

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

Public Meeting

December 15, 1999

Ronald Reagan State Office Building
300 S. Spring Street, Auditorium
Los Angeles, California

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

--o0o--

Industrial Welfare Commission

CHUCK CENTER, Chair

BARRY BROAD

LESLEE COLEMAN

BILL DOMBROWSKI

JOHN MCCARTHY

Staff

MARGUERITE C. STRICKLIN, Legal Counsel

MICHAEL MORENO, Principal Analyst

CHRISTINE MORSE, Analyst

I N D E X

	<u>Page</u>
Proceedings	7
<u>Public Testimony:</u>	
ART PULASKI, California Labor Federation, AFL-CIO	9
MARIA MARIN	17
ORLANDO BARRAGAN, Californians for Justice	19
LARISA CASILLAS, Children Now	21
REV. DAVE O'CONNELL, church pastor, Archdiocese of Los Angeles	23
DAN GALPERN, California Budget Project	25
JOSEFINA CAMPOS	27
MAXIMO GARCIA	28
JAN BREIDENBACH, Southern California Association of Non-Profit Housing	29
RUTH TODASCO, Wages for Housework Campaign	33
JUNG HEE LEE, Korean Immigrant Workers Association	35
JUDITH ECKERT, United Domestic Workers	38
CAROL LYLES, home care worker, Los Angeles County	41
WALLY KNOX, California State Assembly Member	42
JON ROSS, California Restaurant Association	48
TED BURKE, restaurateur, Shadowbrook Restaurant, Santa Cruz	58

JAMIE ALBA, restaurateur	63
JULIANNE BROYLES, California Chamber of Commerce	66
HORACE HEIDT, Sherman Oaks Chamber of Commerce, apartment building owner	72
SANDRA FROLICH, Sherman Oaks Chamber of Commerce	79
JAMES ABRAMS, California Hotel and Motel Association	81
Afternoon Session	94
MARCY SAUNDERS, State Labor Commissioner	94
TERENCE STREET, Roebbelen Contracting	102
JOHN HAKEL, Associated General Contractors of California	103
JAMES MARTENS, Transportation Management Systems	107
PAUL GLADFELTY, California Mining Association	110
CHARLES BIRENBAUM, attorney, California Mining Association	111
KIM WITT, Viceroy Gold Corporation	116
KEN SULZER, attorney, California Independent Petroleum Association, Association of Energy Service Companies, Independent Oil Producers Agency	118
ROD ESON, Venoco	120
DAVE LEFLER, Western Drilling, Inc.	127
SCOTT WETCH, State Building and Construction Trades Council of California, AFL-CIO	143
RICHARD HOLOBER, California Labor Federation, AFL-CIO	145
MATT McKINNON, California Conference of Machinists	154

PATRICIA GATES, attorney, Northern California District Council of Laborers	156
JIM SHADWICK, Time Clock Sales and Service	164
DR. B. J. SNELL, California Nurse-Midwives Association	169
RUTH MIELKE, certified nurse-midwife	175
SUSAN BOGAR, certified nurse-midwife	178
PAULINE GLATLEIDER, certified nurse-midwife	186
CYNTHIA EVERETT, registered nurse	188
JILL FURILLO, California Nurses Association	191
NANCY MARSHUTZ, certified nurse-midwife	196
BETSY JENKINS, certified nurse-midwife	198
CHARLET ROGERS, registered nurse	199
RICHARD SIMMONS, attorney, California Healthcare Association	205
KATHERINE CONNOLLY, registered nurse	231
CHARLES LONG, Edison Pipeline and Terminal Company	233
PAUL LUSSI, Edison Pipeline and Terminal Company	237
MATT BARTOSIAK, Employers Group	241
KARLA WILSON, advanced practice nurse	245
PAMELA MELTON, PARCA	251
MICHAEL MURREY, Staples	252
RICHARD HOLOBER, California Labor Federation, AFL-CIO	254
SONIA MOSELEY, United Nurses Association of California	259

ETHEL ROWE, SEIU Local 399	261
MARY McCULLEY, nurse practitioner	262
FRANCINE ALBA, Sherman Oaks Chamber of Commerce, restaurateur	264
DONNA NOWICKI, nurse practitioner	274
JANE DOWNS, Along Came Mary! Productions	275
HERMIE MONTANI, Saputo Cheese USA, Inc.	276
BOB HAY, Poly-Tainer, Inc.	281
GABRIELLA LOPEZ, Poly-Tainer, Inc.	185
JAMES DAVIS, attorney	286
GINNY PINKERTON, California Association for Health Services at Home	290
JOSEPH DIAZ, California Nursing Home Association	294
MONICA VERA-SCHUBERT, pharmacist	295
ANNETTE FLASTER, pharmacist	298
MORRIE GOLDSTEIN, Guild for Professional Pharmacists	301
Adjournment	304
Certification of Transcriber	305

1 COMMISSIONER CENTER: And Chuck Center. We're
2 here and we have a quorum, so we can now start this
3 meeting. Thank you.

4 What we will do -- and I will ask, because
5 there's a number of speakers here today -- if you have
6 written testimony, just briefly introduce yourself and
7 don't go into your written testimony. We will review
8 that here at the Commission. And if you -- somebody else
9 comes up and comments on the same comments you want to
10 make, if you could just come up and say you agree with
11 those comments, then we can -- might be able to get out
12 of here before dark. So, we'll ask that.

13 And what -- we will first have on the minimum
14 wage --

15 AUDIENCE MEMBER: (Not using microphone) Can
16 you clarify something really quick? Does that mean all
17 of us who are here for AB 60 are really not needed here
18 till after lunch?

19 COMMISSIONER CENTER: We have no idea how long
20 the minimum wage will go. If it goes for two hours, if
21 it goes for an hour and a half, or an hour, or four
22 hours. We don't know.

23 What we'd like to do now is call up a panel in
24 favor of opening up the minimum wage. And I think Mr.

1 Pulaski is here. I'd like Mr. Pulaski to start that off.

2 And when the speakers do come up, we'd ask them
3 to introduce themselves and the organization they
4 represent and their title. And if they could possibly
5 give a business card to the recorder, we'd appreciate
6 that.

7 MR. PULASKI: Mr. Chairman, thank you.

8 Testing.

9 I have to say, Mr. Chairman, that your mike is
10 not very strong in the back of the room, and I'm not sure
11 --

12 AUDIENCE MEMBERS: (Not using microphone) Can't
13 hear! Can't hear anything.

14 MR. PULASKI: That's the answer to that
15 question.

16 COMMISSIONER CENTER: Is yours on?

17 MR. PULASKI: It's on, but it's marginal.

18 Testing, one, two, three.

19 COMMISSIONER CENTER: Kind of holler if you can.

20 MR. PULASKI: I can do that.

21 COMMISSIONER CENTER: I know you can.

22 (Laughter)

23 COMMISSIONER CENTER: And briefly, just to
24 apologize, our executive director is not here today.

1 He's got an illness in the family. And our principal
2 consultant is on his way down, so we have a one-man team
3 here, Christine Morse. So, be patient with us, if you
4 could, please.

5 MR. PULASKI: Chairman Center?

6 COMMISSIONER CENTER: Thank you.

7 MR. PULASKI: Members of the Commission, thank
8 you for your kind attention today.

9 COMMISSIONER CENTER: Is this for a video?

10 MR. PULASKI: I'm getting some extra light.

11 COMMISSIONER CENTER: Okay. Thank you.

12 MR. PULASKI: May I ask, can the people in the
13 back of the room hear? Yes?

14 COMMISSIONER CENTER: She's just running to the
15 audio-visual people now.

16 THE REPORTER: What is your name?

17 MR. PULASKI: Art Pulaski, P-u-l-a-s-k-i.

18 Testing, one, two, three. Can you hear in the
19 back?

20 Oh, good. Okay.

21 Chairman, members of the Commission, thank you.
22 Art Pulaski, California Labor Federation, joined today by
23 a panel of experts, economic analysts, a policy person,
24 representatives and advocates of low-wage workers, and

1 the real experts, one or two low-wage, minimum-wage
2 workers themselves. We appreciate your kind attention
3 today.

4 What it reads in the Code of California law, the
5 Commission's duty, it is to set a minimum wage that is,
6 quote, "adequate to supply the costs of proper living and
7 that eliminates the conditions of labor that is
8 prejudicial to the health and welfare of employees," end
9 quote. California has the highest cost of living, yet we
10 still become the lowest minimum wage on the West Coast.
11 In Oregon, they recently raised the minimum wage to \$6.50
12 per hour. In Washington State, they also, two weeks from
13 today, will begin the new minimum wage of \$6.50 an hour.
14 But more importantly, they will index that minimum wage
15 every year to the cost-of-living increases to the people
16 in the State of Washington.

17 There is no way that a reasonable person can
18 rationalize that \$5.75 per hour, California's minimum
19 wage, is not sufficient for a full-time, year-round
20 worker to live a life of health and a life of dignity.

21 You know that nearly one million California
22 workers are earning the minimum wage right now. In
23 addition to that million workers, there are two and a
24 half million more that earn \$8.00 an hour or less.

1 That's important, for two reasons. One is the federal
2 government says that \$8.00 an hour or less is below the
3 poverty level for a family. But secondly, in 1968, some
4 thirty years ago, the minimum wage was at a level that is
5 far above, in real wages, what it is now to us. And
6 there is no way -- and I'd be interested to hear any
7 argument from any person that would say, suggest that we
8 should have a lower comparable living wage today for
9 California's workers as compared to what we did for them
10 some thirty years ago.

11 Three and a half million workers in California
12 below the poverty level, below what we were thirty years
13 ago -- those are people that have jobs, that work hard,
14 and I would suggest perhaps that may even work harder
15 than you or me to make a living.

16 Let me just dispel a couple of myths about
17 minimum-wage workers.

18 The typical worker at or near the minimum wage
19 in California is an adult, not a teenager, a permanent
20 worker, not a teenager who's earning extra Christmas cash
21 or a teenager that's looking to buy a new pair of gym
22 shoes. Eighty-two percent of minimum-wage workers in
23 California are 20 years or older. Three quarters of them
24 are full-time workers, and most of them are the main

1 breadwinners of their families.

2 These hard-working Californians support every
3 industry and every community of our state. They are the
4 foundation of our economic success, and they are not
5 sharing in today's prosperity. For too many workers,
6 today's booming economy, for them, is bursting their
7 bubble.

8 We are committed to working with you to enhance
9 the desperate lives of three and a half million workers
10 in California. We rely on you to change the condition of
11 life for California workers. We urge you to take
12 seriously your charge by statute and law of the State of
13 California, and we look to a minimum wage of \$8.00 an
14 hour or greater.

15 Thank you for your kind attention.

16 (Applause)

17 COMMISSIONER CENTER: Are there any questions
18 from the Commission?

19 COMMISSIONER McCARTHY: Yes. I have a question.

20 COMMISSIONER CENTER: We've got a nice buzz
21 here.

22 MR. PULASKI: That's the rumble of California
23 workers who are making less than \$8.00 an hour. The
24 rumble is getting louder and louder!

1 (Laughter and applause)

2 COMMISSIONER McCARTHY: You said that your
3 target is \$8.00 or greater. Could you give us the full
4 range. What is the "greater" number that you would want?

5 MR. PULASKI: Well, commissioner, if you look at
6 the comparable wage rate of thirty years ago plus one
7 year, I believe \$1.65 an hour, at the current real-wage
8 comparison, it takes you to over \$8.04. If you figure a
9 2 percent cost of living for next year by the time you
10 get done with this, I would say that probably brings us
11 in the realm of \$8.20 an hour.

12 COMMISSIONER McCARTHY: So, \$8.20 an hour.

13 A couple of questions here, in terms of who
14 currently receives the minimum wage. You say that
15 basically, most are adult, full-time. Would you --
16 conceivably, however, many are not. Would you find it --
17 would you agree, then, that teenagers supported by their
18 families, living at home, would you say they should be
19 exempt from this?

20 MR. PULASKI: No, sir.

21 COMMISSIONER McCARTHY: All right. So, why not?
22 I mean --

23 MR. PULASKI: Because you'll have a situation
24 where there will be enormous competition of work by

1 breadwinners and for comparable wages for a comparable
2 kind of work. And how are you going to ask employers to
3 differentiate between teenagers and a 20-year-old
4 breadwinner? And how -- and how do you differentiate
5 between a 19-year-old who is a breadwinner for a young
6 family and a 20-year-old who is a breadwinner for a
7 family?

8 COMMISSIONER McCARTHY: What about tipped
9 employees, many of whom, say, are waiters, waitresses? I
10 was a waiter when I was in college, and I generally
11 received far more from tips in compensation than I did
12 from my base pay. Why -- I mean, if you're basically
13 saying that -- looking at \$8.00 as compensation, why,
14 say, would you not consider excluding, say, tipped
15 employees?

16 MR. PULASKI: Simply because there ought to be a
17 base rate. It was in effect in 1968 and in all prior
18 years, when we said there's a minimum base rate for all
19 workers in the state. And it was the equivalent then of
20 what this wage would be now. And we didn't make
21 exceptions for people --

22 COMMISSIONER McCARTHY: Well, you're saying what
23 it should be, and we don't have to consider the
24 implications of it. That doesn't make a lot of sense.

1 I'm talking about tipped employees, many of whom -- I
2 earned well beyond the minimum wage when I added my tips
3 in, as I say, as a waiter in college. And, I say, as a -
4 - so, I mean, I see a category of people here who are
5 teenagers or students, supported by their families,
6 receiving, say, in certain kinds of job classifications,
7 significantly more than that. And it's something one
8 might want to consider. That's the only point I'm
9 making.

10 MR. PULASKI: Well, that's all I would say, that
11 why should we take away from workers what they have
12 historically had?

13 COMMISSIONER McCARTHY: Well, as I say, I'm not
14 -- I'm talking about tipped employees here.

15 MR. PULASKI: We've always given tipped
16 employees the minimum wage. So, that would take away
17 from them.

18 COMMISSIONER McCARTHY: Let me -- one final
19 question. It's just a question out of curiosity. The
20 last raise in the minimum wage was established by --
21 primarily by the labor movement, who carried it as an
22 initiative on the ballot and did an excellent job in
23 terms of the campaign. There's no doubt about it. In
24 fact, the major figure behind that -- I saw Richard out

1 here someplace -- did an excellent job.

2 Why -- my question is, why, when labor carried
3 this as an initiative on the ballot, why did you not put
4 \$8.00 an hour on the ballot when it was being introduced
5 to the voters of the State of California?

6 MR. PULASKI: Because, sir, we knew that one day
7 we would have an enlightened Industrial Welfare
8 Commission.

9 (Laughter and applause)

10 COMMISSIONER McCARTHY: Well, what you're really
11 saying -- what you're really saying, Mr. Pulaski, is you
12 didn't trust the voters of the State of California to
13 give you this. That's as I see it.

14 Thank you.

15 COMMISSIONER BROAD: I just wanted to add, by
16 way of clarification, that a tip credit in California is
17 illegal. And the courts have determined that the
18 Commission has no authority to establish a tip credit.
19 It's in the Labor Code and it's a settled issue.

20 COMMISSIONER CENTER: And one -- kind of more of
21 an analogy, Mr. Pulaski, to the comment about teenage
22 children living at home earning minimum wage, is that
23 much different than an elderly parent living with their
24 children that can't afford their own house that gets

1 minimum wage too?

2 MR. PULASKI: I'm sorry?

3 COMMISSIONER CENTER: Is there any difference in
4 an elderly parent living with their children that can't
5 afford to rent a house either and earns minimum wage and
6 gets less because they're living with their children?

7 MR. PULASKI: No.

8 COMMISSIONER CENTER: Thank you.

9 MR. PULASKI: If there are no other questions, I
10 thank you very much.

11 (Applause)

12 COMMISSIONER CENTER: And please, after doing
13 testimony -- it's going to be a long day -- we would ask
14 please hold the applause.

15 MS. MARIN: (Through Interpreter) Good morning.
16 My name is Maria Marin. I'm 36 years old. I have three
17 children. One of them is 13, one of them is 7, and the
18 other is 10 months old.

19 I live in (inaudible), and the reason I'm here
20 today is to tell you about a job earning minimum wage.

21 I'm a person who has worked here in California
22 for sixteen years now in many jobs, and all of them have
23 been minimum-wage jobs.

24 I understand that I should be grateful to this

1 land that gives me a lot of opportunities, but I also
2 understand that we should be earning a little bit more
3 for the hard work that we do.

4 Some of the work that I've done is I've worked
5 in hospitals, I've worked in housekeeping, I've worked in
6 warehouses, packing food, and unfortunately, a lot of
7 these jobs not only pay a low wage, but they don't have
8 the benefits needed.

9 And the reason that I'm here today is to talk
10 about myself and also everybody in -- all the people in
11 California that, with a higher wage, we could get some of
12 these benefits that we can't get, like medical insurance
13 for our kids and maybe even a better education for our
14 children so that we might not have to depend on other
15 government agencies.

