm.

COMMISSIONER BROAD: But suppose we were to say:

"Any employer of a personal attendant who is scheduled to work for a 24-hour shift may exclude from the determination of hours worked a regularly scheduled period of 8 hours of uninterrupted sleep and three uninterrupted meal periods of not more than 30 minutes, provided that if the employee performs work during the sleep or meal period, he or she shall be paid for the actual time worked."

In other words, if it's not actually -- it has to be actually uninterrupted.

MS. ORLANDO: I think that went by me too fast. I would have to see it. I can't. I'm sorry.

COMMISSIONER BROAD: Fair enough. Okay.

MS. ORLANDO: I can't -- I can't digest that.

COMMISSIONER BROAD: Okay. That's fine.

MS. ORLANDO: But what I also did want to say is that the funding for this program does come both from the federal, state, and the county government. And the previous speaker was saying that there was no possibility of Medicare. And that's actually one of the sources of funding for this program. So, I mean, there is a safety net.

COMMISSIONER BROAD: So, there is -- so you disagree as to whether this is covered by Medicare.

MS. ORLANDO: Yeah. It's not like somebody can say, "Oh, I have Medicare, give me this." There's a process. But, yes, this is the state's safety net program. He was talking about private agencies, private homecare agencies. They're totally different.

COMMISSIONER BROAD: So the people that are -- that are Medicare-eligible have a choice whether to approach the Medicare system for this or go to a private agency?

MS. ORLANDO: Well, you have to be on -- basically, on SSI and have some kind of a disability. And then, actually, even if you earn a little bit too much money, you can still get on this program, and you have to pay what's called a share of costs, something directly out of your pocket to the worker. And, I mean, you're allowed to have a certain amount of

income per month, and you can own your own home and a car, and things like that.

But, yes, there is a state safety net. I mean, this is the safety net program. So folks are not going to have to go out from his program to be forced into an institution. There is another option. If they want to stay in their home, they can apply for In-Home Supportive Services.

COMMISSIONER BROAD: Oh. Well, that is somewhat different. So, what you're saying is that with respect to the private agencies here, that's a sort of a voluntary choice, and then if they wish to approach the -- for the safety net program, they can then do that if they can't afford it.

MS. ORLANDO: Right, if they can't --

COMMISSIONER BROAD: And your -- right. And your employees receive the minimum wage.

MS. ORLANDO: Well, actually, not in Alameda County. We have a memorandum of understanding, and they're now earning \$7.82 an hour. And in several other counties, we've gone county by county, through, you know, organizing homecare workers and getting an employer of record. It's a whole long process. There are several counties where workers are making more than the minimum wage, and that's how we know that it makes a huge difference in being able to retain quality homecare workers and the impact that that has on the seniors and the people with disabilities, because there's a huge labor shortage. It's really hard to have somebody come in and do the kind of work that it takes to care for a person and earn so little that you could earn more money in another field where you're not having to do the same kind of skilled work, where you're having to deal with, you know, lifting and transferring people, or really personal, intimate care, or, you know, some people's disabilities are, you know, mental disorders or Alzheimer's, where, you know, it's more difficult, and you need different kinds of communication skills. You need to be an expert in communication then, in following direction. And, you know, I mean, it's just a different kind of work.

And so it's really hard to keep people in that field when they can earn money doing other things, you know, which isn't like back-breaking work or psychologically draining work.

COMMISSIONER BROAD: Right. In any county, whether or not they're subject -- or protected -- employees are protected by a collective bargaining agreement or covered by it, does anyone in the In-Home Supportive Services program earn less than the minimum wage, in any county?

MS. ORLANDO: No, not that I'm aware of.

COMMISSIONER BROAD: Thank you.

COMMISSIONER DOMBROWSKI: All right. Just a little housekeeping before we go on.

I've got -- I now have -- we have five more speakers on minimum wage. Any more cards on minimum wage, you're going to be at the end of the day because we have to start moving this along to the other subjects.

Just for -- for your planning, out there in the audience, we're going to go to -- we're going to work through lunch. We're going to go to the shepherder issue next. I estimate that would probably take 45 minutes to an hour. So, those of you on the construction side, you may want to take this opportunity to get some lunch.

And I apologize for how long we're taking, but we keep getting cards up here.

So, with that, I -- let's go ahead.

MS. ANARCHY: I was called but haven't gotten a chance to speak yet.

COMMISSIONER DOMBROWSKI: Well, we're not breaking. We're not breaking.

MS. ANARCHY: Okay.

COMMISSIONER DOMBROWSKI: Okay.

MS. ANARCHY: Can you hear me?

COMMISSIONER DOMBROWSKI: Yes.

MS. ANARCHY: My name is -- my name is Daisy, and I work with a San Francisco-based organization, Sex Workers Organized for Labor, Human, and Civil Rights. We advocate not only for women who are continuing to work as sex workers, but also for women who are attempting to transition out of sex work.

Many women working in the sex industry in San Francisco are supporting not only dependent children and elders, but are also helping to support extended family members who are working at minimum wage jobs and can't make ends meet. When the minimum wage is too low to support working families, as it is in San Francisco, many women are forced to seek higher wages in the sex industry who might not have chosen this work otherwise. And they are often forced to supplement their minimum wage paid work with sex work and are more vulnerable in the sex industry to labor, health, safety, and criminal violations of their employers.

We support a woman's right to work in the sex industry and for their labor rights within the industry. However, to prevent women and children from being forced into prostitution through economic necessity, and to increase women's safety and power to organize for labor rights within the industry, the minimum wage needs to be increased in order to give women

more options to leave the industry when they want to and so they don't have to support their family members who are working but who underpaid and unable to support themselves with a minimum wage that is really a starvation wage.

For the survival of working families, Sex Workers Organized for Labor, Human, and Civil Rights asks you to please increase the minimum wage.

(Applause)

COMMISSIONER DOMBROWSKI: Virgil Herndon, Juanita McAfee, Rosalyn Dean, Elcardo Gonzalez.

MR. HERNDON: My name is -- my name is Virgil Herndon. I'm a retired transit inspector for the City and County of San Francisco. I'm a member of FORUM, Federation of Retired Union Employees, and I'm also a member of Glide Church, where we see a lot of the homeless and a lot of the working poor.

I wanted to speak on the minimum wage. I'm blessed that I get a pension that I can exist on, and I also get Social Security, so I count my blessings. However, I notice that many of the people are what we call the working poor now, and I think that the minimum wage should be raised to at least \$9 or \$10 an hour, certainly more than the dollar an hour more.

In the Tenderloin, I see many people who have to have two jobs, who are getting the minimum wage, in order to exist. These people are what we call now the working poor. They live in the Tenderloin in these flea-bitten roach hotels -- infested hotels, and they have to get two rooms in order for their children. The landlords charge them \$400 a month for just one room. Of course, if a man has a family, he has to get at least two rooms. So a man has to have two jobs in order just to rent these hotel rooms for his family.

So what happens is, even though they are working, you see them in lines like Glide Church, St. Anthony's, because though they are working and they can pay the rent, they still need to eat and they need -- still need to buy clothes and things for their children. So this is what we call the working poor. So, the minimum wage is clearly not enough for them to make it.

At Glide Church, sometimes I see many people come there because they're not able to make it. And so, naturally, as I say, not only are they eating there, sometimes they come there and they just get assistance. I know Glide Church gives at least 250 people diapers and things a month for their babies, which we don't even get assistance for, but we do make it up from the church.

So, the minimum wage is -- as it stands and as suggested to increase, is not enough. So I encourage you to at least increase that over \$8. Maybe try to increase it to \$9, because the minimum wage is not enough. People



working making this minimum wage are not able to feed their family. And it's really awful. If you -- if some of this panel were to go to Glide or St. Anthony, you can see them with their families in the baby buggies and around. And these are not people that are homeless. These are people that have jobs. In fact, these are people that have two jobs. But still, yet, they're not able to make it.

Thank you.

(Applause)

MS. DEAN: My name is Rosylin Dean. I live in San Jose, California. I'm a retired member of the Machinists Union.

And I'm outraged. I came here because of my concern about minimum wage and what that is doing to the state -- to the quality of life for a very large part of our population. Like I said, I'm outraged. And very frankly, if you're not outraged, you're not paying attention, because the examples are endless of what a minimum wage and low wage is doing to our population in terms of housing, nutrition, et cetera.

My understanding that when the minimum wage was established, its mission was to provide the kinds of wages that allow people to live at at least a basic level of decency. And this is not happening.

Now, I know that your charge on your Commission -- you don't have total control of all that happens in this country, but I do know that you have charge in terms of trying to raise the minimum wage to the highest level you can to help compensate for the wrongs that are going on.

Thank you.

(Applause)

MS. McAFEE: Good afternoon, panel. I'm Juanita McAfee, and I'm a member of ACORN, and that's the reason I'm speaking out.

And one of the words that has been used, but not that frequently this afternoon, and that word has been the word "children." Minimum wages affect children in so many ways that you can never fathom. And I live in the community, I see it every day. And one of the reasons that I joined ACORN is it's working so faithfully to try to get some programs for our children that live in the flatlands -- we'd just as well tell the truth and face it -- live in the flatlands. They have to play in the street, they have to stand on the street corner, and a lot of them get run over by bicycles -- I've seen kids get run over by bicycles where I live many times. They don't have anywhere to go, so they have to do their activities in the street.

Then we wonder sometimes why do they steal. Why do children go to the store and steal? Their mama works two jobs. And if you've ever been

hungry, you know what hungry is, don't you? If you've ever been on a fast, you know what fast is. And some of the things, we can't relate to because we haven't walked a mile in their shoes.

It took the -- it took the system sixty years to figure out the welfare system was wrong. The people that's out there just working for minimum wages are people that the system allowed to get in this predicament. I never could understand why can you pay a healthy somebody to sit, only to have babies for us to work and take care of. And it took sixty years to unveil that. And it seems like it's going to take sixty years to correct this problem here.

We shouldn't be here this afternoon begging for minimum wages. This is a free country. I went to Maryland this summer to -- this fall to a legislative educational conference, and it was just amazing. And when I thought about it and reflected on the trip, I said, "Do you all realize that we paid -- bought tickets round trip, \$400, then go to the White House and beg our legislators and our senators for a fifty-cent raise?" It's amazing.

And if you think about this afternoon, all the money that we spent to get over here today, on BART, \$3.00 gas. And this shouldn't be. These are the things where I feel that we are wasting money instead of making a reality. We shouldn't have to go around and every -- spend six months begging for the same thing.

And then we wonder why children aren't educated or the children in the flatlands are not learning. You don't realize that there are some children that only eat when they get to school in the morning and lunch in the afternoon, and no more until tomorrow. That's because of minimum wages. Their parents aren't there. You wonder why the family structure's breaking down. Minimum wage is breaking it down.

Sometimes we say we're trying to keep with Mr. Jones. I'm not trying to keep up with Mr. Jones, or even Dow Jones; I'm just trying to keep McAfee living. And it's a struggle. And I am on disability, and it's nothing but crumbs. They give you just enough to keep you from dying.

But when you hear of ACORN having an activity or a fundraiser or anything of that nature, I beg you all to please take a part in it. We're only trying to do something to make our children in the flatlands' life a little more livable than it is now.

And thanks for listening to me this afternoon.

(Applause)

COMMISSIONER DOMBROWSKI: Thank you.

I'll go to shepherders. Chris Schneider -- I have on name here, Heraclio --

MR. SCHNEIDER: Heraclio.

COMMISSIONER DOMBROWSKI: -- Heraclio, Cynthia Rice, and Mark Schacht.

(Pause)

COMMISSIONER DOMBROWSKI: One moment. One moment, please.

Mr. Roosma, you wanted to talk about minimum wage? I thought you were under construction. I'm sorry.

MR. ROOSMA: I was, and I originally came in with that intention. But having listened to the folks --

COMMISSIONER DOMBROWSKI: Into the microphone, please. We have a transcript of the hearing, so we have

to --

MR. ROOSMA: Yeah, no problem.

COMMISSIONER DOMBROWSKI: Would you please identify yourself?

MR. ROOSMA: Yeah. My name is Al Roosma. I'm an organizer for the Carpenters Union.

I also was very interested in listening to the gentleman from the restaurant industry. I also come from a pretty competitive industry, and I also started off my career working in college for sub-minimum wage as a trainee, with the guy next to me making minimum wage, who was quite thin feeding his family on what they were paying at that time, which is low enough -- I won't even mention.

But given this highly competitive nature of most businesses, doesn't raising the minimum wage help to level the playing field and make responsible employers who attempt to pay a living wage to their employees, like all these people say they are doing, doesn't it make them more competitive? Isn't that the reason why we don't worry about it, because they're competing against somebody else? And if the rats who aren't paying their people a standard of living are forced to pay a little more, then it doesn't hurt the guy who's trying to do a good job. It makes him more competitive. We have to take that into consideration in these discussions.

And with all these new service jobs being created in this new economy, I'd like to give you guys a tip. If we want good service, we have to be willing to pay for it. And \$6.75 an hour just doesn't cut it. Get real. Support the needy, not the greedy. And raise the minimum wage to at least \$8.10 this year.

Thank you for your time.

(Applause)

COMMISSIONER BOSCO: Yeah. I just wanted to address the comments you made, because actually it was something that Commissioner Broad and I had a brief discussion about. I think the -- where the minimum wage can create non-competitiveness is, I think, across the state borders in manufacturing or that type of thing, where our people have to compete with others around the country. But I haven't heard any testimony, I don't think, or at least extensive testimony, from those people. The people that we seem to have heard from are the ones that are in this state, the theaters, the restaurants, that aren't liable to be competitive with those outside the state.

But it would seem that the minimum wage sort of does level the playing field for everyone in any particular industry, so one in that industry isn't disadvantaged over another, it wouldn't seem to me.

And the point you make is probably a pretty good one, that it, in fact, rewards kind of the good players and puts them on better footing.

And I guess what I'm saying is we have one more hearing. And if manufacturers want to weigh in on this issue and people who feel they're being out-competed in the rest of the country because of minimum wage, I think they ought to do it, because they certainly haven't very effectively so far, at least in my opinion.

COMMISSIONER COLEMAN: I think, just to Barry's point earlier about the number -- the fact that there aren't a lot of employers. Because it is so competitive in the state, people are compelled for the most part to pay much higher than minimum wage, except for a small few who have showed up at the hearings, which, again, we're talking about leveling the playing field within the state as opposed to disadvantaging the state in any way. And we haven't heard any testimony to date about this placing California at a competitive disadvantage. I haven't -- I haven't heard any.

COMMISSIONER BROAD: Right, which I think goes to the point made by a number of the witnesses, that if we don't do it now, at a time when the economy is booming and many employers are paying well above the minimum wage, then when can we do it? So -- and that's my --

COMMISSIONER DOMBROWSKI: Okay. Who wants to lead off here?

MR. SCHNEIDER: Good afternoon. My name is Chris Schneider. I'm executive director of Central California Legal Services. I want to thank the Commission for the opportunity to be here today.

As you know, we're talking about workers who get sub-minimum wage, who are required to be at the work site 24 hours a day, seven days a week, 365 days a year. At the last hearing, we gave a little information about a study which our organization had done. Today we want to put a face -- start putting a face to the statistics in that study, and also to address

some of the issues that were raised at the hearing by the employer representatives in San Diego: one, the myth that shearers work only a couple hours per day, that they're treated like family, that they've got good working conditions and good living conditions, and that their housing is valued at -- it was estimated last week or the week before in San Diego -- at about \$350 a month, that it's good housing, although in the ten years that I've been dealing with this issue, I have yet to see an employer living in one of the trailers that's provided for the shearers. And they will also argue that it's a unique industry, that they're required to have the workers there 24 hours a day, seven days a week.

We submit that there are many businesses throughout California that are required to have workers 24 hours a day, seven days a week: restaurants, mini-markets, bakeries, hospitals, gas stations, newspapers -- the list goes on and on. The only difference is those folks don't try to have just one employee run a mini-market the entire year; they have shifts.

And finally, we want to address what the employers said in San Diego, that we're trying to crucify them. We're not trying to crucify the industry; we're trying to get the workers to be treated like any other worker anywhere else in California.

I just have a photo that's typical of shepherd housing. It's not the worst I've seen, it's not the best I've seen; it's very typical.

(Mr. Schneider displays large photograph)

MR. SCHNEIDER: And as you can see, that's out in the -- it's right next to an orchard. But as you can see, there's no electricity, no running water, no plumbing. This is the water. This is the tank that the worker will get his water to drink and bathe from. This -- and Heraclio Astete will go more into that when he talks about his experience as a shepherd.

And then, also, I just wanted to address briefly one of the things that was raised at the last hearing, was the idyllic life, that the workers beg to go out into solitude, that they're surrounded by nice surroundings, they're up in the hills. Sometimes they are up in the hills, but other times, very often, they're out in the middle of an alfalfa field. And that's not a particularly romantic place to be, for anyone who's spent any time out in the middle of an alfalfa field.

And at the next hearing, we'll be bringing more workers to address the conditions.

Finally, I've got for your -- for each of the members, I have a set of photos that Heraclio will be referring to. And these photos show some of the typical housing that you see, and also a couple photos of shearers at work.

And at this point, I'd like to have Heraclio Astete, who is an injured shepherd, begin.

MR. ASTETE: (Through Mr. Schneider, interpreting) Good afternoon. I want to thank you for hearing me and say that I want to base my testimony on saying I believe in justice, and I believe that there should be justice.

I want to say, first of all, that I believe that work is a right and that we all deserve good working conditions and we shouldn't be discriminated against in our conditions.

So now I will try to describe my own experience. I worked as a shepherd for six years, three months. I worked in the north for a year and a half, and then in California for four years, nine months. We stay at our workplace 24 hours a day. We stay there the 24 hours seven days a week, every day of the month. We don't get any days off. We don't get any benefit of days off.

I'm going to give a simple explanation of the work that we do. There are two periods of the year in the shepherding work.

One is when we're out in the desert and in the other areas removed from the cities. On a typical day in this situation, we have to get up at about four in the morning. When the -- at daybreak, we have to take the sheep out to pasture. We have to have them out in pasture till about nine or ten in the morning, depending on the temperature. Then we have to bring them back to a determined place for them to drink water. Then we have to make certain that all the sheep get water and give them the water that they need, and that will take about an hour to an hour and a half.

You have in front of you a photograph that demonstrates how the work is done in these hours of giving the water.

Once the sheep have drunk enough water, we have to go out and bring more water for the sheep to drink. Depending on the amount of water needed, it could be one truck of water or it could be two trucks of water. And the time to do that depends on how far we have to go to bring the water. And then we try to get something for ourselves to eat and cook something. Depending on the temperature, the sheep will rest until three or four in the afternoon -- four to five.

MR. SCHNEIDER: I'm sorry.

MR. ASTETE: (Through Interpreter) Then we have to take them out to pasture again. And they're out there until sunset, until it starts getting dark. Then we have to bring them back to where they'll be sleeping for the night. That's when the physical work for the day ends.

During the night, we have to be aware of the animals that could cause danger to the sheep, be it coyotes or dogs or other animals that are

there, depending on the zone that we're in. That's what we call guarding the sheep.

That's a typical day in the desert or other remote areas.

Now I'm going to talk about a typical day during the lambing season. Again, we get up at about four in the morning. And we start working about 4:30 -- it's not exact, but that's about the time. Sometimes there are lambs that the mothers don't want, and we have to take those lambs that have just been born to a special area so that they can be grown. We have to attend to them before sunrise.

When sun rises, we have to be out with the flocks to see how many lambs have been born during the night. We need to see what the lambs need. Do they need food? Do they need pasture? Then we have to classify them, whether they were born as twins or singles. That'll take us until almost 10:30, 11 in the morning. Then we have to give water to all the sheep, which now include very many lambs. Then we try to get something to eat to continue working.

Then we do the same in the afternoon, and we're always on guard. And if there's not a whole lot of lambs being born, then we have to help build the fences. Then as the day is ending, we have to go back to where the lambs are that need the special attention. We have to take them, put them in trucks or trailers, and take them to a special place. And then we finish our work around eight or nine at night, on the physical labor. And then, of course, during the night, we have to be aware of animals or other things that could create danger for the lambs.

And that continues for the entire lambing season. Where I work, the lambing seasons start about the 10<sup>th</sup> of October and continue until about the beginning of April. And from there, we start transporting them to other areas, whether it be the desert or the mountains, where they'll be out in the pasture.

That's the work that we do throughout the year. As I said, we don't have a single day's rest. A lot of times, we don't even have time to cook or eat.

I want to mention a photograph that you have in front of you. Here you have a typical trailer of where we live.

In the second photo, you can see the isolation we live in. If you look, you can see a very small box there. That's the house, the trailer.

On the second page, you can see where they're giving water to the sheep.

In the next photograph, you can see the rolls of wire that we have to pick up and make the fences. And you can see that in the bottom picture on that page.

And here we have a photograph that shows what it's like when we have to move the sheep. Here you can see very clearly all the dust that we inhale when we're doing our work. And we don't have any type of safety equipment.

The next picture, you'll see a typical trailer and the tank of water that we use. And the water will be there for about a week. A lot of times, the water is not drinkable because it's taken out of wells or wherever they can find it.

Here there's another trailer that's much smaller. This can be considered a larger trailer too, because there are many trailers that are much smaller than this.

On the next page, you can see the working conditions and that dust that we're exposed to. And then you can see the same as they move the sheep down the highway.

In this picture, you can see when we're in the alfalfa. That's when we're in close to the cities.

On the bottom of the page, you can see when we're out in the desert areas.

And this is typical of the work that we do.

