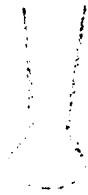


OLL record



OLL 85-1906
27 June 1985

OLL FILE Retirement
Receipt # _____

MEMORANDUM FOR: See Distribution

FROM:
Liaison Division, OLL

VIA: Chief, Liaison Division, OLL *File*

SUBJECT: Hearing on Three Bills Intended to Improve
the Civil Service Retirement System

1. On 27 June, the House Post Office Civil Service Committee, Subcommittee on Compensation and Employee Benefits held a hearing on three bills intended to improve the Civil Service Retirement System for selected employee groups. The purpose for the hearing was to build a strong case in support of the legislation.

2. The three bills are:

- H.R. 989: Would extend early retirement eligibility to flight service station employees;
- H.R. 1131 Would correct certain inequities in the retirement contribution rate for former members of the armed services who wish credit under the civil service retirement system for their years of military service;
- H.R. 1518 Would include inspectors of the immigration and naturalization service and the customs service under the early retirement provisions of current law.

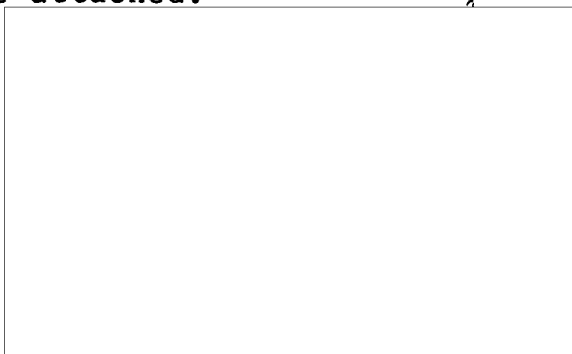
Of interest to the Agency is the bi-partisan support on the House Committee for improving benefits for special employee groups, and the proposed change in the contribution rate for former members of the armed services which would impact on Agency administration.

STAT

3. The Committee plans to work for passage of this legislation this calendar year. Further hearings, which will include spokesmen from the Administration, will be held. Chances for clearance by the Committee and passage by the House are strong; Senate action, however, is uncertain.

4. Copies of the bills and statements for the record from the 27 June hearing are attached.

STAT



Attachment:
as stated

Distribution:

- 1 - DDA
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99TH CONGRESS
1ST SESSION

H. R. 1518

To amend title 5, United States Code, to include inspectors of the Immigration and Naturalization Service and inspectors of the United States Customs Service within the immediate retirement provisions applicable to certain employees engaged in hazardous occupations.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1985

Mr. SWIFT (for himself, Mr. DWYER of New Jersey, Mr. BONIOR of Michigan, Mr. ADDABBO, Mr. NOWAK, Mr. STARK, Mr. BIAGGI, Mr. ENGLISH, Mr. FAZIO, and Ms. MIKULSKI) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to include inspectors of the Immigration and Naturalization Service and inspectors of the United States Customs Service within the immediate retirement provisions applicable to certain employees engaged in hazardous occupations.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) section 8336(c)(1) of title 5, United States Code, is
- 4 amended to read as follows:

1 “(c)(1) An employee who is separated from the service
2 after becoming 50 years of age and completing 20 years of
3 service as a law enforcement officer, firefighter, immigration
4 inspector, or customs inspector, or any combination of such
5 service totaling at least 20 years, is entitled to an annuity.”.

6 (b) Section 8331 of title 5, United States Code, is
7 amended by striking out “and” at the end of paragraph (21),
8 by striking out the period at the end of paragraph (22) and
9 inserting in lieu thereof a semicolon, and by adding at the end
10 thereof the following new paragraphs:

11 “(23) ‘immigration inspector’ means an employee,
12 the duties of whose position are primarily to perform
13 work as an inspector in the Immigration and Natural-
14 ization Service, Department of Justice; and

15 “(24) ‘customs inspector’ means an employee, the
16 duties of whose position are primarily to perform work
17 as an inspector in the United States Customs Service,
18 Department of the Treasury.”.

19 SEC. 2. The amendments made by the first section of
20 this Act shall take effect on the date of the enactment of this
21 Act, and shall apply with respect to employees separated
22 from the service on or after such date.

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99TH CONGRESS
1ST SESSION

H. R. 989

To amend title 5, United States Code, to revise the definition of air traffic controllers entitled to immediate retirement annuities under section 8336(e), and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1985

Mr. TAYLOR introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to revise the definition of air traffic controllers entitled to immediate retirement annuities under section 8336(e), and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 8336(e) of title 5, United States Code, is
4 amended to read as follows:

5 “(e) An employee who is voluntarily or involuntarily
6 separated from the service, except by removal for cause on
7 charges of misconduct or delinquency, after completing 25
8 years of service as an air traffic controller or as an employee
9 who (determined under regulations prescribed by the Secre-

1 tary of Transportation) is actively engaged in providing pre-
2 flight, inflight, or airport advisory service to aircraft opera-
3 tors, or who is the immediate supervisor of such an employ-
4 ee, in a flight service station facility, or after becoming 50
5 years of age and completing 20 years of such service, is enti-
6 tled to an annuity.”

7 SEC. 2. The foregoing provisions of this Act shall take
8 effect on the 90th day after—

9 (1) the date of the enactment of this Act, or

10 (2) October 1, 1985,

11 whichever is later.

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99TH CONGRESS
1ST SESSION

H. R. 1131

To amend title 5, United States Code, to modify the method for determining the amount payable by a Federal employee or Member of Congress in order to receive credit under the civil service retirement system based on certain military service.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 19, 1985

Mr. OBERSTAR introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to modify the method for determining the amount payable by a Federal employee or Member of Congress in order to receive credit under the civil service retirement system based on certain military service.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a)(1) the first sentence of section 8334(j)(1) of title 5,
4 United States Code, is amended by striking out "an amount"
5 and all that follows thereafter through the period and insert-
6 ing in lieu thereof "for each period of military service after
7 December 1956, an amount equal to that percentage of the

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1 basic military pay paid to the employee or Member which
2 would have been payable under subsection (c) of this section
3 if such pay had been paid to the employee or Member for
4 civilian service as an employee rather than for military serv-
5 ice.”.

6 (2) Section 8334(j)(1) of title 5, United States Code, is
7 amended by adding at the end thereof the following new sen-
8 tence: “For the purpose of this paragraph, the term ‘basic
9 military pay’ means basic pay paid under section 204 of title
10 37, United States Code.”.

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NINETY-NINTH CONGRESS

MARY ROSE OAKAR, OHIO, CHAIR
MICKEY LELAND, TEXAS JOHN T. MYERS, INDIANA
STEPHEN J. SOLARZ, NEW YORK DON YOUNG, ALASKA

U.S. House of Representatives

COMMITTEE ON POST OFFICE AND CIVIL SERVICE
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS
406 CANNON HOUSE OFFICE BUILDING

Washington, DC 20515

TELEPHONE (202) 226-7546

SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

HEARING ON H.R. 1131, H.R. 989 AND H.R. 1518

JUNE 27, 1985

WITNESS LIST

- PANEL 1: THE HONORABLE JAMES L. OBERSTAR (D-MN)
MEMBER OF CONGRESS
- THE HONORABLE GENE TAYLOR (R-MO)
MEMBER OF CONGRESS
- THE HONORABLE AL SWIFT (D-WA)
MEMBER OF CONGRESS
- PANEL 2: MR. BRUCE HENRY, PRESIDENT & EXECUTIVE DIRECTOR
NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS
- ACCOMPANIED BY
- MR. EDWARD L. HUIE
 DIRECTOR OF LEGISLATIVE AFFAIRS
 NATIONAL ASSOCIATION OF AIR TRAFFIC
 SPECIALISTS
- MR. CHARLES T. MURPHY, PRESIDENT
 IMMIGRATION AND NATURALIZATION SERVICE COUNCIL
 AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
- MR. PAUL NEWTON
 DIRECTOR OF LEGISLATION
 NATIONAL TREASURY EMPLOYEES UNION
- PANEL 3: MS. TRICIA THOMAS
LEGISLATIVE DIRECTOR
NATIONAL FEDERATION OF FEDERAL EMPLOYEES
- COMMANDER JOHN WANAMAKER
 DEPUTY DIRECTOR
 LEGISLATIVE AFFAIRS
 RETIRED OFFICERS ASSOCIATION

NINETY-NINTH CONGRESS

MARY ROSE OAKAR, OHIO, CHAIR

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STATEMENT OF CONGRESSWOMAN MARY ROSE OAKAR, CHAIR
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

OF THE

HOUSE POST OFFICE AND CIVIL SERVICE COMMITTEE

HEARING ON H.R. 1131, H.R. 989 AND H.R. 1518

THURSDAY, JUNE 27, 1985

WASHINGTON, D.C.

THE SUBCOMMITTEE WILL COME TO ORDER.

TODAY, THE SUBCOMMITTEE WILL COMMENCE HEARINGS ON THREE BILLS TO IMPROVE THE CIVIL SERVICE RETIREMENT SYSTEM.

H.R. 1131, WHICH WAS INTRODUCED BY CONGRESSMAN JAMES OBERSTAR, WOULD CORRECT CERTAIN INEQUITIES IN THE RETIREMENT CONTRIBUTION RATE FOR FORMER MEMBERS OF THE ARMED SERVICES WHO WISH CREDIT UNDER THE CIVIL SERVICE RETIREMENT SYSTEM FOR THEIR YEARS OF MILITARY SERVICE.

H.R. 989, WHICH WAS INTRODUCED BY THE RANKING MINORITY MEMBER OF THE FULL POST OFFICE AND CIVIL SERVICE COMMITTEE, CONGRESSMAN GENE TAYLOR, WOULD EXTEND EARLY RETIREMENT ELIGIBILITY TO FLIGHT SERVICE STATION EMPLOYEES.

H.R. 1518, INTRODUCED BY CONGRESSMAN AL SWIFT, WOULD INCLUDE INSPECTORS OF THE IMMIGRATION AND NATURALIZATION SERVICE AND THE CUSTOMS SERVICE UNDER THE EARLY RETIREMENT PROVISIONS OF CURRENT LAW.

UNFORTUNATELY, BECAUSE OF THE ADMINISTRATION'S CONTINUING EFFORTS TO SEEK REDUCTIONS IN CIVIL SERVICE RETIREMENT BENEFITS AND INCREASES IN THE CONTRIBUTION RATES, WE HAVE BEEN FORCED TO FOCUS MOST OF OUR ATTENTION ON MAINTAINING THE EXISTING BENEFIT AND RATE STRUCTURE. THERE IS NO DOUBT IN MY MIND, HOWEVER, THAT THE CURRENT RETIREMENT SYSTEM CAN BE, AND SHOULD BE, IMPROVED.

I AM ESPECIALLY PLEASED THAT EACH OF THE BILLS BEFORE THE SUBCOMMITTEE TODAY REPRESENTS A STEP FORWARD IN PROVIDING DESERVED BENEFITS TO FORMER MILITARY PERSONNEL AND FEDERAL WORKERS. ONE BILL RECOGNIZES AND SEEKS TO CORRECT AN INEQUITY IN THE CURRENT RETIREMENT PROGRAM THAT REQUIRES FORMER MILITARY

- 2 -

PERSONNEL TO PAY MORE FOR RETIREMENT BENEFITS THAN CIVILIAN EMPLOYEES; THE OTHER TWO WOULD PROVIDE EARLY RETIREMENT ELIGIBILITY FOR EMPLOYEES IN CERTAIN OCCUPATIONS WHO EXPERIENCE UNUSUAL STRESS, EXTREME EMOTIONAL AND PHYSICAL DEMANDS, OR LIFE-THREATENING SITUATIONS. EACH OF THESE BILLS ARE WORTHY OF SERIOUS CONSIDERATION BY THE SUBCOMMITTEE.

I AM LOOKING FORWARD TO TODAY'S HEARING AND THE TESTIMONY FROM OUR FINE WITNESSES.

A STATEMENT BY
THE HONORABLE GENE TAYLOR
BEFORE THE SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS
JUNE 27, 1985

I WANT TO TAKE THIS OPPORTUNITY TO EXPRESS MY APPRECIATION TO MY COLLEAGUE FOR HOLDING THESE HEARINGS, BECAUSE AS SHE KNOWS, I HAVE HAD A LONG TIME INTEREST IN THE SUBJECT OF EARLY RETIREMENT FOR THOSE AIR TRAFFIC EMPLOYEES OR CONTROLLERS WHO WORK IN FLIGHT SERVICE STATIONS.

I AM PLEASED TO APPEAR BEFORE YOU TODAY AS WE BEGIN THESE HEARINGS AND I WOULD LIKE TO ADDRESS MYSELF TO THE SUBJECT I HAVE ALREADY MENTIONED. AS YOU KNOW, I HAVE INTRODUCED H.R. 989, WHICH WOULD PROVIDE THE EARLY RETIREMENT BENEFITS ENJOYED BY TOWER AND CENTER CONTROLLERS TO STATION CONTROLLERS. I HAVE INTRODUCED SIMILAR MEASURES IN PAST CONGRESSES BECAUSE I CONTINUE TO BELIEVE THAT THE RETIREMENT TREATMENT RECEIVED BY STATION CONTROLLERS IS UNFAIR, IN LIGHT OF THE EARLY RETIREMENT BENEFITS RECEIVED BY THEIR COLLEAGUES IN TOWERS AND CENTERS. HOW WE CAN CONTINUE TO TREAT ONE SEGMENT OF A PERSONNEL COMMUNITY WITH CERTAIN BENEFITS AND DENY THOSE BENEFITS TO OTHERS IN THE SAME COMMUNITY WHO DO SIMILAR WORK IS INDEED A MYSTERY.