16 And today I'd like to thank you for giving me
17 this opportunity, and I'd like to ask you that, for the
18 year 2000, you could think about a higher wage law for
19 California. And I personally have some goals of getting
20 -- maybe going -- getting a better career so I could earn
21 a higher wage, higher than minimum wage.

22 Thank you.

23 (Applause)

24 COMMISSIONER CENTER: Thank you.

1 Again, we'll ask you please hold your applause.

2 A question from the reporter. The spelling of
3 your name?

4 THE INTERPRETER: Maria, M-a-r-i-a, Marin,
5 M-a-r-i-n.

6 MR. BARRAGAN: Good morning.

7 COMMISSIONER CENTER: Good morning.

8 MR. BARRAGAN: My name is Orlando Barragan,
9 O-r-l-a-n-d-o, Barragan, B-a-r-r-a-g-a-n.

10 Hi. My name is Orlando Barragan. I'm 19 years
11 old, and I live in (inaudible), California.

12 I collected 7,536 signatures across the state
13 for people who want the California minimum wage to be
14 higher. These signatures are Los Angeles, Contra Costa,
15 Santa Clara, and Alameda Counties. I've been going down
16 the street talking to people who know and understand the
17 difficulty of living on minimum wage. The minimum wage
18 (inaudible), I volunteered for Californians for Justice
19 and other centers. I have seen that the majority of the
20 people with whom I had seen and spoken to have had
21 (inaudible).

22 To be able to have a job, minimum-wage workers
23 have to get -- have to get another job just to meet their
24 rent, bills, and food. They can't buy any -- they can't

1 get any clothes (inaudible). And this is (inaudible)
2 they're living in that condition. Also, when they get a
3 notice to move, they (inaudible) labor so they won't
4 (inaudible). (Inaudible) justice unless we complaint.

5 Although I'm not a minimum-wage earner, it
6 affects my community and friends. It is not about me as
7 an individual; it is about the whole community. I'm here
8 because, on a personal (inaudible), I now have a high
9 chance of being minimum wage earner, because two thirds
10 of minimum-wage earners are people of color, and half are
11 Latino. It's not just about economics earnings, it's
12 also about racial justice.

13 Today I'd like to present 7,536 signatures that
14 we at Californians for Justice collected across the
15 state. These are people who know that they cannot live
16 on minimum wage.

17 (Applause)

18 MR. BARRAGAN: Are there any questions?

19 COMMISSIONER BROAD: We need to receive his
20 signatures.

21 COMMISSIONER CENTER: Yeah. Can you give us
22 your signatures too, please?

23 MR. BARRAGAN: Sure.

24 COMMISSIONER CENTER: Christine is out, so just

1 leave them up here for a moment, please.

2 Thank you.

3 COMMISSIONER BROAD: I'll take them.

4 COMMISSIONER CENTER: Take them, Barry.

5 COMMISSIONER MCCARTHY: Or just leave them here.
6 We'll get them.

7 COMMISSIONER CENTER: Again, we ask that you be
8 brief, and if you have written testimony, just summarize
9 it. Don't read the written testimony. Provide it to us
10 and we'll read it.

11 Thank you.

12 MS. CASILLAS: Good morning. My name is Larisa
13 Casillas, and I'm a senior policy associate with Children
14 Now, which is one of California's largest public advocacy
15 organizations. And I'll try to be brief.

16 We know that in California, there are 2.2
17 million children living in poverty. That's one out of
18 four children in poverty in California. And as you know,
19 the majority of them have working parents. I'm here to
20 speak a little bit about the consequences, the lifelong
21 consequences, of poverty, which can only have
22 (inaudible).

23 But anyway, poor children are more likely to be
24 born with low birth rate, cry in infancy, and be a victim

1 of abuse and neglect. Later in life, poor children are
2 more likely to repeat a grade or drop out of school and
3 be the victim of a violent crime.

4 I wanted to share with you a comment. Last year
5 I had the pleasure of meeting with working parents
6 throughout California, and I listened to families
7 describe how (inaudible) sometimes when family members
8 are ill (inaudible) about that. And this was from
9 families that are fortunate enough to have someone to be
10 able to rely or to lean on during hard times. Families
11 make up 37 percent of homeless populations, a number that
12 has increased over the years. And I wanted to add a
13 comment that had come up while (inaudible), just to
14 illustrate how inadequate the minimum wage is for raising
15 a family and to communicate with you the quality of life
16 that parents and families are -- that poor and neglected
17 parents and families don't have.

18 And a father said, "I work from sunrise to
19 sunset. I go to work when it's dark outside and the kids
20 are in bed. When I come home from work, it's dark
21 outside and the kids are in bed. As a father, I feel
22 bad. I wish I could spend more time with my children.
23 But what can I do? They need to eat, they need to have a
24 roof over their heads, they need books."

1 For the hundreds of thousands of hard-working
2 parents in California, we need to make it more possible
3 for them to provide for their children. An increase in
4 the minimum wage is one of the many steps we need to take
5 to improve the lives of our children and, indirectly, the
6 quality of life for all Californians.

7 Thank you.

8 COMMISSIONER CENTER: Thank you.

9 (Applause)

10 COMMISSIONER CENTER: And to clarify -- please,
11 don't applaud.

12 To clarify for the speakers, this is opening of
13 the minimum wage hearings. We'll be conducting wage
14 boards throughout the state next year, so there will be
15 plenty of opportunity to testify at the wage boards too.

16 Thank you.

17 FATHER O'CONNELL: Good morning. My name is
18 Father David O'Connell -- that's O-C-o-n-n-e-l-l -- and
19 I'm pastor of a church in Los Angeles of 4,000 families,
20 most of them poor, Latino, and African-American. And I'm
21 just here this morning to speak on behalf of families in
22 my congregation.

23 One family that I want to mention is the Lara
24 family, Mr. Jose Lara works full-time, so he's not able

1 to keep the family fed because he's earning minimum wage.
2 His wife, Gloria, she has now a job with McDonald's.
3 She's only on minimum wage. She's got to be out of the
4 house from three o'clock to eleven o'clock every day,
5 five days a week. She says she's glad to work and needs
6 the wages or they would not still be able to make ends
7 meet.

8 And also, I'm worried about the effect this kind
9 of absence of workers from the family is going to have on
10 that family over the long term, where they don't have a
11 chance to play with the children, to be together as a
12 family, to read to their children, just to be by their
13 children. And this kind of story is repeated all over
14 our city and our state all the time, and I think it's
15 having a very bad effect on families.

16 Our state -- not our state, by families, just by
17 accident -- it won't happen by accident -- we have to do
18 certain things in our state, and our businesses have to
19 help, in trying to support families. The California
20 Budget Project said that two-parent families with one
21 outside parent need an annual income of \$31,250 to have a
22 modest standard of living. That's equivalent to an
23 hourly wage of \$15.00 an hour. With two parents working,
24 they need a minimum wage of at least \$10.78 an hour. The

1 single-parent family needs, for a modest living, \$17.00
2 an hour. So, we can see we're even speaking here today
3 of very low increments toward that.

4 I just want to finish off by saying that we need
5 stable families in our society. We need stable families
6 more than we need more cheap hamburgers. McDonald's gets
7 labor cheaply so they can sell their hamburgers cheaply.
8 We need stable families a lot more than we need low-
9 priced hamburgers.

10 Thank you very much.

11 COMMISSIONER CENTER: Thank you.

12 (Applause)

13 COMMISSIONER CENTER: You guys aren't paying
14 attention to the chairman here.

15 MR. GALPERN: Good morning. Thank you very
16 much. My name is Dan Galpern. I am from the California
17 Budget Project, though the previous speaker stole a
18 little bit of our thunder here. However, I'm going to
19 make a couple points and perhaps you could follow along
20 with the remarks that I just handed you that are -- I've
21 handed to you my full testimony -- before you.

22 Looking strictly to Chart 2, as you can see, the
23 typical family budget necessary for a family to make ends
24 meet that was just referred to, a full-time minimum-wage

1 worker earns less than a third of this statewide basic
2 family budget. Even when you factor in the federal
3 earned income tax credit, that family will only earn 40
4 percent of the basic family budget. Clearly, the minimum
5 wage is inadequate.

6 Second, with respect to the impact of minimum
7 wages on the wages of workers, wage and employment trends
8 in California show clearly that recent minimum wage
9 increases have indeed led to real wage gains for low-wage
10 workers, without significant job losses. As you can see
11 in Figure 3 in your packet, the increase in the minimum
12 wage arrested and reversed what was a seven-year decline
13 in its value, and in turn arrested and reversed a decade-
14 long decline in wages at the bottom of the income
15 distribution.

16 And finally, on the question of job losses
17 themselves, an examination of employment rates reveals
18 that the recent minimum wage hikes in California have
19 been accompanied by declining rates of unemployment. And
20 most significantly -- you can see this on Figure 4 -- for
21 young workers, the unemployment rate has dropped by seven
22 points since January of '96. Unemployment rates have
23 also dropped for non-white workers and for workers as a
24 whole -- this is California.

1 And with respect to industries that heavily
2 depend on low-wage workers, particularly retail trade and
3 services, again, the available data provides -- ran to
4 the opposite, about the impact of minimum wage on
5 unemployment. We saw trade employment has grown slowly
6 but steadily since 1996, and service industry employment
7 has grown moderately.

8 And this basic finding that you can have minimum
9 wage increases leading to real wage gains with no or very
10 little employment losses is consistent with several of
11 the studies that I noted in my full prepared remarks that
12 are before you.

13 To conclude, then, the weight of evidence
14 supports the point that, first, California's minimum wage
15 is entirely inadequate to support typical basic
16 expenditures of families, and secondly, that minimum wage
17 increases may have little or no disemployment effect.

18 COMMISSIONER CENTER: Any questions?

19 (No response)

20 COMMISSIONER CENTER: Thank you.

21 MS. CAMPOS: (Speaks Spanish)

22 INTERPRETER: She says, "Good morning." Her
23 name is Josefina Campos. She's been here for twenty-five
24 years in this country and she's earned minimum wage for

1 about seventeen years.

2 MS. CAMPOS: (Speaks Spanish)

3 INTERPRETER: She says she works for a company
4 called DC. She has worked for the minimum wage for ten
5 years, and she continues to earn the minimum wage,
6 although they increased the flexibility as she's been
7 with the company longer.

8 MS. CAMPOS: (Speaks Spanish)

9 INTERPRETER: She says she's supporting -- she's
10 raised four kids. She's supporting, currently, only
11 three kids and one grandchild, they doesn't get any aid
12 from the state or the county for the kids, and that she
13 works normally nowadays, sometimes 12-hour shifts. They
14 count -- they take out of the wages for a 30-cents lunch
15 break. She said it's very hot (inaudible).

16 MS. CAMPOS: *Gracias.*

17 COMMISSIONER CENTER: Questions?

18 COMMISSIONER BROAD: Does your employer supply
19 you with any benefits? Do you get, specifically, any
20 paid vacations, health insurance, dental, any insurance
21 of any sort?

22 MS. CAMPOS: No.

23 COMMISSIONER BROAD: Thank you.

24 INTERPRETER: Thank you.

1 MS. CAMPOS: (Speaks Spanish)

2 INTERPRETER: She's a member of a community
3 organization, AHOL.

4 (Applause)

5 MR. GARCIA: (Through Interpreter) Good
6 morning. My name is Maximo Garcia and I'm for an
7 increase.

8 I've been a farm worker for five years, and I've
9 always earned the minimum wage. That's \$230 a week.
10 After I discount my taxes on that, it's \$200 a week.
11 That \$800 a month, with that to pay rent, you have to pay
12 all your bills, you have to pay your transportation on
13 the bus. Another thing, I'm not including medical
14 problems. My wife got sick a few months ago, and we
15 couldn't pay some repairs. We couldn't pay for the
16 expenses with this salary.

17 The minimum wage is not enough for us. And so,
18 I think that it should be taken into account, the meaning
19 of where we are at today, that the minimum wage will not
20 meet our needs, well, basically, for any workers.

21 Most of the time, the products that we are
22 making, the things that we are working on, we can never
23 afford to buy because our salary isn't enough for us to
24 be able to pay for the products we make with our own

1 hands.

2 And we can't give the kind of education, what we
3 would like, to our children because our wives and
4 children have to work. With that salary, we can hardly
5 get even closer to our expense. Many parents have no
6 time because we're not able to be with them because we
7 have to work. The salary is not enough. And anything
8 like our medical expenses, things that we would like to
9 pay for, and healthcare, we're unable to pay for because
10 our salary is not enough.

11 Thank you.

12 (Applause)

13 MS. BREIDENBACH: Good morning. My name -- good
14 morning. My name is Jan Breidenbach, and I'm the
15 executive director of the Southern California Association
16 of Non-Profit Housing. We are a membership organization
17 dedicated to the production, preservation, and management
18 of affordable housing for low-income people. The core of
19 our membership and our leadership are community
20 development corporations, or CDCs, that are neighborhood
21 community-based nonprofits. These organizations, in this
22 region alone, have built over 30,000 units of housing in
23 the last two decades, producing thousands of jobs and
24 contributing over a billion dollars to the regional

1 economy.

2 We exist for one reason: low-income workers and
3 their families cannot afford a safe, affordable, and
4 decent place to live. In particular, households that
5 survive on one or even two minimum-wage jobs simply
6 cannot afford to rent.

7 Let me share some housing information with you.
8 California as a state and Los Angeles as a region both
9 have major affordable housing crises. The state has one
10 of the lowest home ownership rates in the nation at 55
11 percent, compared to the nation at 67 percent. Los
12 Angeles County has a 48 percent ownership rate, less than
13 half. We are clearly a region of renters because we
14 cannot afford to buy.

15 But more importantly for our concerns today is
16 the relationship of those of us who are renters and also
17 minimum-wage workers. A recently released national study
18 entitled "Out of Reach: The Gap Between Housing Costs
19 and Income of Poor People in the United States," by the
20 National Low-Income Housing Coalition, compared the
21 federal minimum wage with rental costs throughout the
22 nation. Recognizing that California's minimum wage is
23 higher than the federal, this study still found one of
24 the widest gaps in the country in this state.

1 The study also determined what would be a
2 housing wage, the hourly rate necessary to afford an
3 apartment at the fair market rent. And this is the
4 amount that the government determines, if you are
5 receiving subsidies, and it lags consistently behind
6 actual rents. Throughout the region, the California
7 minimum wage is little more than half what would be
8 required by a housing wage. Rents in Los Angeles and
9 Orange County require at least \$16.00 an hour, and San
10 Bernardino and Riverside, they go up to \$14.00 an hour.

11 Another way of looking at this same issue is to
12 calculate how many hours a week must be spent by a worker
13 to earn enough to pay the rent. The number start at
14 about 80 hours a week and continue up until there are no
15 more hours left in the weeks, clearly a fiscal
16 impossibility.

17 Further, rents tie back to wages. According to
18 Real Facts, a statewide company that quarterly tracks
19 average rents, rents in Los Angeles County are edging up
20 to about \$1,000 a month. In the city, they are over \$800
21 a month. We're talking to get an apartment here. More
22 importantly, they have increased by approximately 6
23 percent last year and are scheduled to go up another 6
24 percent the coming year.

1 So, the economic boom that has created more jobs
2 and restored real estate prices is the very boom that is
3 being lowered on low-wage workers when it comes to
4 housing. All of this situation (inaudible).

5 Los Angeles County has the highest rate of
6 overcrowding and severe overcrowding in the nation, and
7 all of California is following suit.

8 Families overpay for rent. The federal
9 definition of affordable housing is no more than 30
10 percent of income to rent. Overpayment is endemic in
11 California. A study nineteen years ago found 73 percent
12 of all low-income residents paying more than 50 percent
13 of their income to rent.

14 Families find the other affordable housing, the
15 non-subsidized apartments that actually do rent for \$300
16 a month. These units have a particular name, however.
17 They are called slums, and Los Angeles in particular has
18 an increasing number of them.

19 The numbers I've discussed here are repeated in
20 all national reviews and studies. L.A. and Orange County
21 have the highest ratio of poor families compared to
22 available low-cost units. There's four families for
23 every one available unit. The low-income houses in our
24 areas are defined by overpayment and overcrowding in

1 substandard units. The rents are increasing at the
2 quickest rate in the west, particularly in California,
3 and particularly in the Inland Empire.

4 We have a crisis on our hands, and we can deal
5 with it a number of ones. We would advocate for a two-
6 pronged effort. While we would obviously argue for
7 adequate production of rental subsidies, we believe just
8 as strongly that the minimum wage that is, in fact, a
9 living wage, and is indexed to inflation, is crucial for
10 our neighborhoods and for our moral health. For your
11 information, attached are some charts describing housing
12 statistics throughout the region.