To finish, I want to say that I believe in justice. I believe that justice should be done. We should be treated as human beings and be compensated for the 24 hours, and that growers, employers, recall that we are human beings and deserve to be treated like human beings.

Thank you very much for having listened to me.

(Applause)

COMMISSIONER BROAD: I'd like to ask the gentleman a question.

Are you required to perform work that would not generally be considered shepherding?

MR. ASTETE: (Through Interpreter) A lot of times, we do driving, carpentry work. Many are sent to work in agriculture, things that are not considered shepherding.

COMMISSIONER BROAD: Is there a definition in the application of the H-2A program that defines what the shepherding activity is?

MR. SCHNEIDER: There is a description of shepherding in there, yes. And it doesn't include carpentry work or driving or working in agriculture, such as doing irrigating or tractor driving, which is a common practice.



COMMISSIONER BROAD: So, clearly, whatever we do here, we ought to put in our wage order a definition of shepherding that's consistent with that, because, obviously, these people should be paid under the agricultural wage order as agricultural workers if they're performing agricultural work, which is not shepherding.

MR. SCHNEIDER: That's correct.

COMMISSIONER BROAD: In the materials we have, at least today, there's some information on the H-2A program, but nothing that has a definition of shepherding. It's generally about the program. So I would like to see what their definition of shepherding is. And, of course, we have fairly clear definitions of what an agricultural occupation is. And it says -- it just says "excludes shepherders," but it doesn't exclude shepherders performing other forms of agricultural work. So that's one thing I'd like to look at.

Then I have another question, which is, in our materials today, we have a document put out by the federal government called "Highlights of Labor Certification Process for Temporary Employment of Aliens in Agriculture in the United States H-2A Program." And on the back, there's a couple things I wanted to ask about in a technical way.

On meals, it says, quote:

"The employer must provide either three meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare their own meals. If meals are provided, then the employer may charge each worker a certain amount per day for the three meals."

End quote.

The last hearing, we were led to believe that this program requires three -- the employer to pay for all the meals and that no one can charge for providing a meal. It seems at odds with this program. And then, you know, the argument being, "Well, don't give them a raise because we're all paying for meals." So I'm curious about this particular aspect of the federal law in this regard.

MR. SCHNEIDER: I don't have the document that you're referring to in front of me. But certainly, the practice that I have seen at most places -- and Heraclio will be better able to address what his situation was -- is that they're not prepared meals, but they are given some food, given some provisions. There's usually a stove, a refrigerator that, according to our studies, oftentimes are non-working refrigerators, and oftentimes it's just canned foods as opposed to any fresh fruit and vegetables.

And there seems to be a variance from farm to farm. We've seen some places where food is deducted and other places where it is not.

COMMISSIONER BROAD: In your experience, sir, has food -- have you had to pay for food?

MR. ASTETE: (Through Interpreter) I didn't have to pay for my food. The rancher would bring me canned food, and I didn't have a chance to go shop for my own food.

COMMISSIONER BROAD: Were you -- was fresh food -- including, you know, availability of fruits and vegetables and fresh meat -- made available to you?

MR. ASTETE: (Through Interpreter) The employer would give a list of food. If I put something else on that I wanted, it wasn't brought.

COMMISSIONER BROAD: Okay. Now, another provision in this federal document, entitled "Tools and Supplies," says, quote:

"The employer must furnish at no cost to the worker all tools and supplies necessary to carry out the work, unless it is common practice for the worker to provide certain items."

End quote.

Is it -- are you provided with all tools necessary, or are you expected to provide some of your own tools and equipment?

MR. ASTETE: (Through Interpreter) We use different tools. To nail in the posts for the fences, we have to use a special hammer. We have to use shovels. And I'd like to say that we're not given all the facilities we need. But, for example, we're not given safety equipment such as belts, so there's a lot of injuries, back injuries. These rolls of wire that you see weigh a couple hundred pounds, and we have to lift these, and we're not given any protective gear, and a lot of people are injured.

COMMISSIONER BROAD: Okay. A third provision here says -- called "Three-Fourths Guarantee," says: "The employer must guarantee to offer each worker employment for at least three fourths of the workdays in the work contract period and any extension." Is there any -- the testimony has been, it appears, from both sides, that shepherders work, you know, seven days a week, 24 hours a day --

MR. SCHNEIDER: Right.

COMMISSIONER BROAD: -- 365 days a year. Are there circumstances where one shepherd can relieve another shepherd and they can have days off? Or -- does that happen, or is it just the industry practice? Obviously, this covers the whole --

MR. SCHNEIDER: Is it theoretically possible, or does it happen?

COMMISSIONER BROAD: Does it happen?

MR. SCHNEIDER: My experience is that it does not happen.

COMMISSIONER BROAD: Thank you.

COMMISSIONER DOMBROWSKI: Harold.

COMMISSIONER ROSE: When it comes to coyotes, are they provided with a gun or traps, or how do they deal with that?

MR. ASTETE: (Through Interpreter) When there are a lot of attacks, the grower will call the governmental agency, and they'll come out and put traps.

MR. SCHNEIDER: But I've also seen that oftentimes the workers are given a rifle for coyotes.

COMMISSIONER ROSE: All right. I won't get into that.

A second question: it would really be a help to see a completed Petition for Nomination for the worker, for -- the federal form that's part of the H-2A.

MR. SCHNEIDER: Oh, okay.

COMMISSIONER ROSE: If possible, I'd like to see a completed one. And the second part, I would like to see a flyer from a rancher advertising for shepherders.

MR. SCHNEIDER: Okay. I will see if I can get one of those, although any time I've tried to get anything from the Department of Labor, they've insisted that I file a Freedom of Information Act request. I have a FOIA request that's been pending for over a year. Recently when I called them to ask what the applicable wage for shepherders in California is, they told me I'd have to file a FOIA request to find that out.

COMMISSIONER ROSE: Okay. All's I'm saying is just, if I could see what the rancher was advertising, hours, money, and so on --

MR. SCHNEIDER: I will look for those and see if we obtain that.

COMMISSIONER ROSE: -- and a form that was completed to see how we matched, I'd appreciate that.

MR. SCHNEIDER: Okay.

COMMISSIONER ROSE: Thank you.

COMMISSIONER BOSCO: I think all of us are trying to understand a little bit better how this whole system works with the shepherders, so we might have some pretty basic questions.

I still can't figure out on what basis the pay is established. The testimony seems to be that it's uniform in California at about \$900 a month. First of all, is that accurate?

MR. SCHACHT: Mr. Chairman, Mark Schacht, California Rural Legal Assistance Foundation. You may remember that at the last hearing, I circulated to the commissioners and asked to be included in the record the Department of Labor's end-season wage report which determines what the prevailing wages are in the industry. And unfortunately, I don't have enough copies to give to all of you again, but I can read from them that the most recent prevailing wage survey done by DOL found several dozen U.S. workers. And of those several dozen, the wage rate ranged from a low of \$700 per month to a high of \$1,488 per month. And that included housing and meals at no charge.

I also pointed out that the top end of that range, about 10 percent were getting \$1,500, about 10 percent were getting \$1,100, about 20 percent were getting \$1,000. And at the very low end of the range, the highest number was concentrated.

And the employers have a witness here I see in the audience, Jim Holt, who's a little bit more familiar than I am with how DOL takes the prevailing wage results and translates them into a prevailing wage that applies to the industry. But my understanding of it is, is that the wage rate that is set for the H-2A program is the wage which the greatest number of workers, in other words, the 51st percentile number of workers, are being paid. So, as the prevailing wage survey is done in each year, DOL looks for that 51st percentile and then sets that as the wage.

I think it's probably important to note that most of the workers in this state are working under this federal program, and an employer is only obligated to pay the wage

-- to offer the wage that DOL certifies as the prevailing wage. So, for example, if a U.S. worker were to come to the job site and say, "Hey, I'd like to do that shepherding work that you've got advertised, but I think that \$700 a month is ridiculous, you know, I'd like \$1,400 a month like I hear the guy down the road is paying," the H-2A grower would not be legally obligated to hire that worker.

Similarly, when they go to Peru to recruit, a Peruvian worker or an Argentinian worker or a Chilean worker has no ability to bargain for a higher rate. The rate that's offered in the H-2A that will be paid, and that's the rate at which workers are recruited at.

COMMISSIONER BOSCO: Well, then, the prevailing wage is established --

MR. SCHACHT: It's by -- established by reference to what U.S. workers are being paid in the industry in the area of intended employment. And the purpose for that focus is that there's a statutory obligation under the H-2A program for the Department of Labor to certify, in advance of

allowing the issuance of visas, that there are no U.S. workers available at the intended place of employment and that the wages and working conditions being offered by the employer don't adversely affect the wages and working conditions of similarly situated U.S. workers. So, from that derives the obligation on DOL's part to determine what similarly situated U.S. workers are making.

Now, obviously, if you have an industry that's heavily penetrated by H-2, and the size of the U.S. workers' share of that market shrinks, you going to have, you know, a pretty wacky sort of surveying going on. Here you've got an industry involving, you know, hundreds and hundreds of workers, where the prevailing wages are being set on what's paid to a handful of U.S. workers. But --

COMMISSIONER BOSCO: Will they -- will the Labor Department establish the prevailing wage simply within the shepherd category or will it --

MR. SCHACHT: Yes.

COMMISSIONER BOSCO: -- go a little broader, to farm workers in general, or --

MR. SCHACHT: No. No, it's -- it's -- no, it's quite clear that the program obligates DOL to make a twin certification in advance of the issuance of H-2A visas. And one of the certifications is that there are no U.S. workers available in the area of intended employment in the occupation for which the employer is seeking H-2A workers.

COMMISSIONER BOSCO: So you're saying -- I'm putting words in your mouth -- but it's sort of an ingrown type of --

MR. SCHACHT: Yeah, it makes its own weather.

COMMISSIONER BOSCO: It makes its own -- all right.

MR. SCHACHT: And employers "game" the system. I heard that term used earlier. They game the system. They lobby in Washington to, you know, reduce the -- to change the methodology for calculating the adverse effect wage rate, they lobby Congress, as they're doing right now, to create a whole new program that doesn't even have these basic legal protections. It's a -- you know, it's a very lobbyist- and consultant-intensive work for them, influencing these requirements.

And if I could just make a point a little bit off this subject, I want to let the Commission know that if you set a higher wage for these workers, that wage is going to be a wage that affects workers in other states, workers that are being paid less than this. It's also going to be a wage that's defensible. Earlier, when this proceeding began, employers suggested that they -- they might pursue a litigation strategy, arguing that the federal low wage, which is basically a cooked wage, is going to preempt any higher wage that California might set. And I just want to

tell you that we have -- we have evaluated some of the recent Supreme Court cases on preemption, and we are confident that we can successfully litigate that case, and that the wage that you set, a juster wage, a higher wage, is a wage that will prevail ultimately in the courts.

COMMISSIONER BOSCO: Do you know if there's like a savings clause in this, for the H-2A program, that would enable the states to impose their own --

MR. SCHACHT: States are permitted to impose their own standards and wage rates. Yeah, there is no --

COMMISSIONER BOSCO: Both in terms of --

MR. SCHNEIDER: In fact, the law says that the -- as to wages, the worker must be paid the higher of the applicable federal minimum wage, the adverse effect wage rate, or state minimum wage. So the law clearly recognizes -- federal law clearly recognizes the states' ability to set minimum wage for these workers.

COMMISSIONER BOSCO: Well, that's sort of -- that's how I read it too. That's why it surprised me there was some kind of --

MR. SCHACHT: Well, that's where this industry has been carved out. This industry has been allowed to proceed on the basis of 1984 field operations memorandum, which has the force of law, promulgated by the Department of Labor, which allows them to set up a separate set of criteria, separate from the other regulatory criteria, that allows this prevailing wage rate to be the highest of the wages.

Now, I suppose that it might be possible to test this whole thing in a slightly different way. I mean, if the Commission were to decide, for example, that it would state that California shepherders would be treated to the same extent of the law and covered under the minimum wage to the same extent as other workers in California, well, we could then litigate -- and I'm getting a little bit into Cynthia Rice's testimony -- we could litigate how California law would deal with this 24-seven, eleven-and-a-half-month work season. And, you know, the industry could end up with a significantly higher wage bill than the one that I think may emerge from this Commission, if you pursued that course.

COMMISSIONER BOSCO: Now, the meals, as I understand it, the government sets up two possibilities. One is that three meals a day be provided, and charged for, and, two, that simply -- simply convenient cooking and kitchen facilities be afforded without food. And I think I read somewhere that transportation be included in that, an ability to actually get food. But this does not appear to be what really happens. It appears that there's some kind of hybrid of this, whereby people are given bulk food according to a list that they submit, and they may or may not get everything on the list, but for the most part, they submit a list and they get that food, and then they're not charged for it. Is that what the practice is?

MR. SCHNEIDER: That's what happened with Heraclio, yes.

COMMISSIONER BOSCO: Is that pretty universal?

MR. SCHNEIDER: Again, I've seen some places where workers are being charged for the food, but it's --

COMMISSIONER BOSCO: Are being?

MR. SCHNEIDER: Yeah, but it's -- I think it's more common that they're given the bulk food and a cooking facility.

COMMISSIONER BOSCO: So, in that regard, the California approach to this doesn't squarely fit the federal regulations, but --

MR. SCHACHT: Well, it does, because one of the findings of the prevailing wage survey is that among the U.S. workers, meals and housing are included. So, in order to not have an adverse effect on U.S. workers similarly situated, in California, I believe, the employer is obligated to pay the prevailing rate, whatever that turns out to be, and then provide meals and lodging at no additional cost.

COMMISSIONER BOSCO: Oh, so -- so the written reg is superseded by some other determination that the government has made?

MR. SCHACHT: Under a prevailing wage and practice survey, yes.

MS. RICE: If I could address that, Chairman Bosco, my name is Cynthia Rice. I'm from California Rural Legal Assistance.

And I have had the benefit of receiving at least limited response to some FOIA requests --

COMMISSIONER BOSCO: I hope you didn't call me "chairman" because --

MS. RICE: Oh, did I?

COMMISSIONER DOMBROWSKI: You can have it! You can have it!

(Laughter)

COMMISSIONER BOSCO: We do that by who gets the shortest straw.

(Laughter)

COMMISSIONER BOSCO: I'm sorry. Go ahead.

MS. RICE: If apologies are appropriate, I render them.

COMMISSIONER BOSCO: It's just -- you know, my life is hard enough as it is.

(Laughter)

MS. RICE: The wage order -- the labor certification order that covers most of the shepherders in California is generally submitted on behalf of several employers and encompasses the majority of shepherders in the state. I think the one that was offered into the record before indicated that it was a petition for some 550 or so workers.

Within that certification, the wage is set. And currently, with respect to the ones for '99 and 2000, the majority of those include a salary which includes board and food. And that is, in fact, consistent with the special order that Mr. Schacht talked about, which is slightly different from the general order relevant to H-2A workers.

COMMISSIONER BOSCO: So this \$900 is expected to include food?

MS. RICE: That's -- that is -- that is -- that is the case with respect to the labor certifications that I have seen.

COMMISSIONER BOSCO: And also a place to cook the food or suitable facilities?

MS. RICE: That's correct.

COMMISSIONER BOSCO: Okay. Thank you.

COMMISSIONER ROSE: Mr. Chair?

COMMISSIONER DOMBROWSKI: Harold.

COMMISSIONER ROSE: Could you explain to me the adverse effect wage rate, because I see it's listed as \$7 and --

MR. SCHACHT: -- and four cents and hour? Yeah, the --

COMMISSIONER ROSE: \$7.27.

MR. SCHACHT: Yeah. The adverse effect wage rate is a rate issued on an annualized basis, on a per-state basis, by the Department of Labor that is derived from United States Department of Agriculture surveys of the previous year for field and livestock workers.

COMMISSIONER ROSE: And the way I read this, that's what actually these gentlemen should be paid.

MR. SCHACHT: Well, if -- if the H-2A program weren't being influenced by the political lobbying and these workers were entitled to the protections of state law, they'd be entitled to the adverse effect wage rate for all 24 hours. But that's not the way either state law works right now, and that's not the way the federal requirement works. The federal requirement for shepherding is, again, governed by separate DOL procedures that allow the prevailing wage to be paid.



Mr. Schneider mentioned the generalized rule which applies in almost all other circumstances, is that the employer has to pay the highest of the federal, state, prevailing, or adverse effect wage rate. And in some crops, the highest rate is going to be the prevailing rate; in some crops, the highest rate might be the adverse effect wage rate.

For example, if you took raisins, California raisins, they're one of the groups that are pushing for, you know, a new *bracero* program, they're paid \$5.75 an hour. Well, if H-2 in its current form were applied to raisins, those workers would be entitled to \$7.27 an hour.

The bill they've got pending before the Congress will knock off at least a dollar off the required rate, while still calling it the adverse effect wage rate, which gives you a feel for what gets done with this program. This is a fifty-year-old program with an extensive, well developed legal architecture that, you know, advocates on both sides have been trying to manipulate. And this hearing is just one of the most recent manifestations of that.

COMMISSIONER ROSE: I'm sure you answered my question. However --

(Laughter)

-- what I read here, it says the wage or rate of pay must be the same as U.S. workers for H-2A workers. The rate must also be at least as high as --

MR. SCHACHT: I handed you last week the clearance order for Western Range for California, which shows you --

COMMISSIONER ROSE: I've read that.

MR. SCHACHT: -- that the rate is \$700 per month. And this year, it's \$900.

MR. SCHNEIDER: The --

COMMISSIONER ROSE: Just because it's written there --

MR. SCHACHT: This is DOL's form. This is DOL certifying the employer to bring in workers and certifying the wage that's required to be paid as \$700 -- or \$900 per month.

MS. RICE: I think I can clarify that, Commissioner Rose.

COMMISSIONER ROSE: Good.

MS. RICE: Again, there are -- there is the general -- there are the general provisions that are applicable to H-2A workers, and then there is the special order that is applicable to shepherders.

Even within the general H-2A program, the prevailing wage is set by the occupation, if you will. So there might be a different prevailing wage for an irrigator versus a picker, even within the agricultural occupations.

Additionally, and separate and apart from that, the procedure is somewhat different, as Mr. Schacht has explained, under the special order for shepherders. When I did the FOIA request from DOL last year, the prevailing wage -- or the prevailing wage for shepherders was \$700. It went up to \$800. I have heard that it went up to \$900, but I've not yet received that response to my FOIA request from DOL. But that is the prevailing wage that is set through DOL, and that seven-dollar one is not applicable to shepherders.

In response to -- I think it was Mr. Broad's question -- but the definition used within the context of the H-2A program applicable to shepherders is the standard industry code definition, the SIC code for shepherders. And it's included -- I think it's quoted, actually, on the certification that was given to the Commission.

MR. SCHACHT: Yeah, it is.

COMMISSIONER ROSE: Thank you.

MR. SCHACHT: Would you like to hear it?

COMMISSIONER ROSE: Yeah.

MR. SCHACHT:

"Job specifications: tends flocks of sheep grazing on range or pasture; moves sheep to and about area assigned for grazing; prevents animals from wandering or becoming lost, using trained dogs to round up strays against predatory animals and eating poisonous plants; may assist in lambing, docking, and shearing animals; may feed animals supplementary rations."

MS. RICE: That's it.

COMMISSIONER BROAD: Yeah. Well, I would think that, whatever we do, we should put that in there.

Can I ask a question? This is less towards policy and more towards the resolution of this. At the last hearing, several of the commissioners asked you, Mr. Schacht, to sit down with Mr. Soares and start looking at some compromise in this area. How are those talks going?

MR. SCHACHT: Well, I can say that I've contacted Mr. Soares and let him know that I was authorized on behalf of the clients and the union to begin those discussions and am awaiting, I guess, his -- his

acknowledgement that he's authorized to have those discussions. At this point, I'm not aware that he is, but our door is open.

COMMISSIONER BROAD: Well, let me ask Mr. Baron a question.

I believe that whatever we would do in this round, we would be taking final action on the 18<sup>th</sup> of October. Is that correct?

COMMISSIONER ROSE: It's the 23<sup>rd</sup>.

COMMISSIONER BROAD: 23<sup>rd</sup>. I'm sorry.

MR. BARON: At this point, that is the plan.

COMMISSIONER BROAD: So that is the time frame.

MR. SCHACHT: Well, our plan still is to offer you next week --

MR. SCHNEIDER: Thursday.

MR. SCHACHT: I keep wishing --

MR. SCHNEIDER: It's not next week.

MR. SCHACHT: I keep wishing it's next week -- offer you Thursday a proposal from our side that will not -- will probably be higher than what the industry is interested in. It'll be a starting point.

MR. BARON: Can I just urge, in terms of the time frames, that while the meeting may be on the 23<sup>rd</sup>, clearly, we're putting out a -- obviously, a notice at least ten days before then. And ideally, a notice should include a proposal for the public. So I would urge action as quickly as possible.

COMMISSIONER BROAD: Well, I know, from my own perspective, that, as just one commissioner, I will put out a proposal of some sort here, but I'd much prefer to be in receipt of an agreed-upon solution to this rather thorny issue.

COMMISSIONER DOMBROWSKI: And I think -- I don't know if you were at the hearing or if you'd left earlier, but Commissioner Bosco volunteered to -

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COMMISSIONER ROSE: Yeah, he did.

COMMISSIONER BOSCO: Was I at that hearing?

COMMISSIONER DOMBROWSKI: You were at that hearing.

(Laughter)

COMMISSIONER DOMBROWSKI: We weren't going to let him off the hook, either.