MY INVOLVEMENT IN THIS ISSUE BEGAN IN THE 94th CONGRESS WHEN I WAS PRIVILEGED TO SERVE AS THE RANKING MINORITY ON OUR FORMER SUBCOMMITTEE ON RETIREMENT AND EMPLOYEE BENEFITS AND HAS CONTINUED UNTIL TODAY. DURING SOME OF THESE YEARS, I ALSO SERVED ON PUBLIC WORKS SUBCOMMITTEE ON AVIATION AND I AM VERY FAMILIAR WITH OUR NATION'S AIR TRAFFIC CONTROL SYSTEM, PARTICULARLY

THE FINE ROLE OF THE SPECIALISTS WHO WORK IN OUR FLIGHT SERVICE STATIONS AND I CAN ATTEST TO THE IMPORTANCE OF THEIR WORK TO A LARGE SEGMENT OF THE AVIATION COMMUNITY.

THERE CONTINUES TO BE A GREAT DEAL OF MISUNDERSTANDING CONCERNING THE ROLE OF FLIGHT SERVICE STATIONS WITHIN THE AIR TRAFFIC CONTROL SYSTEM. SOME OF THIS CAN, I BELIEVE, BE ATTRIBUTED TO THE TITLE OF THE ORIGINAL EARLY RETIREMENT LEGISLATION ENACTED IN 1972 AS THE "AIR TRAFFIC CONTROLLERS CAREER PROGRAM". THERE IS ONLY ONE AIR TRAFFIC CONTROL SYSTEM MADE UP OF THREE CATEGORIES OF SPECIALISTS, NOW KNOWN AS CONTROLLERS, AND THEY ARE EMPLOYED IN TOWERS, CENTERS AND STATIONS.

IN MY OPINION, THE CONGRESS MADE A MISTAKE IN 1972 BY NOT INCLUDING ALL AIR TRAFFIC CONTROL SPECIALIZATIONS, THOSE IN THE DEPARTMENT OF DEFENSE AS WELL AS THOSE IN THE DEPARTMENT OF TRANSPORTATION, UNDER SOME OR ALL OF THE PROVISIONS OF THE ORIGINAL ACT. ALTHOUGH WE AMENDED THE LAW IN 1980 TO INCLUDE THE EMPLOYEES OF THE DEFENSE DEPARTMENT, WE FAILED TO COMPLETELY CORRECT THE PROBLEM.

PERSONNEL IN ALL THREE CATEGORIES ARE FREQUENTLY CALLED "CONTROLLERS" BY THE FEDERAL AVIATION ADMINISTRATION (FAA) AND OTHERS AS WELL AND ONE MIGHT BELIEVE THAT THEY ACTUALLY CONTROLLED AIRCRAFT. HOWEVER, FAA REGULATIONS CLEARLY STATE THAT: "THE PILOT IN COMMAND OF AN AIRCRAFT IS DIRECTLY RESPONSIBLE FOR, AND, IS THE FINAL AUTHORITY AS TO THE OPERATION OF THE AIRCRAFT". THE COURTS HAVE TAKEN A SIMILAR VIEW AND IN SAWYER v. U.S. D.C. N.Y. 1969 STATED:

"RESPONSIBILITY FOR SAFETY OF AN AIRPLANE AND ITS PASSENGERS RESTS WITH THE CAPTAIN-PILOT BY GOVERNMENT REGULATIONS HAVING THE FORCE AND EFFECT OF LAW."

ALSO FROM THE SAME CASE:

"THE FACT THAT THE PILOT MAY BE FLYING WITH AN AIR TRAFFIC CLEARANCE DOES NOT RELIEVE HIM OF THE RESPONSIBILITY FOR OPERATIONAL CONTROL OF THE AIRCRAFT."

ACCORDINGLY, CONTROL CAN ONLY BE EXERCISED IN THE COCKPIT AND BY THE PILOT IN COMMAND.

IN LOOKING OVER THE FATALITY STATISTICS PUBLISHED BY THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) ON JANUARY 10, 1985, I WAS SHOCKED TO LEARN THAT OVER THE PAST TEN YEARS GENERAL AVIATION, INCLUDING AIR TAXIS AND COMMUTERS, EXCEEDED 13,000 FATALITIES, WHICH IS MORE THAN 13 TIMES THE DEATHS AMONG THE SCHEDULED AIR CARRIERS.

GENERAL AVIATION PILOTS ARE THE PRIMARY USERS OF THAT BRANCH OF THE AIR TRAFFIC CONTROL SYSTEM KNOWN AS THE FLIGHT SERVICE STATION. I'M SURE YOU CAN NOW SEE WHY THIS CAN BE SUCH A TRAUMATIC AND STRESSFUL ENVIRONMENT IN WHICH TO WORK. FURTHER, ALMOST HALF OF ALL EMERGENCY FLIGHT ASSISTS, ACCORDING TO RECENT HOUSE TRANSPORTATION APPROPRIATIONS HEARINGS, WERE MADE BY STATION SPECIALISTS, WHILE IT HAS LESS THAN 20 PERCENT OF THE PERSONNEL IN THE ENTIRE SYSTEM. I AM CONCERNED THAT ONE-FIFTH OF THE PERSONNEL HANDLE ALMOST FIFTY PERCENT OF THE EMERGENCY SITUATIONS IN THE AIR AND CAN DO SO UNTIL THEY REACH THEIR LATE FIFTIES OR EARLY SIXTIES.

GENERAL AVIATION IS THE MOST HAZARDOUS SEGMENT OF AVIATION, AND YET, THE FAA DENIES EARLY RETIREMENT BENEFITS TO EMPLOYEES INVOLVED WITH GENERAL AVIATION AND PROVIDES THESE BENEFITS TO THOSE EMPLOYEES INVOLVED WITH SCHEDULED CARRIERS, THE SAFEST SEGMENT OF AVIATION.

THE SECRETARY OF TRANSPORTATION RECOGNIZED THE HAZARDS OF THE WORKPLACE IN THE FLIGHT SERVICE SYSTEM IN THE IMPLEMENTATION OF 5 USC 5542 BY INCLUDING STATION EMPLOYEES FOR ELIGIBILITY FOR SPECIAL OVERTIME PAY AND STATED:

"(A) THE DUTIES OF WHICH ARE CRITICAL TO THE IMMEDIATE DAILY OPERATION OF THE AIR TRAFFIC CONTROL SYSTEM, DIRECTLY AFFECT AVIATION SAFETY, AND INVOLVE PHYSICAL OR MENTAL STRAIN OR HARDSHIP;"

IN MY VIEW, THIS ACTION ALONE, IS SUFFICIENT REASON FOR THE ENACTMENT OF H.R. 989.

GOING BACK TO THE 1980 LEGISLATION, ALREADY MENTIONED, IT IS INTERESTING TO FOLLOW THE SERIES OF EVENTS AFTER THIS COMMITTEE FAVORABLY REPORTED THE BILL. EVEN THOUGH THE APPROPRIATIONS COMMITTEE REPORTED THE BILL ADVERSELY IT RECOGNIZED THE POTENTIAL FOR DETRIMENTAL EFFECT ON EMPLOYEE MORAL. IN THEIR REPORT THEY RECOMMENDED THAT A STUDY BE DONE BEFORE THEY MADE A DECISION AS TO INCLUDING "FLIGHT SERVICE SPECIALISTS" IN THE PROGRAM. THE COMMITTEE FOLLOWED THROUGH ON THIS RECOMMENDATION AND DIRECTED THE FAA TO CONDUCT A STUDY IN COOPERATION WITH AN INDEPENDENT ORGANIZATION, AND TO REPORT IT TO THE COMMITTEE NO LATER THAN SEPTEMBER 30, 1981.

ON NOVEMBER 30, 1981 THE FAA FORWARDED A REPORT PREPARED BY A PRIVATE CONTRACTOR AND THE ADMINISTRATOR OF THE FAA STATED, IN HIS COVER LETTER

IN PART:

"BASED ON THE FINDINGS AND CONCLUSIONS PRESENTED BY JWK INTERNATIONAL, WE DO NOT FIND ANY EVIDENCE WHICH WARRANTS THE EXTENSION OF EARLY RETIREMENT BENEFITS TO FLIGHT SERVICE STATION SPECIALISTS."

IT WOULD SEEM TO ME, THAT THE ONE OF THE BEST PIECES OF EVIDENCE WAS LOCATED AT 5 USC 5542, WHICH I HAVE ALREADY QUOTED.

AT THAT TIME, I EVALUATED THE FAA'S EFFORT AS A HALF-HEARTED ATTEMPT TO APPEASE THE CONGRESS WITH THE HOPE THAT THE PROBLEM WOULD DISAPPEAR. THE ONLY THING WHICH HAS DISAPPEARED IS THE \$75,000 IN TAXPAYER MONEY WHICH THE FAA USED TO PAY THE PRIVATE CONTRACTOR.

THIS REPORT WAS REVIEWED AND CRITIQUED, AT THE REQUEST OF THE NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS (NAATS), BY THE FIRM OF RITTENBERG, FRIEDMAN, KILGALLON AND ASSOCIATES, WHICH IS A WASHINGTON-BASED ECONOMIC RESEARCH AND CONSULTING FIRM SPECIALIZING IN LABOR ECONOMICS AND EMPLOYMENT ISSUES SINCE 1969. UPON URGING BY THE APPROPRIATIONS COMMITTEE, IN CONFERENCE, ON THE 1983 TRANSPORTATION APPROPRIATIONS BILL, THE FAA FORWARDED BOTH REPORTS TO THE GENERAL ACCOUNTING OFFICE (GAO) FOR EVALUATION, ANALYSIS AND A REPORT.

IN MARCH 1984, THE GAO REPORTED ITS FINDINGS AND CONCLUDED:

"OUR REVIEW SHOWED THE JWK'S STUDY RESULTS ARE INCONCLUSIVE. THE RESULTS DO NOT SUPPORT FAA'S CONCLUSIONS THAT FSS SPECIALISTS SHOULD NOT BE AFFORDED EARLY RETIREMENT...."

AS I HAVE ALREADY SET FORTH IN THIS STATEMENT, NO FAA GROUND PERSONNEL CONTROL AIRCRAFT, BUT ALL CONTROL PERSONNEL MAKE RECOMMENDATIONS TO PILOTS TO INSURE A SAFE FLIGHT. STATION PERSONNEL MAKE RECOMMENDATIONS ON A CONTINUOUS BASIS TO SEPARATE AIRCRAFT FROM DANGEROUS WEATHER CELLS. IN HIS HEARING ON THE "IMPACT OF WEATHER ON AVIATION SAFETY", OUR COLLEAGUE, THE CHAIRMAN OF THE PUBLIC WORKS SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT STATED:

"IT BECAME PRETTY CLEAR THAT THE MESSAGE BEING GIVEN BY ALL THE WITNESSES IS THAT SUSPECT WEATHER CELLS SHOULD BE AVOIDED JUST AS ONE AIRCRAFT SHOULD AVOID THE PATH OF ANOTHER AIRCRAFT..."

THE HEAVY RESPONSIBILITY FOR HUMAN LIFE THAT IS CITED AS A STRESS PRODUCING FACTOR FOR CONTROLLERS IN TOWERS AND CENTERS IS SHARED BY THE SPECIALISTS IN STATIONS AND IT IS OFTEN A MORE MEANINGFUL FACTOR BECAUSE THESE EMPLOYEES DEAL FACE TO FACE WITH THE GENERAL AVIATION PILOTS AND THEIR PASSENGERS.

DURING THE COURSE OF AN 8 HOUR SHIFT, A STATION SPECIALIST MAKES A SERIES OF JUDGEMENTS AND RENDERS ADVICE TO PILOTS THAT IS VITAL TO THEIR SAFETY.

HE EXPERIENCES JUST AS MUCH STRESS AND JUST AS MUCH WORRY AS ANY OTHER SPECIALIST OR "CONTROLLER". THIS STRESS OFTEN BECOMES ACUTE WHEN WEATHER CONDITIONS ARE INCLEMENT, WHEN AN INEXPERIENCED PILOT IS AT THE CONTROL OF A PLANE, WHEN AN AIRCRAFT MALFUNCTIONS OR WHEN AN EMERGENCY SEARCH IS UNDERWAY.

SPECIALISTS EMPLOYED AT ALL LOCATIONS WITHIN THE FAA SYSTEM OR THE MILITARY SYSTEM, ARE AWARE THAT THEIR LEVEL OF PERFORMANCE MUST CONSTANTLY BE OF THE HIGHEST CALIBER. THEY KNOW THE COST OF INDECISION AND ERROR IS MEASURED IN TERMS OF HUMAN LIFE. BOTH THE DEPARTMENT OF TRANSPORTATION AS WELL AS THE OFFICE OF PERSONNEL MANAGEMENT HAVE ATTEMPTED, THROUGH SEVERAL ADMINISTRATIONS, TO MINIMIZE THE IMPORTANCE OF THE SERVICES PROVIDED BY FLIGHT SERVICE PERSONNEL.

THIS CONCERNS ME BECAUSE TO ANY ONE WHO THINKS IN PRACTICAL TERMS, THE STATION SPECIALIST IS AS VITAL TO AVIATION SAFETY AS ANY CONTROL OR TOWER SPECIALIST. IN THE PAST, SPOKESMEN FOR THE EXECUTIVE BRANCH HAVE TRIED TO DIVERT THE FOCUS ON THESE MATTERS AWAY FROM THE INTERESTS OF AIR SAFETY, BY PERSISTENTLY OPPOSING MEASURES THAT WOULD EXPAND THE COVERAGE OF ALL OR EVEN PART OF PUBLIC LAW 92-297 TO FSS SPECIALISTS. THESE SPOKESMEN USUALLY TALK IN TERMS OF THE IMMEDIATE BENEFITS WHICH MIGHT BE GRANTED, AS THOUGH THESE SPECIALISTS ARE AN UNDESERVING SECOND-CLASS CITIZEN.