13 Thank you for the opportunity to address you
14 this morning.

15 (Applause)

16 MS. TODASCO: Hello. My name is Ruth Todasco.
17 That's spelled T-o-d-a-s-c-o. I'm here today
18 representing the Wages for Housework Campaign and
19 affiliated groups and would like to speak in support of a
20 raise in the minimum wage.

21 Raising the minimum wage is a central issue for
22 women and children. The feminization of poverty has
23 become one of the tenets of the last decade. At least 60
24 percent of minimum-wage earners are women. The gap

1 between women's wages and men's wages has actually
2 increased during the '90's, from women making 76 cents on
3 a dollar to women making only 74 cents on the dollar.
4 The gap, of course, is even worse for black, Latina, and
5 other women of color, those most likely to be on the
6 minimum wage.

7 Many experts have expressed a view that welfare
8 reform has contributed to that widening gap. Women also
9 do two thirds of the world's work, own one percent of the
10 resources, and receive five percent of the pay. As a
11 result of welfare reform, women are now being forced out
12 of the house, often must pay another women who is making
13 minimum wage to take care of her children and do
14 childcare, while she goes out to work for minimum wage
15 and comes home to continue doing housework of all
16 varieties for no wage. In fact, many licensed, exempt
17 childcare workers are being paid by the State of
18 California below the minimum wage, \$2.20 an hour.

19 I want to point out that this work that we are
20 doing, either for free or for \$5.75 an hour, is the work
21 of raising the next generation and caring for the sick
22 and elderly, not making bombs or killing people.
23 Soldiers earn more, when you include room and board, and
24 even though they're -- even though many of them qualify

1 for food stamps.

2 Even the Republican mayor of Los Angeles,
3 Richard Riordan, has recently quoted -- was recently
4 quoted as saying, "Employees who earn under \$10.00 an
5 hour cannot lead an independent life." The inability of
6 women to earn wages that will make them and their
7 dependents -- take women -- take them out of poverty will
8 force many back into violent marriages in order to house
9 and feed their children. They will be more vulnerable to
10 rape and beatings. Others will be forced into
11 prostitution to feed their kids. At least it usually
12 pays above minimum wage.

13 Today you can give millions of women -- and as
14 you listen to this testimony, I hope you will be mindful
15 of what an awesome responsibility and what an opportunity
16 you have. The truth is that keeping the minimum wage so
17 low, coupled with the pay gap between women and men, is a
18 massive subsidy to business, large and small. Women can
19 no longer afford this to be done on the backs of women
20 and children.

21 A raise in the minimum wage would be a step in
22 the right direction.

23 Thank you.

24 (Applause)

1 MS. LEE: (Through Interpreter) Hi. My name is
2 Jung Hee Lee, and I do work for minimum wage. I have two
3 young children.

4 About three years ago, I started working at the
5 restaurants in Koreatown. During my employment, I worked
6 in a couple of restaurants. In all these restaurants, I
7 worked about 10 to 12 hours a day, six days a week,
8 receiving \$2 to \$3 an hour. Currently I make minimum
9 wage, but I barely make ends meet because it's just not
10 enough.

11 As a restaurant worker, I work 40 hours a week
12 at a rate of minimum wage of \$5.75. The worker makes
13 about \$1,000 a month. However, after taking out the tax,
14 for the family of four, the worker is left with only
15 about \$800 a month. In my case, I get \$800 a month, my
16 salary, plus with about \$700 in tips, I make my living.
17 But this is also -- and I get help from my husband's
18 salary.

19 I make my living as follows. For a babysitter,
20 I pay about \$500; for rent \$800; two car payments, \$300;
21 food, \$400; utilities, \$400; gas, about \$150; medical
22 bills, \$150 or more; and et cetera, about \$200, and
23 household supplies. And that totals about \$2,500.

24 It is very difficult for me to have a living

1 with this situation. I do not know why -- I do not know
2 what's the point of working when I get home at one
3 o'clock in the morning from my job and see my children
4 and my husband asleep.

5 After paying the rent, food, and the bills, we
6 barely survive. My co-worker, who works as a cook
7 helper, works about 12 hours a day, six days a week, and
8 makes about \$1,400 per month. Latino co-workers, who
9 work as dishwashers, get paid minimum wage. How can they
10 live on minimum wage at 40 hours a week? So, they often
11 have two jobs, morning shift in one restaurant and the
12 afternoon-evening shift at a different restaurant. I've
13 heard many stories where a Latino worker gets off at one
14 restaurant and has only about ten minutes to go to his
15 job as fast as he can to another restaurant. That only
16 leaves the worker and family with early in the morning
17 and late in the evening.

18 This is what we want. We the workers want a
19 guaranteed adequate amount of time spent at work, and
20 guaranteed an adequate amount of wage for what's done,
21 and guaranteed adequate amount of time to spend with our
22 families. In order for all these things to happen, the
23 minimum wage must go up.

24 Thank you.

1 COMMISSIONER CENTER: Thank you.

2 (Applause)

3 COMMISSIONER McCARTHY: I have a question. Some
4 weeks, do you work overtime, more than 40 hours a week?

5 THE INTERPRETER: Can you repeat?

6 COMMISSIONER McCARTHY: Yeah. Some weeks, do
7 you work overtime, more than 40 hours a week?

8 MS. LEE: (Through Interpreter) Yes.

9 COMMISSIONER McCARTHY: Do you receive time and
10 a half when you work overtime?

11 MS. LEE: (Through Interpreter) No.

12 COMMISSIONER McCARTHY: That's illegal.

13 COMMISSIONER CENTER: Talk to Roger -- the Labor
14 Commissioner is right there. He'll help you out.

15 Don't let her get out of here, Roger.

16 MS. LEE: (Through Interpreter) Usually, the
17 older schedule, the work is less than 40 hours because
18 they don't want to pay overtime. So, oftentimes it's 39
19 hours, 38 hours, so that these workers are having to work
20 two jobs.

21 COMMISSIONER McCARTHY: I see. That's okay.
22 That's different.

23 MR. ECKERT: My name is Judith Eckert,
24 E-c-k-e-r-t, and I'm a member of the United Domestic

1 Workers, and I work for IHSS, which is In-Home Supportive
2 Services.

3 I've been sitting here watching everyone, and I
4 was trying to imagine you folks up there trying to put
5 yourselves in my shoes. And at one time, I wasn't in the
6 shoes that I'm sitting in right now, and so I know that
7 it wouldn't be hard for me to imagine earning minimum
8 wage, except when I was working through high school and
9 college.

10 One of the things that came out in my
11 observations is everyone in this room is going to have
12 one thing in common: one, they were all going to get
13 old, and God forbid, one of us or all of us in this room
14 have a tragic accident or disease and gets so we become
15 paraplegic or brain-damaged. Everyone who works for IHSS
16 taking care of someone, like one of the members of your
17 home -- it could be your mother, your father, your
18 brother, your sister, or a neighbor -- and everyone in
19 this room is going to end up with one person or more in
20 their family that you're going to be responsible for,
21 making decisions as to how they're going to be cared for.

22 People with IHSS, we don't -- we receive minimum
23 wage, but we don't just put in 8 hours a day. Many of us
24 are taking care of family members -- they might be

1 comatose, they might be paraplegic -- and it's a 24-hour-
2 a-day job. At IHSS, they decide how many hours you're
3 entitled to. Even though you're up 24 hours, you might
4 only be paid for 10 or 15 or 20 hours a week. And at the
5 rate of minimum wage, it doesn't cut the bill. Whether
6 we're sick or we're well, we still have to get up and
7 turn that comatose patient every two hours, 24 hours a
8 day.

9 A lot of us might say, "Well, why don't we
10 institutionalize them?" But I know a lot of us in this
11 room are like that, we'd rather have someone take care of
12 us at home.

13 On minimum wage, more and more people nowadays
14 are needing in-home care, and we're finding it's a lot
15 cheaper to have people take care of us at home than it is
16 to take care of us in a convalescent home that costs over
17 \$15,000 a month.

18 But none of these people in this room that are
19 working for minimum wage, whether they're waitresses,
20 whether they're in-home care services, or whether they're
21 laborers, they're all sure of one thing that all of us up
22 here have, and that's to have a life with dignity and
23 respect. And when they're earning minimum wage, they
24 can't have that. Their children aren't having good meals

1 at home. They don't have their family at home to help
2 take care of them because mom and dad are working around
3 the clock, whether it's in your home or whether it's
4 someplace else. And those children need to have their
5 parents also.

6 But they need money to do this. They need money
7 to pay for their medical bills. They need money for
8 food. And if we don't tie these people to a life that's
9 (inaudible) -- in my case, I lost a special job -- I was
10 never making minimum wage since high school. I lost
11 many-thousand-dollar-a-year jobs because my son's in a
12 coma and my daughter has (inaudible). I work 24 hours a
13 day. I work for In-Home Support Services, and I can't
14 get another job right now. I had five surgeries just to
15 take care of my children, and the five surgeries were
16 physical surgeries, my hands and my arms and my elbows,
17 from lifting 121 pounds. And I'm saying these people --
18 \$8.00 an hour isn't even enough. I know what I used to
19 need to buy when I was making a regular job, when I was
20 in a regular job. Even \$15.00 an hour is more like what
21 people need to live a good life. Money and a good life
22 (inaudible).

23 I don't have anything more to say, but I
24 understand these people, neighbors, make at least \$10.00

1 an hour, and these people put their hearts into a lot of
2 work. When you pay wages and tips, they might make a
3 tip, but that doesn't mean that everyone in this room
4 pays the minimum tip of 15 percent. You know, how many
5 of us walk away and just throw a dollar on the table, no
6 matter how much we paid. And these folks work a lot.

7 And I've got a waitress that I -- I know there's
8 lots of people who don't pay a lot of tips, even though
9 you think of them as giving out their tips. Most of them
10 live off tips when they're in college, but you can't
11 (inaudible).

12 Anyway, that's what I have to say.

13 (Applause)

14 MS. LYLES: Good morning. My name is Carol
15 Lyles, L-y-l-e-s. I'm a Los Angeles County homecare
16 worker. I've been a minimum-wage earner most of my adult
17 life. I'm part of the group of workers, SEIU 434B, 7,400
18 strong, who are basically working to establish a formula.
19 The work we provide through our procurement and
20 assistance saves the state millions of dollars annually.
21 Those savings should be passed to providers who do not
22 get employee benefits such as medical and dental
23 insurance. They should be employed as the source.

24 The minimum wage increase would allow any worker

1 to get the medical and dental insurance and protection he
2 needs.

3 In closing, I would like to invite each and
4 every one of you on the panel to become a homecare worker
5 or a minimum-wage worker for at least one day.

6 (Applause)

7 COMMISSIONER CENTER: Thank you.

8 MR. PULASKI: Mr. Chairman, members of the
9 Commission, thank you again for your kind indulgence. I
10 want to thank the panel for their taking their time to
11 join us today and give their testimony to all of you.

12 With your indulgence, I understand that
13 Assemblyman Wally Knox is in the back of the room, has
14 arrived, and needs to catch a plane to go elsewhere. He
15 is the chief author of AB 60, the daily overtime bill,
16 which you are taking in front of you now. So, with your
17 permission, I'd like to acknowledge and invite the
18 Assemblyman to come forward.

19 COMMISSIONER CENTER: Thank you.

20 MR. PULASKI: Assembly Member Wally Knox.

21 (Applause)

22 ASSEMBLYMAN KNOX: Thank you very much, Chair
23 Center, commissioners, and working people gathered here
24 today. I want to thank you for allowing me to go out of

1 order and to briefly address you on the subject matter
2 you'll be dealing with later in the day, that is, the 8-
3 hour day issue. And in particular, I want to thank those
4 people who are here today to testify on the minimum wage
5 for granting me the courtesy of going out of order to
6 address this other issue that's of major concern to every
7 working person in the State of California.

8 I did not come to give a speech. I came to
9 briefly comment on two aspects of the bill. So, this
10 will not be rhetorical at all; I've simply come to
11 present information to this Commission regarding two of
12 the issues that I know you will be grappling with, with
13 regard to the 8-hour day. Very briefly, those two issues
14 are: Was AB 60 intended to cover the construction
15 industry? And the second issue pertains to the aspect of
16 the bill that deals with the healthcare industry and
17 nursing in particular.

18 Here's why I came today. I came to tell you the
19 author's intent. The author's intent was very simple.
20 The bill was intended to cover the construction industry
21 in the State of California. That was the intent of the
22 bill from the beginning. It remains so through the final
23 signature of the Governor. And it's my joy to be here as
24 author of the bill to present that information to you.

1 If you have questions in that regard, I'd be happy to
2 respond to them.

3 The second reason I'm here today is to bring you
4 information that has nothing to do with my intent or
5 anyone's intent. It's information that I'm reluctant to
6 bring you. It's discouraging news. And that is this:
7 it has come to my attention, and I've been able to
8 confirm, that a small number, but a significantly large
9 minority number, of healthcare institutions are engaged
10 in aggressively slashing base pay for nursing employees
11 in anticipation of the January 1st implementation date of
12 AB 60. It is astonishing that these actions would be
13 taking place at this particular moment in time,
14 astonishing that during the holiday season people's base
15 pay rates would be cut. And as author of the bill, I
16 have to say it is astonishing and of dubious legality --
17 at best, dubious legality -- for persons' base pay to be
18 cut expressly in anticipation of the implementation date
19 of a bill, the policy of which is to foster good pay for
20 employees. That flies in the face of the fundamental
21 policy of the bill itself.

22 It's important for me to bring this information
23 to you today.

24 Chairman Center, I have written you a somewhat

1 lengthier letter on this topic.

2 And I thought that it was imperative for me to
3 come here and provide a sense of that to you for your
4 consideration. It's something that the State of
5 California needs to pay attention to.

6 We've worked hard on this measure. I believe
7 it's a workable measure. And it's clear to everyone who
8 worked on the measure that we reached out to the
9 healthcare community to draw them into one of the more
10 complex aspects of the negotiations of the measure, how
11 to handle overtime issues in the healthcare industry. We
12 asked the industry, "Put your concerns on the table," and
13 they did. And we believe we dealt with the concerns
14 honorably.

15 To now found a few dissident organizations
16 attempting to end-run the fundamental policy of the bill,
17 to the detriment of their own employees, during a holiday
18 season, is astonishing. I'm sorry to have to bring you
19 that information, but I think it is my duty.

20 COMMISSIONER CENTER: Mr. Knox, I have a
21 question. You mentioned the construction industry, but
22 if you read the bill, it says "any work." So, effective
23 January 1, it says "any work" is covered under daily
24 overtime. There's also other industries that were

1 considered exempt but never formally exempted by the IWC
2 -- that would be mining, oil drilling, and logging.

3 Wouldn't they also be covered, effective January 1st too?

4 ASSEMBLYMAN KNOX: Yes, I believe so.

5 COMMISSIONER CENTER: Thank you.

6 ASSEMBLYMAN KNOX: The level of controversy is
7 not as high as you might perceive. That's why I took it
8 upon myself to point to that. Believe me, as you well
9 know, there are a host of other issues as well. And if
10 we had six hours, we could go over them. But I thought
11 I'd limit my comments.

12 COMMISSIONER CENTER: Yeah. We've been going
13 over them a lot, so --

14 ASSEMBLYMAN KNOX: I've worked on the bill for a
15 while, and I do have to say, as far as what you've heard,
16 that was a great committee sitting in front of Dan
17 Galpern, who was the lead staff person on this
18 legislation, everyone who worked on the legislation knows
19 him by first name and knows him for his hard work.

20 COMMISSIONER CENTER: Thank you.

21 Any questions?

22 COMMISSIONER DOMBROWSKI: Yeah. Assemblyman
23 Knox, just -- I, for one, was kind of blindsided by this
24 construction industry issue when it came up. I didn't

1 think it was --

2 AUDIENCE MEMBERS: (Not using microphone) Can't
3 hear you!

4 COMMISSIONER DOMBROWSKI: Can you explain why
5 there's this confusion? I'm still trying to sort it out.

6 ASSEMBLYMAN KNOX: I can give you my impression,
7 Mr. Dombrowski. It's my impression that the confusion
8 may arise because there was relatively little discussion
9 of the issue in the course of the bill. And at the same
10 time, the bill had vigorous discussions about how should
11 we handle the nursing issue, and literally twenty other
12 issues were wrestled with vigorously. At no point during
13 the legislation, it's my recollection, did the
14 construction industry begin to raise cares and concerns
15 about particular drafting of the bill. For that reason,
16 that whole aspect of the bill simply was not -- it wasn't
17 even discussed. And I believe that may have led some
18 folks to misunderstand it. That's my take, more of a
19 psychological interpretation than a legal interpretation.

20 COMMISSIONER CENTER: Thank you, Mr. Knox.

21 ASSEMBLYMAN KNOX: I want to again thank you for
22 your courtesies, and in particular, I want to go out of
23 my way to thank everyone that came here to testify on
24 minimum wage for their courtesy in allowing me to address

1 this other important issue.