COMMISSIONER BOSCO: Yeah. Let me say too -- and I think it's following along with what Commissioner Broad was indicating, that it's my guess -- but I have not had any way of polling anyone on the Commission -- but it's my guess that we will resolve this issue, at least for this state, and if the resolution will come as some sort of a compromise wherein people will be paid more and whose working conditions will probably be improved -- and to what extent, I don't know -- but given the questions we've asked, I think it's safe to say that we don't know this industry nearly as well as the people who are making a living in it, both the owners of these ranches and the workers. And it probably behooves everybody to try to come up with a compromise yourself, because it's very unlikely that we'll come up with something that would please both sides. It may be unlikely that you can either, but it's probably preferable to us doing it.

But I don't think anybody should think that no change is going to be made here. And my guess is that whatever changes are made are going to have to be within the realm of what this industry can also live with. So, having said that, that's maybe not a lot of direction. But the real direction is, try to settle it yourselves, because once -- because we are going to do something about this, and it won't be a long time coming. It's going to be within the next few weeks.

MR. SCHACHT: You've been very gracious with us in terms of your time. We did have one additional aspect of this which we wanted to share with you. And I guess Cynthia Rice could be brief, but we do think it's important.

MS. RICE: Let's me just say it's not a particularly good segue to talk about compromise, and then move to my argument, which was basically to demonstrate how, under California law, these workers would be entitled to payment for 24 hours a day.

But we do want to establish that, both from a legal perspective, because it's such important context for the Commission to take this into consideration, California Rural Legal Assistance, at which I'm a director of litigation, advocacy, and training, has 16 offices statewide. And we are one of the few programs in the nation, as is Mr. Schneider's, that actively represents low-wage workers, including, I might add, personal attendants, and I can tell you that in our 16 offices, the plight of shepherders is truly unique. Although there are other workers who are exempted from the minimum wage, as you heard this morning, even the personal attendants who also have that exemption by and large are paid minimum wage, or very close to it, for the entire time that they are on work.

I believe it was Mr. Ow this morning who recollected to many, many years ago when he made a dollar an hour. Well, two years ago, shepherders made

a dollar an hour, because the prevailing wage was \$700 a month. And on a 24-hour, seven, 365, that comes to \$728 a month at a dollar an hour.

So, these workers are particularly, particularly in need of a careful look at these exemptions, because if the exemption were not applicable, every hour that they spend on that ranch is truly compensable time, under longstanding cases interpreting both federal FLSA law, Fair Labor Standards Act law, and under cases, the most recent of which came down this May, the *Morillion v. Royal Packing* case, which interpreted this wage order's definition of hours worked and said that if you're riding on a bus to your first place of work because your employer makes you be on that bus, that that's compensable time.

Similarly, as Commissioner Broad pointed out, there have been cases that have taken a look at the issue of ambulance drivers and found that except when there are specific contractual or state regulatory issues that exempt their sleeping time from the minimum wage or overtime applicable, that those are compensable hours at minimum wage and overtime. Similarly, people who are forced to stay at their -- at their job site for meals are compensated for that under minimum wage.

So, the workers, as Mr. Astete pointed out in his testimony this morning, every hour of every day of every month of every year of the four-plus years that he worked as a shepherd, he was working.

I did a little cruise on the major range and shepherd associations' Web sites in preparation for this hearing. Every single one of them has a sub-site that talks about the major problem that predators are for the industry. These men, these shepherders, when they're awake, when they're resting, when they're eating, when they're sleeping, are guarding these sheep from the biggest danger to the industry, predators. And they are entitled, under consistent and longstanding application of state law, to be entitled for that if they're not exempted from the minimum wage.

I have some materials that I'd like to add to the record and give to the members that detail the legal summaries and talk about some of these specific holdings. And I'll just close my remarks with that.

COMMISSIONER DOMBROWSKI: Thank you.

Mr. Soares, I'm going to let you manage your panel.

(Applause)

MR. SOARES: Mr. Chairman and members, George Soares, on behalf of the Western Range Association. I appreciate the opportunity to have two panels appear before you today to speak to the issue. I also appreciate the fact that the board members obviously are interested in this issue. We think we have some people on the panels today who will provide you with some important information and also are prepared to respond to any

and all questions you have. I'd like, at the end of the process, to offer some opinion as well.

So, with that, I will turn the mike over to Jim Holt.

MR. HOLT: Good afternoon. My name is James Holt. I am senior economist with McGinnis, Norris, and Williams in Washington, D.C. We're general counsel and also consultants, the lawyers and consultants that Mr. Schacht was referring to, to Western Range Association. I also do consulting work on the H-2A program for most of the other H-2A users around the country. I'm a former professor of farm management at Penn State University. I've been working with Western Range for about a dozen years now, and over that time have -- although I'm not a shepherd nor a sheep rancher, I've gained a good deal of familiarity with the shepherding occupation.

I have with me a report that I'd like to provide to you which addresses the issues that I think are on the minds of the commissioners on this issue. It describes the shepherding occupation, points out that there are, at least in the last California EDD survey, 206 aliens and 29 domestics in California in this occupation, though that number varies a little bit from time to time.

It describes the Western Range Association structure for the use of the H-2A shepherd program, including the particular obligations that the Western Range Association has taken on itself as a part of running the shepherd program, such as their status as joint employers, where they are essentially guarantors of the contract terms that the individual members contract for. If a member, for example, goes bankrupt, the Western Range Association steps in and pays the herders' wages and that sort of thing.

It describes the H-2A program itself and specifically the federal standards for the shepherd program. I think it was Commissioner Rose and some of the others of you have been reading out the 20 CFR 655, Subpart B, regulations for the regular H-2A program. But the shepherd program has never -- the shepherd program actually predates the existing H-2 and H-2A visa categories. It was sort of put there in the immigration law as a -- someplace to put it. But it has always operated under its own separate set of -- its own separate regulatory framework that recognizes the -- some of the unique aspects of this occupation, which are relevant here.

And therefore, for example, although meals and -- at charge or cooking facilities are required in the regular H-2A program, food and lodging are provided free in addition to the cash wage for shepherders. And that's true not only in California, that's true throughout the shepherd program in the ten western states.

The report also describes the non-wage benefits in addition to the food and housing that you've heard about, a two-week paid vacation that the

workers either take as vacation or as additional pay, the fact that transportation to, from, and between ranches is paid for by the Association, medical and life insurance that the Association voluntarily provides that's not required by the H-2A program, a three-year guaranteed employment contract, and a variety of other benefits that -- that the H-2A program itself mandates.

It also describes -- and I would commend this to your attention, and I'm not going to go through it, in the interests of time -- how this program is policed, not only by the Western Range Association, but by the California EDD, by the U.S. DOL, and by the sending country governments. You've heard a lot of outrageous claims of mistreatment and non-compliance and so forth. I think they are just that, they are outrageous claims. And this -- of course, when you get a couple hundred employers, you're always going to find somebody who goes off the reservation occasionally. There is no category of employees in this state or any state that is as highly regulated as H-2A workers are, and as studiously -- studiously studied in terms of compliance with the regulations.

And finally, with respect to the specific issues before this Commission, the report argues that the IWC should retain the current shepherd minimum wage exemption for, we believe, compelling reasons. And I hope that what we heard earlier, that your -- basically, your minds are already made up on this issue, is not quite the case and that we perhaps can persuade you to retain the exemption.

The first reason is that an hourly wage standard is not appropriate for the shepherding occupation. And that has been recognized in federal law and, up until now, in state law, basically since there has been a minimum wage. The Fair Labor Standards Act specifically exempts workers engaged in the range production of livestock, and it does so because of the fact that the concept of hours of work in this occupation where workers are on the range with the animals seven days a week, 365 days a year, the concept of hours worked is simply inapplicable.

And the H-2A regulations with respect to this specific occupation have recognized this also for the fifty years -- fifty-plus years that the H-2A program has been in place. All other H-2A occupations are regulated by an hourly wage. The shepherd occupation and certain other occupations in the range production of livestock are regulated by a minimum monthly salary, again, because of the fact that an hourly wage is not appropriate as a -- is not appropriate to this occupation.

The second reason that we feel the exemption must be retained is that Industrial Wage (sic) Commission coverage -- excuse me -- is not necessary to protect the wages of California shepherders. There is a very elaborate wage protection system in federal regulations that is structured specifically for this occupation, that has existed since this occupation has been covered by alien wage programs. It is designed -- it's applicable in all ten western states. There's nothing unique to

California, except for the fact that the prevailing wage itself is determined on a state-by-state basis.

And I'd be happy -- we've done lots of these prevailing wage surveys, and we would be happy to discuss with you the arcana of these surveys if you'd like. But it is -- I think the important thing is, there is a structure in place specifically designed for the unique characteristics of this occupation and that is applicable to not only the industry in California, but all of the other states in which it -- in which it exists. And I think, in that regard, it's worth bearing in mind that California, unlike many other agricultural enterprises, is only about 10 percent of the U.S. sheep industry. And probably the other 90 percent of it would wish California -- that 10 percent would go away, because that might give them a little better prices elsewhere.

The third reason that we believe the exemption should be retained is that the current wage protections that are in place for sheepherders in California are working. The earnings of California sheepherders are comparable to the earnings of IWC-protected peer workers, that is, farm workers generally. And furthermore, if you look -- Mr. Schacht made a -- alleged that all of this -- that the system has been gamed by the employers -- if you look at how the wages of sheepherders have moved over, say, the past twenty years compared with the wages of other workers, IWC-regulated workers, both farm workers and non-farm workers, you'll find that they have moved -- they have moved in tandem.

The earnings of -- if you take the \$900 prevailing wage that's now in effect for sheepherders and add to that merely the IWC-mandated allowances for lodging and food, which, as I think you recognized, are fairly conservative, you come up with a \$1,282 a month imputed monthly earnings. The -- a full-time farm worker working at the average hourly earnings of California farm workers of \$7.27 an hour, if he were employed 40 hours a week, 365 days a year -- or 40 hours a week, 52 weeks a year -- would earn \$1,260 a month. And they're not, of course, employed anywhere near twelve months a year or 40 hours a week. But if they were, at the average farm worker wage, their monthly earnings would be almost identical to the imputed monthly earnings of sheepherders. So there is not a discrepancy between sheepherder earnings and the earnings of other workers.

The incomes, if -- there are no California statistics for this, but if you look at the personal earnings of farm workers nationally, California sheepherders are in the 80th percentile of earnings of farm workers nationally, counting the imputed value of their food and housing. And even if you just take the base salary without even counting the food and housing, they're in the 70th percentile of farm workers. They are not at the bottom. Their earnings are above the poverty level, not only for individuals, but two-family households and even three-family households, so that these are not poverty-level wages.



And finally, as you'll note on Page 17 of the report, in Table 1, the farm and non-farm worker wages have increased over the past twenty years almost identically. Farm worker wages in California have increased -- farm worker hourly earnings have increased 71 percent over that twenty-year period; sheepherder wages, 78 percent; and manufacturing wages, 81 percent. They've moved almost identically, so that the existing wage protection standards are working. They are not -- they are not disadvantaging sheepherders relative to other occupations.

And I think the last reason why I would argue that the -- it is necessary to retain the sheepherder exemption is that imposing on California sheepherders an hourly minimum wage or a minimum wage, a monthly wage or whatever, higher than that under the current federal regulatory scheme, would simply hasten the extinction of an industry that's already in severe economic distress.

Now, you hear these kinds of arguments, I think, from probably every employer group that sits in front of you, but let me give you some really shocking statistics.

Wool prices in 1999 are 60 percent below the farm price of wool in 1980, twenty years ago, 60 percent below what they were twenty years ago. Lamb prices, which is the other product of this industry, are 18 percent above what they were in 1980, twenty years ago. Production costs, farm production costs in the aggregate, are up 53 percent over that twenty-year period. It doesn't take an account to know that if you've got -- one of your products has declined 60 percent and the other has only increased 18 percent, and your costs have gone up 53 percent, and sheepherder wages have gone up 78 percent in that twenty-year period, you're in a world of hurt. And the shepherding industry is in a world of hurt.

And the statistics on the farms and farms with sheep show that. Farms with sheep and the number of sheep in California are both down 35 percent over the past twenty years. More importantly, the commercial side of the industry, as opposed to farm flocks that people have because they look pretty walking around in the pastures, those farms with 1,000 head or more are down 55 percent in California between the -- in the fifteen-year period between the census of agriculture of 1982 and the census of agriculture of 1997. And by -- I'm sorry -- 1997. By 1997, the census of agriculture reported 110 ranches left in California with 1,000 or more head of sheep. The Western Range Association counts fewer than 80 of them by the year 2000.

This is an industry which is rapidly facing -- moving toward extinction. The ranchers in the industry are basically living off their assets and their depreciation, each one of them trying to hang on, I think, a little longer than the neighbor does, to -- when the industry becomes profitable again.

Raising their employer costs, no matter how it's done, is not going to be a matter of sharing their wealth with their herders. It's going to be a

matter of driving them further into debt and further into economic oblivion.

Thank you.

COMMISSIONER DOMBROWSKI: Where is the industry going?

MR. HOLT: Well, if you project the current trends, it's -- the industry may very well be disappearing.

COMMISSIONER DOMBROWSKI: No, no. I mean, if the industry is -- I mean, accepting your statistics, is it going to another country?

MR. HOLT: Oh --

COMMISSIONER DOMBROWSKI: What's happening?

MR. HOLT: It's going abroad. The decline in wool prices and the very modest rise in lamb prices is due to increased imports from that period of time.

COMMISSIONER DOMBROWSKI: And where does it go primarily? Who are the major --

MR. HOLT: Australia and New Zealand are the principal places, but not -- there are others.

COMMISSIONER BOSCO: The coyotes are still here, though, right?

MR. HOLT: You mean the two-legged ones or the four-legged ones? Both, actually.

COMMISSIONER DOMBROWSKI: Harold.

COMMISSIONER ROSE: A question. You say I'm referring to the wrong piece of paper --

MR. HOLT: Well, I'm not sure what that piece of paper is, sir, but --

COMMISSIONER ROSE: This is what you referred to. It's the H-2A program, but you say it really doesn't pertain to sheepherders.

MR. HOLT: Oh, I --

COMMISSIONER ROSE: Do you have one that does? Show me what you're talking about, please.

MR. HOLT: I'd be happy -- it's referenced in the report, and I'd be happy to provide you with a copy of the special sheepherder guidelines that the Department --

COMMISSIONER ROSE: Could you do that by Thursday?

MR. HOLT: I'd be happy to, yes.

COMMISSIONER ROSE: I'd appreciate it.

MR. HOLT: In fact, I think I --

COMMISSIONER ROSE: Because I know that your -- your booklet here strictly just talks about the H-2A program, so I wondered what --

MR. HOLT: Well, no, it references the -- it points out that the shepherd program operates under a separate set of guidelines, and it references them, but --

COMMISSIONER ROSE: I'd like to see what these guidelines are.

MR. HOLT: I would be happy to provide you with a copy.

COMMISSIONER ROSE: Thank you.

MR. HOLT: Um-hmm.

COMMISSIONER DOMBROWSKI: Good ahead.

COMMISSIONER BOSCO: Could I -- before you start

-- I beg your pardon, but could I ask Mr. Holt one other question about these prevailing wages and, you said, the arcane way that they're -- I think that's what you said. But the testimony that we had before kind of, I think, presented a situation where prevailing wages are determined in an atmosphere where there isn't anybody really making -- doing that job or making any wages other than the ones that are within the program, so it's kind of an inbred thing. Do you agree with that?

MR. HOLT: Well, the notion -- a prevailing wage, as it's used in the H-2A program, whether we're talking about shepherding or any other activity, is occupation-specific. There's a prevailing wage for picking strawberries, and a prevailing wage for shepherding, and a prevailing wage for irrigating, and so forth.

I would not agree that it's sort of inbred and artificial. And I think the best evidence of that is the fact that it, in fact, produces -- that it's been moving over a twenty-year period the same as other wages, including IWC-regulated wages, and that it generates earnings that are comparable to earnings of other farm workers.

COMMISSIONER BOSCO: But since there doesn't appear to be a whole lot of people out there wanting to be shepherders and very few domestic people wanting to be shepherders, it seems like there is just sort of a small pool, that if I was going to determine, "Well, what's the prevailing wage for shepherders?" you know, it's sort of the people that are in this program.

MR. HOLT: Well, statistically, the pool is small. You're right. And, in fact, in some states -- there are enough in California to produce statistically reliable prevailing wage data based solely on California employment. There are a few states in which they have to take the data from several states and combine it in order to produce statistically reliable data.

COMMISSIONER BOSCO: But there's nothing to determine a prevailing wage from, other than what the prevailing wage is as set in the past by this program. Is that true?

MR. HOLT: Well, that's -- that's in the nature of a definition of a prevailing wage, and all -- I mean, a prevailing wage in any occupation is set based on the earnings of workers in that occupation.

COMMISSIONER BOSCO: But usually, that presumes there are workers out there that want to be in that occupation, that there's some movement in an occupation.

MR. HOLT: Well, I agree with you. First of all, there are very few workers in this occupation at all. And secondly, there are a relatively small number of domestic workers in the occupation. But it has not --

COMMISSIONER BOSCO: How many -- excuse me. I'm sorry.

MR. HOLT: But it has not -- part of your statement, or what you said, that I'm sort of disagreeing with, respectfully, is the inbred -- the suggestion that somehow or other, this wage doesn't change because you're always surveying the same population. I mean, the data clearly shows, the record clearly shows, that it does change and has changed.

COMMISSIONER BOSCO: Well, then, could you -- did you say how many of these shepherders there are in California right now?

MR. HOLT: Well, the number varies, depending on when you do the survey. When EDD did their -- their most recent prevailing wage survey, there were two hundred and -- what were the numbers here? I can't find my notes now -- 206 aliens and 29 domestics. But that number -- but both of those numbers fluctuate a bit from one time to another.

COMMISSIONER BOSCO: Well, I don't think any group of people, at least, has gotten the attention of the Commission proportionately more than this one has.

MR. HOLT: We would agree. And I think --

COMMISSIONER BOSCO: We got the minimum wage that affects, you know, a few million workers, and we're spending, I think, as much time on this.

MR. HOLT: Yeah. Well, unfortunately, there's an industry at stake here. That's the -- and it may be a small industry, and it may not survive

anyway. But we want you -- we hope that you will not hasten its demise in California.

COMMISSIONER BOSCO: Thank you.

COMMISSIONER COLEMAN: I have a question -- and forgive me if I was out if you addressed this -- what percent of your total cost is labor?

MR. HOLT: Total production costs?

COMMISSIONER COLEMAN: Um-hmm.

MR. HOLT: That's going to vary a great deal from one operation to another. I think one of our witnesses coming up is going to testify on that very point with regard to his own operation.

But I might say that contrary to the notion that was expressed, I think, at the San Diego hearing that I was present at, in the audience, this is not -- it's not an insignificant part of the production costs. While we don't think of livestock as being labor-intensive, sheepherding is labor-intensive in the sense that, because they do require -- at least, open range sheepherding -- requires herders. And, by the way, there is another way of raising sheep, and that's in fenced pastures where you don't require sheepherders. But open range sheepherding, where the open range is used for pasture, is a labor-intensive undertaking because of the fact that it does require these herders to be with the sheep constantly.

COMMISSIONER COLEMAN: So, somehow is going to speak to the relative percent, because --

MR. HOLT: Yes.

COMMISSIONER COLEMAN: -- what I'm trying to understand is what is the fluctuation in costs if we did do something going to do in terms of affecting the outcome to the industry.

MR. HOLT: Well, I guess, you know, without stealing the other witnesses' thunder, I think there's a rancher here that's going to present some testimony that his labor costs are about 40 percent of total production costs. And that's, I would judge -- I've not ever done a survey of this, but I would judge, just from my background as an economist, that that's probably about typical in this particular occupation.

And interestingly enough, the fruits and vegetables that we generally regard as labor-intensive average about the same percentage of total production costs, labor -- is labor. So this is an industry that's almost as labor-intensive as fruits and vegetables, on the average.

COMMISSIONER COLEMAN: Thank you.

MR. CALLE: Good afternoon. My name is Jose Calle. I am representing -- I'm the coordinator of the Western Range Association in Peru. I've been working for Western Range Association for about eight years directly and about ten years or more indirectly. I mean that because my father was in charge of the program for almost thirty years, all together. I've been raised and born on a sheep ranch, and that's the Western Range Association gave me that responsibility about taking care of the program in Lima, Peru.

And in those thirty years, for my knowledge, we haven't faced any type of serious -- or at least problems that worry us. Among my responsibilities working in Peru include the evaluation of the shepherd program, which is checking the knowledge of these people in the shepherd business, and also to review and explain about their duties and responsibilities and their rights. And I do this verbally, and I spend at least one hour with each one of these men. And I also make them sign a document, a pre-contract in easy Spanish to make them know really exactly what they are getting into. But most of these people are professional herders and they know how it is to herd in the field.

At the same time, I also check and review all the medical exams of these people. They go through a very thorough examination to make sure they don't have or get into any type of problems or disease while in the United States, or take any disease to this country.

Also now, among my responsibilities include to make sure they register on Peruvian officials in my country. The Foreign Affairs Department of my country has put an office, which is the Office of Peruvian Protection Abroad -- this is an office that sees all Peruvians abroad, which not only include the United States -- they are well concerned about the shepherd program in this country, and they are really working hard to help these people.

All the herders have to register, and then -- and they tell them about all their things that they have to do in case they need help, like phone numbers, to whom to reach and all those things, in Peru or while in the United States, through their consulates, so the people know perfectly well, in case they need some type of help, to whom to reach.