IF THE FAA ARGUES THAT A YOUTHFUL WORK FORCE IS REQUIRED IN CENTERS AND TOWERS, I WILL QUICKLY POINT OUT THAT THEIR ACTIONS OF THE PAST COMPLETELY BELIE SUCH ARGUMENTS, SINCE THEY ARE NOW EMPLOYING AIR TRAFFIC CONTROL SPECIALISTS WHO, YEARS AGO, RETIRED UNDER THE PROVISIONS OF PUBLIC LAW 92-297. THESE PERSONNEL WERE DESCRIBED, BY THE FAA, AS "HIGH PERFORMERS" BEFORE THE HOUSE TRANSPORTATION APPROPRIATIONS COMMITTEE.

IF FAIRNESS AND EQUITY IN THE WORK FORCE IS TO BE ACHIEVED AND IF AVIATION SAFETY IS TO BE ENHANCED, WE HAVE NO ALTERNATIVE BUT TO INCLUDE THE AIR TRAFFIC CONTROL SPECIALISTS IN STATIONS WITHIN THE GROUP ENTITLED TO EARLY RETIREMENT AND REMOVE THE STIGMA OF SEPARATENESS FROM THESE LOYAL AND DEDICATED FEDERAL EMPLOYEES.

AGAIN, I WANT TO COMMEND YOU FOR YOUR INTEREST IN THIS ISSUE AND FOR HOLDING THESE HEARINGS.

THANK YOU VERY MUCH.

STATEMENT BY CONGRESSMAN AL SWIFT
BEFORE THE COMPENSATION AND EMPLOYEE BENEFITS SUBCOMMITTEE
JUNE 27, 1985

MADAM CHAIR AND MEMBERS OF THE COMPENSATION AND EMPLOYEE BENEFITS SUBCOMMITTEE:

I AM PLEASED THAT THE SUBCOMMITTEE IS CONTINUING ITS EFFORTS TO BRING FAIRNESS AND EQUITY TO THE EARLY RETIREMENT ISSUE. AS YOU KNOW, ON FEBRUARY 7TH OF LAST YEAR YOUR SUBCOMMITTEE HELD AN EXTENSIVE HEARING ON A BILL I INTRODUCED TO BRING CUSTOMS AND IMMIGRATION INSPECTORS UNDER THE 6(C) EARLY RETIREMENT PROVISION OF CIVIL SERVICE. I BELIEVE WE MADE A GOOD RECORD THAT DAY, AND I'M GLAD THAT WE HAVE THIS OPPORTUNITY TO EXPAND UPON THAT RECORD. I AM HERE TODAY TO SPEAK ON MY BILL, HR 1518, WHICH CONTINUES IN THE 99TH CONGRESS WHAT WE BEGAN IN THE 98TH CONGRESS.

I WOULD BE REMISS IF I DID NOT ALSO TAKE THIS OPPORTUNITY TO COMMEND THE CHAIRMAN OF THE FULL COMMITTEE ON POST OFFICE AND CIVIL SERVICE, BILL FORD, FOR HIS WORK IN THIS AREA, INCLUDING THE HEARING HELD ON APRIL 25TH OF THIS YEAR ON THE EARLY RETIREMENT ISSUE. MUCH OF THE TESTIMONY AT THAT HEARING PARALLELED THE CASE THAT I HAVE TRIED TO MAKE FOR CUSTOMS AND IMMIGRATION INSPECTORS.

FOR EXAMPLE, THE FOREIGN SERVICE REPRESENTS THEIR OCCUPATION AS AN "INCREASINGLY ARDUOUS LIFE; THOSE WHO, AFTER A LONG AND VALUED CAREER, CANNOT CONTINUE TO MEET THOSE CHALLENGES SHOULD BE ABLE TO RETIRE VOLUNTARILY..."

THE FBI STATED THAT CONGRESS "RECOGNIZED THE NEED TO ENCOURAGE THE DEVELOPMENT OF A YOUNG AND VIGOROUS SPECIAL AGENT WORKFORCE CAPABLE OF PERFORMING PHYSICALLY ARDUOUS TASKS UNDER STRESSFUL CONDITIONS...(AND)...THE SPECIAL RETIREMENT BENEFITS HAVE HISTORICALLY PROVEN TO BE A VALUABLE INDUCEMENT IN THE RECRUITMENT OF HIGHLY QUALIFIED APPLICANTS."

SIMILAR COMMENTARY WAS RECEIVED FROM FEDERAL FIREFIGHTERS, AIR TRAFFIC CONTROL SPECIALISTS, THE CIA, AND OTHERS.

I AM STRUCK BY THE SIMILARITY OF ARGUMENTS ADVANCED BY SPOKESPERSONS FROM THOSE AGENCIES JUST REFERENCED, WITH THE ARGUMENTS ADVANCED BY ADVOCATES FOR EARLY RETIREMENT FOR CUSTOMS AND IMMIGRATION INSPECTORS AT LAST YEAR'S HEARING BEFORE THIS SUBCOMMITTEE.

FOR INSPECTORS ARE ALSO SUBJECT TO DANGERS, AND THE HAZARDS THEY FACE ARE SUCH THAT THEY CANNOT BE DISCOVERED PRIOR TO THE COMMENCEMENT OF THEIR DUTIES. IN THE EXAMINATION OF PERSONS, THE INSPECTOR IS ALWAYS FACED WITH THE POSSIBILITY THAT THE ARRIVING TRAVELER IS AN ARMED AND DANGEROUS FUGITIVE FELON WHO LOOKS AT THE INSPECTOR AS A ROADBLOCK BETWEEN FREEDOM AND APPREHENSION.

IN LAST YEAR'S HEARING A GROUP OF INSPECTORS' WIVES FROM MY DISTRICT GAVE WHAT I BELIEVE IS COMPELLING TESTIMONY ON THE HAZARDOUS DUTIES OF INSPECTORS. "THE INSPECTOR IS TRAINED TO MAKE A DETERMINATION BASED NOT ONLY ON WHAT IS SAID, BUT HOW IT IS SAID, MANNERISMS EXHIBITED...PROFILES LEARNED AND A HOST OF OTHER TECHNIQUES. IT IS VERY OFTEN THE INSPECTOR'S ABILITY AND HIS COWORKER'S ABILITY TO COME TO HIS AID WHICH MAKES THE DIFFERENCE BETWEEN LIFE AND DEATH. THE MENTAL AND PHYSICAL STRAIN THIS PLACES THE INSPECTOR UNDER IS ENORMOUS.

MULTIPLY THIS STRESS OVER A LONG PERIOD OF SERVICE, AND YOU CAN IMAGINE THE TOLL IT TAKES." IN CONTRAST, POLICE OFFICERS "ARE USUALLY ARMED WITH ARREST AND SEARCH WARRANTS BEFOREHAND, AND THEY HAVE INFORMATION ON THE SUBJECT TO BE ARRESTED--WHO HE IS, WHAT HIS KNOWN HABITS ARE, AND WHETHER OR NOT HE IS LIKELY TO BE ARMED. THEY KNOW WHEN AND WHERE THE ARREST WILL TAKE PLACE, AND THEY PLAN ACCORDINGLY, USUALLY MAKING SURE THERE WERE MORE OFFICERS THAN SUBJECTS PRESENT. THE INSPECTOR, HOWEVER, HAS NONE OF THESE LUXURIES. IT IS THE CRIMINAL WHO PICKS HIS TIME FOR THE CONFRONTATION, AND THE CRIMINAL APPROACHES THE INSPECTOR, KNOWING HE IS IN VIOLATION OF THE LAW, AND FULLY PREPARED TO PREVENT HIS ARREST AT ALL COSTS."

THE ARREST STATISTICS--WHILE NOT AS PERSONALLY COMPELLING--ARE ALSO GRAPHIC. CUSTOMS INSPECTORS MAKE IN THE ORDER OF 13,000 ARRESTS A YEAR, MANY OF THEM BASED IN PART ON INFORMATION FROM THE FBI'S NATIONAL CRIME INFORMATION CENTER. THE FBI STATES THAT CUSTOMS INSPECTORS MAKE MORE NCIC ARRESTS THAN ALL OTHER FEDERAL AGENCIES COMBINED, AND ALL OF THEM ARE FELONY ARRESTS. IMMIGRATION INSPECTORS HAVE LEAD RESPONSIBILITY FOR SCREENING INDIVIDUALS ENTERING OUR COUNTRY. IN PAST YEARS, MORE THAN ONE-HALF MILLION INADMISSIBLE ALIENS A YEAR HAVE BEEN INTERCEPTED AT PORTS OF ENTRY, MANY OF THEM USING FRAUDULENT OR COUNTERFEIT DOCUMENTS. THIS IS AN INCREASINGLY VOLATILE SITUATION, AND VIOLENCE AND ARREST RESISTANCE ARE A CONSTANT THREAT TO INSPECTORS.

WE HAVE SUPPLIED INSPECTORS WITH HIGH TECHNOLOGY TOOLS FOR CRIME DETECTION AND PREVENTION; WE HAVE FUNDED AGGRESSIVE AND EFFECTIVE SPECIAL INTERDICTION TEAMS TO COMBAT DRUGS, FELONS AND DEFENSE-RELATED CONTRABAND; AND WE HAVE DEMANDED OF CUSTOMS AND IMMIGRATION INSPECTORS--AND RIGHTFULLY SO--THAT THEY SERVE AS A FIRST LINE OF DEFENSE TO PROTECT THE INTEGRITY OF OUR BORDERS AND ENSURE THE VIGILANT AND ENERGETIC ENFORCEMENT OF OUR NATION'S LAWS. IF WE EXPECT THIS PUBLIC MANDATE TO BE MET, THEN WE NEED THE BEST PEOPLE FOR THE JOB. WITHOUT ENSURING THE ENTHUSIASM AND ESPIRIT DE CORPS THAT A YOUNG AND VIGOROUS WORKFORCE WILL BRING TO THE JOB, WE HAVE NOT DONE OUR BEST TO PROTECT OUR NATIONAL INTERESTS AND THE PUBLIC WELFARE.

AGAIN, MADAM CHAIR, THANK YOU FOR GIVING ME THIS OPPORTUNITY TO COMMENT ON THE ISSUE OF EARLY RETIREMENT FOR CUSTOMS AND IMMIGRATION INSPECTORS.



NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS

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STATEMENT

before the

SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

THE HONORABLE MARY ROSE OAKAR
CHAIRPERSON

COMMITTEE

ON

POST OFFICE AND CIVIL SERVICE

UNITED STATES HOUSE OF REPRESENTATIVES

Ninety-Ninth Congress

on

BENEFITS FOR AIR TRAFFIC CONTROL SPECIALISTS (STATION)
EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION

DEPARTMENT OF TRANSPORTATION

by

BRUCE B. HENRY
PRESIDENT & EXECUTIVE DIRECTOR
NATIONAL ASSOCIATION OF
AIR TRAFFIC SPECIALISTS

June 27, 1985

Madam Chair and Distinguished Members of this Subcommittee, I am grateful that you have provided me with the opportunity to appear before you and to express my thoughts and opinions relative to early retirement benefits for Air Traffic Control Specialists (Station). I am accompanied by Mr. Edward L. Huie, our Director of Legislative Affairs, and Mr. Edward J. Malo, an aviation consultant and an expert on the Air Traffic Control System. Mr. Malo will make a short statement after I conclude.

These hearings are most timely since all issues relating to Federal employee retirement are under consideration by this Congress. We believe that the issue before you is one of air safety and fairness.

The Flight Service System is an integral part of the Air Traffic Control System and there are about 317 flight service stations throughout the United States. The personnel who staff the Air Traffic Control System are designated by the Office of Personnel Management as Series 2152 and are called:

- Air Traffic Control Specialists (Station)

This category is the least understood of all the categories because of the lack of term standardization and the widespread use of colloquialisms. FAA, and others as well, confuse the issue by referring to this category as Flight Service Specialists, Specialists, Flight Service Station Specialists, Station Specialists, Station Personnel, Station Controllers, Controllers and Specialists. It is so confusing that uninformed persons sometimes infer that these are the personnel who fuel and maintain aircraft. For NAATS, this is an overwhelming educational burden. An example is

included as Attachment (1) hereto. (FAA news release dated March 5, 1985--FAA 10-85).

The two other categories are:

- . Air Traffic Control Specialists (Terminal)
- . Air Traffic Control Specialists (Center)

This Association is designated by the Secretary of Labor as the exclusive representative of all the bargaining unit members who are Air Traffic Control Specialists (Station) Series 2152.

Personnel in all three categories are frequently called "Controllers" by FAA and others as well, and one might infer that they actually control aircraft in the ordinary sense of the word "control." Federal Aviation Administration Regulation 91.3(a) clearly states, "The pilot in command of an aircraft is directly responsible for, and is the final authority as to the operation of that aircraft."

If responsibility for operation of the aircraft is vested in the "pilot in command" as the FAA has prescribed, then control and separation can only be exercised by the pilot and not by an FAA employee located on the ground in some far away place using a radarscope, an inexact instrument at best even when operating at peak efficiency.

Additionally, we have all heard of radar "outages" in recent years, an event upon which the news media thrives. We often wonder how the media finds out about "outages" so quickly. Of course, when there is an "outage" the FAA ground

personnel can provide no information to the pilot at all. The Federal Aviation Administration has, therefore, wisely placed all command, control and separation squarely on the shoulders of the pilot because there is no other place where this awesome responsibility can be lodged.

On such a basis we do not believe that responsibility can be shared for the safety of that aircraft, and that control can only be exercised in the cockpit.

We can provide no better example of this than the near miss between two jumbo jet aircraft on March 31, 1985, at Minneapolis, Minnesota, with a combined total of 500 people aboard. While the National Transportation Safety Board has not rendered its report, Chairman Burnett and other Safety Board personnel have been widely quoted by the news media. "Both crews were executing the air traffic control instructions they were provided, no question", according to Michael O'Rourke, investigator in charge for the Safety Board.