2 Thank you.

3 (Applause)

4 COMMISSIONER CENTER: Do we have any other
5 people who want to testify in favor of raising the
6 minimum wage?

7 Why don't we just have a showing of hands?

8 People in favor of raising the minimum wage, can
9 you just --

10 (Show of hands)

11 AUDIENCE MEMBER: (Not using microphone) Can
12 you repeat that?

13 COMMISSIONER CENTER: People that are in favor
14 of raising minimum wage?

15 Okay. Thank you.

16 People opposed?

17 (Show of hands)

18 COMMISSIONER CENTER: Oh, boy. We have some
19 speakers, I guess. But we have to have some -- this is
20 going to take a little while, but we will conduct
21 hearings and we'll see where it goes.

22 But thank you very much for the testimony.

23 (Applause)

24 COMMISSIONER CENTER: I think we have some -- a

1 number of employer groups that would like to come up and
2 testify about the minimum wage. Can you come up as a
3 panel and sit in the front row?

4 (Pause)

5 COMMISSIONER CENTER: I've got a sign-up list.
6 Do you want me to go by the sign-up list?

7 Okay. I want you guys -- work it out. Okay.

8 (Pause)

9 MR. ROSS: Yeah, Mr. Center and commissioners,
10 my name is Jon Ross. I'm here today on behalf of the
11 California Restaurant Association. I'll limit my remarks
12 today the adequacy of the current minimum wage.

13 With me is Ted Burke, of the Shadowbrook
14 Restaurant in Santa Cruz, who will speak after me for a
15 moment on how he, as one restaurant operator, has
16 adjusted to the near 35 percent increase in the minimum
17 wage that's occurred in the course of the past few years.

18 We've distributed written remarks to you. Also,
19 I've got a couple of charts. I'm going to truncate my
20 remarks here in the interests of time.

21 First, I'd like to take a moment to review the
22 standard that has been employed over the years to
23 determine whether the state minimum wage is adequate. As
24 I hope my comments will demonstrate, based on the

1 traditional standard employed to determine adequacy by
2 this Commission, and most recently by the people of
3 California when they passed the Living Wage Act of 1996,
4 it's our conclusion that a minimum wage increase at this
5 time would be premature.

6 That said, we stand ready to help you in your
7 deliberations and want to work with you to address the
8 many important and valid policy considerations that were
9 raised earlier this morning by the earlier panelists.

10 As was stated earlier, the California Labor Code
11 requires you to review whether wages paid to employees
12 may be inadequate to supply the costs of proper living.
13 That standard has guided this Commission's deliberations
14 since 1913. We believe, therefore, that the best measure
15 of the adequacy of the current minimum wage is determined
16 best by looking at how the standard has been applied over
17 time and how the current minimum wage compares to the
18 implementation of the standard over that period.

19 First, in our review, we looked at the historic
20 average of the state minimum wage. Where perhaps we
21 differ from the panel that you heard from first this
22 morning that spoke about the minimum wage that existed in
23 1968, which was an all-time historic high, what we have
24 done is we've looked at the minimum wage in every year

1 since 1956, adjusted that minimum wage for inflation to
2 real dollars, and come up with what the average minimum
3 wage has been in the state, adjusted for inflation, in
4 today's dollars.

5 That number, as the chart demonstrated, is
6 roughly \$5.85, adjusted for inflation, in real-time
7 dollars. And that number presumably was reached over the
8 years by looking at the standard test you're looking at
9 and coming to a conclusion as to what was adequate.

10 Second, we looked at how this panel construed
11 adequacy when it was last charged with that review, or
12 determining whether or not the minimum was. In 1988, the
13 IWC adopted a minimum wage of \$4.25. That minimum wage,
14 deemed adequate by this body then, adjusted for
15 inflation, today would equal approximately \$5.67.

16 Finally, as noted earlier, the people of the
17 state, in 1996, were asked to establish a minimum wage
18 that was sufficient to raise people out of poverty and
19 provide proper living to people of the state. The people
20 of the state in 1996 concluded that as of March 1, 1998,
21 that level was \$5.75. In our view, a substantial
22 departure from that level set by the people three years
23 ago to the level we hear this morning, in the \$8.00
24 range, would necessarily involve a reformulation of the

1 policy considerations that underlie what is adequate.
2 And while we can all have a debate about what should and
3 shouldn't be the necessary -- or the appropriate
4 considerations, as I suspect will happen in the course of
5 the next few months, I would certainly argue that
6 employing the considerations that this Commission and
7 others have looked at over the period of the last 43
8 years, you'd reach a far different conclusion.

9 Finally, before I turn it over to Ted, two more
10 points.

11 Is it the appropriate time now to increase the
12 minimum wage? In 1998 when the minimum wage was last
13 raised by this Commission, the wage in effect at that
14 time was \$3.35. It was better than 26 percent less than
15 the then-average minimum wage historically at that point,
16 a far greater gap, certainly, than exists today between
17 the current wage of \$5.75 and the average historical rate
18 of \$5.85.

19 When the people moved in 1996 to raise the
20 minimum wage, they were acting at a time when the minimum
21 wage was at a four-year low. We don't face nearly the
22 same circumstance today. Again, the \$5.75 was
23 established as an appropriate wage in March of '98, and
24 it's been a very short time since that period.

1 A final point, and then I'll conclude. You
2 heard some testimony today about the effect of raising
3 the minimum wage on jobs, and it was asserted that the
4 increase in the minimum wage over the last few years has
5 not resulted in job loss, and, in fact, there's been job
6 growth over that period. That's true. But we think that
7 that's a rather limited statement. If you look at -- we
8 provided a chart -- where the job growth has occurred,
9 it's been very uneven. While we've seen a huge job
10 growth in various sectors of the economy, the job growth
11 in the retail, restaurant, and other sectors that employ
12 historically more minimum-wage or entry-level workers has
13 risen at a rate, job growth rate, far below the state
14 average job growth in that time. So, while we've had an
15 increase in the economy, an increase in jobs generally,
16 the effect on these sectors of the economy, we think, has
17 been dampened to a great extent by the 35 percent
18 increase in the wage levels when you look back over that
19 period.

20 With that, unless there are questions, I'd like
21 to turn it over to Mr. Ted Burke.

22 COMMISSIONER McCARTHY: I'd like to make a
23 comment, in light of some of the remarks you said. Let
24 me

1 -- by way of background here, I guess I've earned the
2 reputation over the years on this Commission as being
3 someone who's, above everything else, I think, committed
4 to the processes of our political system, our democratic
5 system. And sooner or later down the line, I seem to
6 have antagonized everyone, which told me I thought I was
7 doing a pretty good job.

8 And specifically, some time ago, I'd say, I
9 objected and voted against altering the laws with regard
10 to overtime, on the basis that since a vote had been
11 introduced into the Assembly and the Legislature and they
12 had voted against repealing our overtime laws, I thought
13 it was extremely arrogant, you know, on the part of the
14 Commission, among other things, to have an end run around
15 the will of the Legislature, which is clearly superior in
16 our political system to this Commission.

17 I mention that by way of background, because it
18 raises, I think, a much more important issue with regard
19 to the overtime issue. And that's that we had a public
20 initiative, where the voters of this state, okay, voted
21 on a measure that was largely introduced and proposed by
22 labor as a living wage at the current level. And the
23 voters of that state overwhelmingly indicated not only
24 that they supported that, but that, obviously,

1 implicitly, they had the right in that situation to set
2 the minimum wage.

3 And what we are in the process of doing is
4 taking a position here where, while the voters of the
5 state were useful for the time being, now they're
6 inconvenient, so what we're going to do is essentially
7 take an end run around something that was passed just a
8 few -- few years ago. And I think this is a rather grave
9 situation.

10 Now, some people will say it doesn't appear that
11 way at all. But let me ask you this. If today we were
12 considering or beginning to consider lowering the minimum
13 wage below what the voters of the state had established
14 just a few years ago, I'm sure, as you are, that all hell
15 would break out and we would be accused of usurping the
16 power of the voters of this state. However, since we
17 want -- since some want to go in the opposite direction,
18 I'm sure you will never hear that argument from that side
19 of the thing.

20 And I just -- as I say, I'm not here at this
21 point to argue what is the proper wage or not, but rather
22 to introduce what I think is a very serious issue, that
23 since we took the extraordinary step as a state to bring
24 this issue, not before the Commission, but before the

1 voters, recently to do so, all right, and now to
2 basically exclude the voters and the will of the voters
3 from the decision that was made, I think this bears some
4 attention and some concerns.

5 And that's -- that's just an observation I want
6 to make. And as I say, it's a very serious consequence,
7 not in this day and age when we do whatever it takes to
8 get whatever we want, but I think, in the greater scheme
9 of things, I do think it's a very serious issue.

10 Anyways --

11 (Applause)

12 COMMISSIONER CENTER: Go ahead, Barry.

13 COMMISSIONER BROAD: First a comment. If you
14 actually read the initiative, what it says is that the
15 Industrial Welfare Commission shall have a minimum wage
16 of "no less than \$5.75 an hour." So, the voters have
17 made it quite clear that we have the power to raise it.
18 It wasn't setting the level of the minimum wage for all
19 time.

20 And I, having been one of the people that
21 drafted that initiative, I -- it was very clear in my
22 mind what we were doing at that time and presenting to
23 the people of the State of California. That was raising
24 the minimum wage to a level that would be adequate for

1 the time covered by the initiative, but not forever and
2 for all time.

3 Let me ask you this question, Mr. Ross. In the
4 period of 1913 to the present, has the California
5 Restaurant Association ever supported an increase of the
6 minimum wage?

7 (Laughter)

8 MR. ROSS: I can speak to the period for which
9 I've been involved with the Restaurant Association, which
10 is two years. And recently, that I know, they have not.

11 COMMISSIONER BROAD: Okay. So, then -- okay.
12 So, if we go back historically, that they've opposed the
13 initiative, they opposed increases in the minimum wage
14 before this Commission, that means they had some idea of
15 what the minimum wage ought to be. And how far do we go
16 back before we figure out what the Restaurant Association
17 thinks is the proper minimum wage? 25 cents and hour?

18 MR. ROSS: Certainly not. And, Mr. Broad, my
19 comments here today are -- one is an adequate wage now
20 and an adequate wage as the statute defines it. And I
21 suppose the position of the Association in the past has
22 been based on their view of adequacy at that time. But
23 currently, given the history of the last few years and
24 the wage over time -- excuse me -- the wage today is much

1 closer to the historic sense of adequacy.

2 Second, just to clarify, we don't question the
3 authority of this body to raise the minimum wage. That's
4 not the point of our -- of my testimony, nor would I say
5 it would be inconsistent with the will of the people for
6 this body to take some action. Clearly you have the
7 statutory ability to do that.

8 What I'm trying to suggest is that there are
9 certain policy considerations inherent in what the people
10 did and in what the IWC has done over time when reaching
11 conclusions of adequacy, and that a substantial departure
12 from where the people arrived at their conclusion in 1996
13 would certainly involve a different menu of policy
14 considerations than that have been historically employed.

15 COMMISSIONER BROAD: Thank you.

16 COMMISSIONER MCCARTHY: Just a quick rejoinder,
17 if I may. With regard to the initiative, my colleague
18 and friend here and I disagree. I think that the fact of
19 the matter is, whatever the legal argumentation that's
20 presented is, that the level that was put in the
21 initiative was not \$8.00 an hour, and the reason that
22 labor did not put \$8.00 an hour into that initiative is
23 because they knew damn well the voters of the State of
24 California would not approve it. And whatever else one

1 might want to say, I think that I would say that's pretty
2 clear.

3 And as far as our authority, of course we have
4 the legal authority, and of course the initiative didn't
5 mean to tie our hands, as Mr. Broad says, forever. But
6 1996 today is not forever. We're talking about very
7 recent history, with a small, but very small, change in
8 the cost of living.

9 COMMISSIONER CENTER: I'm on here as another
10 labor appointee. Barry's the smart one, so I had to get
11 down to basics to understand things.

12 I used to, when I -- in 1968, I think I was
13 working at a Taco Bell in Long Beach, and I don't know
14 what the minimum wage was -- it was a dollar and
15 something -- but I remember the cost of the taco was 19
16 cents. That's how much -- could you give me a chart and
17 a price of -- what the minimum wage is now compared to
18 the cost of the taco at Taco Bell, by the next hearing?

19 MR. ROSS: Certainly.

20 COMMISSIONER CENTER: To me, that's a basic
21 understanding.

22 MR. ROSS: But I think, inherent in what we've
23 done, we've tried to adjust wages in '68 to the present
24 and wages in '56 to the present, counting changes in

1 things like the increase in the price of the taco.

2 COMMISSIONER CENTER: Yeah. Well, that's how
3 much things cost. And that's basic stuff. I'd like to
4 have that information if I can get it.

5 MR. ROSS: Can I introduce briefly Ted Burke?
6 Ted is with the Restaurant Association and owns a
7 restaurant in Santa Cruz and, I think, would like to
8 share his perspective on how the minimum wage works in
9 practice.

10 MR. BURKE: Good morning, Chairman Center and
11 commissioners. As Jon Ross introduced me, my name is Ted
12 Burke, and I'm a restaurateur from northern California,
13 the Santa Cruz area. And I've traveled some distance
14 today because changing the current minimum wage, or the
15 starting wage, as I like to call it, is that my important
16 to my ability to operate my restaurant in a manner that
17 truly provides a net benefit to my employees.

18 You just heard, and you will hear, some good
19 arguments today, by representatives of the California
20 Restaurant Association and others, to move slowly in
21 modifying California's current minimum wage. Of course,
22 as a restaurant employer, one might say I am biased.
23 However, I truly believe that any disinterested third
24 party that reviews carefully CRA's testimony would find

1 their arguments compelling. I urge you to be that
2 noninterested or nonbiased third party and find that
3 after California voters increased the minimum wage 35
4 percent over 18 months, there needs to be a compensating
5 period of time for an employer to absorb such an increase
6 before it's modified again.

7 But beyond the legal arguments and beyond all
8 the statistical information that CRA and others on both
9 sides have offered, let me briefly tell you about the
10 effect on my business from changing the starting way.

11 As background, I am an independent restaurant
12 operator. My partner and I have worked in the restaurant
13 industry for nearly thirty years. I started out as a
14 part-time food server the summer after graduating from
15 college, having completed my military service. I was on
16 my way to graduate school that summer, and I was paid a
17 dollar an hour after the modest in meal prices available
18 then. I had never before worked in a restaurant. I soon
19 found that I was earning so much in tips that summer that
20 I postponed studies for a semester in order to build a
21 financial nest egg sufficiently large enough that I
22 wouldn't have to work while attending graduate school.

23 In the months following that summer, I fell in
24 love with the restaurant industry. I was asked to accept

1 a manager position, and I did. I have never left
2 Shadowbrook, where I ended up buying the business in
3 1978.

4 And why am I telling you all this? First, to
5 let you know that minimum wage is just a starting wage.
6 There is so much opportunity for those who start out
7 inexperienced but work hard in this industry to succeed,
8 to get promoted, to become supervisors, managers, and
9 even owners. It happens all the time.

10 Charles Halliday worked as a minimum-wage food
11 server and later as manager at Shadowbrook. Today he is
12 president of the Florida Hotel and Restaurant School in
13 West Palm Beach.

14 Greg Alexander was a busboy earning minimum wage
15 at Shadowbrook, and later assistant manager. Today he is
16 the new owner of a three-restaurant chain in Mammoth
17 Lakes.

18 Bob Montague worked at Shadowbrook and earned
19 minimum wage. Today he is the chef-owner of Café Sparrow
20 in Napa.

21 There are many, many other stories about people
22 who began at the lowest rung and quickly moved up the
23 economic ladder. Every single individual who holds a
24 supervisory or management position at Shadowbrook today

1 started out earning minimum wage.

2 However, just as it was when I was hired, there
3 needs to be an economic environment that encourages and
4 allows employers to hire people that unskilled and then
5 provide some training. Regrettably, one of the most
6 significant responses to the last increase in minimum
7 wage has been a reluctance to hire and invest in people
8 that are unskilled. We can no longer afford to take the
9 chance with unskilled or inexperienced workers that my
10 employer took when he hired me, and that I took when I
11 hired Greg and Charles and Bob. It's just way too
12 expensive now to risk hiring an inexperienced worker.
13 Instead, in recent years we reluctantly tell promising
14 workers to come back after they get more work experience.

15 When the minimum wage burden has less an
16 economic impact than it does not, we can afford to take
17 some chances in hiring inexperienced workers, but not any
18 more.