The second point I want to address is about the alleged mistreatments that I have been hearing. That is, for me, a bit surprising, but I have been hearing this in a couple of the last years. During the time I was working, at least directly, with the Western Range Association, from all the people that return and re-enter my country, I never heard -- if I say more than one percent, it's too much -- about some type of problems they were getting in the United States. They were all very happy about the job they were getting, and I would say the vast majority were happy about their jobs.

And this I could demonstrate very easily by saying that all of these people -- and I'm talking about maybe 95 percent of them -- recommend

their own people, relatives, friends, or whatever, to come to this country to work. If there were some type of mistreatment in this country, I don't think -- why would they be recommending their own relatives or friends? I don't think that's a good point about -- I don't think, according to them, there is any type of problems or mistreatment.

The other issue I want to address is the -- that the Peruvian officials are very carefully monitoring this program. They are more concerned about this program, and this has been more in the last year. There was a group of officials, which is the Office of the Peruvian Help Abroad, which is the one that I mentioned earlier, at Lima, where they have to register -- all of them are obliged to register -- and they help them not only with their problems, but also with their legal documents, et cetera.

And also, there is another one in the United States, of course, which is the consulates, the consulates at each point, which, in this case, I guess it would be San Francisco and Los Angeles. But they are very closely helping these people.

I know that sometimes when there has been a little bit of complaints, they would know much faster than what I do, or maybe sometimes that the Western Range would know about the problems, and they would be acting very fast, asking me -- asking the Western Range Association what to do to help those people solve their problem.

Last year, due to the problems that arose about the mistreatment, there was a Peruvian commission that come to this country, which was -- in the group were two congressmen. They were to investigate this alleged mistreatments that happened especially in the Bakersfield area of California. And they did find nothing serious about it, except some typical labor problems that happens in all type of those industries. And even they mentioned -- and I say this to the press, because this issue was so big in my country, the TV, newsmen, all over, about the shepherd program -- they issued that -- there was problems, some that that -- they could be solved, some labor problems, and at the same time, they issued -- they mentioned about the good things the members were doing with some of these people. And I could say some of them, that even they help in the education at their camps.

Finally, I would like to finish saying that more than 95 percent of the herders that return to this country are people that are recommended by their own countrymen, which is family or friends. And if they recommend these people, it's because they know that they are going to have good conditions and going to be treated accordingly.

And also, I would like to finish by mentioning that I would say about 60 percent or more of the people returning to this -- from the total herders that come into this country, are people that are re-entries, people that are on more than one contract. And that could be maybe three to six contracts, which I have seen in so many cases, which, for me, also means that these people, which is a good percentage, weren't unhappy with the

labor. They didn't have to be returning. They're very happy at returning back, for which also myself, as being Peruvian, am very happy for the opportunity being given to these people in this country.

Thank you.

I have to my right a herder, an actual herder, which is Emilio Leo, who works in Fresno for Tim Indart. He's working for more than eight years. He was asking me if he could testify. And the problem is, he doesn't know English, so I would like to help him with some of his words. And at the end, if there was any questions --

COMMISSIONER DOMBROWSKI: Go ahead.

MR. CALLE: -- or maybe you would like me to ask him.

COMMISSIONER DOMBROWSKI: Go ahead. Go ahead.

You have to be a little louder, there.

MR. LEO: (Through Mr. Calle, interpreting) I'm representing my fellow partners that -- we work for the Tim Indart Company.

I would like to spend time to the salary. To my way of thinking, and sharing the way that my fellow partners think, in reference to our compensation for our work being done as a sheepherder, I think that the actual method about receiving a monthly salary, I consider, is a proper method.

I say this in relation to what is proposed about getting a minimum hourly salary for the 24 hours. We see it's something impossible, all this depending on the economical solvency of each company. I think this is impossible to be concrete and make it a reality. And this would endanger the work of many of our countrymen.

In conclusion, gentlemen, I think attention should be put more in the attention that would be given to the sheepherders and the facilities, and depending on each company, because in my company, where I work, we don't have any complaint. We have a very good labor relationship.

And this is all what I would like to say.

MR. CALLE: If there would be any questions that the panel would like to ask myself or to Emilio, we would be very glad to answer it.

Thank you.

COMMISSIONER DOMBROWSKI: I think you're okay. Thank you.

MR. TALBOTT: Thank you, commissioners. My name is Ray Talbott, from Los Banos, California. I'm a third-generation sheep person. I had two



grandfathers that were sheepherders, a father that was a sheepherder, and I was a sheepherder. So I associate with what's going on here today.

I was asked to testify here today as to the part the government plays financially in the sheep industry today. Two years ago, because of the import situation on lamb meat, the market was devastated in this country, and a group of ranchers and lamb feeders got together, and through a provision of the GATT agreement, petitioned to the International Trade Commission for relief from imports. We prevailed in the case, and what we had requested and wanted was import -- import relief. The imports were killing us.

Well, the administration gave us minimal import relief. They came out with a financial package, which is what I understand you people have had questions about. The restrictions that were put on, they put a 9 percent tariff the first year, 6 percent tariff the second year, 3 percent tariff the third year. We are 14 months into the program now, so there's 22 months left, less than two years. They also put quotas that they increased about 8 percent a year. The penalty on over-quota was 40 percent the first year, 34 percent the second year, and 28 percent the third year.

I guess the next question -- logical question for this Commission would be, what does that mean in California money? In California money, the first year, a typical sheep producer with in the neighborhood of 3,000 head of sheep -- and that may or may not be typical -- would be about \$3,000 to \$3,500 maximum. The second year, that same producer could expect about \$7,500, which is the year we're in now. The third year, which will start next July 22nd, a producer with 3,000 head of sheep could expect government aid of about \$7,500. So that's the money we're talking about, as far as average California Western Range sheep producer with a flock of that size, which I think is above average size. I think I'm -- if I'm in error, I'm in error projecting too much money.

Realizing that the amount of money that we are going to receive from financial assistance every year is not a lot of money, I think we also have to -- it's -- it's my duty to tell you that the administration provided this three-year program to assist us in becoming more competitive in the international market with lamb, in our own market with imported lamb. In other words, it's a stopgap transfusion-type thing.

The program will die in 22 months. No more sheep -- no more federal sheep program. So the administration is, in fact, just helping the industry along, with the idea that the industry can strengthen itself a little bit and become competitive with the Australia and New Zealand product again. And for this Commission to look to that money to pass on to labor would fly into the face of what the administration had designed this program for in the first place.

I have some numbers that may or may not be of importance here. California sheep numbers since 1991 have decreased 44.4 percent. That's a pretty

easy number to remember: 4-4-4, a dramatic decrease. Why? Rest assured that it's not because everybody got rich and retired. That's not the case. It's just been economic attrition.

As to who's to blame, who is to say? I couldn't tell you who's to blame. I know there are things beyond all of our control. For an example, the Australian and New Zealand currencies in the last three years have devalued 33 and 50 percent. Now, they've become formidable competition in the marketplace. And "formidable" is not a strong enough word; they take over the marketplace.

So that's where we are. It's interesting that -- you know, the California sheep industry is probably one of the two or maybe three oldest industries in this state. Is it significant? Maybe not. Maybe not to some of you. But the sheep industry started at the time of the missions. I mean, there was -- before San Francisco, before dot-com, before the bridges were built here -- we're talking about 1770. We're talking about 230 years ago. And is it worth helping -- I should say "helping along" -- but should it survive? The answer is yes. We provide food and fiber. We are, in a sense, also a harvester and convert grasses and other things, and brushes, to something useful to man, which is food and fiber. Is it worth -- should it be here another hundred years from now? It probably should.

I had one other -- well, I -- I'll rest with that, and I'd be happy to try to answer any questions you might have.

Thank you.

COMMISSIONER ROSE: You're talking about \$2.50 a head, roughly, just --

MR. TALBOTT: Yes.

COMMISSIONER ROSE: And how many pounds of wool do you get off a sheep when you shear it?

MR. TALBOTT: About eight pounds.

COMMISSIONER ROSE: And this subsidy that's going to start this year on wool?

MR. TALBOTT: There's no subsidy on wool.

COMMISSIONER ROSE: I was told last week in San Diego there was going to be a subsidy this year.

MR. TALBOTT: Well, you're to hear it from me there is not, as we speak, a subsidy on wool.

COMMISSIONER ROSE: Thank you.

MR. TALBOTT: I would like to mention one other thing, since the gentleman mentioned wool. In 1950, fifty years ago, the wool from 200 sheep would buy a pickup. Today it takes the wool from 9,000 sheep to buy a pickup.

COMMISSIONER ROSE: How much a pound?

MR. TALBOTT: 30 cents a pound today. 1950, a dollar-plus a pound. 200 sheep in 1950, 9,000 sheep today, to buy a lousy pickup.

Any more questions?

COMMISSIONER DOMBROWSKI: Thank you.

MR. BARON: Excuse me. I just had a question for Mr. Holt.

Just from a comparison, you compared earlier to the IWC orders relative to ag, and you talked about \$7.27 per hour and what it would earn, \$1,260 a month, and compared that to the -- if you added in the meals and lodging.

MR. HOLT: Um-hmm.

MR. BARON: Wasn't that based on the farm worker who's working 40 hours a week?

MR. HOLT: Yes.

MR. BARON: Are we saying -- are you saying that the shepherders are working 40 hours a week?

MR. HOLT: No. They're on call 24 hours a day, seven days a week. I don't think you -- I don't think you can characterize how much they're working.

MR. BARON: No, but I'm just saying you were making a comparison between the farm worker wage and the shepherd wage, but the farm worker wage is only based on a 40-hour week.

MR. HOLT: Well, what I was -- what I was trying to do is make a comparison of earnings, what the -- what the average farm worker would earn if they worked full-time, which, of course, they don't.

MR. BARON: Right.

MR. HOLT: The fact of the matter is, the shepherd earnings are actually better than farm worker earnings. But if the farm worker worked full-time, and I just base that on 40 hours a week, 52 weeks a year --

MR. BARON: Okay.

MR. HOLT: -- at the average hourly earnings of \$7.27 an hour, that's what you come up with, \$1,260 a month.

MR. BARON: Thank you.

MR. SOARES: Mr. Chairman and members, we have one last panel. We have several of us here. I think our testimony, from most, will be brief.

I'd like to start with Tim Indart.

MR. T. INDART: Good afternoon, and thank you for allowing us to be here today.

Excuse me. I've been fighting a little bit of a cold for the last few days.

There was mention about a wool program in 201. I have also heard the same thing. There's a rumor that we may get a payment of 20 cents a pound on our wool clip for this last year. That has yet to be confirmed. I haven't been told that. In my particular operation -- I run around 3,800 ewes -- that payment would amount to \$3,600.

My name is Tim Indart. I'm a third-generation sheep farmer here in California. Next to me is my son, Darren. Hopefully, he wants to be a fourth-generation farmer.

I started this business when I was 12 years old with my father when I bought my first sheep. And I can say I've enjoyed this business since that time. We have a family farm operation. It's not a large operation. We do have herders to help us. We do a lot of the work ourselves, and we work with our men.

I was -- I was interested in the testimony given earlier from the other shepherd that's here and the mistreatments that he reported. And I will have to say that appalls me. Anyone that mistreats -- any sheep man that mistreats his herders should be reported and should be taken to task. That's unacceptable. I can tell you that none of my men -- and if this gentleman had worked for me, he would not be here today testifying about mistreatment. That just shouldn't happen. And if it does happen -- and I'm wondering why -- if he was mistreated that way, and I'm not saying he wasn't, did he report that? Because there is a process by which those kinds of things should be reported and taken care of. I think it's -- I think it's terrible that anyone, any human being, should be mistreated, any worker.

I'd like to review a couple things with you today. When I first heard about this, I immediately wondered how it would affect my business and my bottom line. And together with my son, we went over our current budget, which we had because we're going through the banking process now, and we -- we looked at our current budget and kind of how, based on several different scenarios -- and we used \$5.75, \$6.25, up to \$6.75 an hour -- and we used a 12-hour day and we used an 8-hour day, and how that impacted our bottom line. And just briefly, I will have to say that on the 8-hour day, we go from a profit to making \$1,000, on an 8-hour day at

\$5.75. And, of course, on a 12-hour day, we're \$66,000 in the whole. And that's direct costs, right out of our budget that we did with our accountant.

The other thing is, somebody asked about what is the percentage of our cost for personnel or for labor. In our particular operation, at the \$900 a month, our labor cost is 41 percent of our -- of all of our total costs. And it's interesting also -- we get another -- if I can find it here -- our per-herder cost, if we were to go to a 12-hour day at \$5.75, our per-herder cost jumps 100 percent.

I think --

COMMISSIONER BOSCO: Could I interrupt you one second --

MR. T. INDART: Sure, certainly.

COMMISSIONER BOSCO: I'm trying to write down all the figures you mentioned.

MR. T. INDART: I'm sorry. I'm trying to hurry.

COMMISSIONER BOSCO: On the 8-hour and 12-hour day, what was the wage you were assuming there?

MR. T. INDART: Well, we started with the base of \$900 a month, and then we used three different scenarios, the first one \$5.75 an hour, based on a 12-hour day, also based on an 8-hour day, and then we did --

COMMISSIONER BOSCO: And you were going from \$1,000 -- down to a \$1,000 profit, and then to \$6,600 in the hole. Was that based on \$5.75 an hour or more?

MR. T. INDART: That was on the -- that was on the 12-hour day. On the 8-hour day, we went from making a profit of roughly \$35,000 to \$40,000 to making a profit of \$1,000.

COMMISSIONER BOSCO: Was that based on \$5.75?

MR. T. INDART: \$5.75 an hour on an 8-hour day.

COMMISSIONER BOSCO: That's it.

MR. T. INDART: Yeah. And I'm sorry. I've got so many of these facts, I get confused myself.

COMMISSIONER BOSCO: Well, that's very helpful.

MR. T. INDART: These are right out of our budget preparations with the bank.

You know, we believe that we run a very efficient and well run operation. And it concerns me that lifting our exemption on wage and hour probably just takes us right out of the playing field, gentlemen -- and lady.

And also, I want to say, we continually hear about our government, both state and federal, wanting to protect and preserve the family farm. Yet, it seems like every time we turn around, our governments are continuing to pass rules, regulations, and laws that do just the opposite. And I'll tell you that lifting the exemption on wage and hour for us is just one example of that.

And I want to thank you for your time. I'm sorry I rushed through it, because I know time is short, but I'll be glad to answer any questions.

MR. SOARES: Darren?

MR. D. INDART: I'll just briefly pick up where my dad left off. As he mentioned, I'm his son. My name is Darren Indart, from Clovis. I am the fourth-generation family farmer in our family. I hope that my children can be the fifth.

A year and a half ago, I left a career in the technology field to return to Fresno and go into business with my dad. I love the work. It was a dream of mine. It was something I really wanted to do. I hope that my children are able to have the same opportunity.

With that said, I'd like to provide a little bit of clarification on how our operation is run so there's no distortion about hours worked and so forth, the way it is in our operation, and which I believe is representative of other operations in our area, if not the industry in general.

This information was given to me by our head shepherd, Emilio, who you spoke with a few minutes ago. He helped me put this together. We definitely wanted his input because we didn't want him to not be buying into anything that we were presenting. We want to be very genuine with our facts. And this is what we came up with. These are averages that I'm going to present to you because, as you know, in any operation where you're employed due to seasonal and -- there are other factors that work into it, it's pretty much impossible to say we work an 8-hour day five days a week. So these are averages that I put together.

We can break our production year for sheepherding out into three categories. The first one is our heavy lambing period, and it begins in -- on October 1st and runs for six weeks, or approximately 46 days. We went through November 15th. We have seven shepherders under our employ. During that time, five of them work as lambers, two work as support personnel. The lambers are involved in the heavy lambing activities and work, on average, 13 hours a day.

It's a long day, there's no doubt about that. We all do it when it's agriculture. It's a way of life. I'm not opposed to or not unfamiliar with working 13-hour and much longer days myself.

The two support personnel work, on average, 5 hours a day, 5 hours a day.

The second period goes -- it's our lighter lambing period -- from November 15th through the end of March. The lambing is less intensive at that time, so the amount of lambers required has been reduced from five down to two. So, during that 136-day or approximate four-and-a-half-month period, two of our employees are working as lambers -- again, we're using a 13-hour-day average to apply to them. The remaining five are working as support personnel, and, again, their average is a 5-hour day.

The remaining six months of the year, there is no lambing, there is no heavy labor-intensive activity going on. We do some repair and maintenance on some of the fence, and, you know, they do some watering. And, you know, there's just not a lot going on. There is no lambing. The seven people under our employ, shepherders work, on average, 3 hours a day.

Those are the facts with our operation. They came from our shepherders. We didn't make them up. We don't want to deceive you. But we would like you to better understand how our operation works. And that is our best representation of how our labor is employed in our operation.

With that said, I just would like to say that -- re-emphasize what my dad said, we do try to run a good operation. We do take care of our men. They like working for us, and they want to continue to work for us. A change in our -- in the way we pay our employees, on the scale that's been talked about, no doubt hurts us -- puts us out of business, and additionally hurts the people we employ, because they will no longer be employed. They won't have a place to work.

I guess that would conclude my testimony. I'd be happy to answer any questions.

MR. SOARES: Lisa?

MS. ELGORRIAGA: Good afternoon. My name is Lisa Elgorriaga, and I'm here representing myself and my husband, Steven. And he wasn't able to come today because he's at home taking care of our sheep that we just bought.

And in spite of all the difficulties, we believe that there is a place in the sheep business for us, and we plan and hope to succeed in it.

And I am addressing your Commission because it is important for you to see that there is a future in the sheep industry. And for the industry to continue and move ahead, we need to keep the shepherd minimum wage exemption.

I will explain to you why this is so important. As you know, sheepherders are currently making \$900 a month, plus food and shelter. The grower also pays one half of the herders' health insurance costs, workers' compensation insurance, and between \$250 and \$305 per month for administrative costs. In the past two years, sheepherders have received a 30 percent wage increase, which has been approved by the federal government.

The sheep industry is regulated by the federal government. The H-2A program is a United States government program. The housing conditions of the herders are monitored annually by the EDD of the State of California. And if they pass inspection, the employers are given a permit. If they do not pass inspection, the employer is required to make necessary repairs, and then they're issued permits.

If the minimum wage is imposed on the sheep industry, the wages of herders will increase 56 percent for a 12-hour day, 30 days per month, at \$5.75 per hour. And keep in mind that the herder is not necessarily working this entire time. He is making sure that the sheep have food and water. Sometimes he is building fence. And most ranches use guard dogs to guard the sheep at night from predators.

When wages increase, jobs decrease. Employers are not able to pay the wages, and they will have to stop operating, or, in other words, they will sell the sheep and find another way to support their families. When workers are terminated because of the employer not being able to pay them, it is not just one or two people that are affected. The effects are felt around the communities, by both the families and other businesses.

As for the sheep growers, the price of lamb is very volatile, and it can fluctuate between 60 cents and \$1.00 per pound in any given year. The grower does not know until the lambs are about ready to be shipped how much he is going to receive for his crops -- for his crop. If he does -- if he knows how the market works and it is a good year, then he will be able to pay off his operating loan. If not, the grower will have to -- will most likely have what is called a lap-over loan, which is the remainder of the previous year's loan plus the current year's loan to pay off. And if you think about it, that can result in a cycle in which the grower will never get ahead, or he will have a very difficult time getting ahead.

The sheepherder exemption makes it possible for the grower to continue in the business. Every year a few more growers are liquidated their herds. And if the minimum wage is imposed on the sheep industry, it will spell the ultimate end of the sheep industry in California. Many families will be out of business, and it will not just be the growers that suffer. The effects will be felt by local businesses, such as feed and supply stores, veterinary suppliers, veterinarians, banks, freight and trucking, farmers, and many others.



Before you make your final decision on this issue, you need to seriously think about the consequences that will develop. My husband and I are both college -- both have college degrees and we have other options, but we are in the sheep business because we love it and we want to continue a family tradition, and we want to pass it down to our own family. Please don't take this away from us.

Thank you.

MR. CARREIRO: My name is Robert Carreiro. I'm from Riverdale, California, and I'm here because I'm concerned about the sheep industry and what could happen if there's a wage hike.

I started in 1978 with two sheep. In the year 2000, I've built it up to 3,800, and I don't want to lose that overnight. I worked hard to get that, and I want to keep it.

And I just think that we're giving a fair wage, and our people our happy. And I just hope you people agree with us.

COMMISSIONER ROSE: A question: how many herders do you have?

MR. CARREIRO: Myself?

COMMISSIONER ROSE: Just yourself.

MR. CARREIRO: My name is Robert. I have five shepherders.

COMMISSIONER ROSE: Five.

MR. CARREIRO: And myself.

COMMISSIONER ROSE: Five for 3,500. And the other question is, how many do you have for -- how many sheep do you have?

MR. T. INDART: We have seven.

COMMISSIONER ROSE: But how many sheep?

MR. T. INDART: 3,800.

COMMISSIONER ROSE: Okay.

MR. ETCHEBEHERE: Hello. My name is Jean Ethchebehere. I'm from Livermore, California. I'm the third generation in the sheep business.

And these guys have really said what I was thinking about saying. You know, this 900 -- we're paying \$900 now, and we can't go much higher on this wage deal.

And what he was saying about the shearers, my dad was a shepherd, my grandfather was a shepherd, and they made it into a business. And I know how to treat a shepherd because I was raised with the sheep.

And the trailer houses he showed you, I don't know what they look like, but they're not all the same. Now, maybe the place he's working at, it's not fit for humans. But, you know, they should come and look at our outfits, people that do run their outfits halfway decent, because, you know, we're not all the same.

I want to stay in business. I've got kids that want to be in business. So I just -- I think this paying a little more than what we're paying, we just can't do it. We're not going to stay in business.