However, one pilot in command disregarded the "controller instructions" and acted on his own and within his authority and responsibility. He avoided what could have been a disaster reminiscent of the world's worst aviation disaster, where 577 people were killed in Tenerife, Canary Islands, in 1977 in a similar crossing situation.

This is not to say that the FAA employee on the ground has no responsibility, for he does have the responsibility for carrying out the assigned duties of that position

which are to provide information, make recommendations and to warn the pilot of other objects in the area as seen on his radarscope. He cannot in any way interfere with the prerogatives of command, which can be no less than absolute.

Nevertheless, we have heard in past hearings, and probably in this one as well, the FAA witness state that station personnel are not qualified for early retirement because they do not control and separate aircraft. We hasten to add that no FAA employee on the ground controls and separates aircraft with the exception of the operation of a drone aircraft (no pilot) and in this case control is exercised from a ground position or from another vehicle. An example of this was the recent intentional crash of FAA aircraft in the desert for reasons of research. In that specific case, FAA employees on the ground did, in fact, exercise the prerogatives of command, control and separation. This is the only example that has come to our attention, where control and separation has been experienced by FAA ground personnel.

In our view, commercial air carriers are not too anxious for it to be well known that their pilots in command bear the full responsibility for the aircraft. It is in their best interest to dilute and confuse the issue when it comes to public liability litigation and, if possible, involve the government as much as possible in sharing damages which may be awarded by the courts as the result of an air carrier accident or crash. This applies to the general aviation

community as well.

In FAA's recent report to the Congress entitled "FY 1985-87 Planned Office and Facility Consolidations--To Improve System Effectiveness and Efficiency" dated December 1, 1984, the functions and mission of the flight service stations are set forth as follows:

"Flight Service Station (FSS). Flight service stations offer a broad range of pre-flight and in-flight services aimed at general aviation (or non-airline) pilots. These services include conducting pre-flight weather briefings for pilots and accepting and closing flight plans, primarily through telephone and radio communications. Additionally, FSS's provide enroute communications with pilots flying under Visual Flight Rules (VFR), assist pilots in distress, work with search and rescue units in locating missing aircraft, assist lost aircraft and aircraft in emergency situations, monitor radio navigation stations, relay air traffic control (ATC) clearances, originate Notices to Airmen, broadcast aviation weather and National Airspace System (NAS) information, receive and process Instrument Flight Rules (IFR) flight plans, and monitor radio air navigations facilities (NAVAIDS). In addition, at selected locations, FSS's provide Enroute Flight Advisory service (Flight Watch), take weather observations, issue airport advisories, and advise Customs and Immigration of transborder flights. The FSS's also have communications equipment for relaying information to air traffic towers and control centers and for various emergency services. Flight service stations are under the general direction of the regional Air Traffic Divisions and Washington headquarters."

This statement of mission and function deserves careful study:

- . In the first sentence, the FAA attempts to downgrade our service by eliminating scheduled airline pilots as one of the users of flight service information. While the service may be aimed at general aviation pilots, the truth is that scheduled carriers are very frequent users of flight service products.
- . The word "emergency" is used twice.

Other phrases:

- . Assist pilots in distress.
- . Work with search and rescue units in locating missing aircraft.
- . Assist lost aircraft and aircraft in emergency situations.
- . Advise Customs and Immigration of transborder flights (includes drug and narcotics interdiction-- added).

It is very significant that 45.7 percent (1985 House Appropriations Hearings, Part 6, page 641), of all flight assists were made by Air Traffic Control Specialists (Station) while the system was endowed with only 18 percent of the total personnel positions in the Air Traffic Control System. To us, this looks like our people work in an environment where there are more opportunities to provide assistance for safe flight.

Flight assists are usually emergency situations where the pilot, passengers and aircraft are in jeopardy.

We believe that emergency situations create a tense working environment which requires the utmost from the journeyman in time-critical situations where superior judgment is required.

In this matter, we believe that the Federal Aviation Administration itself has expressed the strains upon the Air Traffic Control Specialists (Station) far more eloquently than we ourselves can express it. In the case of Marvin A. Miyai (an Air Traffic Control Specialist (Station)) v. Federal Aviation Administration, before the United States

Merit Systems Protection Board, at a hearing dated February 7, 1985, (Docket No. SFO7528510116), Mr. Malachy T. Coghlan, for the FAA, said of Mr. Miyai's job:

"There are few jobs that require more alertness of mind, more sound judgement, [sic] the ability to assimilate information, and the ability to make split second decisions. The stresses and the strains of the job are incalculable. And there are very few people who can perform in that position."

The Comptroller General of the United States recently published a Report to the Congress, "Safety Standards on Small Passenger Aircraft," (GAO/RCED-84-2 of January 4, 1984) which is germane to the Flight Service System and sets forth the major safety problems with smaller aircraft. While the report deals specifically with small air carrier aircraft, the problems set forth are applicable, we believe, to all general aviation aircraft. All of these are the primary customers of Flight Service. An appropriate excerpt from this report follows:

"For a variety of reasons it is difficult to attribute an aircraft accident to any single cause or factor. According to NTSB reports, aircraft accidents generally result from multiple causes. Yet, based on the accident statistics, one fact remains clear: Flying in a small carrier aircraft is definitely less safe than flying in a large one.

"How small commuter and air taxi aircraft are used obviously affects the level of safety that they can achieve. For example, small commuter aircraft average twice as many take-offs and landings per hour flown as do large air carrier aircraft (most accidents occur during take-offs and landings). Also, commuter and air taxi aircraft serve a significantly larger number of lesser equipped or remote airports than the large aircraft. Finally, small aircraft spend considerably more time operating at lower altitudes, where flying weather is often less than ideal.

"The incongruity of this situation, however, is that small aircraft, which are operating potentially under the more hazardous conditions, are being built and operated under FAA's least stringent airworthiness standards and operating rules for air carriers.

"MAJOR CAUSES AND FACTORS THAT INFLUENCE AIR CARRIER ACCIDENTS

"While we cannot draw a direct link between accidents and specific causes, our analysis of FAA accident data for the period 1975-81 indicates that the causes and factors of air carrier accidents are related to three areas.

- personnel (including pilot and flight crew and other personnel such as mechanics and dispatchers),
- environment (airports, weather, and terrain), and
- aircraft (airframe, powerplant, instruments and accessories).

"Using FAA and NTSB data and our own analyses of these data on 1,327 commuter air taxi accidents that occurred during 1975-81, we found that about 53 percent of the accident causes and factors were personnel-related, 30 percent were related to the environment, and 14 percent were related to the aircraft."

In general aviation, overall, it is estimated that 40% of all accidents are weather related.

To approach this from another point of view, the National Transportation Safety Board (SB 85-01 of 1/10/85) has published the stark body count of fatalities for the past ten years as follows:

FATALITIES

	U.S. Air Carriers*	General Aviation**			
	All Scheduled Service (Airlines) (14 CFR 121)	Air Taxi Commuters TOTAL	Air Taxis	Commuters	General Aviation
1975	122	1,355	69	28	1,258
1976	38	1,353	100	27	1,226
1977	78	1,430	118	32	1,280
1978	160	1,761	155	48	1,558
1979	351	1,380	77	66	1,237
1980	0	1,392	103	37	1,252
1981	4	1,410	94	34	1,282
1982	233	1,268	72	14	1,182
1983	15	1,119	62	11	1,046
P. 1984	4	1,094	55	41	998
Total 10 yr. period	1,005	13,562	905	338	12,319

AIRCRAFT HOURS FLOWN

P. 1984	7,302,000	35,626,000	3,328,000	1,757,000	30,541,000
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P. Preliminary

* About 2,200 aircraft

**Over 200,000 aircraft

Further, on February 28, 1985, the Chairman, National Transportation Safety Board, testified before the House Committee on Appropriations (Transportation) as follows:

"Tremendous strides have been made in aviation technology in the brief eight decades of its existence, and yet aviation continues to be plagued by one of the oldest causes of accidents in the book -- weather."

From this, one might observe that the FAA is concentrating the preponderance of its personnel and material resources in the safest and least accident-prone sector of the Air Traffic Control System (e.g., scheduled carriers).

From all this, we can only conclude that Air Traffic Control Specialists (Station) experience physical and mental strain and hardship in the workplace and that the work is unusually taxing and extremely stressful, perhaps more than any part of the Air Traffic Control System.

It is for these reasons that the Secretary of Transportation, in implementation of 5 USC 5542, included Air Traffic Control Specialists (Station) within the provisions of that law. The pertinent provisions are quoted below:

"(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS-14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay."

Air Traffic Control Specialists (Station) are employees of the Department of Transportation. They do occupy nonmanagerial positions in GS-14 or under. Their duties are critical to the operation of the Air Traffic Control System and directly affect aviation safety. These duties involve physical and mental strain and hardship and, therefore, overtime work is unusually taxing. Lastly, operating requirements cannot be met without substantial overtime work.

In the House Appropriations Hearing for Fiscal Year 1985, (Part 6, page 641), the FAA estimated that overtime in the Flight Service System would be 163,561 hours.

Not only has the Secretary of Transportation determined that Air Traffic Control Specialists (Station) are covered by 5 USC 5542, but also the Secretary has reaffirmed this determination every pay period since the enactment of the law.

Not only is special overtime pay for Air Traffic Control Specialists (Station) provided in 5 USC 5542, but also premium pay is provided by the Congress in the Continuing Appropriations for Fiscal Year 1983 (P.L. 97-276 Oct. 2, 1982) quoted below:

"§5546a. Differential pay for certain employees of the Federal Aviation Administration

"(a) The Administrator of the Federal Aviation Administration (hereafter in this section referred to

as the 'Administrator') may pay premium pay at the rate of 5 per centum of the applicable rate of basic pay to--

"(1) any employee of the Federal Aviation Administration who is--

"(A) occupying a position in the air traffic series classified not lower than GS-9 and located in an air traffic control center or terminal or in a flight service station;..."

* * * * *

"(e)(1) The Administrator may pay premium pay to any air traffic controller or flight station specialist of the Federal Aviation Administration who, while working a regularly scheduled eight-hour period of service, is required by his supervisor to work during the fourth through sixth hour of such period without a break of thirty minutes for a meal.

"(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 50 per centum of one-half of the applicable hourly rate of basic pay."

Here again the law is permissive as to its application, and the FAA Administrator has, for good and sufficient reasons, included Air Traffic Control Specialists (Station) as a group of employees qualified for the premium pay authorized:

We, accordingly, hold that the community of Air Traffic Control Specialists (Station) is a unique group of Federal employees who, by law, is worthy of special consideration and that exclusion of this group from early retirement benefits accorded to other Air Traffic Control Specialists of the same 2152 designation and covered by 5 USC 5542 and PL 97-276 constitutes unfair and inequitable treatment.

Unfair and inequitable treatment is demonstrated daily by the "Second Class Citizen" label which Air Traffic Control Specialists (Station) have applied to themselves on a national

basis with the attendant low morale environment which is apparent to even a casual observer.

The enabling legislation, Public Law 92-297, provided that only those GS-2152 series Air Traffic Control Specialists employed at centers and towers would be provided coverage and benefits under that legislation.

The discriminatory aspects of that legislation has divided the different categories of Air Traffic Control Specialists into the "haves" and the "have-nots" and has created a very real caste system within this safety and life-saving system.

This discrimination has escalated at all levels of the FAA and the legislation as enacted has proved to be detrimental, rather than beneficial, to aviation safety.

The cumulative effects of the discrimination by FAA, which favored one sector of its Air Traffic System workforce to the exclusion of another, has resulted in feverish attempts on the part of those covered by the legislation to protect the "private domain" interests, and they were provided with all possible aid and comfort by the FAA in continuing and expanding the area of discrimination.

The question is sometimes asked, "Can the Government be sued in aircraft accidents involving alleged negligence on the part of Air Traffic Control Specialists (Station)?" The answer to that question is in the affirmative, and numerous examples are set forth in this Committee's Hearing Record Serial 94-40.

Accordingly, legal burden is upon the shoulders of every Air Traffic Control Specialist (Station) in the everyday performance of his duties.

While pay is not a subject of this hearing, discrimination certainly is a major subject. One only needs to refer to GAO Report "Development of the Classification Standard for Flight Service Station Specialists" (FPCD-79-52 of July 25, 1979) to find significant examples which are quoted:

"Because of the possibility of widespread work slowdowns by controllers, the Commissioners intervened directly in the decision making process. PATCO was granted a personal hearing by the Commissioners who overturned the Standards Division's position which resulted in a one-grade increase for controllers over what the Standards Division had recommended. NAATS was also granted a personal hearing, but it was unsuccessful in its appeal for higher grades for flight service station specialists."

We hold that if the Commissioners so much as lifted a finger in response to a threat of a widespread work slowdown by "controllers", then the Commissioners were, in fact, placed in the position of condoning the commission of an intended felonious act. Air Traffic Control Specialists (Station) did not threaten the Commissioners in any way nor did they contemplate any such action.

In the Secretary of Transportation's comment on this GAO report, the Secretary stated:

"It was the Department's and the agency's expectations and point of view that selected air traffic control and FSS facilities should be elevated one grade level.

"Although the GAO concludes, and we agree, that proper procedures were followed by the CSC, we continue to be convinced that high-volume FSS facilities should be

established at the GS-12 level. Nothing in the report changes this belief or resolves this dilemma."

5 USC 2109 defines Air Traffic Controller as "an employee of the Department of Transportation who is actively engaged in the separation and control of air traffic", and provides that the Secretary of Transportation may prescribe regulations or determine the application of this section. As previously argued in this testimony, we contend that no FAA personnel on the ground controls aircraft.

It is interesting to note at this time the document used by the Secretary of Transportation to implement the provisions of P.L. 92-297. It is identified as Department of Transportation Federal Aviation Administration Order 3410.11a, dated May 16, 1975, and reprinted August 30, 1976, with change 1 entitled "ATC Second Career Program".