19 There are some who would say, "Well, just raise
20 your prices," as though that simple action would solve
21 the economic squeeze that results from large mandated
22 wage adjustments. I often find myself asking in
23 response, "Don't these people realize that if I could
24 raise my prices higher and find that the public would

1 just go along with them, that I would have already done
2 that?" The reason that prices are where they are is
3 because they were as high as they can go before the
4 public starts finding alternative places to go, such as
5 lower cost, less service restaurants, or even take-home
6 meals from high-end grocery stores. And when that
7 happens, job numbers go down, work hours diminish, and my
8 contributions to my community, in the form of taxes and
9 charitable giving, shrink.

10 Commissioners, there are real consequences to
11 raising starting wages beyond levels that are affordable.
12 I couldn't raise my menu prices 35 percent in eighteen
13 months to compensate for the last increase. Instead, we
14 now close one half-hour earlier every night of the week.
15 We reduced our kitchen payroll by restructuring our menu
16 to replace labor-intensive items with those that require
17 very little time to prepare. And we now serve lunch in
18 our lounge during the day with a limited menu and three
19 employees rather than with an extensive menu and full-
20 service staff in the dining room.

21 For business to continue having the type of
22 worker the minimum wage was meant to hire, and for
23 employees to find first-time work and get sufficient
24 amounts of it, we need to let some time go by after the

1 huge increase of 35 percent.

2 I would hope that I could again be able to
3 imitate my hiring experience by having the opportunity to
4 hire inexperienced and unskilled youth at a starting wage
5 that is affordable, that allows for training, and
6 provides an opportunity for everyone to succeed.

7 Thank you very much for listening.

8 COMMISSIONER CENTER: Thank you.

9 Any questions?

10 (No response)

11 COMMISSIONER CENTER: Thank you.

12 (Applause)

13 COMMISSIONER CENTER: You guys got -- I've got a
14 list. You want to go by the list? All right. I'll go
15 by the list. That way, somebody won't get mad at me --
16 unless you're ready, Julie.

17 MS. BROYLES: (Not using microphone) Not yet.

18 COMMISSIONER CENTER: Okay.

19 MR. ALBA: Hi. Good morning, everybody -- or
20 afternoon.

21 I want to say a little bit about myself --

22 MS. BROYLES: (Not using microphone) Jamie,
23 your name.

24 COMMISSIONER CENTER: Name?

1 MR. ALBA: I'm sorry. Jamie Alba, A-l-b-a.

2 COMMISSIONER McCARTHY: You might pull the mike
3 in a little closer.

4 MR. ALBA: Is that --

5 COMMISSIONER McCARTHY: Yeah.

6 MR. ALBA: Okay.

7 I was a busboy for many years. I was a waiter
8 for many years, and a manager for many years. I now own
9 two restaurants and I have about 300 employees.

10 Now, what I want you to know is, is that the
11 busboys, the waiters are not --

12 AUDIENCE MEMBER: (Not using microphone) Speak
13 into the mike!

14 AUDIENCE MEMBER: (Not using microphone) Can't
15 hear.

16 COMMISSIONER CENTER: Speak into the microphone.

17 MR. ALBA: Sorry.

18 The busboys and the waiters who work at our
19 stores are not minimum-wage employees. The busboys make
20 between \$10 and \$12 an hour, and the waiters make between
21 \$20 and \$40 an hour. I think the people who are here are
22 mostly restaurant people because we're the ones who are
23 most adversely affected by increasing minimum wage
24 because we, in essence, pay a minimum wage, yet we pay

1 taxes on it, tips as well. So, these people are, in
2 fact, not minimum-wage employees.

3 I have nine minimum-wage employees. The reason
4 -- the nine happen to be dishwashers. These people, at
5 this point, don't speak any English and are starting at
6 the bottom to work their way up. Most of the
7 dishwashers, we try to bring them in as prep people, and
8 then we try to put them on the hot line and cold line as
9 we move them up. It's a solid wage for these people.

10 What I want to tell you is, is when I was a
11 busboy, I supported myself. When I became a waiter, I
12 supported my wife and my children. As a manager, I did
13 the same. And obviously, as an owner, I do that as well.

14 Interestingly enough, today we cannot find the
15 people to hire and pay \$7 or \$8 an hour to, because
16 there's people -- the people out there are not trained to
17 do much within our industry. And so, we need to bring
18 them in, cultivate them, train them, and bring them up.

19 But the people who work the front of the house,
20 which is approximately 70 percent of the people, are
21 minimum-wage employees on one hand, and tipped employees
22 on the other hand. So, they're making a substantial
23 amount more than minimum wage.

24 And I don't know other industries, and I can't

1 speak for other industries. I can only speak for the
2 restaurant industry. We have gotten eaten up over the
3 last seven or eight years. And as the gentleman before
4 me spoke, it's true, you can't raise your prices 35
5 percent. But we're increasing -- we've gotten -- we've
6 had to pay 35 percent more than the minimum wage. And
7 for the front of the house, it's ridiculous. It really
8 is. There's nobody who's a minimum-wage employee. I
9 know I've said this three or four times, but I'm saying
10 it even one more time before I finish. They're making
11 \$20 to \$40 an hour, and they work anywhere from 20 to 35,
12 40 hours a week. So, for that, a raise is -- it's unfair
13 to our industry.

14 That's all I really wanted to say. Would anyone
15 like to ask me any questions?

16 COMMISSIONER CENTER: Thank you.

17 We have -- do you want to go first, Julie, for
18 the Chamber people?

19 MS. BROYLES: Good afternoon, Mr. Chairman,
20 members. If I can find the microphone here, I'm Julianne
21 Broyles, with the California Chamber of Commerce, and I'm
22 very pleased to be able to talk to you today.

23 The minimum wage is an issue of concern to
24 certainly a significant number of small businesses in

1 California. And I'm not here today in opposition or in
2 support, but to add some points for you to consider as
3 you deliberate these very important issues.

4 The minimum wage in California certainly, as
5 it's been discussed by other speakers, is where people
6 with no skills start their career, for the most part.
7 And as they gain skills, as different research that we
8 will be submitting to the Commission as part of our
9 comments, indicates, 40 percent of them are earning
10 substantially more than the minimum wage after just the
11 first four months, and almost 60 percent are earning even
12 higher amounts by end of their first year as their skill
13 base goes up.

14 Some other issues that don't seem to get
15 mentioned very often is the issue of what the minimum
16 wage has as an impact on other parts of a business'
17 operation. Now, I remember the last time this whole
18 issue was being discussed by the Commission, and I got a
19 call from a reporter. It was a young reporter from the
20 Los Angeles going, "I am very upset. I just came back
21 from getting a cup of coffee next door and I felt I just
22 had to call someone who was involved in the minimum wage
23 process to complain about it." And I said, "Well, what
24 is the issue?" She said, "Well, there's a notice on the

1 front of this shop saying that as a result of the
2 increase in the minimum wage, that they were raising
3 their menu across the board by about 4 or 5 percent" -- I
4 don't think it was any higher than five. And she said,
5 "I want to know, isn't it illegal for an employer to pass
6 on the minimum wage increase to their customers?"

7 (Laughter)

8 MS. BROYLES: I said, "No, it's not. It's what
9 normally happens." And anyplace where an employer can't
10 or a business can't, the reason it costs you money is
11 producing your product or your service usually is passed
12 on to the consumer. And that's rather a vicious cycle
13 that you see ensue. You have the minimum-wage worker
14 who's saying, "I'm not making enough now to make ends
15 meet; therefore, the minimum wage should be increased."
16 If the minimum wage is increased, then the business then
17 raises the prices of whatever they're doing to -- you
18 know, for their product or their service, and then that
19 minimum-wage worker then, of course, is going to be
20 paying more for that product or service, therefore
21 necessitating yet another increase in the minimum wage.
22 So, you do have a cyclic effect as a result.

23 But other ways that minimum wage impacts a
24 business is possibly -- and it's something that I have

1 researched before -- the workers' compensation insurance
2 premium price, in that for every 25 cents, on average,
3 that the minimum wage goes up, you have about a \$30-
4 million increase on the workers' comp premiums throughout
5 the state, overall, on average, because as business
6 people know, your workers' compensation insurance is
7 first calculated on the size of your payroll. If the
8 payroll goes up, there's a -- as a -- and we calculated
9 this -- of course, that's with a
10 -- certain number of employers who probably have minimum-
11 wage workers as a significant part of their workforce.
12 You can see how the increase really can add up, how you
13 have just a -- you know, at the very beginning of this,
14 there was talk about an \$8.50 increase -- you're looking
15 about a \$750-million increase in workers' comp rates
16 across the board, just with what they're discussing as
17 their number.

18 And, again, that's probably not what's going to
19 be the prime issue for this board, but certainly that
20 should give you some food for thought.

21 Some other issues that you may want to consider
22 is what California is right now. Now, these are numbers
23 either from the Bureau of Economic Analysis in
24 Washington, D.C., that advises the White House on the

1 condition of the economy, or from the Bureau of Census.
2 And these are all from 1998 and 1999 numbers.

3 An issue that -- some of the numbers that you
4 might find of interest, but per capita income, on
5 average, in California, is \$27,503. That puts us about
6 thirteenth in the rank of all the states in terms of per
7 capita income. But you have to think about what we also
8 do in per capita taxes. Per capita taxes, we are number
9 four in the country, and we are number two in the country
10 with the escalation of taxes over just the last year.
11 Taxes went up in California over a year -- from a year
12 ago to now by 6.6 percent. From where they were in per
13 capita taxes, they've gone up 11.4 percent overall.

14 Additionally, when you look at these numbers,
15 you have to think there are other ways to make California
16 an affordable place for people to work and leave. And
17 that's really what you have an obligation as a
18 Commission, because you're supposed to look at what makes
19 California affordable for everyone, not just minimum-wage
20 workers, but for everyone in the state. And you have to
21 look at what the impact is on, say, housing cost, what --
22 and figure in, if you do this, what is the increase in
23 tax rates that might ensue, what is the increase and the
24 impact on insurance rates, what does this do to make

1 healthcare more or less affordable, what does this do to
2 make the cost of a meal more or less affordable.

3 And all these things have to -- I'm hoping are
4 going to be sitting in the back of your mind as you look
5 at numbers and different deliberations concerning minimum
6 wage, because it's not an easy task. I'm hoping, at
7 times, as we go through these hearings, to provide more
8 and more economic information to you on this issue. And
9 again, the California Chamber has not taken a position on
10 the increase in the minimum wage at this time because
11 there is not a concrete number, unless the Commission is
12 going to set one today, that we can actually provide
13 specific comments on.

14 But at this time, I certainly hope that you will
15 look at the California Chamber of Commerce as a resource.
16 We have over 11,000 members, almost 12,000 members now,
17 who employ over three and a half million workers in the
18 State of California. And through our local chambers,
19 we're able to reach out to about a few hundred thousand
20 employers, to provide information and data for this
21 Commission. So, I hope you will take them up on that.

22 COMMISSIONER CENTER: Ms. Broyles -- so
23 everybody understands, what we're doing here, we're
24 statutorily required to do.

1 MS. BROYLES: Yes, I understand that.

2 COMMISSIONER CENTER: And we'll be conducting
3 wage boards.

4 I know we -- Mr. McCarthy and I, we sat with
5 another commissioner when they were doing the initiative,
6 and hopefully, the employers don't do "the sky is
7 falling" and start doing away with the senior citizen
8 discounts, before we conduct all our business, in
9 restaurants again. That's not very nice.

10 MS. BROYLES: I don't think I was saying the sky
11 is falling. I'm asking for you to consider how to make
12 the sky not fall and make sure that, if you're looking at
13 increasing the minimum wage, that you do so in a
14 reasonable manner and based on reasonable facts.

15 COMMISSIONER CENTER: And we will do that.
16 Thank you.

17 MR. HEIDT: Good afternoon, commissioners. My
18 name is Horace Heidt, and I currently the president of
19 Sherman Oaks Chamber of Commerce. We're a small chamber
20 in the heart of the City of Los Angeles, and we're
21 committed to protect the rights of our small business
22 members.

23 I guess the best way to give us notoriety is we
24 are in Wally Knox's district; he is our Assemblyman. And

1 one of the main reasons I appear today is we have tried
2 for years to explain some of the needs of our businesses
3 in this district at our Government Affairs Committee
4 meetings, and we really haven't had a good response. We
5 really feel we haven't been listened to. And I'm hoping
6 -- hoping that this board will take a little time to
7 consider that this great State of California is made up
8 of more than just entry-level employees. There are --
9 there are many people in the state -- I think we have 33
10 million residents and 16 million workers. And we have to
11 consider all of them.

12 And I would like to echo, before I start, one
13 thing that I think is the biggest mistake any of us can
14 make politically in this state, and that's not listening
15 to the will of the voters, because when you don't listen
16 to the will of the voters, most young people coming in to
17 our country or growing up here lose the will to be
18 involved in politics. They feel that they're not
19 listened to, why even -- why even care? Why even
20 participate?

21 So, I really think it's important to listen. I
22 don't know this year there's been an agenda not to listen
23 to the small business owners, because I believe all the
24 statistics show that the growth in employment in this

1 state comes from small business. That is simply a fact.

2 Our membership is made up of mom-and-pop
3 restaurants, shopping malls, doctors, drugstores, grocery
4 stores, car dealers, insurance, manufacturers,
5 communication businesses, retail stores, bank, apartment
6 complexes, theaters, artists -- go on and on -- they are
7 all small business people. They are all small people
8 that started at the bottom of the businesses and worked
9 very, very hard to become owners and managers of their
10 companies.

11 Those small business owners are having a very
12 tough time today making ends meet. I'm an apartment
13 house owner. I happen to have 80 percent older, retired
14 people in my complex. We're under rent control. Because
15 we have older people, I have to have a large staff to
16 take care of them. Last night, one of the husbands of
17 one of the residents went out and no one knew where he
18 was. I was at my business to eleven o'clock trying to
19 locate him and placate the fears of his wife. That takes
20 a step. That takes extra time.

21 If the wage, the entry-level wage, of my staff
22 members keeps on going up, and also, if AB 60, which I'll
23 discuss later, is applied, we have to cut down on our
24 staffing. We can't have the number of people to care for

1 these people. And I just feel the state isn't going to
2 be there at eleven o'clock at night to see that these
3 people are cared for.

4 So, there's really two sides to the story, and I
5 think there are other ways of helping these good people
6 that are here today that are concerned about affordable
7 living. There's other ways to help them.

8 My biggest problem with minimum wage, it's
9 across the board. It's one suit fits everybody, one wage
10 is for every industry. I just think that's absolutely
11 absurd. That is not scientific, it is not flexible, it
12 is not workable. I don't know what the problems are with
13 other owners in different industries. I know one of my
14 employees is a nurse, and she has to work two jobs to
15 make ends meet
16 -- to make ends meet, but she does work those two jobs.
17 And she's happy to do it. And I -- I can't -- I know
18 that industry is very concerned about AB 60, but that's
19 another subject.

20 The other ways that I think the minimum wage
21 should be taken care of is, I would feel better if you
22 would pinpoint the industries where there are the
23 greatest abuses and try to do something for that
24 particular industry, instead of just blanketing every

1 single employer in the state. I mean, I think it's
2 pretty cavalier that you think you know the problems of
3 every employer in the state. We're in the business of
4 providing goods and services and do the best job we can.
5 And we have very individualized problems, so you could
6 pinpoint industries.

7 Another thing, I really feel, in this country,
8 this great country of ours, that minimum wage is a
9 federal issue. It should be set by the federal
10 government, not each individual state, because if ours is
11 higher than the next state, then we have a competitive
12 disadvantage in this state.

13 And I agree and will echo, of course, the
14 speakers before me: minimum wage is an entry-level wage.
15 It's a starting wage for kids in high school, for people
16 that may want a second job, for people that want to make
17 some extra money. But when you raise minimum wage,
18 you're just raising the cost of living in California.
19 Every service will go up. The cost of a babysitter will
20 go up, the cost of food will go up, the cost of getting
21 gas will go up, the cost of electricity will go up. All
22 the city services, all the costs of your apartment will
23 go up. I look at it like a high jumper that's supposed
24 to go over six feet. So, you raise the minimum wage so

1 it's only five feet, but by raising the wage, you've got
2 to raise the bar another foot. So, you're really just
3 making the cost of living more in this state. And the
4 more it costs, the less people will be able to live here,
5 and the less competitive we will be in this now world
6 market, world economy, which we have.

7 I have a few more comments, and I thank you for
8 listening to me.

9 Taking away minimum wage also, I feel, will take
10 jobs away from people. Employers will be caught. We
11 feel, as employers, that we contribute to society by
12 hiring the people. That's how we make a difference. We
13 want full employment for our country and our state. With
14 raising the minimum wage, we will be not allowed to hire
15 more people. We will actually maybe have to reduce the
16 number of people. And small businesses are supposed to
17 be the engine for creating more employment.

18 Finally, I would just like to say that raising
19 the minimum wage raises the cost of doing business across
20 the board and will deal a severe blow to the prosperity
21 of our state. We need to be more competitive. We need
22 to hire more people.