Thank you.

MR. T. INDART: George, can I add on thing?

Right today, the sheep industry is not very healthy. And I'm surprised someone hasn't asked me, "Why are you doing this?" You know, I ask myself the same question. I'm 59-1/2 years old. I don't know what else to do. This is what I do for a living. I don't know what else to do, other than try to make a living in the sheep business. And I'm going to stick with it till the bank takes it away from me.

Now, my son is probably young enough to do something else, but he doesn't want to. He wants to raise sheep for a living.

That's all.

COMMISSIONER BOSCO: Could I ask one question, for one of the Indarts --

MR. T. INDART: Yes.

COMMISSIONER BOSCO: -- although I think Junior is the one that testified to this, I was very interested in the hours worked, because I think that's really what we're talking about here. And I think what makes this so unique is no one knows what hours are worked, in a traditional sense, as opposed to what hours are more restful, you know. How did you -- can you give me a real brief description of how you distinguish between what hours are worked and what hours aren't?

MR. D. INDART: Yeah. And I don't know if it would be helpful for Emilio to come up as well --

COMMISSIONER BOSCO: No.

MR. D. INDART: -- because, as I said, we went through that together. But I think, in general, it's everybody's perception of what a worked hour is, and that's actually working. Emilio's perception, I believe -- I don't want to put words in his mouth -- but was that in you're in your

camp laying around reading a book, you know, watching TV, you're not working. And that's the basis that we used in conducting our analysis. And there are, you know, times when you're out working long, hard days. It's agriculture. It happens. It's just the way it is. It's the nature of our business. But there are also times, like the six months out of the year from April 1st through the end of September, where the average workday is 3 hours of work per day. The rest of the time is -- you know, of course, they're there -- so is my dad. He's lived there his whole life. I don't live on a ranch.

I'm there all day, and -- I mean, what do you classify as working? My cell phone's on 24 hours a day, on my hip. If it rings, I'm working. I mean, I'm on call. I don't consider myself working 24 hours a day. I guess maybe it's a difference in perception.

COMMISSIONER BOSCO: Well, it might be helpful to have somewhat of a definition of this. And I don't know, I mean, based on what you said --

MR. D. INDART: Definitely.

COMMISSIONER BOSCO: -- I'm not sure you're really far off the minimum wage right now.

MR. D. INDART: Definitely not.

COMMISSIONER BOSCO: You know, if that's accurate, you know, but working -- what isn't working we all understand, you know, if you're sitting around and sleeping, or maybe with a little bit of an ear towards some coyotes out there --

MR. D. INDART: Right.

COMMISSIONER BOSCO: -- not, you know, chasing them necessarily --

MR. D. INDART: Right.

COMMISSIONER BOSCO: -- but what is working, you know, trudging around in the mud, and putting up fences, or lambing -- you know, I can picture what that would be like, maybe under someone's supervision, with a crew around, where, you know, that's -- is that more or less what you --

MR. D. INDART: Exactly. And if there are -- and I can speak for our operation -- if there are some specifications like that, we would, I'm sure, easily be able to operate in something like that. But saying that we've got to pay an hourly rate on 24 hours a day, 24-seven, 365, I mean, who realistically thinks that we can increase our labor costs that much?

COMMISSIONER BOSCO: Well, I don't think --

MR. D. INDART: Yeah, I understand. Yeah, at some point, it would be definitely helpful.

MR. SOARES: Mr. Chairman, if I can conclude by thanking all of the commissioners for your patience, and the audience as well -- I know there's other issues to be dealt with, and I appreciate that. I'd like to summarize, just on a couple of points.

On Commissioner Coleman's question about labor costs, I think Mr. Indart talked about 41 percent. I think that's under current circumstances. I think that number climbs to over 50 percent if there's any adjustments in the numbers, so just to complete that information.

I wanted to make the point that I think I will give credit to both sides of this argument, that everybody is sincerely concerned about the issue, but I think the Commission is also finding out something, that a one-line exemption in IWC Order 14 has a lot behind it, on both sides.

From our vantage point, we've talked about a few of them here today, the trade implications. The sheep industry in the United States, not just California, is in great jeopardy because of trade implications, not that you and I can do anything about it, but it's a fact of life for both the producer and the herder. It's a fact of life. It goes to the bottom line.

We all need to protect family farms. I think we all agree on that. We also, I think, all agree we're not trying to do it on anybody's back. And I think sometimes it's suggested or implied that the producer is uncaring about their employees and they'll pay their employees next to nothing, so long as they can make a profit. I hope we've brought enough witnesses before you today and in San Diego, and then again in Stockton, to demonstrate that at some point, hopefully, you'll conclude that this is the industry, this is not just the cream of the crop and we've left all the bad actors home, this is the industry. We are trying to figure a way so that the producer and their employees can all find opportunity in this business. So, I just want to set that stage, that we're not opposed to talking about any possibilities.

But I think the reality is, when you get into the numbers -- and I know that this Commission now, through various members, has said that we must find a compromise -- when you look at the numbers side of the issue here and you talk about trade implications and any number of other things, the labor costs, it's going to take quite an effort, not only by us, on both sides of the issue, but as well as this Commission, to find how a larger number is going to work to satisfy the employee side even while these people attempt to stay in business.

What I'd like to suggest to this Commission, rather than focusing on the dollar sign, which is affected by trade and other issues, there has been considerable testimony about working conditions. And to the extent that the IWC can address that issue, I'm here to tell you that the industry, in its own self-policing, is very interested in these points that are made. Now, it's not for me to say whether all the points are distortions or not, but it is for me to say that this industry has an obligation to follow through on the allegations, whether they're in the newspaper or

made at the microphone here. We are looking at these issues. And we well may come back to all of you with ideas in that regard.

So, I hope when we talk about trying to find a solution, that the Commission is open to all possibilities, as opposed to just focusing on the number. I'd like to at least plant that seed.

This is, by all accounts -- it doesn't have to be just our numbers -- we'll provide you whatever you want -- this is an industry in decline. The trick here, the trick is to keep them all in business -- that's the producer and that's the shepherd. It could not give you any satisfaction, I am sure, nor us, if you were to pass a higher wage standard only to find out that the shepherd force in California shrinks from 250 to 150. What have we accomplished but to have damaged an industry?

And so, I'm suggesting that this takes a lot of time and attention. I know this part is a broken record, and I hope not to offend the commissioners, but I continue to believe that this issue is so complex and so difficult to weave our way through that it really requires quality time and attention in order for us to find that fine line where we can all coexist.

So, I, for one, am sorry that we only have 14 or 17 days or whatever for this Commission to make an issue -- decision on this issue. I think it's much bigger than that. I think there's a lot more at stake than that. We'll do our best to try to accommodate the time line, but it is a very difficult situation that we're all trying to deal with.

And with that, I thank you for your time and attention, and we'll see you in Stockton.

COMMISSIONER DOMBROWSKI: Thank you.

MR. SCHACHT: May I --

COMMISSIONER DOMBROWSKI: No, no, no! No, no, no! No, no!

Thank you.

Stockton -- let me just -- before people leave the room, the order on Stockton is going to be construction first, minimum wage second, shepherders third. I am told that there will not be a lot of testimony on minimum wage in Stockton, but, as we all know, that can change. So, just to give you some sense of planning your day on Thursday, if that's helpful -- thank you.

(Pause)

COMMISSIONER DOMBROWSKI: All right. I'm going to bring these up in order again. Andrew Slivka, Mitch Ward, Phil Vermeulen, Karen Rudolph, Ed Ehlers.

(Pause)

COMMISSIONER DOMBROWSKI: Whoever wants to start, just identify yourself.

I'm sorry.

AUDIENCE MEMBER: (Not using microphone) Is this employers?

COMMISSIONER DOMBROWSKI: I wasn't doing it by panel. I was taking them by cards. If you want to -- you want to -- go ahead -- sit down.

MR. VERMEULEN: Mr. Chairman, my name is Phil Vermeulen. I represent both signatory and nonsignatory contractors throughout the State of California, and I'm here today to -- it's very difficult for me to be here to say things to the contrary, but I want you to know that, as I say, we have both signatory and non-signatory contractors. Several months ago, we urged the Commission to empower a construction wage board because the existing wage orders do not work for the construction industry. You recognized that. You empowered a construction wage board. I'm here today to tell you that the construction wage board failed miserably.

If you look at what is before you now, it looks very similar to what is on the other wage orders. And again, it doesn't work in the construction industry. I'm speaking, again, for both signatory and non-signatory contractors.

With regard to the signatory contractors, we believe that AB 60 was very specific. Section 514 of the Labor Code is very specific that it exempted the collective bargaining agreements. Each of those collective bargaining agreements, we believe, is sacred, that labor and management sit down in good faith, they understand that there's uniqueness within the construction industry. For example, if -- with regard to my engineering contractors that have a lot of cranes and heavy equipment, it doesn't work trying to climb down and take a coffee break. In exchange for that, there are offsets. So they may get higher wages, they may get higher other types of benefits, but it is understood that some things in the construction industry don't work, and we offset that through other things in the collective bargaining agreement.

When we look at what is proposed here, it just -- as I say, it does not work. We're talking about coffee breaks, we're talking about seating. I want you to know I'm a third-generation general contracting son. I was raised in the business. And if I was caught sitting down on a job, my butt would have been kicked from one side to the other. And it's not just my father or my grandfather that would have done it, it would have been other workers. The industry is very specific in these areas. And yet, as a result, we asked you very specifically to empower a construction wage

board to look at these unique issues. We thought that these were going to be addressed properly, and we are deeply distressed that they were not.

What we would urge the IWC to do, number one, is to exempt the collective bargaining agreements. Again, it's very specific, we believe, in AB 60, Chapter 514 of the -- of the Labor Code, which I quote here in the letter before you, that the collective bargaining agreements are exempt. And we would urge you to heed that advice.

Secondly, we believe on the non-union side -- and again, as I said, I represent both sides -- we have no problem with saying that there should be a level playing field. And we would urge you to put what we would call an industry-accepted standards or industry-wide standards that are accepted by all the different crafts, both the labor -- the union side and the non-union side. Our fear is that despite what some other people have said about *Livadas*, that this whole issue is going to be held up in litigation for years. And we don't think that that's in anybody's best interests. We want to get on with the task at hand.

So, as we say, we would urge you to continue on with the exemption on the collective bargaining side. And on the non-union side, level that playing field, but don't exceed it.

Thank you very much.

MR. BARON: Can I ask a question? Can you tell me, looking at the collective bargaining agreement language, where there is an exemption relative to where you do have a collective bargaining agreement, that's inadequate? I just want to be clear in terms of where -- the language that's sitting in the present proposal now, it does have an exemption where there's a collective bargaining agreement. I just was curious as in terms of that specific language, where you find it --

MR. VERMEULEN: Where --

MR. BARON: -- where you think it's inadequate.

MR. VERMEULEN: Where the regulation that is being proposed says that where the collective bargaining agreement is silent, that the state order shall apply. And we're saying, "Wait a second, it's very unique, each agreement was bargained in good faith between both sides; if there's an issue such as meal breaks or some other unique situation, bring it up the next time the package is up before both sides." But we think it's -- it doesn't make sense for the state to come in and say, "This is going to be the way it should be."

I would go on to say one other thing -- and both sides, both the signatory and non-signatory, feel very strongly about this as well -- that it questions the need for a labor union if all of the sudden the state's going to be coming in and saying, "Well, you are going to be doing X, Y, and Z." And, I mean, that's a bold statement to say, but I'm

very serious when I say that my signatory contractors are saying the same thing there.

And again, we have bargained in good faith. We have very -- I work very closely with my colleagues on the labor side on issues in Sacramento, and we want to continue doing that. But we feel we have to draw the line here, that we have some serious concerns with regard to the proposal at hand today.

Thank you.

With me today is Mr. Mitch Ward, who is one of my non-signatory contractors. And I asked him on purpose to come up from southern California to talk about his perspectives on it.

MR. WARD: Hi. My name is Mitch Ward, Sequel Contractors, from Downey, California. We've been in business since about 1990. We do public works general contracting. We are non-signatory; however, we're not opposed to unions. We hire union and non-union subcontractors.

Over the years, I believe, in the public works industry especially, the unions have created some very good working -- I guess the things that you guys are trying to shape with this information here. We're opposed to it because you exclude collective bargaining agreements not to apply. In order for us to bid against our union competitors, we want it to be the same on both sides.

If collective bargaining agreements include these items, then we generally follow suit, not to make them upset. So, some of the language in here is, I don't think, selective to certain types of construction industry, sitting on a job. For us, our jobs are linear in nature, sometimes several thousand feet or several thousand acres -- or, not a thousand acres, but hundreds of acres, so it makes it very difficult to have a warm place to be and a specific seating area. So, in some of that sense, I don't necessarily agree with.

Sorry I'm not as smooth as Phil, but we're a little --

COMMISSIONER DOMBROWSKI: You're more effective.

(Laughter)

MR. WARD: But we do see some issues here that I think need to be further addressed, and we would like to maintain a level playing field with the union contractors.

Thank you.

COMMISSIONER DOMBROWSKI: Thank you.

Next.



MR. ROLLERI: Good afternoon. I'm Tom Rolleri. I'm director of labor relations for Granite Construction Company, headquartered in Watsonville, California.

The type of work that Granite Construction Company performs includes heavy highway work. Probably our largest customer is the State of California, the Department of Transportation, Caltrans. And we've got a few comments that we would like to offer, some of which I hope are not duplicative of what you've already heard.

But one of them has to do with echoing the remarks that were included in the September 19th letter from Tom Holzman, executive vice president of the Associated General Contractors of California, of which we're a member.

Granite, in addition to being a construction contractor, is also in the mining business. And we mine materials that are used for building materials on various construction jobs, such as aggregates and so forth. Many of the issues have been address already, but I feel that I need to talk about some of them, which are already covered in our collective bargaining agreements. And as has already been said, why are we trying to reinvent a collective bargaining agreement?

Reporting time pay is already covered under our collective bargaining agreements. I don't see any reason why the state should have any interest in changing what we're doing now and in changing our collective bargaining agreements.

With respect to records that will probably be necessary to be kept in order to comply or prove compliance with these proposed regulations, more recordkeeping, more time, more money, more places for people to make little technical slip-ups, and more ways for us to be cited for some kind of violation.

Meals and lodging issues are already covered by our collective bargaining agreements. We already have something known as subsistence built into those agreements. Now, there's two kinds of ways of doing that, one of which is a lump-sum payment per day per person, or some collective bargaining agreements provide for a wage differential in some of them. And that way, the wage differential is -- would be from two to three dollars an hour, and it gets picked up by the prevailing wage people, and therefore the taxpayers of the State of California indemnify us against those increases.

And the other thing had to do with meal periods. They're already taken care of in our collective bargaining agreements. There are already meal periods provided for. And if there are no meal periods taken for one reason or another, there is a way of dealing with that through our collective bargaining agreements. Again, there's no point in the State of California trying to come in and changing that.

As to rest periods, most of those provisions have long since come out of collective bargaining agreements that we normally have for those people who do highway work and other heavy engineering, heavy civil projects. They've gone away. Why have they gone away? They've gone away because it was determined by both labor and management that they should go away, they're not necessary. People have already found ways of dealing with those issues, and it wasn't necessary to have something superfluous in our collective bargaining agreements, so they've gone away. The State of California would attempt to put those back in.

Now, because we have to, under federal law, negotiate with the unions for issues covering wages, hours, and working conditions, this is another issue now that we will have to negotiate, because the State of California decided it's something that needs to be considered.

As to penalties, why should the State of California, again, have an interest in adding more penalties onto penalties that are already provided for under our collective bargaining agreements if you don't meet our requirements under those agreements? Those penalties are not very nice. And why should there be a duplicate penalty situation with respect to the state?

Those are some of the -- some of the issues that have come to my attention. There are many others. However, the most important thing for us to raise as an issue is the integrity of collective bargaining itself. What do the Industrial Welfare Commission rules and regulations, and other regulations and laws that the state has, what interest do they have in attempting to modify or interfere with our collective bargaining agreements? What is so bad about the collective bargaining agreements that we already have, that we've negotiated collectively with the unions? What is so bad with those that the state feels that something has to be done to change them?

That's a rhetorical question.

And also, what about whether the state should, in effect -- and this point had already been made -- what does it do to a collective bargaining relationship off into the future if the state, step by step, is constructing a virtual collective bargaining agreement for all of us to live with? Where is collective bargaining going to go in the future? I'm very concerned about that.

Finally, I'd like to request, because of the nature of construction, in which we have to bid hard money contracts that often exceed a year, and sometimes two years in length, we would ask for consideration of exemption of any kind of additional requirements placed upon us, to exempt those contracts currently under construction as of the time that the new law goes into effect.

And those are my remarks at this time. And finally, I'd be happy to answer any questions that you might have.

MR. EHLERS: I'm Ed Ehlers, executive director of the Associated California Loggers. We've been spending considerable time trying to make the case that the -- both the interim and the wage order that came out of the wage board are not the correct thing for logger, and that more appropriately, we should be over in the ag wage order, 14.

The problem with the other ones is that they're really based on an urban or semi-urban setting. And the kind of work we do in the woods, that is remote, at best, you know, doesn't fit into that framework.

If we go back to the ag wage order, and in Section 2C, "Definitions," there are a number of things there that describe the work that we do that we think make us fit in that -- in that category. In Subsection (3), it refers to "thinning," and much of our work in the woods, as tree farms, as we call them, is thinning. We do, as it says in Subsection (4), "cutting and bunching and placing" -- I'm picking those words that fit us -- "placing in the vehicle in which the commodity will be hauled on the farm," on the tree farm, "and to the place of first processing." Those clearly describe what we do in our field.

In Subsection (5), the "assembly and storage of any agricultural or horticultural commodity, including loading, load siding, stacking, and piling." All of those things, we do. We deck our logs in the woods until they're ready to go to the sawmill or the pulp mill or wherever they're headed to, and when they want them, on a -- it's a prearranged schedule that's determined by the purchaser.

And Section 7, Subsection (7), the "conservation, improvement, or maintenance of such farms and its tools and equipment." And, of course, that is, you know, very much a part of what we do.

And back to Subsection (1), the "care and treatment of farm land." Tree farm land is a primary purpose for the work that we do. In California, the work that's done is developed and planned by a registered professional forester. There's a timber harvest plan submitted and approved by the state, and that forms the prescription that we follow when we go into the woods with our equipment and manpower.

As you've seen from our letters, first, to the Commission in January, and our most recent one in September on this subject, ours is not what you'd call a particularly healthy industry or end of the industry, the logging business. We're family-owned businesses. Most of us have fifteen or fewer employees. Our problem and that of our employees is working enough days every year in order to be able to earn or pay a living wage. Our rates -- you know, minimum wage is not an issue with us. Our entry-level positions are paying \$10.50 and \$11 and go up from there. But again, working enough days is the key, our problem.

We would again urge that the Commission consider moving us to the ag wage order, where we think we fit, where the language fits us, and not put us in a wage order that is designed for other purposes. We've suggested a

couple of minor changes to -- one of them, I think, significant to us but relatively minor in the whole scheme of things, that would make 14 a better fit and make it work in the more traditional pattern that we've found works for our employees and for logging.

Any questions?

COMMISSIONER DOMBROWSKI: Thank you.

MR. EHLERS: Thank you.

COMMISSIONER DOMBROWSKI: Okay. I'll call Karen Rudolph, Kevin Dayton, Andrew Slivka.

Scott, you want to bring up your people, then? I've got -- you gave me five cards. I don't see five people.

MR. WETCH: I think it's just going to be the four of us.

COMMISSIONER DOMBROWSKI: All right.

MR. WETCH: Mr. Chairman, Scott Wetch, of the State Building and Construction Trades Council.

We know the Commission's exhausted, so we're going to be very brief and just run through some issues that were raised by the employers at the last hearing and today very briefly, and we'll give you a status report on those.

We're now entering our tenth month that the issue of a construction wage order has been before the Commission, and I'm heartened that Mr. Vermeulen has decided to participate in this process.

I found it curious, though, that his testimony was based on the fact that he was proposing and urging a blanket exemption for collective bargaining agreements, which I think the Commission has been briefed by both counsel, as well as by counsel for the Building Trades, about the legalities that prevent us from being able to do that, but then that his contractor he brought with him was opposed to the wage order for the reason that it exempted, in some areas, collective bargaining agreements and didn't exempt the non-union. So, there seems to be some internal conflict there.

But in response to a couple issues that were raised today by the AGC, the first one was some objections to the meal and lodging and the meal period provisions. I'd just like to remind the Commission that those provisions, there is a limited exemption that would defer to the collective bargaining agreement if they do, in fact, address those issues. And pursuant to the testimony of AGC, all of their collective bargaining agreements, and every collective bargaining agreement that I'm familiar with, addresses meals and lodging, and meal periods as well.

In regard to the penalty and the objections from the employers to the penalty provisions, again, under the proposed regulations and what we're supporting, and what the wage board unanimously supported, was deferring to the collective bargaining grievance procedures in regards to penalties for the signatory sector, which we think is appropriate.

Very briefly, down in San Diego, there were some issues raised by the employer community regarding inclement weather and the fact that the construction industry is very unique and has -- is uniquely affected by the weather. And specifically, they objected to the reporting time provisions, which -- the language within the proposed wage order is pretty standard to the reporting time provisions in most collective bargaining agreements -- which specifies that if an employee is required to report to a job site and then is not put to work, then they are guaranteed a minimum of two hours of pay, and if they're not put to work for at least half a days' work.