The "Foreword" to this order, signed by the "Acting Administrator", J. W. Cochran, is quoted:

"EXPLANATION. This order revises the ATCS Second Career Program to incorporate recommendations of the ATCS Second Career Review Committee, guidance contained in Supplemental Instruction letters issued as supplements to Order 3410.11, and recommendations from Washington and field offices."

No mention is made of retirement benefits or other subjects addressed in this order and yet, on page 1, we find that the purpose of the order is significantly expanded:

"PURPOSE. This order implements Public Law 92-297 which is designed to improve the conditions of employment for air traffic controllers by offering retirement benefits, job training and special appeal procedures for those who are involuntarily removed from air traffic control work; and

to establish maximum age limitations for recruitment under 5 U.S.C. 2109, 3307, and 3384."

The coverage section is of such importance that it is set forth in its entirety.

"5. COVERAGE

- a. This order applies to and affords coverage for: employees of DOT with five or more years of career controller service who meet all of the following requirements; or the immediate supervisor or a nonsupervisory employee who meets all of the following requirements:
 - (1) Officially assigned to an air traffic control facility;
 - (2) Actively engaged in the separation and control of live air traffic;
 - (3) Occupies a position which requires him to meet on a continuing basis the physical qualification standards established by the Civil Service Commission for an air traffic controller.
- b. This coverage includes and is limited to full professional level controllers and their immediate supervisors; those assigned as flow controllers; and employees receiving developmental training at or above the established entry levels as defined by the classification standards and the Civil Service examination announcement at time of entrance on duty. Also included are controllers assigned to a combined Flight Service Station/Tower where the tower duties are performed on a regular, recurring basis. Where a second level or higher supervisor is required to serve as a career controller or as the immediate supervisor of a career controller or as the immediate supervisor of a career controller performing the full range of first level supervisor duties on a regular, recurring basis for a substantial portion (e.g., 50% or more) of his time, and these duties are included in the official position description, he is covered under P.L. 92-297.
- c. This coverage does not include employees temporarily assigned to control of live air traffic

primarily for the purpose of maintaining proficiency in order to aid in the performance of their other regularly assigned duties or primarily for research, development, or evaluation purposes. Also not included are employees receiving pre-developmental training at grades below the normal entrance level, supervisors of flow controllers, and second level and higher level supervisors except as provided in item b above.

- d. Decisions regarding application of coverage provisions in this paragraph will be made by the regional/center directors. This authority may be redelegated to the manpower division chief. The regional/center director, or his designee, may refer questions regarding interpretations of coverage provisions to the Director of Personnel and Training."

We note that only five years of "career controller service" as a full-time permanent employee of the Department of Transportation is required to qualify.

Not only are "full professional level controllers" included in the coverage, but also those receiving developmental training and those employees holding undefined "flow controller" positions.

The authority for making decisions regarding coverage provisions is delegated to regional/center directors of which there are thirty-one in number. Such authority may be further delegated to "manpower division chiefs."

Accordingly, we have 62 officials who may be authorized to make decisions relative to coverage under this order. How any standard for approval/disapproval can be achieved under these conditions is indeed mysterious to us.

To look further into the implementing order, we believe the section on retirement is germane to the confusion:

"12. RETIREMENT

- a. An employee who meets the service and age requirement under P.L. 92-297 has a vested right to such entitlement, which he may exercise at his option, regardless of subsequent job assignments within the Federal service. The annuity computed for employees retiring under the provisions of this order is based on the regular retirement formula with a guaranteed minimum equal to 50% of the high-3 average salary. The annuity is not reduced even if the employee is under age 55 at the time of separation.

- b. In order for the Civil Service Commission to determine whether the retirement claim of an employee is governed by P.L. 92-297, it is necessary that a certification will be made by the chief of the servicing payroll branch and will be based on the determination of creditable service made by the respective manpower division chief in coordination with the air traffic division chief, as appropriate.

A completed FAA Form 3300-30, signed by the manpower division chief, or his designee, will be forwarded along with Standard Form 2801, Application for Retirement, (and any other applicable material) to the chief of the payroll branch. Based on this information, the payroll chief will make the necessary certification on Standard Form 2806, Individual Retirement Record. Where the employee claims creditable experience which is not readily determined, due to inadequate records, position descriptions, etc., the employee should seek verification of his claimed experience from his former supervisor, if available; from old records at home or elsewhere; and furnish his own statement of the duties he performed, time performed, and circumstances surrounding the performance. All the pertinent information should then be sent along with the employee's application for retirement to the manpower division for determination. The Regional Flight Surgeon will also submit a recertification that the employee is permanently disqualified for career controller work."

In this section we note that additional officials participate in the approval/disapproval determination relative to the "certification of creditable service," i.e.:

Chief of the Servicing Payroll Branch;
Air Traffic Division Chief;
Designee of the Manpower Division Chief.

Not only are additional authorities designated, but also the selection provides that creditable service may be certified by a former supervisor or by an unsworn self-serving statement by the employee himself relative to his own stewardship.

From this implementing order 3410.11A, it is difficult for us to understand how any knowledgeable Air Traffic Control Specialist (Center/Tower) would be denied the benefits provided by Public Law 92-297.

By way of review, this issue with kindred subjects was considered by this Committee in the 96th Congress and reported favorably [House Report 96-726 (Part I)] after exhaustive, in-depth hearings conducted by Chairperson Schroeder, Subcommittee on the Civil Service. (Serial 96-37)

The Bill was subsequently referred to the House Appropriations Committee which reported the Bill adversely (House Report 96-726, Part 2) but with an important recommendation quoted as follows:

"The Committee is cognizant of the potential for detrimental effect on *employee morale* resulting from the exclusion of flight service station specialists from programs such as those authorized by Public Law 92-297. The committee intends, therefore, to recommend a further review of this problem and its impact on aviation safety. The committee believes that this further study is necessary before a decision is made with respect to inclusions of flight service station personnel in this program." (Italics supplied)

On July 24, 1980 - House Appropriations Committee directed further review and report (House Report 96-1193) quoted below:

"Under Public Law 92-297, air traffic controllers can qualify for an early retirement program, but flight service station specialists are not entitled to similar benefits. In part 2 of the report of H.R. 1262, the Committee recommended a further review of this situation. This Committee reiterates this recommendation and directs the FAA, in cooperation with an independent organization, to report on this matter no later than September 30, 1981."

Finally, on November 24, 1981, the Administrator of the Federal Aviation Administration forwarded his report to the House Committee on Appropriations. In his covering letter the Administrator stated:

"Based on the findings and conclusions presented by JWK International, we do not find any evidence which warrants the extension of early retirement benefits to Flight Service Station Specialists."

This was an excellent opportunity for the Administrator to express his own views on the issue since the entire Flight Service System is an important part of his organization. He, however, remained silent and relied completely on the views of an outside entity. We can only infer that the FAA Administrator had no position he considered worthy of consideration by the Appropriations Committee.

Believing the JWK International study to be inadequate, the NAATS leadership commissioned the authoritative personnel firm of Ruttenberg, Friedman, Kilgallon and Associates, Inc., to critique the FAA product, which they found to be faulty. These conclusions were forwarded to the House Appropriations

Committee which, subsequently, on August 19, 1982 (Report 97-783) stated:

"EARLY RETIREMENT - Under Public Law 92-297 air traffic controllers can qualify for an early retirement program, but flight service station specialists are not entitled to similar benefits. In part 2 of House Report 96-726 the Committee recommended a further review of this situation. This study was completed in November, 1981, and an analysis of the study was provided to the Committee earlier this year. Because of the questions raised regarding the validity of the conclusions contained in the study, the Committee is considering requesting a General Accounting Office evaluation of both the study and the subsequent analysis."

The conferees, meeting on the Department of Transportation and related agencies appropriations in 1983, considered this issue to be of such importance that it was addressed in the Conference Report:

"The conferees urge that the study and the analysis relative to eligibility of flight service station specialists for early retirement under Public Law 92-297 be referred to the General Accounting Office for evaluation, analysis and report." (Congressional Record, Volume 128, No. 46, Monday, December 13, 1982, page H 9512)

Eventually, in May 1983, the FAA Administrator, in compliance with the Congressional mandate, forwarded the two studies to the General Accounting Office.

On March 27, 1984, the United States General Accounting Office report B-214320, "Review of Studies on Early Retirement of Flight Service Station Specialists," the GAO concluded:

"Our review showed the JWK's study results are inconclusive. The results do not support FAA's conclusions that FSS specialists should not be afforded early retirement"

And that, Madam Chair and Members of this Subcommittee, is where the matter stands today.

In our view, the recommendations to aircraft pilots by Air Traffic Control Specialists (Station) are just as important and just as vital to aviation safety as the recommendations by Air Traffic Control Specialists (Center, Tower), including such geographical locations as O'Hare, Kennedy, Los Angeles and any other area.

The issue is one of fairness and equality, and our community of Specialists have been second class citizens since the passage of PL 92-297, and they consider themselves as such.

It is axiomatic that all personnel in the same personnel category must be treated equally and fairly if high morale, good order and discipline are to be achieved. This is not the case in the air traffic control community where there exists a caste system of noblemen and serfs.

We believe it to be appropriate to quote the Chairman of the Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation in his hearing record "The Impact of Weather on Aviation Safety". (98-440; pages 425-26)

"We did not begin this inquiry with the thought that it might solve the weather problem, but I believe we did put a handle on some of the things which will help in improving our accommodation of weather into the Nation's air transportation system.

"Initially, we learned some alarming statistics from the Safety Board as to the impact of weather on general aviation, commuter airlines, and the air carrier operations. The percentages quoted for the number of fatal

accidents where weather was considered a factor seem to be far beyond what the safety investigators had expected to find, and certainly they were shocking to us.

"The loss of even one life is difficult to accept, but the 5-year total of 4,000 tells us that a lot of people may be concerned about weather. But not enough people are talking about how to avoid flying into these turbulent cells.

"We heard of the planning activities of some carriers who utilize all the weather information available so as to avoid flying near or into what may be a hazardous situation. But we also heard of some of the difficulties associated with general aviation attempts to obtain weather information from flight service stations.

"It became pretty clear that the message being given by all the witnesses is that suspect weather cells should be avoided just as one aircraft should avoid the path of another aircraft." (Italics added)

And lastly, Madam Chair, we invite your attention to a study which has come to our attention only this month. It is entitled:

"PHYSIOLOGICAL RESPONSES TO UNVARYING (STEADY) AND 2-2-1 SHIFTS: MIAMI INTERNATIONAL FLIGHT SERVICE STATION (FAA-AM-85-2 - dtd February, 1985)

By C. E. Melton

Civil Aeromedical Institute
Federal Aviation Administration
Oklahoma City, Oklahoma "

The Civil Aeromedical Institute is the FAA's own medical research activity and Dr. Melton has been involved in and has conducted many studies related to stress in the Air Traffic Control environment.

Some excerpts from this report are germane to this hearing:

"In 1974 a stress index was formulated in this laboratory based on excretion levels of the stress indicator hormones (SIH's) in urine (KGS, E, and NE). This index facilitated comparison of stress at various ATC facilities (5,7). Basically, the index consists of the product of resting and working values of each SIH mathematically treated so as to provide a unitary common denominator for each SIH. The SIH's are treated in this way so that each will have equal importance in stress assessment; otherwise, the catecholamines' importance would be overwhelmed by the steroids' importance because of the far greater amount of steroid material in urine compared to catecholamines. The individual indices are designated cst (KGS), ce (E) and cne (NE). The average of the three indices is designated Cs, the composite stress index."

(underlining added)

"When stress indices for all ATC facilities studied are listed (Table XIX), MIA IFSS tops the list as the most stressful (Cs=2.60)."

(MIA IFSS means Miami International Flight Service Station.)

Table XIX follows:

TABLE XIX

Comparison of Various ATC Facilities by Means of a Stress Index

<u>Facility</u>	<u>C</u> <u>s</u>	<u>C</u> <u>st</u>	<u>C</u> <u>e</u>	<u>C</u> <u>ne</u>
Miami IFSS ('82)*	2.60	.95	1.03	4.85
O'Hare ATCT ('68)	1.05	1.41	.75	.98
Opa Locka ATCT ('72)	.84	.64	.74	1.15
Atlantic ARTCC ('73)	.82	.76	.34	1.37
Miami ARTCC ('72)	.76	.61	.71	.96
Los Angeles TRACON ('74)	.75	.27	1.10	1.44
Houston ATCT ('70)	.74	1.27	.29	.65
Oakland TRACON ('74)	.72	.23	1.31	.61
Houston ATCT ('71)	.68	.89	.62	.52
Oakland TRACON ('72)	.60	.62	.76	.43
Los Angeles TRACON ('72)	.60	.66	.34	.81
Fort Worth ARTCC ('73)	.34	.22	.58	.20

*NOTE: The C_s for Miami IFSS was subsequently corrected as per the Addendum (pages 29-30) to 1.46.

"It was thought that perhaps the high level of excretion of NE might be a reflection of the age of the subjects. However, the correlation between NE excretion level and age is not statistically significant ($r=0.29$, $p>0.30$). Some of the subjects were on medication for control of blood pressure; however, there was no apparent significant correlation between medication usage and NE excretion. Analytical reruns and audits of laboratory procedures have likewise failed to reveal experimental error as the cause of the high values. Further, urine collection procedures were identical to procedures used in other studies. The same personnel performed these analyses by the same methods as in the previous studies."

(underlining added)

"A diligent search for experimental error has delayed this report beyond the reporting time normally required for studies of this type and the search will continue as long as personnel and facilities are available for this purpose or until the validity of the high values is established.

"The MIA IFSS employees as a group possibly show the highest level of acute workload stress of any ATC facility yet studied."

It is apparent to NAATS that the Miami International Flight Service Station did not fit the mold which we believe was presupposed by the FAA's Civil Aeromedical Institute.