23 Again, I will say there isn't one person in my
24 business that is working now at a minimum wage. They are

1 all working far above it. But for the very first job,
2 before I got to know what their skills were, before I had
3 the ability to see if they were interested in the type of
4 work that I do, it gave me a chance to hire more people
5 than I'm able to do.

6 I thank you very much for listening to me, and
7 I'm sorry that I was not eloquent enough to discuss this
8 issue. But please don't forget small businesses.
9 They're the engine of prosperity in this country, and
10 they have to be able to make it too. And if you want to
11 look at any statistics, look at the number of businesses
12 going out of business in this state. Look at the number
13 of bankruptcies. I would love to have some report on the
14 record number of bankruptcies that are going on this year
15 with small business, because they can't make it. They
16 can't make ends meet.

17 Thank you very much.

18 COMMISSIONER CENTER: Just a question. And Dan
19 Galpern testified earlier, from the California Budget
20 Process (sic), and it showed, after the initiative passed
21 and the minimum wage increased, that unemployment went
22 down in California.

23 MR. HEIDT: Employment went down?

24 COMMISSIONER CENTER: Unemployment went down.

1 MR. HEIDT: That -- that may be due to other
2 factors. There's a tremendous influx of people into
3 California. You remember that Hong Kong has now become
4 part of China. There was a mass exodus from that -- from
5 that country to California, bringing a lot of money and a
6 lot of people here. There are many other reasons why
7 California has less unemployment right now.

8 And one of the problems for employers that
9 really needs to be considered, we're having a hard time
10 finding qualified employees. You know, we honestly need
11 people that speak English, because my old -- my older
12 tenants speak English. And I have to have someone that
13 can come to them and talk to them, in my industry. And
14 we need more qualified, educated workers.

15 And I mention as another alternative, as other
16 people did, nothing is more important than education, and
17 trade schools and training. If you want to take money
18 and put it somewhere, put it into educating our people in
19 our state and training them to do a good job so we can
20 serve each other better, because that's all we're doing.
21 We're serving each other. We're supplying goods and
22 services to each other. And there has to be a
23 relationship between your qualifications and how hard you
24 work and the result and what the business does in its

1 goods and services. If you just get it automatically,
2 you just automatically get this and you don't have to do
3 anything, it creates havoc with the employer-employee
4 relationship.

5 COMMISSIONER CENTER: Any more questions?

6 MR. HEIDT: Thank you.

7 COMMISSIONER CENTER: Do you have anything?

8 (No response)

9 COMMISSIONER CENTER: Thank you.

10 I've got a list. Do you want me to call names
11 or jump up or --

12 MS. BROYLES: Sure.

13 COMMISSIONER CENTER: All right. I lost it now
14 already.

15 We've got Sandra (sic) Frohlich.

16 MS. FROHLICH: Sondra.

17 COMMISSIONER CENTER: Sondra. That's why --
18 they just jumped up.

19 MS. FROLICH: A very common challenge for
20 people.

21 I'm Sondra Frolich. I'm currently the executive
22 director of the Sherman Oaks Chamber of Commerce. I've
23 been in Chamber management for more than twenty years.
24 And I would like to make a couple of comments from my

1 experience.

2 When the initiative was proposed for the ballot,
3 one of our gas station owners -- and I shouldn't say -- I
4 had all these thoughts that a gas station was one of the
5 minimum-wage places -- the owner said, in the course of
6 the Chamber's discussion about the pros and cons, that he
7 didn't really like to hire somebody at minimum wage, but
8 he found it very necessary. The reason he didn't like it
9 is that he recognized that it was not going to support a
10 family or the majority of the needs of most individuals,
11 but in hiring, it was necessary because of the training
12 when somebody was just starting in the business. And his
13 goal was that that employee, for six or eight months at
14 the outset, would have become better skilled and,
15 consequently, would be promoted, both to more
16 responsibility and a higher pay.

17 And I think that is the attitude of a great many
18 business owners. It would appear from some of the
19 remarks from some of the employees they may not believe
20 that the business owner has that at heart, but I think a
21 great many of them do.

22 Another thing that, again, disturbed me earlier
23 when employees were speaking about working at minimum
24 wage and having no benefits, I don't think they are aware

1 of how many small business owners have no personal
2 benefits. I could take you into the south San Fernando
3 Valley and introduce you to business owners who have no
4 medical insurance for themselves, who lack many of the
5 things that are commonly considered to be employee
6 benefits. And so, the fact that the minimum-wage
7 employees are not being provided with those benefits is
8 perhaps not as unique as many of us might believe.

9 Also, I would like you to take into
10 consideration the many legislative mandates that are
11 being placed on business ownership these days. It's not
12 only the workers' comp percentage going up, of which
13 Julianne spoke, but it seems as if every session of the
14 Legislature addresses some business employee-related
15 problems, and they end up saying, "Well, the business
16 owner can just take care of this problem." And so, there
17 are a great many pressures and additional expenses beyond
18 just paying wages.

19 Thank you.

20 COMMISSIONER CENTER: Thank you.

21 Any questions?

22 (No response)

23 COMMISSIONER CENTER: Jim, I don't see your name
24 on here. You probably can't talk here.

1 MS. FROLICH: Pardon me?

2 COMMISSIONER CENTER: No, I was talking to Jim
3 Abrams.

4 MS. FROLICH: Oh.

5 MR. ABRAMS: It's on the one outside.

6 COMMISSIONER CENTER: Okay. Then we'll let you
7 talk.

8 (Laughter)

9 COMMISSIONER BROAD: Can we vote on that?

10 COMMISSIONER CENTER: No. Be courteous.

11 (Laughter)

12 MR. ABRAMS: Thank you, Mr. Chairman and members
13 of the Industrial Welfare Commission. I'm Jim Abrams,
14 executive vice president of the California Hotel and
15 Motel Association.

16 And I'd like to take perhaps a different tack
17 with respect to this whole issue, because I think
18 statistics, to the extent that they are thrown out at
19 this kind of proceeding, can be very misleading. And
20 while it's true, for example, that California has the
21 lowest unemployment that it's enjoyed in many, many, many
22 decades, we still have the highest unemployment rate in
23 the country. So, it can go both ways, and I think that
24 misses the point, quite frankly.

1 And a couple of people who have spoken today,
2 and some of the questions that some of you have asked,
3 have pointed up what I think is, hopefully, an avenue
4 that you will explore, and that is to take the minimum
5 wage and not apply it across the board, one-size-fits-
6 all. The gentleman from the Sherman Oaks Chamber of
7 Commerce told you this. And I think that as we go
8 forward in the wage board process, people in the public,
9 employers and employees, need some guidance from you.

10 For example, I think we need to pinpoint exactly
11 what it is that you want to know about or the wage board
12 wants to know about, in terms of what the minimum wage is
13 designed to do. Mr. Pulaski read from the code, from the
14 Labor Code. And that is certainly what the legislative
15 mandate of this Commission is. However, the statistics
16 that you hear thrown around or talked about -- let's take
17 \$8.00 an hour, for example, to hit the poverty line for a
18 family

19 -- I will submit to you that the minimum wage is not
20 designed to deal with a family of two people, three
21 people, four people. And how big is a family? We heard
22 a number of people talk this morning, earlier on, about
23 dependents, two, three, four, five dependents. Should
24 the minimum wage be a function of whether I have five

1 dependents or two dependents? I submit to you that, no,
2 it should not be.

3 The minimum wage, as I think many people
4 originally envisioned it and, I believe, got lost in the
5 mix, is to -- I would submit to you, is to deal with what
6 it takes to take care of the health and welfare, proper
7 costs of living, of a single employee.

8 Now, I think if you say to yourself, "We have to
9 presume that people don't live by themselves -- many of
10 them do -- but that people live in family units, and
11 therefore we have to be able to support a family," that's
12 -- that's saying basically that two people doing the same
13 work, we're going to pay everybody as though you are
14 married or have a significant other and you've got a lot
15 of dependents. And that becomes the floor, when, in
16 fact, that is not what it takes to supply the proper
17 costs of living for someone who is an individual
18 employee.

19 So, I think it is incumbent upon the Commission
20 to tell the public, which will come before you and
21 testify at the wage board hearings and subsequent
22 hearings on this issue, is the minimum wage designed to
23 take care of a hypothetical single person, a family of
24 two, three, or four, because depending on what you select

1 as your target, what you feel your legislative mandate
2 is, right or wrong, it will focus and change dramatically
3 the outcome of the testimony that's presented to you and,
4 I submit to you, the outcome of your own individual
5 deliberations.

6 Secondly, I think it's critical to look at --
7 and whether it's a family or one person, whatever you
8 decide is the target of the minimum wage mandate from the
9 Legislature -- I think you need to say to yourself that
10 the minimum wage needs to focus in on, with some degree
11 of individuality, but not worker by worker -- some degree
12 of individuality based on that person's circumstances.

13 For example, I think it's very critical that you
14 look at the whole issue of tipped employees. And while I
15 appreciate what Mr. Broad says, that Labor Code Section
16 351 and sections around that have been held by the
17 California Supreme Court to preclude a separate, lower
18 minimum wage for tipped employees, I think it is
19 incumbent upon this Commission to not only make decisions
20 that the minimum wage, for example, will or will not go
21 up, or go up by so many dollars, or whatever else, but to
22 find out really what it takes to best serve the needs of
23 the employees of the State of California. And if you,
24 for example, come to the conclusion that there should be

1 a separate minimum wage for tipped employees, I think it
2 is inherent in your duty and I think you have a mandate
3 to tell the Legislature, "We suggest to you that you, the
4 Legislature, look at the question of whether or not there
5 should be -- Labor Code Section 351 should be amended to
6 permit some sort of a -- either a lower minimum wage for
7 tipped employees or a tip credit, which is common
8 throughout the United States, with the exception of about
9 four or five states." The fact that the law today may
10 prohibit you from setting up a separate, lower, or
11 different minimum wage for tipped employees does not
12 preclude you from voicing your opinion, based on all the
13 input -- this is where the input comes from, is through
14 the Industrial Welfare Commission. You're the only ones
15 who really have the hearings all around the state. And
16 if you come to the conclusion that a legislative change
17 is needed, I think it is your obligation to tell the
18 Legislature, "Here's a suggestion." Obviously, you can't
19 order them to do anything, but you can make suggestions
20 based on your input. You are the experts, and you have
21 the ability to go and get information.

22 The same thing is true with the comment, as it
23 was stated in the earlier hearing. People had testified
24 in favor of being able to go on 12-hour days. I

1 appreciate that AB 60 doesn't allow that at the present
2 time. But if, in the course of your hearings, you come
3 to the conclusion that that is a good social goal, then I
4 think you have the obligation -- I think you certainly
5 have the right -- the mandate from the Labor Code to tell
6 the Legislature and the decision-makers of the state that
7 this is something that they should look at as a desired
8 social goal.

9 I also think it's important to look at the fact
10 that this affects a great many people. They are
11 teenagers living at home, supported in other
12 circumstances, who are getting their first jobs and for
13 whom their skill levels are, at best, perhaps minimal, in
14 terms of what the employer needs. And I think that it is
15 certainly within your right to say that we are going to
16 recognize that differential, and that we are going to
17 recognize that people who don't have a lot of work
18 experience, who are just brand new to the workforce,
19 should perhaps be -- we should perhaps provide incentives
20 for employers for hiring these people by recognizing the
21 fact that their productivity level, when they first enter
22 a lot jobs, when their job skills are not yet refined --
23 should perhaps be different than the minimum wage for
24 someone who is working full-time, is on his or her own,

1 with or without a family, depending on where you set the
2 target.

3 And also, I would like to propose to you that
4 you let it be known whether or not you are willing to
5 take testimony, whether you're willing to consider what I
6 will call a system of setoffs. And I'm speaking strictly
7 for myself -- I'm not speaking on behalf of the Hotel and
8 Motel Association, and I haven't asked my board whether
9 they think this is a good idea or a bad idea -- but I
10 think that, as the lady from the Sherman Oaks Chamber of
11 Commerce who spoke -- and I apologize for forgetting her
12 name -- it is true that a great many people don't have
13 any benefits. But I think that if you assume, for the
14 sake of argument, that the minimum wage should go up --
15 I'm not advocating that -- that employers who now provide
16 benefits that really make it possible for people to have
17 a better standard of living, whether it's health
18 insurance, transit assistance, childcare assistance, 401K
19 plans, whatever it happens to be, health clubs, whatever
20 it is, that if you make up a list of what you feel are
21 socially desirable goals, things you want to do for
22 workers to make their standard of living better, I would
23 submit to you that one of the best ways to do that is to
24 tell an employer that, "We are going to raise the minimum

1 wage" -- and I'll just use this as a hypothetical; I'm
2 not advocating raising it, or certainly not to the \$8.00
3 that Mr. Pulaski recommended -- but, "However, if the XYZ
4 Hotel or the ABC Restaurant or So-and-So Service Station
5 provides healthcare benefits or provides childcare,
6 provides transit assistance, that there ought to be a
7 tradeoff." I would submit to you it ought to be a
8 dollar-for-dollar tradeoff, not below the \$5.75; if I'm
9 not getting that, then you go back to square one.

10 But, for example, in the case of healthcare, in
11 our small office we have eight people, and we pay about
12 \$250 a month for healthcare for our employees, for a
13 single employee, more if there's a dependent. And that
14 works out to -- if you figure 160 hours a month, that
15 works out to what? -- about \$1.50 an hour, give or take a
16 little bit. I would submit to you that if I gave an
17 employee \$8.00 an hour, he could not, on that difference
18 between the \$5.75 and the \$8.00, take that money and go
19 out and buy him the kind of healthcare that the employers
20 provide through group coverage. And if I provide that
21 kind of benefit, should not I have an incentive to do
22 that, particularly if I don't now provide it? I would
23 submit the answer is yes. We all would like employers to
24 provide health insurance.

1 But secondly, what you're doing is taking away
2 the incentive for an employer to take away some benefits
3 that he now provides them. And I think it is certainly
4 true that -- or we might argue that raising the minimum
5 wage throws people out of work or not, but it's certainly
6 true that employers in many industries, not across the
7 board, but certainly many industries, have to look at the
8 level of benefits they provide. They may not now be able
9 any longer to provide healthcare to their employees. And
10 they say to the employees, "I have to now have you pay 10
11 or 20 or 30 or 40 or 20 percent a month towards your
12 health insurance because I can't afford to pay 100
13 percent of it," or "I can no longer contribute anything
14 to your 401K plan." So, while it might not necessarily
15 in unemployment or disemployment, I think that if you as
16 a Commission decide this is something you're interested
17 in, I think you need to tell the public, "Come to us and
18 tell us what are you providing in the way of benefits,
19 what does this cost you per employee or per work unit,
20 whatever else it is?" How can we look at molding
21 something that's truly creative instead of the usual
22 'Don't raise the minimum wage,' 'Raise it to \$3 million,'
23 and it ends up somewhere in the middle or it doesn't
24 change at all? I think the Commission needs to tell the

1 public that come to these wage board hearings what kinds
2 of creative opportunities and ideas that you'd like to
3 hear about, what kind of information do you want, so that
4 you don't get the same old rhetoric. And I don't mean
5 that disrespectfully of anybody's comments; it's where
6 we've been.

7 And I think -- I think the key, really, to go
8 forward -- and I don't know, Mr. Center, if you're going
9 to be announcing the kinds and numbers of wage board
10 hearings and planning or anything else, what kinds of
11 boards, at the beginning of the year, but I think it is
12 time for the Commission to start to focus in on really
13 who the minimum wage is designed to help. And that will
14 determine an awful lot of what is done. I think you
15 should look at some creative ways. I would suggest to
16 you -- my personal suggestion -- that looking at
17 incentives to provide extra benefits or not lowering
18 existing benefits is a good social goal and needs to be
19 factored into the minimum wage equation, and that looking
20 at brand new hires, people who are living at home, who
21 really have an independent source of income and living,
22 needs to be factored into the equation as well.

23 Thank you for your time. It's been a long
24 morning for you, but I'd be happy to answer any questions

1 that you have.

2 COMMISSIONER BROAD: Mr. Abrams, you know, I
3 have that strange distinction of actually being a
4 business owner, a small business owner, with two
5 employees, so I feel your pain. But also, I think I'm
6 deeply familiar with the advantages of being a small
7 business owner that this society provides. And while
8 there's a lot of moaning and groaning here, there are
9 significant advantages.

10 In terms of the incentives that our society
11 provides, one need not go any farther than the Tax Code
12 to look at the incentives that employers are given to
13 provide these benefits. They are 100 percent -- they can
14 be written 100 percent off against your income in any
15 given year. Beyond that write-off, how much of a subsidy
16 do the taxpayers of the United States pay to low-wage
17 employers to keep them, you know, in their Jaguars? I
18 mean, that's really ultimately what it comes to.