The employers testified in San Diego that this was just going to be something that they couldn't possibly work under because of the nature of construction. Well, that's just simply not the case. There's two instances today where this issue is dealt with every day in construction. Under collective bargaining agreements, there's reporting time provisions today, so the signatory sector already manages their operations to accommodate for weather. They give explicit direction to their employees of when to report to work and when not to.

And if they require their employees to report to work when there's a good chance that there may be rain or inclement weather, then that is a risk they're taking, that perhaps work may be interrupted. But if they require an employee to report to a job, and then say, "I'm sorry, but the weather is just not going to allow us to work today; go home," they have now cost that employee the opportunity to work someplace else or in some other capacity and earn a living for that day. In addition, you have employees that are weighing various factors. Should they stay home and watch the -- I mean, they are required to come to work for the day, and then they're turned around and told that they can't be put to work because there's rain, because the employer didn't factor that into their calculations, well, then they've already paid for childcare, they've already paid for other sorts of expenses that now they're out.

Under prevailing wage law, reporting time is covered under prevailing wage. So, for the non-union sector to say that they just would be beside themselves in trying to -- in trying to conduct their routine business if there was this reporting time provision, they have to follow that any time they do a public works job. This isn't some sort of new requirement that is brand new to the construction industry that the wage board just came up with out of thin air. This applies to all public works jobs in the state already, and it applies to any collective bargaining agreement.

So, there's nothing new in here that should put any new burden or provide any new perplexities to the -- or complexities to most employers in the state to follow.

In addition to rest periods, we continue to work with employer groups regarding the specific language that we want to recommend to the Commission in regard to rest periods. In continued discussion, and hopefully, by the end of this week, at the hearing on Thursday, we will have some language to propose to you to clarify the flexibility that we think is inherent within that provision today.

And lastly, in regard to the temperature and the seats and those other conditions that were proposed by Commissioner Broad, the good news is that I think we're of like mind on that issue. We do not believe, at least for the construction portion of the wage order, that the setting of mandatory temperature and seats and those provisions in the wage order are appropriate for the construction industry. And we've discussed it with Commissioner Broad. And we believe, as long as there's language drafted in the wage order that speaks to the industry standards, and that nothing in the wage order forces the construction industry to exceed the existing industry standards in regard to temperature and seating and those sorts of issues, that we won't have a problem with it.

But if -- the way it reads today, we don't believe it's appropriate for the construction industry, and it would be very difficult to implement.

With that, I look forward to seeing you in Stockton.

Thank you.

MR. COHEN: Mr. Chairman, commissioners, Paul Cohen, representing the Northern California Carpenters. I fear that familiarity may breed contempt, and so I will be very brief.

I do want to acknowledge and thank my fellow members of the United Brotherhood of Carpenters who turned out today to demonstrate their concern as well for this issue.

I was thinking, anyway, of sharing a memory with you, and after listening to the employers' testimony, I feel compelled to do so. And that is of more than twenty years ago, as an apprentice member of the United Brotherhood of Carpenters, using the hiring hall to seek work, looking at a copy of California Wage Order Number 4, and looking at its provisions, and wondering, after a journeyman explained to me, "Well, that doesn't apply to us," why it didn't.

Far from agreeing that labor and management long ago agreed that rest periods are unnecessary and the protections in this wage order don't -- are not needed by construction workers in California, it's taken twenty years, but I'm proud to have been part of the wage board that's going to

make those kind of provisions cover construction workers in California. I think it's long overdue.

As to the draft wage order, I do want to follow up on some previous testimony talking about Section 9, on "Uniforms and Equipment," and specifically Paragraph B, dealing with the issue of hand tools and equipment, or, as modified in some recent material, I believe, by the IWC, by the Labor Commissioner, "hand tools and hand equipment."

It is -- you know, this is an important issue, and it requires careful definition to avoid abuse by unscrupulous employers. As we've expressed in previous testimony, not only on this wage order, but on previous wage orders and in the discussions around the passage of AB 60, the exception must be clear, and it should be limited in its impact so it does not extend to power tools, pickup trucks, et cetera. And without trying to resolve it or offer language today, I would be happy to offer, if it would be helpful, language from several collective bargaining agreements that I think clearly delineates industry practice and defines hand tools and hand equipment such as toolboxes, without opening the door to other abuses.

I have asked a couple of my fellow carpenters to speak briefly on the wage order.

MR. WOODS: My name is George Woods. I'm a member of the Carpenters Union, Local 751, Santa Rosa.

I'd like to bring up the matter in front of the Commission concerning any regulations that would prevent contractors from requiring myself and other carpenters from bringing to work things like power tools, cords, ladders, a pickup truck, and so on. As it is right now, I buy all my own hand tools and I have to replace them when lost or broken, at considerable expense to me. They're not, in general, maybe as expensive as power tools, but this is -- this is part of the cost to me to go to work. I certainly don't want to have to bring, under threat of maybe not having my job, I wouldn't want to have to bring power tools and other equipment that I should not have to buy for my job.

So, at my what I would consider barely living wages, I cannot afford to bring power tools and other bigger equipment, ladders and so on, to work and also pay my bills.

I thank you for your time.

MR. SLIVKA: I'd like to thank the chairman and the commissioners. My name's Andrew Slivka. I work as an organizer for the Northern California Carpenters Union.

I'm here to talk about the unrepresented workers. I greatly agree that we in the Carpenters Union do have a collective bargaining agreement and enjoy many benefits because of that. However, in my position, in my job,

I deal most of my time talking with unrepresented workers. And in talking with these workers and building up relationships with these people and individuals, it's obvious to me that construction workers on that side of the fence need some basic rights.

The work they do is physically hard, dangerous work, and yet technically challenging. And just imagine what it takes to put together a room such as this, as a good example. Why workers in the construction industry are being treated than workers in different industries is pretty unreasonable to me. I heard the word "exploited" today through some of the discussions and some of the testimony. And I feel that's an appropriate word for these workers that are unrepresented. They are exploited by the employers, who use them just as any other tool that you could go down to the hardware store and buy, or a piece of lumber.

Unrepresented workers typically put in 50 to 60 hours of work for a 40-hour check. They also bring, many times, their own power tools. We're talking about compressors, chop saws, table saws, even using their own trucks to transport the employers' materials, even going so far as to having to pay out of their own pocket for nails to do the job, of course not even getting a basic ten-minute break. Why construction workers' quality of life has to be affected by these conditions is unknown to me, and why unrepresented workers have to be treated differently.

I urge the Commission to strongly consider these recommendations before them today.

Thank you.

(Applause)

MS. BENSON: Thank you. Good afternoon, commissioners. I'm Sandra Benson, from the Van Bourg law firm. And you're far more familiar with my colleague, Patty Gates, but I'm just here to address a few issues in her absence.

I'd like to talk a little bit about the hand tools. I negotiate many, many of these collective bargaining agreements, not only on behalf of the carpenters, but virtually all of the construction trades. And having to provide hand tools is a very common element. And I reiterate everything that's been said here. I just want to make clear also that I believe the wage order doesn't address it, but it should be made clear that this will also not impact the requirement of employers to indemnify employees for any hand tools which are either stolen or damaged on the employers' premises. It's part of the Labor Code that's been in there since 1937, and I would hope that that's recognized in this wage order.

In San Diego, apparently at least one of the employer associations raised the issue of this wage order and how it might impact public works jobs, where the public entity requires that the employer work 10 hours. I'm a little confused by that, because Labor Code Sections 1810 through 1815,



as well as the California Constitution, prohibit the employment of a construction worker on a public works job for more than 8 hours in a day without the payment of overtime. So that's already dealt with in the Labor Code. It doesn't make any sense. I don't think that was a bona fide concern with respect to the wage order.

With respect to the reporting pay, that again is a very customary element of a collective bargaining agreement which we negotiate every day. It's solely within the employer's ability to either have a policy to let the employees know ahead of time, if there is inclement weather, don't show up, or to have a call-in number, which is very common, where the employees will call in in the morning at, say, 6:30: "Are we reporting for work today?" And there's someone there to tell them, "Yes, report for work," or don't.

In today's society, you have to remember there are numerous women coming into construction right now, and we are very happy to see it, and we are encouraging more and more women in nontraditional employment jobs. They are greatly affected by this because the odds are, they have daycare responsibilities that they have to take care of. So, if they take those children to a daycare facility, to show up to work only to find out that now the employer's going to send them home, they've not only spent the time and energy of doing it, but they have incurred daycare costs, which most likely could have been not incurred if the employer had simply taken the responsible position of having a policy set up on reporting, and that's solely within the employer's ability to do.

The opt-out provisions, again, the testimony today was very scattered on you should defer or you shouldn't defer. Well, the longstanding policy, both federal and state, has been to defer to collective bargaining. However, we know from both *Livadas* and *Firestone* that there are some basic minimums from which you may not opt out. I've looked at all of the provisions, the way the opt-outs are written

-- and we fully brief this -- Patty has briefed it in a legal brief to you -- we believe that all of these opt-out or refusal to opt-out fully comply with the *Firestone* and *Livadas* decisions and believe that you should not have any concern on that.

The final thing I would like to address was the issue that was brought up by Granite today for the first time, saying that contracts have been bid on, and that therefore, if you do enact this wage order, you should defer its effective date until all of these contracts are finished. I think that that would be very unfair and very unwise.

For one thing, if you were to do that, the first thing you would see would be a mad rush to negotiate long-term construction contracts, three, four, and five years down the road.

In addition, employers are not unfamiliar with having wages change in the middle of a contract. There's a new prevailing wage determination that is

issued every six months by the Director of Industrial Relations. So, every six months, the terms and conditions of employment in construction, certainly in public works, can change, and they often do change. And the employers are very familiar with how they adjust their contracts or adjust their bids to deal with changing working conditions.

Finally, most construction contracts, if not all, provide a mechanism for an employer and a customer to make adjustments in the monetary value of the contract if there are government-mandated changes that go into effect during the term of the contract. So we would urge your adoption of the wage order and not to defer its implementation to some undefined time in the future.

Thank you.

(Applause)

COMMISSIONER DOMBROWSKI: Thank you.

MR. WETCH: Thank you.

COMMISSIONER DOMBROWSKI: We'll adjourn.

(Thereupon, at 3:50 p.m., the public hearing was concluded.)

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CERTIFICATE OF REPORTER/TRANSCRIBER

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I, Cynthia M. Judy, a duly designated reporter and transcriber, do hereby declare and certify under penalty of perjury under the laws of the State of California that I transcribed the three tapes recorded at the Public Hearing of the Industrial Welfare Commission, held on October 3, 2000, in San Francisco, California, and that the foregoing pages constitute a true, accurate, and complete transcription of the aforementioned tapes, to the best of my ability.

Dated: October 21, 2000 \_\_\_\_\_

CYNTHIA M. JUDY

Reporter/Transcriber





STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
INDUSTRIAL WELFARE COMMISSION

Public Meeting

October 23, 2000  
State Capitol, Room 4202  
Sacramento, California

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P A R T I C I P A N T S

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Industrial Welfare Commission

BILL DOMBROWSKI, Chair

BARRY BROAD

DOUG BOSCO (arr. 10:09 a.m.)

LESLEE COLEMAN

HAROLD ROSE

Staff

ANDREW R. BARON, Executive Officer

MARGUERITE C. STRICKLIN, Legal Counsel

DOUG McCONKIE, Analyst

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TRACI PILGRIM, Analyst

NIKKI VERETT, Analyst

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(Time noted: 10:08 a.m.)

COMMISSIONER DOMBROWSKI: All right. Why don't we get started?

I call the meeting to order. Let the record reflect Commissioners Broad, Rose, Coleman, and Dombrowski present.

As many of you know, we are voting today on both the wage order of the construction, drilling, logging, and mining industries and the consideration of an increase in minimum wage. We've had three public hearings on these subjects, with extensive testimony at three different locations in the state. So the commissioners would ask that if you wish to testify, please keep your remarks brief and to the point.

We have no -- okay, we have no minutes to approve, I believe, right? At this point.

Okay. So we'll just go to the first item, consideration and/or adoption of regulations regarding occupations in the construction, drilling, logging, and mining industries.

I'm going to call up -- I have -- I have three people who I believe want to testify on this, Scott Wetch, Paul Cohen, Patty Gates.

And again, we've heard from all three of you before, so please be brief.

Let the record show Commissioner Bosco is present.

MR. WETCH: Mr. Chairman, Scott Wetch, with the State Building and Construction Trades Council. I'll be very brief.

I think we've conveyed to most of the commissioners in the last couple of weeks the fact that we've been -- since the last hearing on October the 5th in Stockton, we have been meeting diligently with representatives of the various employer groups, Associated General Contractors, and others to try and develop the sort of flexibility into the language that the Commission directed us to do. I think that we have accomplished that.

Specifically, in regard to the issues of the reporting time, providing flexibility for the inclement weather and for occurrences outside the control of the employer.

We worked closely with the employers at the direction of the Commission to address the issue of rest periods and how we could build in flexibility to address certain types of procedures that just aren't conducive to having a ten-minute, rigid -- a ten-minute rest period.

And on a number of related sorts of issues, conforming sorts of changes, I think we've gotten a copy of those changes to the Commission, and we think, with those changes, that the recommendations made by the wage board should be adopted today.

I just wanted to, once again, on behalf of the building trades, thank the Commission and the staff of the Commission for all the work they've put in on this, and I'll be available for questions.

COMMISSIONER DOMBROWSKI: Go ahead, Paul.

MR. COHEN: Thank you. Paul Cohen, of the Northern California Carpenters. I want to just echo Scott's comment. At your direction, Chairman Dombrowski, we met with the employers. I think we're satisfied that we've addressed the legitimate concerns about flexibility on some of these issues.

I do have a question. I picked up the document labeled "Attachment A" that was at the front today -- that is the original. Okay. And so, but what is in front of the Commission reflects the language submitted by Scott that is a result of those meetings that we had with the employers.



With that, I would ask you to go ahead and adopt this wage order.

Thank you very much.

MS. GATES: At this point, I think there is no other legal testimony that's necessary.

I want to -- my name is Patty Gates, and I'm with the Van Bourg law office. And I submitted written testimony at the prior public hearings, and I think that's adequate to address the legal issues that we looked at in the wage order. So I won't carry on today.

Thanks.

COMMISSIONER DOMBROWSKI: Thank you.

Scott.

MR. WETCH: Mr. Chairman, I would just ask, being that this is the last hearing, when the employers -- I believe we've addressed all the employers' concerns, and I believe that we have agreement with the employers that this is a representative document -- if they should come up here and throw any new issues on the table, I would ask that perhaps we'd get a chance to respond to those.

COMMISSIONER DOMBROWSKI: All right.

Jamie, come up.

MS. KAHN: Jamie Kahn, representing the Associated General Contractors. And we have been working with the Building Trades and the Carpenters to try to resolve some of our issues.

I don't know -- is this the document?

MR. BARON: No. The document you have in front of you is still the original that went out to public hearing. It does not reflect all the discussions that you had.

COMMISSIONER DOMBROWSKI: Why did we put that out?

MS. KAHN: To make me nervous.

(Laughter)

MS. KAHN: We have reached accommodation on a number of different issues, but, now, as it is, we are putting this out to our contractors as well, and the more contractors that take a look at this document, there are some specific issues that come up each time.

And the rest period, of course, is the one that is causing the most concern. Implementing the wage order will be a costly venture for our

contractors because rest periods are something that we did not have to do before, either with a collective bargaining or without a collective bargaining agreement. And there will be a cost factor associated with that.

With the -- and I think that at our hearing -- at your hearing in San Francisco, one of our contractors mentioned fixed-price contracts. Fixed-price contracts are those contracts where you've already estimated what your cost factors are going to be, and then you have to complete the project based upon those factors. What will happen is, when rest periods take in -- come into effect, that will be an additional cost factor that they have not calculated into their estimates, and those are costs that will have to be borne by the contractor.

What we're looking for, just for a possible mitigating opportunity here, is for a delayed implementation, to July if possible, that would allow a lot of the contracts that are now in existence to be completed, and would also allow for new contracts to be submitted with that calculation included in them.

So, if that would be a possibility, that is something we have not talked to the subtrades about or -- I mean to the Building Trades or the Carpenters about, but we would like to see that particular element included.

We would also like to see in the rest periods a Statement as to the Basis to give us some clarification on the protection that -- I mean on the equivalent protection section, if that can mention fatigue, because that is an element that is included in collective bargaining agreements that is not included in that language. And this is a particular concern to some of our union contractors -- or only to our union contractors, who do factor in fatigue but do not factor in equivalent protection because they have already negotiated rest periods into a -- you know, into increased wages. And that's a factor that is not listed in the collective bargaining agreement, but it's something that we would like to have factored into a Statement as to the Basis.

Also, consistency in the penalties section to make sure that all other sections refer to "authorized" and "permitted." That language was something that we had worked out, but I saw, in one of the many wage orders that I have reviewed that that was not carried through. The term "authorized" and "permitted" for rest periods and meal periods, we'd like to see consistently carried through.

Okay. Flexibility on the alternative workweek was another element -- I think we have reached some accommodation on that, and that is something that would be a concern to us because there are factors that come into play that would not allow us to finish up a 40-hour workweek in a four-day period if we were under an alternative work schedule, and the fifth and sixth day would then be required to be paid overtime.

So, those are some of the factors we have -- we appreciate all the efforts that the IWC, that the members have provided, and with the Building Trades and the Carpenters in trying to meet some of our concerns.

COMMISSIONER DOMBROWSKI: Thank you.

Go ahead, Barry.

COMMISSIONER BROAD: Mr. Chairman, I have a question.

Okay. Let me understand this. You sat down with the Building Trades, you worked out the language that's before us in this motion, on rest periods, on all these issues, and then there's -- and you still have questions about what you sat down and agreed to, but you agree that you agreed to it?

MS. KAHN: On the rest periods?

COMMISSIONER BROAD: Well, on -- you mention all these issues, but you guys sat together and you reached an accommodation with one another. And now you're sort of questioning -- see, the pattern we've had here is that you sat down in a wage board, and your representative voted by a two-thirds vote for something, then you came here and told us, "Gee, we really didn't mean to do that, and we're really sorry we did that; can we just forget the whole thing?" Then we -- and we said, "No, you can't forget the whole thing because we're bound by a two-thirds vote." Then you agreed on these issues, like temperature and seats and rest periods, to sit down with the Building Trades and try to work something out. You sat down with the Building Trades you worked something out, and now you're here today to tell us that, yes, you worked something out and you really appreciate that, but it isn't quite what you want.

But we're sort of at the end of the -- of the road, and I'm just wondering whether you did or didn't work something out.

MS. KAHN: My understanding, a Statement as to the Basis are things that can continually be worked out, and those are what I'm looking for. Delayed implementation is something that, you know, just came up, and that is something that we did not discuss, but that was something that the IWC can certainly consider, you know, taking those factors into consideration.

These are things that are -- you know, like I said, as our contractors review this, different facts keep on coming to our attention, and we're trying to address those as we go along. And at each of the meetings, we have tried to bring those to your attention and tried to work out as much as we can. These are just a couple of outstanding issues.

COMMISSIONER BROAD: Let me just add one more thing. I appreciate that.

With respect to rest periods, I do believe that your employers will more than make up any possible costs from rest periods by a decrease in their workers' compensation experience. So, I -- rest periods are such a fundamental part of the way our society operates in the workplace that I can't believe that there's really an issue that could remain there.

MS. KAHN: Barry, this is -- I'm sorry -- Chairman Broad, this is only --

COMMISSIONER BROAD: No, no. I'm not the chairman; that's Mr. Dombrowski.

MS. KAHN: I'm sorry. I'm sorry.

This only comes up in cases where a union contract has already been negotiated and rest periods were part of that discussion and negotiated -

COMMISSIONER BROAD: Okay.

MS. KAHN: -- negotiating process. This does not come up in other circumstances.

COMMISSIONER BROAD: Well, we'll let those guys work that out with each other. They're good at that.

MS. KAHN: Any other questions?

MR. ROHLFES: Good morning. My name is Larry Rohlfes, with the California Landscape Contractors Association, with a question.

The version of the on-site wage order that was the handout is not what you're voting on exactly, word for word?

MR. BARON: Right. That is the version that was handed out for -- to the public hearings. So that's an initial version.

MR. ROHLFES: Okay, because my --

MR. BARON: I understand. Yes, I know.

MR. ROHLFES: Paragraph 10 will be changed to --

MR. BARON: Fine, right.

MR. ROHLFES: Okay. Thank you very much.

MR. BARON: You're welcome.

COMMISSIONER BROAD: Mr. Chairman, I'm prepared to make a motion on this issue.

COMMISSIONER DOMBROWSKI: Go ahead.

COMMISSIONER BROAD: I would move what you have before you, a document entitled "Motion Concerning On-Site Occupations Wage Order," I would move that wage order with the additional requirement that any action that we take with regard to the minimum wage be included in this wage order, since the wage orders mention the minimum wage.

COMMISSIONER ROSE: Second.

COMMISSIONER DOMBROWSKI: Okay. We have a motion and second.

Procedurally, I have an amendment I want to propose, which is in your packets, I believe.

MR. BARON: Yes, it is.

COMMISSIONER DOMBROWSKI: It's on the "On-Site Industries Wage Order Concerning Onshore Processing Facilities Associated with Offshore Production," which basically provides that those facilities that do separation work could vote for a 12-hour day. So, I guess, before we take the vote, I need -- I'd make that motion and ask for a second.

COMMISSIONER COLEMAN: Second.

COMMISSIONER BROAD: Okay. I have a question, Mr. Chairman. Can we make sure that we clarify in the Statement of Basis that we're talking here about no employees that are now covered by Wage Order 1 or any other wage order?

COMMISSIONER DOMBROWSKI: Right, yeah. And that's fine.