In fairness to Dr. Melton, he did include information as to his checks and double checks of all procedures in the laboratory reruns. In fact, at the end of the report he included an addendum to express his views, not based on fact or research, but based on his belief and conjecture:

"It is now believed that, by human error, samples for creatinine analysis were taken from the nonacidified moiety, resulting in low creatinine values. Because the weight of creatinine forms the denominator of the creatinine-based ratio, calculated SIH's were inordinately high. The fact that all SIH values were high, impelled us to look first at the creatinine analysis, but the samples for the reruns were again taken from the urine previously set aside for creatinine analysis, thus giving

the same result as the first run. It was only when we started from "square one" that we realized what had happened."

(underlining added)

The last sentence in the above paragraph is not understood since throughout the report it is apparent that the CAMI staff and Dr. Melton started from "square one" many times.

Even with his "correction" Dr. Melton states:

"Because the error is a relatively constant one, we do not believe that conclusions regarding differences in the two shift patterns are compromised. The computed level of stress is changed, however, to about half the value reported."

And finally FAA's Dr. Melton states:

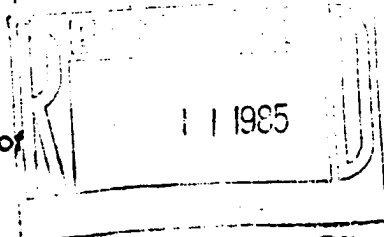
"The Miami International Flight Service Station (MIA IFSS), though, still retains its number one position on the stress index list, surpassing even O'Hare Tower during the high-stress time of the 1968 ATC slowdown (IFSS Cs= 1.46, ORD Cs= 1.05)."

(ORD means O'Hare Tower.)

Thank you Madam Chair.



U.S. Department of
Transportation



News:

Office of the Assistant Secretary for Public Affairs
Washington, D.C. 20590

FOR RELEASE TUESDAY

March 5, 1985

FAA 10-85

Contact: John G. Leyden

Tel.: (202) 426-8521

FAA REPORTS MORE THAN 1,000 FLIGHT ASSISTS IN 1984

In April 1984, a Federal Aviation Administration air traffic controller in St. Louis gave flying instructions by radio to a woman in a private aircraft when her pilot-husband suffered a heart attack. The controller guided her down to a safe landing.

A few months later, Miami controllers, confronted with the same scenario, provided similar assistance and went home that night knowing they had saved a human life. And in November, Kansas City controllers helped two passengers keep their airplane straight and level until the ill pilot recovered consciousness and brought them all down safely.

The FAA calls these incidents flight assists, and during 1984 controllers and flight service station specialists were involved in 1,069 assists, possibly saving the lives of 2,852 people.

Secretary of Transportation Elizabeth Hanford Dole said, "I am very proud of the highly professional work done by the air traffic control specialists who have guided so many pilots in distress to safe landings. They bring credit to the entire air traffic control service."

FAA Administrator Donald D. Engen said that these flight assists happened at a rate of roughly three a day in 1984, and that almost all of them involved private and business aircraft.

More typically, the assistance given to pilots in trouble involves less dramatic situations, although most assists are still critical. Typically, a non-instrument rated pilot is lost, caught on top of clouds and may be running low on fuel. Controllers and flight service station specialists use radar or direction-finding equipment to pinpoint the pilot's position, talk him down through the overcast, and guide him to the closest airport for a safe landing.

The FAA Administrator said, "These flight assists rarely make the newspapers or evening television news, so the outstanding work done by the agency's air traffic control specialists on a day-to-day basis goes largely unnoticed by the general public.

"However," he added, "I believe the aviation community understands and appreciates these efforts, and pilots fly with a lot more assurance knowing that help from the FAA is as close as their radio microphone if they should get in trouble. Both the pilots and controllers know that the FAA is here to serve."

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STATEMENT

BEFORE THE

SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

THE HONORABLE MARY ROSE OAKAR

CHAIRPERSON

COMMITTEE

ON

POST OFFICE AND CIVIL SERVICE

UNITED STATES HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

ON

BENEFITS FOR AIR TRAFFIC CONTROL SPECIALISTS (STATION)

EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION

DEPARTMENT OF TRANSPORTATION

BY

EDWARD J. MALO

AVIATION CONSULTANT

June 27, 1985

Madam Chairperson and Members of this Subcommittee, I am pleased to be allowed to present my statement.

My name is Edward J. Malo and I reside in Burke, Virginia. For most of my adult life, I have been closely associated with aviation and served as a pilot in World War II. For some 29 of my 34 years of federal service, I was employed by the Federal Aviation Administration and its predecessor organization. My experience as a controller in all three options of air traffic control: namely tower, flight service station and air route traffic control center, has given me a good insight into the stresses of tower, station and center controllers.

After retiring from the FAA, the Aircraft Owners and Pilots Association employed me as the Director of the Air Traffic Control Department. One of my primary duties was to assist our members in their day-to-day dealings with flight service stations and the dedicated men and women who work in those facilities.

First of all, let me state that I completely agree with the statements and recommendations made by Mr. Henry. The specialists who are working in flight service stations deserve the same treatment as other controllers working in towers and centers. The job requirements of station personnel are just as stressful as those for other types of ATC facilities. Let me cite a few for your information.

In centers and towers, controllers can generally consult with other personnel to decide the best course of action to take as there is always additional personnel available. Just the opposite is true in flight service stations where, because of inadequate staffing and the work environment, station employees almost always make

judgments which affect safety of flight operations without consulting with other knowledgeable controllers.

The flight service stations generally deal with pilots who have less experience than pilots who are in contact with tower and center personnel. Therefore, they must exercise care and judgment in providing information to these pilots. Controllers in stations must ask themselves ---- Is this pilot fully knowledgeable about flying or is he just reluctant to ask for further details about his flight? Many such questions arise in the minds of station personnel. ---- Will the pilot be insulted if too many details are given about his flight?

Some pilots, unfortunately, are unwilling to admit that they have made a mistake and are most reluctant to ask for assistance. This is when the flight service station controller must determine the type of action to take. All of us in aviation have, at one time or another, heard a pilot call a flight service station and ask for a practice "DF" (direction finding) steer to an airport. This type of situation requires judgment on the part of the controller. Is the pilot just asking for practice OR is he truly lost and requires emergency assistance? Interestingly enough, statistics indicate that station personnel, on a percentage basis of assigned controllers, provide more flight assists annually than controllers in towers or centers.

It may seem that I am placing too much emphasis on the judgmental requirements of flight service station controllers. However, a review of the FAA instructions on providing flight services -- the so-called "station bible" -- shows a different story. Just broad general

guidelines are provided in this handbook. Personnel are told to exercise "their best judgment" in dealing with pilots. Such phrases as "brief by translating, interpreting and summarizing available data for the intended flight"; "emphasize conditions that are particularly significant such as low level wind shear, embedded thunderstorms, reported icing and airport closures"; and "VFR flight not recommended" can be found throughout this handbook.

Some people believe that the only duties of station controllers involve briefing general aviation pilots on weather conditions and filing a flight plan. It is true that these are their primary duties. However, these are just routine assignments. Other tasks of a non-routine nature are equally or more important and require a great amount of judgment. For instance, station personnel are involved in:

- Emergency DF procedures and instrument approaches -
- Aircraft making emergency landings with explosive cargoes aboard -
- Aircraft bomb threats -
- Law enforcement activities -
- Lost or stolen airplanes -
- Military flight exercises and training operations - and
- Handling and forwarding messages concerning special air missions, including presidential flights.

Over the years that I've been involved in aviation. I have, as a controller, manager, user of the ATC system and representative of a general aviation association, seen the dedication of controllers working in flight service stations. This is not to say that controllers in towers and centers are not also dedicated and provide

an excellent service to those who fly or are dependent on aviation. Unfortunately, flight service stations are not glamorous. When resources are allocated to the ATC system, the flight service stations are the first to be cut. Equipment is outmoded. In fact, I wouldn't be surprised to see some of the teletypewriter equipment that I used to operate still in service today. There always appears to be a shortage of qualified controllers in the flight service option. Nevertheless, these dedicated people, under very trying circumstances, continue to perform their duties in an outstanding manner.

Many of us in aviation are convinced that, after the unfortunate job action of tower and center controllers in August 1981, station controllers, by remaining on the job, were greatly responsible for restoring the air transportation system in the United States to normal operation.

Over the past twenty or thirty years, the FAA has conducted numerous studies on the job stresses of tower and center controllers. May I suggest that flight service station controllers experience similar or greater stresses and frustrations.

There is an old saying among airline captains that 95% of their flying job consists of sheer boredom and 5% of sheer terror. I might paraphrase that and say that 95% of the time controllers in flight service stations are extremely overworked and 5% of the time they are experiencing sheer terror.

I wish to thank this Subcommittee for allowing me to express my views on air traffic control and flight service station controllers. I hope that you will see fit to grant station personnel the same job benefits afforded tower and center controllers.



STATEMENT OF

**ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION**

TO THE

**SUBCOMMITTEE ON COMPENSATION
AND EMPLOYEE BENEFITS
HON. MARY ROSE OAKAR, CHAIR**

HOUSE POST OFFICE AND CIVIL SERVICE COMMITTEE

**H.R. 1518, INCLUDE U.S. CUSTOMS
SERVICE INSPECTORS IN "6(c)"
RETIREMENT**

**U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.**

JUNE 27, 1985

Madame Chair, Members of the Subcommittee, I am Paul W. Newton, Director of Legislation of the National Treasury Employees Union. NTEU is the exclusive representative of over 120,000 Federal workers, including all employees of the U.S. Customs Service worldwide.

We appreciate this opportunity to testify on H.R. 1518, a bill to amend title 5, United States Code, to include Inspectors of the U.S. Customs Service and the Immigration and Naturalization Service within the Federal law enforcement officers and firefighters retirement provisions with entitlement to retire at age 50 with 20 years of service.

Our union -- especially the over 4,000 Customs Inspectors we represent -- commends the Chair of the Subcommittee for once again facing the issue of the lack of fairness and equity by excluding the inspector from the early retirement provisions of the law. We also want to thank Rep. Al Swift (D-WA) and the co-sponsors of the bill for their diligent efforts to obtain enactment of this legislation.

We have long taken strong issue with the Office of Personnel Management's narrow and strict interpretation of the definition of "law enforcement officer." OPM testified at your hearing last year that the definition is limited to those positions the duties of which are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws

of the United States. On this basis, OPM has consistently turned down agency requests for coverage of Inspectors saying that ". . . most of their work involves routine inspections . . . Routine inspection of travelers, baggage, and cargo is not a qualifying duty for coverage under this program." It is hardly routine when the inspection involves being always alert to persons or companies known or suspected of being Customs violators, or there is an outstanding warrant for persons wanted by Federal, State and local law enforcement agencies. It is hardly routine that it is the Inspector who makes the initial apprehension and detention and is required to arrest these fugitives, a group which includes persons charged with crimes ranging from robbery, rape and murder to those behind in their child support payments.

The enforcement nature of the Inspector's role cannot be questioned. Overall, the Customs Service enforces over 400 statutes and regulations for 40 different Federal agencies. Included among these are a number of statutes that require the Inspector to be able to recognize and, if necessary, detain individuals suspected of illegal criminal activity, including drug trafficking and violent crimes. Inspectors currently must complete a nine-week training program at the outset of their employment which stresses law enforcement aspects such as firearms operation, detention and arrest techniques, and search and seizure procedures.

In fact, the interrogation and apprehension of known and suspected criminals results in over 7000 arrests by Customs Inspectors every year. Many of these are based on data from the Federal Bureau of Investigation's National Crime

Information Center (NCIC). The FBI has noted that Customs Inspectors have been responsible for nearly seven percent of all NCIC arrests; more than any other single law enforcement agency in the country. It should be no surprise, then, that approximately 75 percent of Customs Inspectors carry firearms either by requirement or by choice in order to protect themselves against the types of individuals they may encounter in the course of their jobs. Indeed, this past year, the Customs Service established a new requirement that Inspectors must qualify in the use of firearms before they can perform inspectional duties.

In recent years, Customs Inspectors served on Special Enforcement Teams which were responsible for 19 percent of all heroin seizures by the agency, 49 percent of the cocaine seizures, and 37 percent of the hashish seizures. Inspectors have also participated in Operation Exodus which monitors illegal exportation of high technology. Activities such as these have taken the Inspector far beyond traditional duties into the areas of investigation, surveillance, and confrontation with dangerous criminals.

For example, the NCIC data basis is interfaced with the Treasury Enforcement Communications System (TECS), which provides Inspectors with jobsite information. The two systems contain data on approximately 175,000 persons who are wanted and/or considered dangerous, and 970,000 vehicles which have been stolen or used in the commission of felonies. As a result, there are at least 1,125,000 potentially dangerous situations that Inspectors could confront at our nation's land crossings, airports, and

seaports. Since 1900, 54 Inspectors have been killed in the line of duty and over 100 cases of assault have occurred since 1974.

Clearly, as the law enforcement responsibilities of the Inspector position--already a basic part of the duties--increase, so too do the possibilities of injury or even death. It is not merely the enforcement aspect of the Inspector's job that contains danger, but also the adverse environmental and physically strenuous conditions which these employees face on a daily basis.

The mere recitation of law enforcement statistics does not fully convey the accompanying mental and physical strain that such acts place on the Inspector. Though the TECS system enables an Inspector to identify many potentially dangerous suspects, not everyone who is armed and dangerous is entered into the system. The potential for being caught unaware is ever present for Inspectors. From the time a criminal suspect is identified, either by his own action or through TECS, to the time of apprehension, the Inspector is in potential danger. The mental stress of facing a violent confrontation combined with the physical strain of subduing, disarming or chasing a suspect can exact a severe toll on the Inspector.