19 MR. ABRAMS: May I respond?

20 COMMISSIONER BROAD: Please.

21 MR. ABRAMS: Mr. Broad, with all respect,
22 sincerely and personally, if this is going to be a debate
23 about tax credits and small business employers driving
24 Jaguars and the salaries of CEOs of Fortune 500

1 companies, then -- and I mean this sincerely, Barry, with
2 respect -- that's not where I believe this discussion
3 should go.

4 The Tax Code says that ordinary -- expenses
5 incurred in the ordinary -- necessary and ordinary course
6 of doing business are deductible. There are a lot of
7 things, education expenses, and things like that. There
8 are a lot of employers who, right now, cannot afford to
9 provide healthcare. If they did provide healthcare, they
10 could probably write it off. They can't afford it.

11 So, my question to you as a body responsible for
12 the health and welfare of the whole economy and the
13 employees in it, in a roundabout, very connected way, is,
14 "If you raise the minimum wage, is there a social value
15 in telling an employer that we would also like you to
16 provide healthcare? You can't -- we really don't think
17 we can make you do both. You can provide better
18 healthcare for that employee because you are a group than
19 that employee can provide on his or her own, no matter
20 how high we raise the minimum wage, within reason. And
21 therefore, we want to at least consider whether that is a
22 proper thing to do." I'm not telling you it is or it
23 isn't, but I think if the Commission says, "Damn it,
24 employers are driving Jaguars and they've got 100 percent

1 tax write-offs," I think a golden opportunity will be
2 missed.

3 COMMISSIONER McCARTHY: Yeah. I think there are
4 some excellent suggestions here. I don't know how they
5 are practically implemented.

6 And this is a little off of what you said, but I
7 know a lot of minimum-wage employees do not receive
8 benefits. But among those who do, I suspect one has to
9 take into account that a major increase in the minimum
10 wage will lead to a reduction in the benefits of those
11 who do receive benefits.

12 MR. ABRAMS: Tax write-offs -- a 100 percent tax
13 write-off doesn't mean it is still a profitable good
14 thing for a business to do.

15 COMMISSIONER McCARTHY: No. And as evidence of
16 that, I would cite a man I greatly respect, Assemblyman
17 Knox, in talking about AB 60 this morning before us. I
18 mean, what he pointed out is there's something out there
19 called a market, and the effort on the part of the
20 healthcare industry to reduce base pay to kind of
21 compensate for the increase in overtime pay is indicative
22 of that. I'm not necessarily supportive of that, but I'm
23 just saying there is a market out there. And that's not
24 the only consideration, and maybe not the major

1 consideration, but it is something to be taken into
2 account, as well as your own suggestions.

3 COMMISSIONER CENTER: Thank you, Mr. Abrams.

4 MR. ABRAMS: Thank you very much.

5 COMMISSIONER CENTER: Any other speakers on the
6 minimum wage?

7 (No response)

8 COMMISSIONER CENTER: With that, we'll adjourn
9 until 1:15, and we'll -- it's 45 minutes.

10 (Thereupon, at 12:30, the public meeting was
11 recessed for lunch.)

12 --o0o--

13

14

15

16

17 A F T E R N O O N S E S S I O N

18 --o0o--

19 (Time noted: 1:20 p.m.)

20 COMMISSIONER CENTER: Thank you.

21 Right now I want to introduce Marcy Saunders,
22 who's the State Labor Commissioner. She's got some draft
23 language on their interpretation of AB 60, and she'd like
24 to comment on that.

1 MS. SAUNDERS: Good afternoon.

2 I have presented to you today our
3 interpretations -- Division of Labor Standards
4 Enforcement -- interpretations of AB 60. Just let me
5 explain to you that it's taken us approximately two
6 months, with the work of Counsel Miles Locker, some of my
7 other attorneys, and my senior staff. We have done a lot
8 of research, and investigation, and studying into this
9 bill to bring forward to you these interpretations.

10 These interpretations for enforcement of that
11 bill will go into effect on January 1st, and we'll
12 continue to enforce the bill based on these
13 interpretations, unless we hear something different from
14 the IWC, either changes in wage orders, amendments to
15 regulations, or new regulations.

16 And if you have any -- if you questions, I'd be
17 happy to answer them.

18 COMMISSIONER BROAD: Madame Labor Commissioner,
19 with respect to construction, mining, drilling, and
20 logging, what is your -- what is your interpretation of
21 how they will be dealt with starting on January 1?

22 MS. SAUNDERS: I included in the packet that I
23 gave you -- it is an interpretation, but unless something
24 happens otherwise, unless you address the issue

1 concerning those four industries prior to January 1st as
2 to being exempted or included, they will automatically be
3 included on January 1st, in -- for overtime, under AB 60,
4 and everything else that is involved in AB 60, not just
5 the overtime.

6 COMMISSIONER CENTER: Did you cover them on a
7 specific wage order?

8 MS. SAUNDERS: No, we did not. We just said
9 that our interpretation of the statute, AB 60, is that --
10 we felt that those four industries were covered, unless
11 somebody on the IWC -- or you voted differently prior to
12 January 1st.

13 COMMISSIONER CENTER: Thank you.

14 I've misplaced it. Could I get another copy
15 too?

16 MS. SAUNDERS: Sure.

17 COMMISSIONER CENTER: I don't know where I put
18 it.

19 COMMISSIONER BROAD: Yeah, me neither.

20 COMMISSIONER CENTER: Yeah. We need copies.

21 Go ahead.

22 COMMISSIONER DOMBROWSKI: I have -- it's a legal
23 question, maybe, for Marguerite.

1 What is our authority before January 1st on the
2 four industries?

3 MS. STRICKLIN: The statute doesn't go into
4 effect until January 1st, so the Commission can't act
5 until after that date.

6 MS. SAUNDERS: Correct.

7 COMMISSIONER McCARTHY: Are we not in the
8 position -- do we not have legal authority to grant those
9 exemptions under prior authority today?

10 MS. STRICKLIN: No. In order to act on any
11 industry not covered -- if the position is that they are
12 not covered, and that's the position that the IWC has
13 taken in the past -- with the advent of AB 60, if you
14 believe they are covered and you want to exempt them,
15 then you have to call wage boards, get a finding from the
16 wage board, hold hearings, and then act. And there's
17 nothing in AB 60 that would allow you not to have wage
18 boards, as far as I see it.

19 COMMISSIONER CENTER: So, we could open that
20 wage board today, for those industries?

21 MS. STRICKLIN: But you'd have to have
22 recommendations for wage board members. You could ask
23 that --

1 AUDIENCE MEMBERS: (Not using microphone) Can't
2 hear you.

3 MS. STRICKLIN: You're going to have to get
4 recommendations for wage board members. In your packets,
5 there's a -- information on wage boards, with the statute
6 and the regulations, as well as a summary.

7 The Commission could vote, under 1173, if that's
8 their position, to open wage boards on all four of those
9 industries.

10 COMMISSIONER CENTER: Thank you.

11 Thank you, Ms. Saunders.

12 COMMISSIONER McCARTHY: But -- I'm sorry. Could
13 I --

14 COMMISSIONER CENTER: I'm sorry.

15 COMMISSIONER McCARTHY: I'm sorry, Chuck.

16 COMMISSIONER CENTER: I thought you were
17 finished.

18 COMMISSIONER McCARTHY: Yeah. It was my fault.

19 But if we determine that they, these industries,
20 have operated, even if it weren't written, but that they
21 have operated under exemptions and were considered by the
22 Commission to have operated under exemptions, would the
23 same rulings apply, in terms of wage boards, or what?

1 MS. STRICKLIN: If the Commission takes the
2 position that AB 60, as of January 1st, includes those
3 four industries, in order to exempt them, you would have
4 to call wage boards.

5 COMMISSIONER McCARTHY: Well --

6 AUDIENCE MEMBERS: (Not using microphone) Can't
7 hear!

8 COMMISSIONER McCARTHY: But if we took the
9 position that they were not included because they were --
10 can we do that? -- that they -- in other words, that they
11 have exemptions, that they are considered exempt?

12 COMMISSIONER BROAD: I don't think that the
13 Commission has the authority to take a vote on whether
14 someone is exempt -- is excluded or included under AB 60.
15 That's for the courts to determine. They either are or
16 they are not on January 1.

17 And from my opinion, it's pretty obvious that
18 they are. As such, it seems that we can convene wage
19 boards to determine, for example, whether we want to have
20 one wage board cover all four industries, one wage order
21 cover all four of those industries, or four, or three, or
22 two, or to consider any possible exemptions within those
23 industries that we -- that we're lawfully permitted to do
24 after convening wage boards. But I don't think we can

1 vote today and, you know, with that vote, exempt those
2 industries. I don't think we have the power to do that.

3 COMMISSIONER CENTER: And I would agree with
4 that. So does our attorney.

5 MS. STRICKLIN: That's correct.

6 COMMISSIONER CENTER: Yeah. Okay.

7 What I'd like to do now -- I know we have sign-
8 up lists, but I think, in order to get out of here, we
9 need to expedite it a little bit. So, I want to go off
10 the list and bring up industries, and so maybe we won't
11 duplicate the testimony.

12 Oh, yeah. First we have our draft proposals for
13 our interim orders that we'll vote on in January. And we
14 have two drafts, and we'd like to choose one to put out
15 today.

16 So, I'd entertain a motion to adopt the draft
17 that we were provided later on in the day, since the
18 original one.

19 COMMISSIONER DOMBROWSKI: So moved.

20 COMMISSIONER BROAD: Second.

21 COMMISSIONER CENTER: All in favor?

22 COMMISSIONER BROAD: Excuse me.

23 COMMISSIONER CENTER: Okay. Go ahead.

24 COMMISSIONER BROAD: I'd like to do one thing.

1 COMMISSIONER CENTER: Okay.

2 COMMISSIONER BROAD: I'd like to add, on Page 2,
3 after it says, "No person" -- under Section 3,
4 "Administrative, Executive, and Professional Employees,"
5 in the second sentence of that paragraph, it says,

6 "No person shall be considered to be
7 employed in an administrative, executive, or
8 professional capacity unless the person is
9 primarily engaged in the duties which meet the
10 test of the exemption and earns a monthly salary
11 equivalent to no" --

12 -- it should say --

13 " -- of no less than two times the state minimum
14 wage for full-time employment."

15 I'd like to add the following sentence:

16 "Labor Code Section 515(a) mandates that the
17 Commission conduct a review of the duties which
18 meet the test of the exemption, and that any
19 hearing conducted pursuant to that subsection be
20 conducted no later than July 1, 2000."

21 So, what I'm doing is making a substitute motion
22 that we adopt the second proposal with that change.

23 COMMISSIONER CENTER: Okay. Do I have a second
24 on the substitute motion?

1 COMMISSIONER COLEMAN: I will.

2 COMMISSIONER CENTER: All in favor of the
3 substitute motion, "aye."

4 (Chorus of "ayes")

5 COMMISSIONER CENTER: Opposed?

6 (No response)

7 COMMISSIONER CENTER: All in favor of -- the
8 substitute motion passes.

9 All in favor of the first motion to adopt this
10 draft regulation to distribute at the end of this
11 hearing? All in favor, say "aye."

12 Oh, a question?

13 COMMISSIONER DOMBROWSKI: Just one comment to
14 the public, that there's a -- it is a draft interim order
15 that we had tried to work on. We don't have consensus on
16 all items in this order. And the intent, from my
17 perspective, is to get a document out there that gives
18 everyone something to look at and to comment on over the
19 next whatever it is until our next meeting. So, this is
20 very much a work in progress, and I want to emphasize
21 that to people, that we do need to hear from you after
22 you see this thing and give us some feedback.

23 COMMISSIONER CENTER: Okay. And that's -- and
24 we need to get input on these orders, but we need to have

1 this typed up. I don't know if we can get that done or
2 not, Christine, from -- and fax it down today if we can.

3 All right. We want to commend Christine. She's
4 been working very hard. Michael's here to help too.

5 So, we have a motion and a second. All in
6 favor?

7 (Chorus of "ayes")

8 COMMISSIONER CENTER: Opposed?

9 (No response)

10 COMMISSIONER CENTER: Motion passes. Thank you.

11 Yes. And if you don't get it, it'll be
12 published on the Web site, or you can write to the
13 Industrial Welfare Commission in Sacramento.

14 Now I'd like to bring up the representatives
15 from the -- oh, sorry -- from the construction industry,
16 the worker guys -- or the construction guys, not the
17 worker guys, and the mining, logging, and oil, if we can
18 all sit up here. But first we want to go to
19 construction, and in any order you guys so choose.

20 MR. STREET: My name is Terence Street, T-e-r-e-
21 n-c-e, last name Street, S-t-r-e-e-t. I'm the chief
22 executive officer and president of Roebbelen Contracting
23 in northern California. We're also a member of the
24 Construction Employers Association, which represents

1 approximately 100 building employers. Again, I'm
2 speaking to purely the construction industry.

3 We are in support of AB 60. I think our biggest
4 confusion is how it eventually is going to implement
5 itself, which I think will be through the wage boards.

6 We currently have approximately 400 employees on
7 the payroll now. We are represented by a collective
8 bargaining agreement, and we do encourage the payment of
9 overtime. One of the key reasons that we have that's
10 motivated us to encourage the payment of overtime is to
11 discourage, as much as possible, the use of overtime, and
12 that is the main reason my superintendents and project
13 managers -- purely the safety issue. I think we're in an
14 inherently dangerous industry. I think the Legislature
15 has spoken in a very definite fashion with the
16 legislation that went through this last year that safety
17 should be a major concern to anybody in any industry
18 coming up this next year.

19 We have found that prolonged periods of
20 overtime, our accidents become -- we become much more
21 susceptible to accidents from the crews being tired.
22 It's a very physical job site -- industry that we're in,
23 and it's a problem that we try to avoid and stay away
24 from. So, I think that's what I'd like to say on that.

1 That's what I would say.

2 COMMISSIONER CENTER: Any questions?

3 (No response)

4 COMMISSIONER CENTER: Thank you, Mr. Street.

5 MR. HAKEL: Good afternoon. I'm John Hakel,
6 H-a-k-e-l. I'm the executive director of Governmental
7 Relations for the AGC of California, the largest general
8 contractors trade group in the state.

9 You already have my written testimony, but I
10 just wanted to go over a few points that I'd like to
11 reconfirm and see if you have any questions about.

12 AGC of California believes that there have been
13 -- a historical precedent has been established and that
14 the Commission should continue to exempt construction
15 from its regulations. If it cannot facilitate this first
16 request, then the Commission should initiate discussions
17 with affected parties and develop a separate wage order
18 that will meet the needs of the industry and its workers.
19 If the Commission agrees with a separate wage order, then
20 the AGC is requesting a temporary delay on the
21 implementation of the regulations until the affected
22 parties can draft mutual, acceptable regulations.
23 Finally, the AGC of California is requesting that due to
24 the complexity of this act and the continuing dialogue

1 surrounding the implementation of the act, that a
2 moratorium be placed on its enforcement procedures.

3 In closing, I'm speaking on behalf of the AGC of
4 California and its 1,100 members statewide. It should be
5 acknowledged that AGC is available to the Commission as a
6 comprehensive resource to the question that's being posed
7 today.

8 Thank you.

9 COMMISSIONER CENTER: Excuse me. So, you
10 disagree with Mr. Street that -- you're still looking for
11 exemptions to overtime? Working excessive overtime is
12 safe in your industry?

13 MR. HAKEL: I think we have to go back and
14 dialogue with that. We do realize that, with the type of
15 work we do have, the most important part of any job site
16 would be safety. But I think we have to, I think, sit
17 down with the -- with the Commission and go over some of
18 those points.

19 COMMISSIONER CENTER: Thank you.

20 Any questions?

21 Yeah, go ahead.

22 COMMISSIONER DOMBROWSKI: Excuse me. Hello?

23 Did you testify on the bill when it was in the
24 hearing in the Legislature? Were you involved at all in

1 that regard?

2 MR. HAKEL: I don't believe we did. To the --
3 to the extent of actual testimony, that I'm not sure of.
4 I believe we had written testimony. Were we there
5 physically? I do not know.

6 COMMISSIONER DOMBROWSKI: And then, if I heard
7 you right, one of your requests was for a moratorium on
8 enforcement. Is that --

9 MR. HAKEL: Until we know exactly what the
10 language and how you are to enforce it. I think it would
11 be somewhat difficult until we know exactly the language,
12 for our contractors to make sure that we are on the true
13 extent of this effort.

14 COMMISSIONER DOMBROWSKI: I guess I -- you're
15 asking legal questions, aren't you? I don't -- I don't
16 know if we have any authority to do -- I mean, the law
17 becomes the law on January 1st.

18 MR. HAKEL: Right. And that we do know, but the
19 exact definition of it, the actual implementation of it,
20 I believe, from what I'm hearing, is still being -- this
21 is why you're going around the state --

22 COMMISSIONER DOMBROWSKI: Correct. Correct.

23 MR. HAKEL: -- to get the language so we, as
24 general contractors, know the full breadth of what it is.

1 And if we're -- once we know the full breadth, I think
2 the implementation of it will be much easier for general
3 contractors to follow so we will not be in any type of
4 violation.