COMMISSIONER BROAD: Okay. I --

COMMISSIONER DOMBROWSKI: Okay. I have a second. So if we take a vote on the amendment -- call the roll.

MR. BARON: Dombrowski.

COMMISSIONER DOMBROWSKI: Aye.

MR. BARON: Bosco.

COMMISSIONER BOSCO: Aye.

MR. BARON: Broad.

COMMISSIONER BROAD: Aye.

MR. BARON: Coleman.

COMMISSIONER COLEMAN: Aye.

MR. BARON: Rose.

COMMISSIONER ROSE: Aye.

COMMISSIONER DOMBROWSKI: Okay. That passes. Now I'd ask for a vote on the adoption of the overall wage order.

MR. BARON: Dombrowski.

COMMISSIONER DOMBROWSKI: Aye.

MR. BARON: Bosco.

COMMISSIONER BOSCO: Aye.

MR. BARON: Broad.

COMMISSIONER BROAD: Aye.

MR. BARON: Coleman.

COMMISSIONER COLEMAN: Aye.

MR. BARON: Rose.

COMMISSIONER ROSE: Aye.

COMMISSIONER DOMBROWSKI: Okay. That is passed as amended.

The second item of business on the agenda is the minimum wage. I have -- let's see here -- approximately six cards. I'm going to call everyone up at the same time.

John Baranek, Joan Lee, Art Pulaski, Tom Rankin, Chris Schneider, and Victor Flores.

Once again, we'd ask people to be brief.

COMMISSIONER DOMBROWSKI: Go ahead, sir.

MR. BARANEK: Yes. I'm John Baranek. I'm a family farmer.

And my concern is that I would ask for a delay in making this decision to raise minimum wage. And basically, what it's based upon is agriculture is going through a depression. And I want you to understand that.

I don't know -- I was unable to make your prior hearings. I was out harvesting. But what basically is happening to agriculture -- and I'll use wine grapes as an example -- last year, open market wine grapes were in demand and you could get \$600 a ton for them. Today they're not in demand because -- again, because of overplanting and market conditions. But if you could sell them, you could get \$125 a ton.

And our biggest problem is, because of a lot of factors -- example, fuel has doubled in price, interest rates have increased one or two percent -- and basically, we're in a position with our backs against the wall. We're not going to be able to give our normal workers a raise -- and what I'm referring to is, most of us are paying over minimum wage. Our basic worker is \$6 an hour. And above that, all of our other workers make \$8, \$10, depending upon what they're doing. And what we're into is a situation that when you raise minimum wage, costs of things go up accordingly. And we normally give our workers a raise. Well, we're not going to be able to do that this time.

So, therefore, our workers are actually going to suffer because of this, because they're not going to be earning the normal increase they would be getting.

I would urge you at this time, because there's going to be a ripple effect in the economy, especially in the Central Valley, that we have to get loans from banks, you have to make balance sheets balance, and it's pretty ugly out there. And I'm asking you to postpone it until we really see what the shake-out is, and we'll have a better idea when loans come due this year how many farmers are going to be able to pay back their loans and what the real financial impact is going to be, because if the farmers don't make it, then you have all their suppliers, chemical companies, ma-and-pa stores in the rural community -- rural communities are going to really go through an economic disaster.

And what I'm worried about the whole economy of California will be affected by this. It takes a year or two or three, but we have to do something drastic. And the main reason why, we're competing on the international market now. We're competing against China, that pays \$1 a day for wages; Mexico with \$3-a-day wages; Chile, \$10-a-day wages -- and we've got to compete in that market.

So I'm asking you to please postpone it until we really see what's going to be shaking down or what's going to happen.

Thank you.

COMMISSIONER DOMBROWSKI: Thank you, sir.

Art -- oh, sorry

Harold?

COMMISSIONER ROSE: Are you asking that the minimum wage be not put in for everyone or some specific group?

MR. BARANEK: Well, I think the inner-city workers definitely need some kind of an increase in wage because their costs are entirely different than out in the country. But our problem is in agriculture that we're not going to be able to absorb this. And I don't know if you've heard this

before or not, but we're just organizing the family farmers because our lobbyists have been out trying to do a decent job, but they don't realize how the farmer really is against the wall. I mean, we just have no margins of profit we have to deal with.

And so, what's going to suffer is the farm worker, actually, because we've got to probably cut our budget by 30 percent. And what's the biggest item we have? It's labor. And we have no choice. And that's what's going to happen. That's the reality of life.

And all I'm saying is that this -- postpone it until we see what the shake-out is and see what's going to happen, because the ripple effect can be much greater than just agriculture. It can pull down the whole economy.

Thank you.

MR. PULASKI: Mr. Chairman, members of the Commission, Art Pulaski, from the California Labor Federation.

The challenge to low-wage workers to be able to afford the basic necessities of living is becoming more dramatic and more difficult every day. The costs of housing and healthcare and transportation continue to skyrocket. We cannot delay. We cannot delay to begin to make up and recover for low-wage workers those lost wages we have been declining for the last 32 years -- 1968, they were much better off than we are now -- than we are now. And every year since then, our wage values have declined as minimum wage workers, in order to catch us back up, in order to catch the minimum wage back up to 1968, 32 years ago, we'd have to go over \$8 an hour now.

We ask you to move as generously as possible and as quickly as possible so low-wage workers can begin to recover so they can pay their expenses and afford for their families to live a decent life. We urge quick action today.

Thank you very much.

(Applause)

MS. LEE: My name is Joan -- Joan Lee.

Am I coming on the microphone?

And I'm here today representing Grey Panthers and the Older Women's League, as well as a very large coalition who, here in the Sacramento area, have been working for a living wage.

We are all very concerned about this issue as a matter of fairness and morality. The minimum wage has declined in value almost 40 percent since



1968. The result of that is that people cannot escape the trap of poverty. They have to work an average of 52 hours just to stay afloat.

This morning's newspaper reported that the average apartment in Sacramento -- and you realize Sacramento is probably the bottom of the rental market in our state -- that it was -- it's over \$700 a month for the average apartment. I don't see how any family can manage on that amount without a serious impact, particularly on children.

And this is one of the issues that I bring forward to you, that 76 percent of mothers have to work just in order to make ends meet. And they comprise a large percentage of this population that are making the low wages, between \$5.15 and \$6.14. And so there's a tremendous gap here for mothers who are trying to make these wages stretch across a month.

It's very significant when we figure that the average income of the bottom rung of society has actually fallen by more than 20 percent nationwide. And so the percentage of children living in poverty is growing every day.

I've worked on the homecare campaign here in Sacramento and have worked with these people who are trying to make it on those wages. And I do know that they have to carry two and sometimes three jobs just to get through the month for their kids. The result is not only the burden on them, but the burden on society in order to help them out with their children that are not getting the care they need as a result.

So I would ask you to set aside any difficulties there might be and immediately send a recommendation to the governor to raise the minimum wage.

(Applause)

COMMISSIONER DOMBROWSKI: You should -- this isn't a recommendation to the governor. If we vote to increase the minimum wage, it's increased.

MS. LEE: Good.

COMMISSIONER DOMBROWSKI: It's the Commission's authority.

MS. LEE: Fine. Thank you.

COMMISSIONER DOMBROWSKI: Who's next?

MR. SCHNEIDER: Good morning. My name is Chris Schneider. I'm executive director of Central California Legal Services. I'm here on the shepherd exemption issue.

We have a proposal before you that, at first blush, looks like a lot of money for a minimum wage worker, \$2,060 a month. But by the growers' own admission, during the lambing season, the workers are working at least 13

hours a day, so we are talking about 91-hour workweek. A non-ag worker under a minimum wage of \$6.25 an hour working 91 hours a week in one month would earn \$3,193. An ag worker, another farm worker, working 91 hours a week in a month would earn \$2,949 in a month. At \$6.25 an hour straight time, 91 hours a week over a month, that would be \$2,451.68 a month. So we're giving \$450 a month to the growers on our offer, and we think that's extremely reasonable.

Thank you.

COMMISSIONER DOMBROWSKI: Thank you.

Go ahead.

MR. FLORES: (Through Mr. Schneider, interpreting) Thank you very much. My name is Victor Flores.

For over 45 years, we have not received the minimum wage. I think it is now time to consider what is just for these farm workers, sheepherders. We ask that you do justice. We believe that what we have submitted would be justice for our members.

Thank you very much.

COMMISSIONER DOMBROWSKI: Mr. Rankin.

MR. RANKIN: Tom Rankin, California Labor Federation.

Just a word on the deferral question, especially regarding the sheepherders issue. There's a reasonable proposal before you on this issue. It is time to act on this issue. There has been, I should point out, a wage board that considered this along with other issues of exemption. And we believe that immediate action is necessary to deal with the exemption problems, especially that of the sheepherders.

Also, in terms of the plea from the agricultural community, we never hear them coming up here during good times and saying, "It's time to increase the minimum wage." It's time to increase the minimum wage now. The workers need it.

We've -- workers have experienced long droughts here. From 1980 to 1988, the minimum remained the same. From '88 to '97, the minimum wage remained the same. And it's remained the same from '98 to 2001, if you take action today. That's long enough.

COMMISSIONER DOMBROWSKI: Thank you.

To the commissioners, in the packet, this -- just so you know, there's one letter submitted by the California Labor Federation, from Speaker Hertzberg, which has the Speaker's letter encouraging an increase above

what is proposed on the table, and is signed by more than sixty other state legislators.

Second, there's a letter in the packet from Assemblyman Dennis Cardoza, which is requesting that we create a narrowly focused wage board to evaluate the process for establishing the amount of compensation for the sheepherders.

Third, there's a letter from Senator Dick Monteith asking us to preserve the sheepherder exemption.

COMMISSIONER BROAD: Mr. Chairman, I'm prepared to make a motion at this time.

COMMISSIONER DOMBROWSKI: Okay. Go ahead. Go ahead.

COMMISSIONER BROAD: I'm going to make a motion with regard to the exemptions. We'll then -- and this does not include the actual increase in the minimum wage -- that will be separate.

You have before you something entitled "Motion on Exemptions," and I would move -- the noticed proposal concerning elimination of overtime exemptions, with the following modifications, and there are a series of modifications that change the language. And I will go through them.

In the minimum wage order itself, it deletes the reference to public employees. And then we would also amend Section 5 of the minimum wage order, which cross-references minimum wage provisions in the other industry and occupation wage orders.

With personal attendants, it would apply the minimum wage and other related provisions to personal attendants, except it would create an exemption for a person under the age of 18 who is employed as a babysitter for a minor child of the employer in the employer's home.

With learners, it would -- currently, the learner's rule allows a learner's wage of 85 percent of the minimum wage for the first 160 hours of employment, but it's applicable only to employees above the age of 18. This would apply it to workers both above and below the age of 18, but would eliminate another provision that applies specifically to minors, per the noticed proposal. And there's other related provisions on minors that would -- I'm proposing would be eliminated, based on our proposed notice.

Professional actors, it also would apply the minimum wage and related exemptions.

With agricultural professionals, the \$900 amount would be increased to two times the minimum wage.

It would eliminate -- it would apply the minimum wage to public employees, and to full-time carnival ride operators, and to student nurses. and psychiatric technicians.

With regard to shearers, what I would propose to do, there is language there under proposed Section 4, "Minimum Wages," Paragraph (E) (1) proposes a minimum wage \$2,060. Essentially, it's the amount that's put in -- requested by the Shearers Union and the CRLA.

I -- you have before you a piece of paper entitled "Friendly Amendment re Shearers." This would -- I would propose, in the interests of time -- this was proposed on behalf of Commissioner Bosco, and I can count, and so what I would propose to do would be to substitute this paragraph for Paragraph (E)(1). What it creates is for shearers employed on a 24-hour, seven-day-a-week schedule, as an alternative to the minimum wage, a monthly minimum wage of \$1,600 per month, with a credit for meals and lodging of no more than \$400, if certain protective conditions are met.

That's it.

COMMISSIONER DOMBROWSKI: Okay. Do I hear a second?

COMMISSIONER ROSE: Second.

COMMISSIONER DOMBROWSKI: All right.

Commissioner Bosco?

COMMISSIONER BOSCO: Mr. Chairman, I don't know exactly what the proper procedure would be -- I suppose I should make a substitute motion, and I will, but let me preface it by saying this, that ironically, we have before us the minimum wage that will affect millions of California workers, and we have the shearers issue that will affect about a hundred people, and we spent about the same amount of time, I think, on each, which is good, because I think it's important that even small groups of people have their day in court, so to speak.

And we've heard vastly different testimony about the shearers. I was hopeful that we would be able to come up with a compromise on this matter, and I think we will, and I think that compromise will include both an increase in pay and a change in working conditions.

But I think that we should do it a little bit different way. I'm told that the -- that if we are to mandate a change in working conditions, that we should have a wage board to do that, and then actually mandate the changes in conditions, if we were to do it. Otherwise, it could be subject to legal challenge.

And so, having said that, I would like to make a substitute motion -- and this is all conditioned on the proposal that our Commission, at its next meeting, establish a wage board that will determine at least three

things: one, the number of hours that these shepherders work and the working conditions; and, secondly, the actual expenditures that employers make toward those workers; and then, thirdly, a recommendation as to how the minimum wage, as it will be at that point, should apply to those people.

And that, I understand, we would do at our next meeting, to establish the wage board.

So I'm going to move that the current exemption for the shepherders remain in effect, subject to the proposals that I've made.

COMMISSIONER DOMBROWSKI: Okay. Do I have a second on that motion?

COMMISSIONER COLEMAN: Second.

COMMISSIONER DOMBROWSKI: All right. On that motion, let's call the roll.

MR. BARON: Dombrowski.

COMMISSIONER DOMBROWSKI: Aye.

MR. BARON: Bosco.

COMMISSIONER BOSCO: Aye.

MR. BARON: Broad.

COMMISSIONER BROAD: No.

MR. BARON: Coleman.

COMMISSIONER COLEMAN: Aye.

MR. BARON: Rose.

COMMISSIONER ROSE: No.

COMMISSIONER DOMBROWSKI: Okay. That motion passes, 3 to 2.

COMMISSIONER BROAD: So that means -- that would, I guess, leave my motion on the table, without any -- with the shepherders part removed, correct?

COMMISSIONER DOMBROWSKI: That's correct. Correct.

COMMISSIONER BROAD: Right.

COMMISSIONER DOMBROWSKI: And that has been seconded, so I guess we can just call the roll on that.

MR. BARON: Correct.

Dombrowski.

COMMISSIONER DOMBROWSKI: Aye.

MR. BARON: Bosco.

COMMISSIONER BOSCO: Aye.

MR. BARON: Broad.

COMMISSIONER BROAD: Aye.

MR. BARON: Coleman.

COMMISSIONER COLEMAN: Aye.

MR. BARON: Rose.

COMMISSIONER ROSE: Rose.

MR. BARON: Motion carries.

COMMISSIONER DOMBROWSKI: Okay. Let's go to the minimum wage proposal.

Commissioner Bosco, I believe.

COMMISSIONER BOSCO: Mr. Chairman, I also have a motion on that subject. I think, as with most things that our Commission does, it's next to impossible to make everyone happy. Certainly, we've had extraordinarily good testimony on all sides of the minimum wage issue. I would commend the various labor organizations, all of the people that have taken their time to come here and speak with us, which have been hundreds of people, and also the people from agriculture, the restaurant industry, and others that have, to some degree, opposed the motion that I made, I guess, a couple months ago.

Also, I want to thank the wage boards that have met and considered this, and our staff that has done a superb job, as they always do.

The motion I'm going to make will increase the minimum wage over a two-year period by one dollar, fifty cents a year, which is a 17 -- a little over a 17 percent increase in the minimum wage, and will affect over two million people who now will make -- who now make less than this proposal.

And I hope, in making this motion, that we can all commit ourselves that we're not going to go for these long periods of time without reviewing the minimum wage again. I'm hopeful that a year and a half from now, we will again be going through the process of, hopefully, increasing the minimum wage again, because at least I'm convinced that California workers can't wait eight years, like they did the last time, before a change is made in the minimum wage.

But having said that, I move that we adopt the minimum wage and meals and lodging credit increase in the noticed proposal, amending the relevant sections of all of the wage orders, including the minimum wage order.

COMMISSIONER DOMBROWSKI: Okay. Do I hear a second?

COMMISSIONER COLEMAN: Second.

COMMISSIONER BROAD: Mr. Chairman --

COMMISSIONER DOMBROWSKI: Go ahead.

COMMISSIONER BROAD: -- I have a comment I'd like to make.

I'm going to vote for this motion. I don't think it's an increase that's sufficient in the minimum wage, and I -- but I do think that we're going to have to be back here after two years and looking at increases. I would have preferred it to go higher or perhaps to include a third year, but nevertheless, it is a significant for California's low-wage workers, and I can support it.

But I will be pushing very hard, if I'm around here in two years, or even if I'm not on this Commission, I will still be pushing very hard for it in two years when we review it for it to go up again.

COMMISSIONER DOMBROWSKI: Thank you.

COMMISSIONER BROAD: Thank you.

COMMISSIONER DOMBROWSKI: Any other comments?

Commissioner Rose.

COMMISSIONER ROSE: I also am going to vote for it, but I disagree with the dollar amount, and I will do what I can to see -- to lay more groundwork to get a raise in at least two years.

COMMISSIONER DOMBROWSKI: Okay. Any other comments?

COMMISSIONER COLEMAN: I'd just like to, again, thank everyone that participated in this. We've heard a lot of testimony, but we also received a lot of written comments from people that couldn't make the trek to the hearings. And I do think -- I agree with Commissioner Bosco that the time is right to do this, and I am appreciative of his interest in continuing to look at this and not go for such long periods as we have in the past.

So, thanks to everyone that participated in the discussion.

COMMISSIONER DOMBROWSKI: Okay.

Seeing no other comments, we've got a motion on the table. Can we call the roll? We do have a -- Leslee seconded it.

MR. BARON: Dombrowski.

COMMISSIONER DOMBROWSKI: Aye.

MR. BARON: Bosco.

COMMISSIONER BOSCO: Aye.

MR. BARON: Broad.

COMMISSIONER BROAD: Aye.

MR. BARON: Coleman.

COMMISSIONER COLEMAN: Aye.

MR. BARON: Rose.

COMMISSIONER ROSE: Aye.

COMMISSIONER DOMBROWSKI: Okay. The motion passes, 5-zero.

Any further business anyone wishes to bring up?

COMMISSIONER BROAD: Yeah. Mr. Chairman?

COMMISSIONER DOMBROWSKI: Commissioner Broad.

(Applause)

COMMISSIONER BROAD: I would like noticed at the next hearing a discussion of whether the interim wage order that now remains should be repealed in light of the fact that we have adopted --

COMMISSIONER DOMBROWSKI: Correct.

COMMISSIONER BROAD: -- you know, wage orders. And we may have to have a wage board to do that. So --

COMMISSIONER DOMBROWSKI: Okay. All right.

Anything else?

(No response)

COMMISSIONER DOMBROWSKI: Do I have a motion to adjourn?

COMMISSIONER BROAD: So moved.

COMMISSIONER ROSE: Second.



COMMISSIONER DOMBROWSKI: All in favor, say "aye."

(Chorus of ayes)

(Thereupon, at 10:47 a.m., the public meeting was concluded.)

--o0o--

CERTIFICATE OF REPORTER/TRANSCRIBER

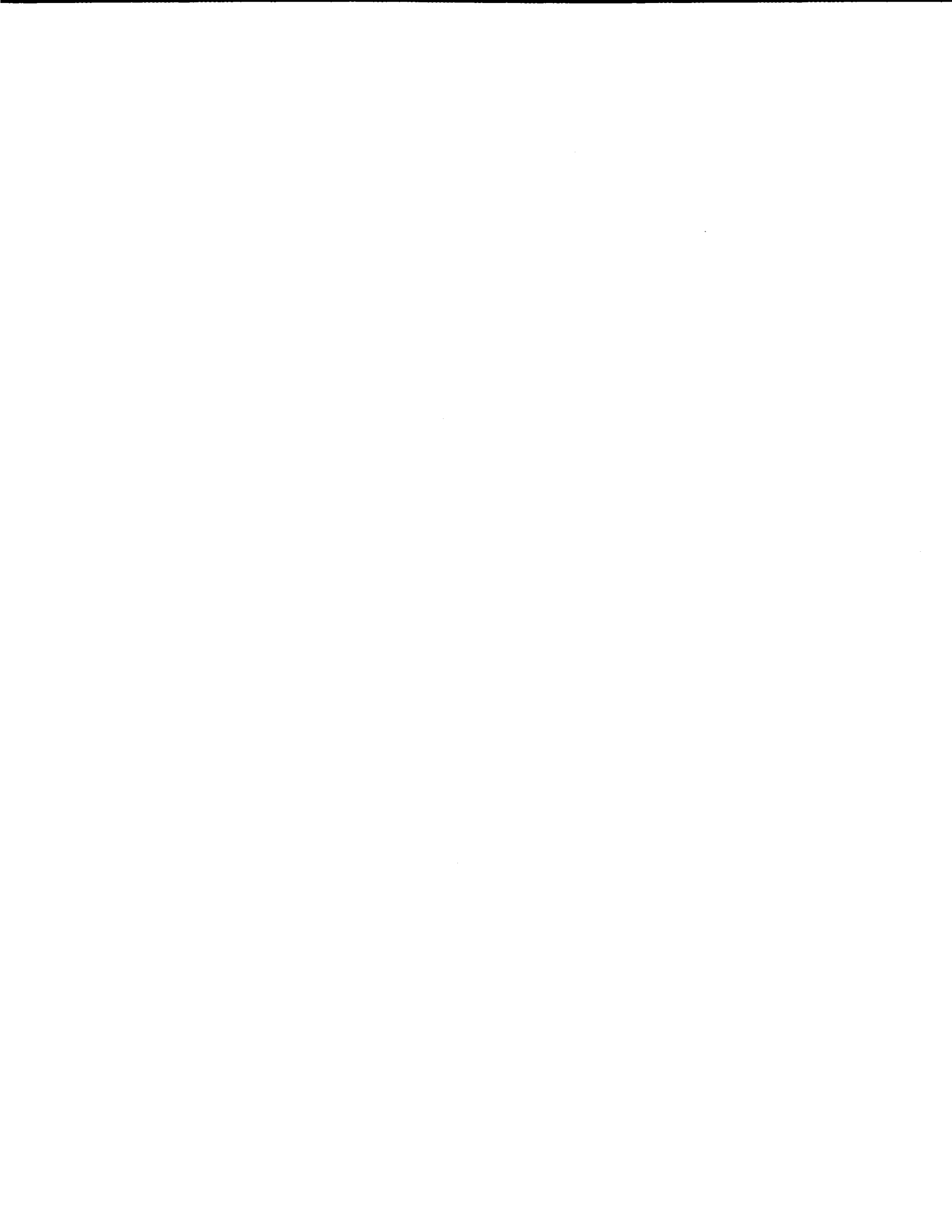
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I, Cynthia M. Judy, a duly designated reporter and transcriber, do hereby declare and certify under penalty of perjury under the laws of the State of California that I transcribed the tape recorded at the Public Meeting of the Industrial Welfare Commission, held on October 23, 2000, in Sacramento, California, and that the foregoing pages constitute a true, accurate, and complete transcription of the aforementioned tapes, to the best of my ability.