In addition, the process of inspecting aircraft, vessels, automobiles and railcars requires bending, lifting or moving heavy containers, kneeling or stooping for prolonged periods and even crawling into cramped cargo holds. Inspectors are sometimes required to disembark from large ships onto smaller craft in all types of weather conditions, or stand for hours

at land border crossings in an awkward position breathing exhaust fumes. All of these strenuous conditions require the stamina and endurance of a relatively young and fit workforce.

Another factor adding to the danger and stress of the Inspector's job is the isolation in which many of these Customs employees must work. Wherever in the United States international passengers and cargo arrive, a Customs Inspector must be stationed there or travel to that location, no matter how remote. In many cases, the Inspector is the only law officer on the scene, with the closest backup miles away. Airports, land crossings and seaports are all some of the isolated areas where the Inspector must work.

The U.S. Customs Service has noted that even normally busy terminals such as John F. Kennedy International Airport in New York City can at certain times be aptly called isolated duty stations in that only one Inspector is assigned to clear small aircraft after midnight.

A Customs Service report states that: "In virtually all locations along the borders, the airport is generally located several miles outside of town, and the airport offices are closed at night. The Customs Inspector reports alone to a deserted, often poorly lighted airfield, generally with no advance knowledge of the kind of people he will be meeting. With air smuggling on the increase, the likelihood of encountering a violation, or evidence of the aircraft having been used to smuggle, is considerable. The Inspector who makes such a discovery has no immediate support, and may be

considerably outnumbered. Even if he can get to the telephone or radio to call for help, it may be an hour before another law enforcement officer can reach him. This is almost equivalent to no help at all, since it can be assumed that the violator(s) will not wait quietly for that period of time. The Inspector must handle the situation himself, alone."

The words used in that statement could accurately describe any number of ports of entry along our nation's border. The vulnerability these men and women feel is underscored by the fact that smugglers and fugitives often seek out such ports in the hopes of escaping detection. Working alone in such potentially dangerous circumstances only enhances both the danger and the stress of the Inspector's job.

In addition, many Customs Inspectors commonly work rotating shifts which require them to alternate between work days of 8:00 a.m. to 4:00 p.m., 4:00 p.m. to 12:00 midnight, and 12:00 midnight to 8:00 a.m. This policy of rotating shifts every two weeks adds yet another physical and mental burden to the inspectional workforce.

In a study for the U.S. Department of Health and Human Services, Dr. Donald L. Tosto found that rotational shifts had numerous deleterious effects on employees who worked them. The results of the study showed that shift workers tend to report more physical complaints, more problems with sleep, more fatigue, and greater personal and domestic problems than other workers. These findings provide further evidence of the physical and psychological strains faced by

Inspectors which necessitate the maintenance of a capable, vigorous workforce.

We have described many of the factors which make the Customs Inspector's job hazardous, yet incredibly the concept of hazard is not a factor in determining whether a "law enforcement officer" should be entitled to early retirement. OPM in their testimony last year stated ". . . we might need to consider . . . reintroducing the concept of hazard into the definition. That was previously in the law and taken out in 1974." If that be the case, then Section 8331(20) of Title 5, United States Code which defines law enforcement officer ought to be amended to include the concept of hazard in who would be eligible for early retirement. We would strongly endorse such an amendment as it would allow for the consideration of other occupation groups which should be covered but for the existing narrow interpretation of the definition and the lack of the concept of hazard in determining eligibility.

We believe that Revenue Officers in the Internal Revenue Service more than meet the criteria of a law enforcement officer engaged in a hazardous occupation, kidnaping, murder and assaults are an ever present danger to the Revenue Officer. They are exposed to an ever increasing number of life-threatening situations in the course of their normal duties. Assaults against IRS employees increased from 531 in 1983 to 789 in 1984--a 50 percent increase. In addition to these incidents, there are several well-financed groups around the country who advocate organized violence against IRS employees.

Excluding the Revenue Officers and the Inspectors of the Customs Service and INS is not only unfair to this group of employees but prevents the government as the employer from maintaining a young and vigorous workforce in these areas of law enforcement.

In summary Madame Chair, we strongly endorse H.R. 1518 and urge early favorable committee action.

In addition, we urge the Subcommittee to consider an amendment to 5 U.S.C. 8331(20) that would clarify the definition and criteria of a law enforcement officer so that similarly situated occupation groups are treated fairly and equitably. I would be happy to answer any questions you may have.

PN/prw/0152L

**NATIONAL
FEDERATION
OF FEDERAL
EMPLOYEES**

NFFE

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20006
(202) 862-4400**

SERVING FEDERAL EMPLOYEES AND THE NATION SINCE 1917

STATEMENT BY

THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

BEFORE

THE SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

ON

H.R. 1131

**MODIFICATION OF THE METHOD FOR RETIREMENT CREDIT
BASED ON CERTAIN MILITARY SERVICE**

June 27, 1985

Madam Chairwoman and Subcommittee Members:

I appreciate the opportunity to appear today in support of H.R. 1131, a bill to modify the method by which Federal employees receive credit under the Civil Service Retirement System based on military service. Because many of the employees we represent are also veterans, this issue is extremely important to our membership. We therefore commend both you and Congressman Oberstar for your efforts to treat these veterans in a more equitable manner. We look forward to working with you toward the enactment of this legislation.

Until September 1982, Public Law 84-881 contained a provision--commonly referred to as Catch-62--which reduced annuities for civil service retirees who became eligible for social security at age 62, if those annuities were based in part on years spent in the military after 1956. The provision targeted Civil Service and Postal Service retirees who received military service credit toward their civil service annuity. However, when their social security benefits were based in any part on their military service, these retirees were forced to delete the post 1956 military service credit from their federal annuity. This has resulted in substantial losses for many veterans.

In the meantime, civil service retirees with no military service after 1956 did not suffer annuity reductions at age 62 if they were entitled to social security. Unlike the all-military careerist or the all-civil service careerist, the Catch-62 victim

-2-

was denied retirement income after age 62 based on all his government service just because he transferred from military to civil service.

This penalty was enacted in 1956 at the urging of the former Civil Service Commission. The Commission took the position that military service credit for both social security and civil service retirement constituted a "double credit". Thus, it was in violation of statutory prohibition against crediting service to two retirement systems at one time.

After extensive lobbying by the National Federation of Federal Employees and other organizations, Congress rejected this argument acknowledging that the Social Security System is not a retirement system and was never so intended. Rather, it was designed as a system to provide supplemental income to elderly people, who are expected to have additional income from other means. So, to correct the Catch-62 inequity, Congress modified the law to allow current and future civilian retirees to avoid the annuity reduction at age 62. The Omnibus Budget Reconciliation Act of 1982 gave retirees the opportunity to pay back to the government an amount equal to seven percent of the basic pay they earned while on military active duty after 1956. In return, retirees would be permanently credited with this military service.

While this provision was a major victory for veterans who retired from the civil service, it overlooked one detail: civil service

-3-

employees were required to contribute only six and one-half percent of their pay to the retirement system until 1970. Therefore, it makes little sense to require retirees seeking to avoid the Catch-62 penalty to deposit seven percent of their basic pay for this period. H.R. 1131 addresses the inequity by requiring these retirees to pay back only the actual post 1956 employee retirement contribution. For example, under H.R. 1131, a civil service retiree with five years of military service from 1957-1962 would only be required to contribute six and one-half percent of his basic pay in order to avoid the annuity reduction, because during that time civil servants were only required to make a six and one-half percent contribution to the retirement system. This modification is only fair.

NFFE believes that H.R. 1131 provides further protection to a segment of the federal workforce whose needs for equal retirement annuities have long been ignored. This bill's adjustment of the Act is warranted and necessary.

Once again, the NFFE commend both you and Congressman Oberstar for your efforts on behalf of veterans and Federal employees.

That concludes my statement. I will be happy to answer any questions.



**THE
RETIRED
OFFICERS
ASSOCIATION**

201 N. Washington St., Alexandria, VA 22314-2529 • (703) 549-2311

Statement of

THE RETIRED OFFICERS ASSOCIATION

before the

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE ON

COMPENSATION AND EMPLOYEE BENEFITS

Presented by

COMMANDER JOHN F. WANAMAKER
United States Navy, Retired

Deputy Director, Legislative Affairs

June 27, 1985

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM COMMANDER JOHN WANAMAKER, DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS OF THE RETIRED OFFICERS ASSOCIATION, (TROA) WHICH HAS ITS NATIONAL HEADQUARTERS AT 201 NORTH WASHINGTON STREET, ALEXANDRIA, VIRGINIA. OUR ASSOCIATION HAS A MEMBERSHIP OF OVER 343,000 RETIRED, FORMER AND ACTIVE DUTY OFFICERS OF THE SEVEN UNIFORMED SERVICES. INCLUDED IN OUR MEMBERSHIP ARE 42,871 WIDOWS OF FORMER MEMBERS.

I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO PRESENT THE VIEWS OF THE MEMBERS OF OUR ASSOCIATION ON THE MERITS OF THE BILL (H.R. 1131). THIS BILL WOULD ESTABLISH IDENTICAL CONTRIBUTIONS INTO THE CIVIL SERVICE RETIREMENT FUND BETWEEN CIVILIAN EMPLOYEES AND FORMER MEMBERS OF THE ARMED FORCES WHO WISH TO RECEIVE CIVIL SERVICE RETIREMENT CREDIT FOR MILITARY SERVICE FROM 1 JANUARY 1957 THROUGH 1969. THE DEFICIT REDUCTION ACT OF 1984 (P.L. 98-369) EXTENDS THE EFFECTIVE DATE TO 1 OCTOBER 1985 WHEN THE DEPOSITS ARE TO BE MADE INTO THE CIVIL SERVICE RETIREMENT FUND WITHOUT INCURRING INTEREST PENALTIES.

BY THE ENACTMENT OF P.L. 97-253 (BUDGET RECONCILIATION ACT) FORMER MILITARY MEMBERS OF THE UNIFORMED SERVICES ARE REQUIRED TO DEPOSIT INTO THE CIVIL SERVICE RETIREMENT FUND AN AMOUNT EQUAL TO 7 PERCENT OF THEIR BASIC PAY FOR YEARS OF MILITARY SERVICE AFTER 1956 IN ORDER TO RECEIVE CREDIT FOR THOSE YEARS TOWARDS CIVIL SERVICE RETIREMENT. THE CONTRIBUTION RATE FOR THE YEARS 1957 THROUGH 1969 FOR FEDERAL CIVILIAN EMPLOYEES WAS ONLY 6.5 PERCENT. FORMER SERVICE MEMBERS WILL, IN EFFECT, BE PAYING ONE-HALF OF ONE PERCENT MORE THAN THEIR

CIVILIAN COUNTERPARTS FOR THAT SAME PERIOD. COMPOUNDING THIS INEQUITY IS THE CURRENT SITUATION WHEREBY NEW CIVIL SERVICE EMPLOYEES HIRED AFTER DECEMBER 1983 CONTRIBUTE ONLY 1.3 PERCENT INTO THE CIVIL SERVICE RETIREMENT FUND FOR SERVICE AFTER THAT DATE. THE BILL (H.R. 1131) WOULD MAKE THE PERCENTAGE AMOUNT OF CONTRIBUTIONS EQUAL FOR FORMER MILITARY PERSONNEL AND CIVIL SERVICE EMPLOYEES FOR SIMILAR PERIODS OF TIME. IN SUMMARY, MR. CHAIRMAN, H.R.1131 WILL CORRECT A SERIOUS DEFICIENCY IN CURRENT LAW AND WE STRONGLY SUPPORT THE MEASURE.

REPEAL OF DUAL COMPENSATION ACT

THE HEARING TODAY PRESENTS AN EXCELLENT OPPORTUNITY TO CORRECT ANOTHER INEQUITY IN CURRENT LAW. THERE EXISTS ANOTHER GROUP WHO NOT ONLY MUST CONTRIBUTE THE 7 PERCENT FOR YEARS OF SERVICE AFTER 1956, BUT IN ADDITION, MUST FORFEIT A LARGE PORTION OF THEIR MILITARY RETIRED PAY AS A PRECONDITION TO ACCEPT CIVIL SERVICE EMPLOYMENT. THAT GROUP CONSISTS ENTIRELY OF REGULAR RETIRED OFFICERS WHO ARE SUBJECT TO THE DUAL COMPENSATION ACT OF 1964 (AS AMENDED).

THE FOLLOWING STATEMENT WAS TAKEN FROM THE LEGISLATIVE HISTORY REPORT ACCOMPANYING THE DUAL COMPENSATION ACT IN 1964:

"ALTHOUGH GOVERNMENT EMPLOYMENT NEEDS GROW IN THE SPECIALIZED FIELDS MORE WITH EACH PASSING YEAR, TO PROHIBIT A LARGE NUMBER OF RETIRED REGULAR OFFICERS FROM SERVING THEIR COUNTRY IN A CIVILIAN CAPACITY AS THEY HAVE SERVED IT IN A MILITARY CAREER SEEMS NOT ONLY UNJUSTIFIED, AND A SINGULAR DISCRIMINATION, BUT

A WASTE OF MANPOWER AND SKILL THAT CAN NO LONGER
BE AFFORDED."