Dated: October 24, 2000 \_\_\_\_\_

CYNTHIA M. JUDY

Reporter/Transcriber



**DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT**

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*Office of the  
State Labor Commissioner*

May 29, 1998

Re: Exclusion of Sleep Periods from Hours Worked Under the  
Ambulance Driver and Attendant Provisions of IWC Orders  
5-98 and 9-98

In reviewing my letter to you, dated October 22, 1997, concerning the impact of the new Industrial Welfare Commission ("IWC") Wage Orders, it has become apparent that we must clarify our answer to the question: "Under Wage Order 5 and 9, what hours does an employer have to count as time worked if an employee does not receive eight hours of uninterrupted sleep time? Is it all the sleep time or only the hours that were actually worked?"

As indicated in the earlier letter, there are provisions in both IWC Orders 5-98 and 9-98, dealing with ambulance drivers and attendants, that allow such employees who are scheduled for 24 hour shifts of duty to agree, "in writing to exclude from daily time worked not more than three meal periods of not more than one hour each and a regularly scheduled uninterrupted sleep period of not more than eight hours."

In order to exclude such a sleep period from daily time worked, the sleep period must be "regularly scheduled" and "uninterrupted." The IWC Orders provide for a maximum exclusion of eight hours sleep time, so that even if the employee enjoys a regularly scheduled sleep period of more than eight hours, only eight hours can be excluded.

Unfortunately, the previous letter suggested that if the employee receives less than eight hours uninterrupted sleep, all sleep time must be counted as time worked and paid accordingly. In fact, the question of whether sleep periods of less than eight hours can be excluded from daily time worked was addressed by the

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court in Monzon v. Schaefer Ambulance Service (1990) 224 Cal.App.3d 16. In that case, the court held that under the IWC Orders that preceded 5-98 and 9-98, an employer can enter into an agreement with ambulance drivers and attendants "to exclude up to eight hours of sleep time from work or compensable time on twenty-four hour shifts if adequate sleeping facilities are provided by the employer and the employee has the opportunity to get at least five hours of uninterrupted sleep. If the employee does not get five hours of uninterrupted sleep, then the entire time must be considered as hours worked." This holding was largely based upon the express intent of the IWC in its "Statement on Special Provision for Ambulance Industry in Orders 5-80 and 9-80."

Although Monzon was decided under the former Wage Orders, its reasoning, as to the amount of uninterrupted sleep time that can be treated as non-work time, would appear to apply with equal force to the new Orders. We therefore conclude that under IWC Orders 5-98 and 9-98, uninterrupted sleep time of at least five hours, but no more than eight hours, can be excluded from time worked, provided that there is an agreement between the employer and the ambulance drivers and attendants to exclude sleeping time from hours worked, that the sleep period is regularly scheduled, and that the employer provides adequate sleeping facilities. If the sleep time is not uninterrupted, or if any other requirement for the exclusion of such hours from time worked is lacking, all sleep hours would constitute compensable hours worked.

Please accept my apology for any confusion caused by the previous letter on this subject. As always, feel free to contact me with any other questions or comments.

Sincerely,



JOSE MILLAN  
State Labor Commissioner

cc: Robyn Black  
John Duncan  
John Rea

1998.05.29



**The 2002 Update Of**  
**The DLSE**  
**Enforcement Policies and Interpretations**  
**Manual**  
**(Revised)**

**ACKNOWLEDGEMENTS**

The Division of Labor Standards Enforcement (DLSE) Enforcement Policies and Interpretations Manual summarizes the policies and interpretations which DLSE has followed and continues to follow in discharging its duty to administer and enforce the labor statutes and regulations of the State of California.

We would like to thank the following DLSE management, deputies, attorneys and clerical staff members for editing, cite checking and otherwise contributing to the Manual:

Robert Jones, Acting State Labor Commissioner

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**March, 2006**

# **DIVISION OF LABOR STANDARDS ENFORCEMENT**

## **ENFORCEMENT POLICIES AND INTERPRETATIONS MANUAL**

### **1 INTRODUCTION**

1.1 A primary function of the Division of Labor Standards Enforcement (DLSE) is to enforce the State's labor laws regulating wages, hours and working conditions for employees in the State of California. (Labor Code § 95) The Division's enforcement powers, however, are limited by the phrase "the enforcement of which is not specifically vested in any other officer, board or commission."\*

1.1.1 Since DLSE has the primary authority to investigate and prosecute all actions for the collection of wages, it is important to understand the concept of wages and the manner in which DLSE has defined and interpreted the law for purposes of this enforcement.

1.1.2 The California Supreme Court has concluded that:

"Of course, interpretations that arise in the course of case-specific adjudication are not regulations, though they may be persuasive as precedents in similar subsequent cases. Similarly, agencies may provide private parties with advice letters, which are not subject to the rulemaking provisions of the APA. Thus, if an agency prepares a policy manual that is no more than a restatement or summary, without commentary, of the agency's prior decisions in specific cases and its prior advice letters, the agency is not adopting regulations. (Cf. Lab.Code, § 1198.4 [implying that some "enforcement policy statements or interpretations" are not subject to the notice provisions of the APA].) A policy manual of this kind would of course be no more binding on the agency in subsequent agency proceedings or on the courts when reviewing agency proceedings than are the decisions and advice letters that it summarizes.

"The DLSE's primary function is enforcement, not rulemaking. (Lab.Code, §§ 61, 95, 98-98.7, 1193.5.) Nevertheless, recognizing that enforcement requires some interpretation and that these interpretations should be uniform and available to the public, the Legislature empowered the DLSE to promulgate necessary "regulations and rules of practice and procedure." (Labor Code § 98.8.) The Labor Code does not, however, include special rulemaking procedures for the DLSE similar to those that govern IWC rulemaking, nor does it expressly exempt the DLSE from the APA." *Tidewater v. Bradshaw* (1996) 14 Cal.4th 557, 569-570.

1.1.3 At first glance then, it would appear that DLSE may not interpret the myriad of laws which it must enforce without utilizing the very time consuming process of the Administrative Procedures Act. The *Tidewater* court did, however, provide that:

If an issue is important, then presumably it will come before the agency either in an adjudication or in a request for advice. By publicizing a summary of its decisions and advice letters, the agency can provide some guidance to the public, as well as agency staff, without the necessity of following APA rulemaking procedures.

1.1.4 The Supreme Court later expanded on its explanation of the use of agency advice letters in the case of *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 21 (concurring opinion, adopted and cited with approval at *Morillion v. Royal Packing* (2000) 22 Cal.4th 575, 590) when it stated:

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\*The wages, hours and working conditions of public employees are, generally, guided by the provisions of the Government Code or similar statutory authority. Labor Code § 220 was amended effective January 1, 2001, and provides that some public employers are subject to wage, hour and working conditions provisions of the Labor Code. See discussion at Section 12.1.1 of this Manual.

# **DIVISION OF LABOR STANDARDS ENFORCEMENT**

## **ENFORCEMENT POLICIES AND INTERPRETATIONS MANUAL**

“Long-standing, consistent administrative construction of a statute by those charged with its administration, particularly where interested parties have acquiesced in the interpretation, is entitled to great weight and should not be disturbed unless clearly erroneous. (*Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861, 32 Cal.Rptr.2d 892). This principle has been affirmed on numerous occasions by this court and the Courts of Appeal...Moreover, this principle applies to administrative practices embodied in staff attorney opinions and other expressions short of formal, quasi-legislative regulations. (See, e.g., *DeYoung, supra*, 147 Cal.App.3d 11, 19-21, 194 Cal.Rptr. 722 [long-standing interpretation of city charter provision embodied in city attorney’s opinions]...”

The Supreme Court gave two reasons why such administrative letters should be entitled to great weight:

First, “When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation.” (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.*, *supra*, 24 Cal.2d at p. 757, 151 P.2d 233...

Second, as we stated in *Moore, supra*, 2 Cal.4th at pages 1017-1018, 9 Cal.Rptr.2d 358, 831 P.2d 798, “a presumption that the Legislature is aware of an administrative construction of a statute should be applied if the agency’s interpretation of the statutory provisions is of such longstanding duration that the Legislature may be presumed to know of it.” As the Court of Appeal has further articulated: “[L]awmakers are presumed to be aware of long-standing administrative practice and, thus, the reenactment of a provision, or the failure to substantially modify a provision, is a strong indication the administrative practice was consistent with underlying legislative intent.”

Finally, the Supreme Court in the case of *Morillion v. Royal Packing Company* 22 Cal.4th 575 at 584, concluded that “advice letters [of the DLSE] are not subject to the rulemaking provisions of the APA.” (citing *Tidewater, supra*, 14 Cal.4th at page 571) The Court then cited two of the Division’s advice [opinion] letters regarding the DLSE’s interpretation of the term “hours worked”. The Court noted that the “DLSE interpretation is consistent with our independent analysis of hours worked.”

- 1.1.5 In a later development concerning the use by the courts of DLSE Opinion Letters, the California courts have opined in the case of *Bell v. Farmer’s Insurance* (2001) 87 Cal.App.4th 805, 815:

“Advisory opinions... ‘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.’ (*Yamaha Corp. of America v. State Bd. of Equalization, supra*, 19 Cal.4th at p. 14, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Thus, in *Morillion v. Royal Packing Co.*, *supra*, 22 Cal.4th at page 584, 94 Cal.Rptr.2d 3, 995 P.2d 139, the court reviewed two DLSE advice letters and found support in the fact that the DLSE interpretation was consistent with its independent analysis. (See also *Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal.4th at p. 571, 59 Cal.Rptr.2d 186, 927 P.2d 296.)”

- 1.1.6 This manual summarizes the policies and interpretations which DLSE has followed in discharging its duty to administer and enforce the labor statutes and regulations of the State of California. The summarized policies and interpretations are derived from the following sources:

1. Decisions of California’s courts which construe the state’s labor statutes and regulations and otherwise apply relevant California law.



## **DIVISION OF LABOR STANDARDS ENFORCEMENT**

### **ENFORCEMENT POLICIES AND INTERPRETATIONS MANUAL**

2. California statutes and regulations which are clear and susceptible to only one reasonable interpretation.
  3. Federal court decisions which define or circumscribe the jurisdictional scope of California's labor laws and regulations or which are instructive in interpreting those California laws which incorporate, are modeled on, or parallel federal labor laws and regulations.
  4. Selected opinion letters issued by DLSE in response to requests from private parties which set forth the policies and interpretations of DLSE with respect to the application of the state's labor statutes and regulations to a specific set of facts.
  5. Selected prior decisions rendered by the Labor Commissioner or the Labor Commissioner's hearing officers in the course of adjudicating disputes arising under California's labor statutes and regulations.
- 1.1.6.1 The particular sources underlying the specified policies and interpretations are indicated in the manual. Where the source is a statute, regulation, or court decision, its citation is set forth in the text; where the source is an opinion letter, the parenthetical abbreviation "(O.L. )" is inserted in the text, and where the source is a prior quasi-adjudicative decision of the Labor Commissioner (adopted as an "Administrative Decision") resulting from an adjudication of a dispute, the parenthetical abbreviation "(A.D. )" is inserted in the text. In the future, where the source is a decision of the Labor Commissioner which has been adopted as a "Precedent Decision", it will be referenced in the manual by the parenthetical abbreviation "(P.D. )".
- 1.1.6.2 The opinion letters, administrative decisions, precedent decisions and other unreported sources of these interpretations are contained in the companion volume to this manual.
- 1.1.6.3 Certain opinion letters cited in this manual refer to "Interpretive Bulletins" that were previously issued by DLSE. However, the California Supreme Court, in *Tidewater*, held that the Division's use of interpretive bulletins violates the provisions of the Administrative Procedures Act to the extent that such bulletins go beyond a simple restatement or summary of existing laws, duly promulgated regulations, judicial decisions, the Division's opinion letters, or administrative decisions. Thus, to the extent that any such interpretive bulletin purports to interpret the law by setting out rules of general application and fails to present such interpretation as a restatement or summary of the above enumerated sources, it is invalid.



## DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

## LEGAL SECTION

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ANNE STEVASON, Acting Chief Counsel

February 21, 2002

James S. Blythe  
4744 Ben Avenue, No. 3  
Valley Village, CA 91607-3957

Re: Whether Time Spent Traveling on an Out-of-Town Business  
Trip Constitutes "Hours Worked"

Dear Mr. Blythe:

This is in response to your letter of June 16, 2001, in which you inquired as to whether you are entitled to be paid for time spent traveling to and from an out-of-town, overnight business trip in connection with a training class that your employer required you to attend. The facts that you presented are as follows: You are a non-exempt employee, you work in California, and the training class was in San Antonio, Texas. The classes were held during normal work hours on Monday and Tuesday. All of the travel took place outside your normal work hours of Monday to Friday, 9:00am to 5:30pm. You traveled from California to Texas on the preceding Saturday, from 11:15pm to 6:30pm PDT, you spent Sunday sightseeing in San Antonio, and you returned from Texas to California at the conclusion of the training on Tuesday evening, from 6:00pm to 1:00am (Wednesday morning) CDT. On the trip to Texas, you spent a half hour eating lunch, and on the return trip you spent a half hour eating dinner. Your travel plans had been approved by your supervisor.

You state that you expected to be paid for the time spent traveling outside your normal work hours, less the meal time while traveling. Specifically, you expected to be paid 6.75 hours for your travel on Saturday, and 6.5 hours for your travel on Tuesday evening. However, after you returned from this trip, your employer informed you that none of your travel time to and from San Antonio would be paid, pursuant to your company's staff manual which provides, "Time spent traveling as a passenger on a plane, train, bus, car, or taxicab to a business destination outside your normal business hours is not considered to be paid time." You seek an opinion as to whether this company policy conforms with California law. As discussed below, this policy violates California law in that the time spent traveling to and

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from a business meeting or other event where attendance is required by the employer constitutes hours worked, whether or not the travel takes place during regular work hours, and whether or not the business trip includes an overnight stay.

Initially, we note that the question you presented would be answered differently under federal law. Under federal regulations adopted by the Secretary of Labor pursuant to authority granted by the Fair Labor Standards Act (FLSA), "travel that keeps an employee away from home overnight . . . is clearly worktime when it cuts across the employee's workday. . . . The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on non-working days. Thus, if an employee regularly works from 9am to 5pm from Monday through Friday, the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. . . . As an enforcement policy the [U.S. Department of Labor] will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus or automobile." (29 CFR §785.39) However, under the federal regulations, "any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane" in contrast to a passenger, "is working while riding." (29 CFR §785.41) Also, the federal regulations provide that travel outside of normal work hours on a special one day assignment to another city must be counted as worktime. (29 CFR §785.37) Thus, under these federal regulations, some, but not all, of the travel time in connection with your trip to San Antonio would constitute compensable worktime.

State wage and hour law differs in many respects from federal law, including in the extent to which various activities are treated as "hours worked" under state law, or as compensable worktime under federal law. The federal FLSA provides the floor below which no employer may go, but when California law provides greater protections to employees, the more protective provisions of California law will apply. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575; See also *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785. Every one of the industrial and occupational orders adopted by the California Industrial Welfare Commission (IWC) defines "hours worked" to include "the time during which an employee is subject to the control of an employer" and "all the time the employee is suffered or permitted to work, whether or not required to do so." As the California Supreme Court held in *Morillion*, compulsory travel time constitutes time during which the employee is "subject to the control of an employer" and thus constitutes compensable "hours worked," whether or not the employees are free to read a newspaper or engage in other personal pursuits while riding in a

bus as passengers. And as the Supreme Court observed in both *Ramirez* and *Morillion*, federal regulations which have no counterpart in state law, and which would have the effect of undercutting protections provided by state law to employees, do not apply and will not be used to interpret state law.

The state law definition of "hours worked" does not distinguish between hours worked during "normal" working hours or hours worked outside "normal" working hours, nor does it distinguish between hours worked in connection with an overnight out-of-town assignment or hours worked in connection with a one-day out-of-town assignment. These distinctions, and the treatment of some of this time as noncompensable, are purely creatures of the federal regulations, and are inconsistent with state law.

Under state law, if an employer requires an employee to attend an out-of-town business meeting, training session, or any other event, the employer cannot disclaim an obligation to pay for the employee's time in getting to and from the location of that event. Time spent driving, or as a passenger on an airplane, train, bus, taxi cab or car, or other mode of transport, in traveling to and from this out-of-town event, and time spent waiting to purchase a ticket, check baggage, or get on board, is, under such circumstances, time spent carrying out the employer's directives, and thus, can only be characterized as time in which the employee is subject to the employer's control. Such compelled travel time therefore constitutes compensable "hours worked." On the other hand, time spent taking a break from travel in order to eat a meal, sleep, or engage in purely personal pursuits not connected with traveling or making necessary travel connections (such as, for example, spending an extra day in a city before the start or following the conclusion of a conference in order to sightsee), is not compensable.

It should be noted that our analysis of California law is consistent with the long-standing policies of the Division of Labor Standards Enforcement. In February 21, 1984, then State Labor Commissioner C. Robert Simpson, Jr. reasoned that "the Industrial Welfare Commission orders require that time spent traveling during either regular working hours or in addition to the regular working hours, if such travel is done pursuant to the employer's instructions, is considered worktime," and "is considered hours worked even if no productive work is performed." (DLSE Interpretive Bulletin No. 84-6-Rev.)

The fact that your company policy purports to treat certain time spent traveling to a required out-of-town meeting or class as unpaid time cannot, of course, override the requirements of state law. If time constitutes "hours worked" under state law, that time must be paid. The rate at which it must be paid

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depends upon the nature of your compensation agreement. If your employer has agreed to pay you a fixed hourly rate of pay for any work performed, then travel time must be paid at that regular hourly rate, or, if applicable, the required overtime rate based upon that regular rate. Likewise, if you are a non-exempt salaried employee, state law expressly provides that your salary only compensates you for non-overtime hours, i.e., for hours worked up to 8 in a day and up to 40 in a week. Hours worked in excess of 8 in a day or 40 in a week must be compensated at the applicable overtime rate, which must be computed by converting the weekly salary to an hourly rate, which is defined as 1/40th of the weekly salary. (See Labor Code §515)

If you are an hourly paid employee, your employer can establish a separate rate for travel *before the work is performed*, provided that no rate of pay can fall below the state minimum wage. Under state law, the obligation to pay no less than the minimum wage attaches to each separate hour, or part of each hour worked.

Also, all necessary expenses incurred in connection with employer required travel must be reimbursed to the employee, pursuant to Labor Code §2802, which provides: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . . ."

Thank you for your patience in awaiting a response to your letter, and for your interest in California wage and hour law. Feel free to contact us with any other questions.

Sincerely,



Anne Stevason  
Acting Chief Counsel

AS/mel

cc: Art Lujan  
Tom Grogan  
Assistant Chiefs  
Bridget Bane, IWC  
Legal Sections

2002.02.21

## PROOF OF SERVICE

I, Miles E. Locker, hereby state and declare:

I am a partner with the law firm of Locker Folberg LLP, with a business address at 71 Stevenson Street, Suite 422, San Francisco, California 94105. I am not a party to the above-entitled action. I am an attorney licensed to practice law in the State of California.

On the date hereof, I caused to be served the foregoing MOTION FOR SUPPLEMENTAL JUDICIAL NOTICE on the interested parties, by depositing copies thereof in the mail at a U.S. Postal Service facility in San Francisco, California, with each said copy enclosed in a sealed envelope, with first class postage fully prepaid, addressed to the persons listed on the following Service List attached hereto.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of February, 2014 at San Francisco, California.

A handwritten signature in black ink, appearing to read "Miles E. Locker", written over a horizontal line.

Miles E. Locker

**SERVICE LIST**  
**Appellate Court Case No. B240519**  
**Tim Mendiola, et al. vs. CPS Security Solutions, Inc. et al.**  
**LASC Case No. BC 388956 consolidated with**  
**Floriano Acosta, et al. vs. Construction Protective Services, Inc., et al.**  
**LASC Case No. BC 391669**

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