THE ABOVE STATEMENT NOT WITHSTANDING, THE CONGRESS PASSED THE DUAL COMPENSATION ACT OF 1964 TO LIMIT THE INCOME OF RETIRED REGULAR OFFICERS WHO ELECTED TO ACCEPT A POSITION IN THE FEDERAL CIVIL SERVICE. THEY THEN WERE REQUIRED TO FORFEIT ONE-HALF OF THEIR MILITARY RETIRED PAY OVER A BASE AMOUNT WHICH HAS GROWN FROM \$2000 IN 1964 TO APPROXIMATELY \$7,000 TODAY (\$6972.38 UNDER AGE 62; \$7012.87 OVER AGE 62.) THE CIVIL SERVICE REFORM ACT OF 1978 PLACED ANOTHER RESTRICTION. IT REDUCED THE RETIRED PAY OF ALL FORMER MEMBERS OF THE UNIFORMED SERVICES WHO RETIRED AFTER JANUARY 11, 1979, BY THE AMOUNT THEIR COMBINED SALARY AND RETIRED PAY EXCEEDED THE SALARY FOR LEVEL V OF THE EXECUTIVE SERVICE. (CURRENTLY \$67,800.) THIS CAP LIMITATION APPLIES TO ALL MILITARY RETIREES, OFFICER, ENLISTED, REGULAR AND RESERVE. NOW, ADDED TO THE SIGNIFICANT FINANCIAL PENALTY ALREADY IMPOSED, MILITARY RETIREES MUST ALSO CONTRIBUTE 7 PERCENT OF THEIR BASIC PAY FOR MILITARY SERVICE AFTER 1956 IN ACCORDANCE WITH P.L. 97-253. CURRENT LAW FURTHER REQUIRES THE RETIREE TO COMPLETELY FORFEIT ALL MILITARY RETIRED PAY IF HE SHOULD ELECT A COMBINED ANNUITY.

THESE COMBINED RESTRICTIONS IN EFFECT PREVENT MOST REGULAR OFFICERS FROM CONSIDERING ANY FORM OF FEDERAL EMPLOYMENT FOLLOWING RETIREMENT FROM MILITARY SERVICE. THE FEDERAL GOVERNMENT SUFFERS AS A RESULT. THE CONCERNS THE CONGRESS EXPRESSED IN 1964 IN THE BEFORE MENTIONED REPORT HAVE PROVEN TO BE ACCURATE. MANY WHO HAVE ACQUIRED

EXCEPTIONAL SKILLS AND TRAINING, OFTEN AT CONSIDERABLE GOVERNMENT EXPENSE, AS DOCTORS, LAWYERS, MANAGEMENT EXPERTS, OR NUCLEAR ENGINEERS ETC. WOULD OTHERWISE BE WILLING TO PROVIDE ADDITIONAL SERVICE TO THEIR NATION IN A CIVILIAN CAPACITY IF SUCH RESTRICTIONS WERE ELIMINATED. IN LIGHT OF THE LEVEL V RESTRICTION, THE DUAL COMPENSATION ACT SINGLES OUT REGULAR OFFICERS FOR THE KIND OF SINGULAR DISCRIMINATION THAT THE 1964 ACT ASSERTED WOULD WASTE MANPOWER SKILLS. THEREFORE, WE STRONGLY RECOMMEND THAT THE 1964 DUAL COMPENSATION ACT BE REPEALED. IT WILL MOTIVATE EXCEPTIONAL PEOPLE TO SEEK SECOND CAREERS IN THE FEDERAL GOVERNMENT BUT WILL AVOID PAY INVERSION.

SHOULD THE COMMITTEE DECIDE TO RETAIN THE DUAL COMPENSATION OFFSET, WE STRONGLY RECOMMEND THAT THE REDUCTION IN RETIRED PAY AS REQUIRED BY THAT ACT BE PLACED INTO THE CIVIL SERVICE RETIREMENT FUND TO SATISFY THE CONTRIBUTION REQUIREMENTS OF P.L. 97-253 (SECTIONS 306 AND 307). WE FURTHER RECOMMEND THAT THE FULL AMOUNT OF MILITARY RETIRED PAY BE RESTORED, SUBJECT TO THE COMBINED EARNINGS LIMITATION AFTER THE CONTRIBUTION AMOUNT HAS BEEN SATISFIED.

WE STRONGLY SUPPORT H.R. 1131, BUT URGE THE COMMITTEE TO FAVORABLY CONSIDER THESE RECOMMENDATIONS IN ITS DELIBERATIONS.

I WANT TO THANK THE COMMITTEE FOR PROVIDING ME THIS OPPORTUNITY TO PROVIDE TESTIMONY ON THE LEGISLATION UNDER CONSIDERATION (H.R. 1131) AND WILL ATTEMPT TO ANSWER ANY QUESTIONS THAT THE MEMBERS MAY HAVE.



NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL

OF THE

American Federation of Government Employees

Affiliated with AFL-CIO

In Reply Please Refer To:

STATEMENT OF

CHARLES J. MURPHY

PRESIDENT

NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

ON

H.R. 1518

JUNE 27, 1985

TO DO FOR ALL THAT WHICH NONE CAN DO FOR ONESELF

Madam Chairwoman and Members of the Subcommittee, I am pleased to appear here to testify on behalf of H.R. 1518, a bill to amend Title 5, United States Code, to include Inspectors of the Immigration and Naturalization Service (I&NS) and Inspectors of the United States Customs Service within the immediate retirement provisions applicable to certain employees engaged in hazardous occupations.

As President of the National Immigration and Naturalization Service Council, of the American Federation of Government Employees, which represents all non supervisory I&NS employees except those assigned to Border Patrol Sectors, I would like to express our deep appreciation to the Chair for her untiring efforts on behalf of all Federal workers and in particular our appreciation for these hearings on H.R. 1518, which will extend long overdue hazardous duty retirement coverage to the Immigration Inspectors we represent. I would also like to extend our thanks to Representative Al Swift, and his colleagues, for their sponsorship of this legislation.

Briefly, H.R. 1518 expands the provisions of 8336(c), Title 5, U.S. Code to cover Immigration and Customs Inspectors. The Hazardous Duty Retirement provisions of the statute provide that officers working under hazardous conditions may retire at age 50 with twenty years of service. The law guarantees that these employees will receive 50% of average salary plus 2% for each year of creditable government service over twenty years. The annuity is intended to make retirement at this age economically feasible. Covered employees contribute 7.5% of salary; exclusive of certain types of overtime compensation, as opposed to the 7% which is contributed by most employees. The law also provides for mandatory retirement at age 55 for employees with twenty years of hazardous duty service.

As the Subcommittee knows, Congress enacted Public Law 93-350, providing for such Hazardous Duty Retirement, not primarily to reward those Federal employees who are exposed to hardship and danger on the job, though some might argue that such a reward would only be appropriate as compensation for the risks these employees take. Rather, these provisions were intended primarily as a personnel tool through which the government would maintain a younger and more vigorous workforce by making it possible for such law enforcement personnel to retire at an earlier age.

Given this focus, the basic question regarding H.R. 1518 is whether the duties of Immigration and Customs Inspectors should mandate their coverage under this personnel policy. In our view the answer to this question is a resounding yes.

The American public is entitled to a young and vigorous workforce to protect our borders and to ensure the energetic and effective enforcement of our laws. As immigration issues have moved to the forefront of the nation's public policy agenda, it has become clear that it is important that we have Immigration and Customs Inspectors who have the mental and physical strength and stamina to fully meet the strenuous requirements of their jobs. Inclusion of these Inspectors under this established personnel policy will allow the needed recruitment of young and able workers to perform this crucial and increasingly dangerous task. The jobs of our Immigration and Customs Inspectors are as difficult and as hazardous as those of our other enforcement personnel.

The exclusion of these positions from hazardous duty coverage creates a situation that is not only unjust but one which is unwise as well. It works to encourage some of our best and most qualified inspectors to seek positions in other branches of the Services which are covered under the statute. The effect is to deny this Branch of the Service the ability, which other Branches have, to attract and hold for their entire careers the best and most effective officers.

Further, while there is often movement among the Service's other occupational groups little such movement occurs into the Inspections Branch. This is not to say that those in the job are less vigorous, less dedicated, or less effective than the Service's other officers but it is to say that the cream of the crop of the Inspections Branch move up and out of the line inspections corps and into other covered positions. This damages the Service's overall enforcement effort. Extending 6(c) coverage will increase the willingness of other Service personnel to accept positions in this area.

I, for example, am a Special Agent, assigned to our Anti-Smuggling Unit, and am covered under the present 6(c) provisions. I would never voluntarily accept an offer of employment in the Inspections Branch, and neither would many of my colleagues. What prudent officer would accept a job with hazards equal to those in other occupational areas when the other jobs are covered under 6(c) retirement and the Inspector's job is not? The answer is few if any.

Given the importance of the nature of the Inspector's duties in this Subcommittee's deliberations I would like to briefly outline their jobs.

The I&NS and Customs share the inspections responsibilities at each port of entry. It is the practice in many cities that these Officers be cross designated to perform the other's functions, so that these officers have dual enforcement responsibilities and in fact these officers perform the mission of other federal agencies as well. Each Inspector is an expert in his or her own agency's mission. In recognition of this fact each agency maintains Secondary Inspectional Facilities to conduct in depth inquiries into violations of their particular statutes. Our Inspectors are trained to enforce the Immigration Laws and to look to the admissibility of any individual seeking to enter the United States and to prevent the illegal entry, or smuggling, of those not eligible to enter under color of law. These officers inspect each individual seeking to enter, they conduct interviews in depth in Secondary Inspections. They make arrests, detain aliens and citizens for prosecution or administrative proceedings. They take part in every stage of such proceedings from presentation of cases to United States Attorneys for prosecution, to grand jury proceedings and criminal trials. They are in every respect law enforcement officers.

Immigration and Customs Inspectors rely upon their judgement, personal observations, questioning techniques, and increasingly sophisticated data bases to perform their duties. In many areas the Inspector receives on the spot assistance in identifying fugitives and other criminals by use of the two Services' data bases but in every case the officer is required to utilize his or her investigative skill to determine if an arrest, seizure, or further investigative activity are necessary. They are constantly in a position which can demand that they arrest wanted felons, smugglers, terrorists, or aliens seeking to enter the United States illegally. These individuals may fall under the purview of State or Federal or Foreign Law.

The nature of the Inspector's job is such that she or he must act on the basis of their intuitive and investigative skill in situations where only those skills and their judgment lie in the way of ready entry of criminals or undesirable aliens into the United States. Many land border ports are staffed by a single Inspector. These officers are often required to work alone for long hours. Not all of these Inspectors work at Airports, or major Seaports, many work on board ship miles far from other officers or any law enforcement backup. Many of these Inspectors are required to be armed for their own safety, and in many states these officers are designated state peace officers by legislation.

The fact of the matter is that the Immigration Inspector's job is much like that of the Border Patrol Agent or Special Agent. Like their colleagues Inspectors must distinguish between those eligible to be in or to enter the United States and those ineligible for admission. Their job varies in that they work in a fixed location but it is similar in terms of the danger inherent in the individual confrontation with each person they encounter. One significant difference between these officers is in the numbers of people each will have to deal with in the normal course of a business day. While Special Agents or Border Patrol Agents might deal with dozens, or perhaps hundreds of people daily, Inspectors, of both Services, deal with hundreds, and on busy days, thousands of people. The personal health hazard of dealing with such large numbers of people alone is significant yet we must also take into account the knowledge that an Inspector could be shot or killed or kidnapped at work or while off duty, all of which have occurred during the last year.

The distinction seems to be that Inspectors must detect the malafide document, impersonator, smuggler, felon, or contraband goods from a fixed position on an immediate basis, rather than after an investigation of greater length. Yet the hazard is the same. In fact the hazard is growing, in certain areas Inspectors now work undercover in and around the Ports of Entry to identify and apprehend smugglers. Inspectors perform most of the functions of their colleagues without the freedom that characterizes the positions of their brother and sister officers. Inspectors must act quickly, without the benefit of planning, or backup, to affect the arrests or seizures which their colleagues can plan and control. In a sense it is from this requirement for on the spot action that the hazard arises. For the public to be assured that it has the vigorous and effective career minded officer on the spot to do the job it is only appropriate that these positions be covered under the early retirement provisions of Section 8336(c).

While some would suggest that it is the nature and length of the "investigation" that determines law enforcement status we would suggest that the hazard arises out of the actual confrontation both Inspectors and Agents of every type must face. The hazard arises not out of the time consumed in determining or recognizing illegal activity but out of the moment of truth, and the likelihood of legal action, that occurs with an arrest. An appropriate analogy could be drawn to the police officer who walks a beat and the detective who investigates "more sophisticated" crime. Neither faces reduced hazards though one might know beforehand, in a greater number of cases, when he might have to make an arrest, based on the ability to conduct that later and longer inquiry away from the scene.

A few examples would be appropriate at this time and perhaps the best example is that of our largest Port of Entry, San Ysidro, California where an average of fifteen felony arrests are made each day. More stolen vehicles are seized at this port annually than in the entire state of California. At San Ysidro, California this past weekend alone three Immigration Inspectors were injured while attempting to prevent the entry of ineligible aliens. One female inspector was assaulted by a female alien who attempted to pass through the vehicular inspections lines on foot. Another Inspector was bit by a female alien who attempted to flee during inspection. A third officer had his wrist broken when he attempted to arrest an alien who had made a false claim to United States citizenship. During the past month our Immigration Inspectors, at San Ysidro and Otay Mesa interdicted some 200 different smuggling attempts and seized some 125 vehicles.

In each case where our Inspectors make a criminal arrest, or apprehend a smuggler, they perform the same function as our Special Agents. Their function and their responsibilities are the same as those of our other officers and in fact where officers have not carried out that responsibility as effectively as expected the Service has attempted to impose discipline.

Given the nature of the duties of Immigration and Customs Inspectors, we fail to see the rationale for excluding these positions from Hazardous Duty Retirement coverage. Both the I&NS and the Customs Service have long recognized the realities of this situation but apparently the career managers of the Services are prevented from giving expression to this realization. Hopefully the Congress will.

Given the overwhelming need for Hazardous Duty Retirement Coverage for Immigration and Customs Inspectors the I&NS Council wholeheartedly urges the adoption of H.R. 1518. We urge the Subcommittee to ensure the passage of H.R. 1518 to assist us in improving the effectiveness of the Immigration and Naturalization Service and Customs Services and to provide thereby for the recognition of the increasing hazards faced by these officers.

I would again express my thanks to the Chair and the members of this Subcommittee for their patience here today and, again, to Representative Swift and his colleagues for their sponsorship of this legislation. I would be happy to answer any questions you might have.