5 COMMISSIONER DOMBROWSKI: Okay. I guess -- and
6 I do have to apologize, because I did not get to read the
7 Labor Commissioner's document yet, but maybe it's spelled
8 out in there, so -- the way it goes down.

9 COMMISSIONER CENTER: A question. Are you more
10 -- I think the Labor Commissioner will be enforcing in
11 January. I don't know if we could even request her to
12 not enforce the law. Are you speaking more to the actual
13 wage orders that cover --

14 MR. HAKEL: I would think -- right, until we
15 realize exactly if we do go to any wage order and there
16 are time limits as it relates to that enforcement part of
17 it, then we'd like to hold off until you're done going
18 down that path, and so our members have to abide by those
19 certain rules. Does that make sense to you?

20 COMMISSIONER CENTER: I don't know. Let's think
21 about that one.

22 Any more construction industry people?

23 MR. MARTENS: Good afternoon, gentlemen --
24 ladies and gentlemen.

1 Barry, I haven't seen you in a long time.

2 COMMISSIONER CENTER: Closer to the mike, if you
3 can, please.

4 MR. MARTENS: My name is James Martens. I
5 manage a trucking company that deals exclusively in
6 transportation of construction commodities. And I'm not
7 sure that the transportation exemption is going to fall
8 into my arena or not. I'm quite confused on, literally,
9 where I'm going here, without seeing these documents that
10 you drafted and now amended and made some changes,
11 because this will make a dramatic impact on the
12 California trucking construction industry, which I know
13 quite well. And there are about 8,000 small employers in
14 this business, with probably two to four or five drivers,
15 and maybe a handful of fifty companies that have in
16 excess of 25 or 30 trucks. And the impact of overtime on
17 the delivery of construction products is going to be a
18 major -- major, major impact on the -- definitely the way
19 the construction industry receives our prices, our
20 delivery contracts. Everything is going to be upside
21 down, unless I -- unless I can be assured that the
22 transportation exemptions falls to construction trucking.

23 COMMISSIONER BROAD: Well, the first question to
24 ask yourself is whether your industry was originally

1 covered by Order 9. That is to say, was it considered --
2 and I just don't know the answer, and I think you should
3 probably talk to the Labor Commissioner's office, because
4 if it's considered part of the trucking industry as
5 opposed to construction --

6 MR. MARTENS: I spoke to somebody, and he
7 believes that it is exempt, but he has not got
8 enforcement orders of what AB 60 is going to do. So, you
9 know, he's in the same dilemma as --

10 COMMISSIONER BROAD: Well, nothing in what we
11 are doing affects the trucking industry exemption that's
12 contained in any of the wage orders.

13 MR. MARTENS: Any of them?

14 COMMISSIONER BROAD: It is in all the wage
15 orders.

16 MR. MARTENS: I can take that to the bank?

17 (Laughter)

18 COMMISSIONER BROAD: Might not be much of a
19 deposit.

20 (Laughter)

21 MR. MARTENS: Well, not to belabor the dilemma
22 that we're in, because, you know, these -- the industry
23 delivers all of its commodities by the ton, not by the
24 hour. 85 percent of it is delivered by the ton. And

1 it's totally controlled by the contractor on the other
2 end as to how fast he wants it and how slow he wants it,
3 and whether he wants it after three o'clock in the
4 afternoon, so mostly we'll be on overtime hours.

5 COMMISSIONER BROAD: Well, I believe, in all
6 likelihood, that you -- that dump truck operations are
7 considered covered by Order 9, as all other trucking
8 operations. And there has always been that exemption.
9 So, if there -- which covers you if you are -- if your
10 drivers' hours of service are regulated by DOT or the
11 California Highway Patrol -- and there's nothing that
12 we're proposing that alters that.

13 COMMISSIONER CENTER: But you -- just a comment
14 -- you might want to, you know, talk with the Labor
15 Commissioner, because if you're delivering but you're in
16 the actual construction project, like you're delivering
17 asphalt, where you're actually pouring the asphalt out
18 there -- I don't know. You need to talk to the Labor
19 Commissioner on that.

20 COMMISSIONER BROAD: Right.

21 COMMISSIONER CENTER: That could be a different
22 issue.

23 MR. MARTENS: Okay. So, that would be the Labor
24 Commissioner.

1 COMMISSIONER CENTER: Yeah.

2 MR. MARTENS: Well, I will speak to them.

3 COMMISSIONER CENTER: Any more construction
4 industry?

5 (No response)

6 COMMISSIONER CENTER: How about mining?

7 AUDIENCE MEMBER: (Not using microphone) I'm
8 sorry. What?

9 COMMISSIONER CENTER: Mining.

10 MR. GLADFELTY: Mr. Chairman and members, Paul
11 Gladfelty, representing the California Mining
12 Association. Let me make a couple comments with regard
13 to mining.

14 We believe that the mining industry really
15 should be viewed on two segments, one of which is metal
16 mining, the other of which is other types of mining.
17 With respect to metal mining, we believe that the law as
18 it relates to overtime provisions and premium wage rates
19 are covered under previous legislation, which is
20 Bustamante legislation, AB 739.

21 With respect to other types of mining -- rock,
22 sand and gravel, and so on -- we certainly believe that
23 the Industrial Welfare Commission has the authority to
24 regulate this industry.

1 We look forward to working with the Industrial
2 Welfare Commission with respect to whether or not mining
3 should have a separate wage order or whether or not it
4 should be consolidated under manufacturing or some other
5 wage order. We don't have a position at this time on
6 that. But I can tell you that there have been mining
7 operations that have, in the past and currently, operated
8 under the manufacturing wage order.

9 COMMISSIONER CENTER: Thank you.

10 Any questions?

11 (No response)

12 COMMISSIONER CENTER: Next is the timber
13 industry.

14 MR. BIRENBAUM: We're still on mining.

15 COMMISSIONER CENTER: Oh, mining. I'm sorry.

16 MR. BIRENBAUM: Thank you, Mr. Chairman.

17 Charles Birenbaum, with Thelen, Reid & Priest. I was
18 asked to come before the Commission, so I thank you and
19 the other commissioners, the Labor Commissioner, chief
20 attorney of the Division of Labor Standards Enforcement
21 and other members of the public.

22 The reason the California Mining Association
23 asked me to make a brief statement before you is because
24 of my involvement in the enactment of AB 739. That goes

1 to the subject just mentioned, that companies engaged in
2 underground mining, or have plants or smelters for the
3 reduction and refining of ore, should be specially
4 treated. And to address a point made by one of the
5 commissioners earlier, you do have the jurisdiction to
6 interpret AB 60; that's clear. What we want to make sure
7 is that you interpret it in a way that is consistent with
8 another statute, AB 739. That's essential, because if
9 you create a conflict between the statutes, it will
10 create confusion and it will dash the hopes and interests
11 of many workers in plants and smelters for reduction and
12 refining of ores and metals.

13 The plain language of AB 60 gives you that
14 authority, but also, it leads to that conclusion. The
15 statute expressly addresses virtually every industry.
16 And even though the industries covered by AB 739, which
17 is in Labor Code Sections 750, 750.5, 751.8, was before
18 the Senate and the Assembly, they chose not to include it
19 in AB 60. In Sections 517 and 1182.3 through 1182.10, we
20 have mention of the ski industry, commercial fishing,
21 healthcare, horse racing, pharmacists, outside sales,
22 organized camps in agriculture, and railroad employees.
23 Other industries are mentioned by the five wage orders
24 that were the subject of the repeal of daily overtime by

1 this Commission in January of last year, Wage Orders 1,
2 4, 5, 7, and 9.

3 Even though these very specific industries and
4 wage orders were referenced, those companies and
5 employees covered by AB 739, Labor Code 750 *et seq.*, were
6 not. They were deliberately left out. And it's
7 essential that this Commission honor the statutory intent
8 there, the legislative intent there in that statute.

9 It makes a lot of sense because 750 and the
10 employees it regulates is broader than AB 60. It puts
11 greater -- greater impositions on employers in that
12 industry before those employers can enjoy the kind of
13 overtime rights the statute provides. In essence, it
14 provides for up to 12 hours of straight-time work in the
15 mining industry. Why is that important to the mining
16 industry? Employees have to travel from very far to get
17 to their places of work. If straight-time shifts up to
18 12 hours were no longer permitted because this Commission
19 decided AB 60 extended to those employees and their
20 employers, they would have to work more days per work and
21 commute more, which would affect their personal lives,
22 their income, and all the things that they sought under
23 AB 739.

24 The legislative history of AB 60 supports what

1 I'm urging you to do. The supporters of AB 60 were very
2 careful to point out that the purpose of the statute was
3 to remedy the IWC actions in repealing daily overtime in
4 the wage orders I referenced earlier. It was not
5 intended to affect Labor Code Section 750 and AB 739.

6 We submitted a statement to the Commission which
7 makes these points in greater detail, so I won't hammer
8 it any further. But I will point out one thing: the
9 Industrial Welfare Commission has "welfare" in it for a
10 good reason. It's the welfare of the working public in
11 the state. And as the next speaker will address, the
12 employees of employers in plants and smelters for the
13 reduction and refining of ore and metals in this state
14 demanded the AB 739 result. It was worked out with
15 organized labor in the legislative process and was agreed
16 to by every essential major group involved. So, we hope
17 that you interpret AB 60 in a way that is consistent with
18 AB 739 and permits the continued practice of 12-hour
19 shifts at straight time in that industry.

20 Thank you.

21 (Applause)

22 COMMISSIONER BROAD: I have a question.

23 Well, I tend to agree with you; it's a more
24 specific statute. It wasn't dealt with by AB 60, and

1 therefore, if we adopt a wage order affecting the mining
2 industry, it should include those provisions that are in
3 the statute, which are binding, I believe, on this
4 Commission.

5 My question goes to, if we do a wage order,
6 you're not saying that we don't have the jurisdiction to
7 put in that wage order other things that are normally in
8 wage orders that -- you know, like breaks, rest time,
9 meal periods, all those issues -- temperature -- there's
10 a whole series of things beyond simply overtime and the
11 amount of overtime.

12 MR. BIRENBAUM: Right.

13 COMMISSIONER BROAD: So, I want you to comment
14 on that.

15 MR. BIRENBAUM: Sure. Thank you.

16 Two points. One is that to the degree the
17 Commission decides to issue a wage order, the first
18 question will be whether the Commission has jurisdiction
19 to do it. Insofar as any wage order for the kind of
20 employees covered under Labor Code 750 is involved, I
21 think it would be *ultra vires*, meaning out of your
22 jurisdiction, to issue a wage order that conflicts with
23 that statutory scheme.

24 Whether you have jurisdiction to regulate those

1 employees in other ways that do not conflict with that
2 statute is a separate issue. I don't have the answer for
3 that right now. My hunch is that you probably do, but I
4 don't have the -- I have not studied that issue
5 sufficiently to give you a good answer on it.

6 COMMISSIONER BROAD: Thank you.

7 MR. BIRENBAUM: The only other point there
8 that's suggested by your question is whether you can
9 issue an exception for people covered by Labor Code
10 Section 750 under Section 515 of AB 60. And I believe
11 that you cannot if you don't have jurisdiction over them
12 in the first instance. And I think that's the wiser
13 interpretation to ensure that we don't have a conflict
14 between AB 60 and AB 739.

15 COMMISSIONER CENTER: Thank you.

16 MR. WITT: Mr. Birenbaum, are you finished?

17 Okay. I'm Kim Witt. I'm the manager of human
18 resources for the Viceroy Gold Corporation.

19 Again, we'd like to attest here that there is a
20 difference between metal mining and any of the other
21 aggregate operations. Our employees commute an average
22 of an hour and a half to two hours each way to work each
23 day. We were approached by the employees in the early
24 '90's, and because of the statute, 750, we were not able

1 to allow them extended work shifts.

2 In 1995, when the law passed, we saw great
3 improvement in morale, and we've seen an improvement in
4 safety. Our employees are able to spend more quality
5 time at home, as was testified in the -- in the Assembly
6 hearing earlier. They're able to work in a situation
7 where they cut one third of their commute times out.
8 Each year, our employees working the schedules permitted
9 by 750 and other sections, are able to see 14 weeks of
10 family time per year, because of the way the schedules
11 work. There isn't a problem with safety, because we've
12 seen an improved safety record.

13 In 1995, when we took the poll of the Nevada
14 operations working the 12-hour shifts used in metal
15 mining, 18 out of the 20 operations in the State of
16 Nevada were working the extended shifts.

17 Again, our employees vote each year. Since the
18 implementation of 750, each December we have conducted
19 elections, and 100 percent of our employees have voted to
20 continue this schedule.

21 We would appreciate any assurance you can give
22 to us in maintaining 750. If there are other wage orders
23 for the other mining industry companies, we would be more
24 than happy to help work through the details or provide

1 you with any information you need.

2 Thank you.

3 THE REPORTER: Your card, please.

4 COMMISSIONER CENTER: Thank you.

5 Anybody else from the mining industry?

6 (No response)

7 COMMISSIONER CENTER: Timber industry.

8 (No response)

9 COMMISSIONER CENTER: All right. How about oil
10 drilling?

11 MR. SULZER: Good afternoon, Chairman Center and
12 members of the Commission. My name is Ken Sulzer. I
13 represent the California Independent Petroleum
14 Association, the Association --

15 AUDIENCE MEMBERS: (Not using microphone) Use
16 the mike!

17 MR. SULZER: -- the Association of Energy
18 Service Companies, and the California Independent
19 Petroleum Association. With me today are Dave Lefler,
20 from Western Drilling, and Rod Eson, from Venoco.

21 As you know, our industry has historically not
22 been covered by the IWC's orders, as we've discussed.
23 The DLSE has -- I want to clarify a couple of -- a couple
24 of brief points before turning it over to Ron and to Dave

1 -- but I want to make a couple of preliminary points.

2 The DLSE has termed this, in various forms, as
3 an "exemption," an "exclusion," an "exception,"
4 "noncoverage." To clarify the position of at least our
5 industry, we are just not covered. That is our legal
6 position currently, as we sit here today.

7 It is also our position that we are not covered
8 by AB 60. This doesn't cover our industry, despite
9 comments by the commissioner. The legislative counsel's
10 digest doesn't say anywhere in it that our four
11 industries are covered, so we respectfully disagree with
12 the Labor Commissioner and Assemblyman Knox. He may have
13 understood that construction and oil and other industries
14 were included. I don't believe his colleagues
15 understood that.

16 What I'd like to do is two things today. I'd
17 like to let Mr. Eson and Mr. Lefler provide some factual
18 context on two different parts of the oil industry. And
19 there are different parts of this industry, and I think
20 it's important for the Commission to understand what
21 those are. And second, I'd like to supplement the
22 comments I made on November 15th regarding some very
23 narrow legal issues with respect to the ability of the
24 IWC to include the oil industry in an interim wage order,

1 assuming that -- for purposes of argument, that AB 60
2 covers the oil industry.

3 With that, I'll turn it over to Rod Eson.

4 COMMISSIONER McCARTHY: Could I make -- could I
5 make just a comment -- could I just make a comment on
6 your remarks first?

7 With regard to your saying you didn't -- with
8 regard to Assemblyman Knox, I might point out he did not
9 say that he thought that -- if I heard him correctly, he
10 did not say that he thought that oil, mining, and lumber
11 were covered by AB 60. He was only addressing
12 construction. And then, when he was asked if he thought
13 construction was covered -- perhaps it's one's
14 interpretation of the English language -- he -- he -- it
15 was less than compelling -- he said, "I believe so."
16 Now, common English usage says that that is less than an
17 absolute conviction.

18 But whatever it may be, I'm sure he -- and he
19 doesn't speak for the rest of the Legislature in terms of
20 their understanding whether they were covered either.

21 COMMISSIONER CENTER: Being a lobbyist in the
22 Legislature, sometimes people vote on things they don't
23 understand too. It happens once in a while.

24 MR. ESON: Mr. Chairman, members, my name is Rod

1 Eson, E-s-o-n. I'm executive vice president and co-
2 founder of an oil company based in Santa Barbara. And
3 the company is Venoco, V-e-n-o-c-o. We're a company, one
4 of the larger independents, headquartered in the State of
5 California, with approximately 190 employees. About 100
6 of those employees work in our offshore facilities,
7 either on platforms or on on-shore facilities that are
8 specifically related to offshore platforms. We produce,
9 both within the state water, meaning within the three-
10 mile limit of the coastline, as well as on the outer
11 continental shelf or federal waters.

12 I would like to first give you a little bit of
13 an idea what kind of work these people do and why we feel
14 the implementation of AB 60 would put a hardship on our
15 employees. The type of work they do is typically a
16 seven-on, seven-off, meaning they work seven days
17 straight, 12 hours a day. This is both the people on the
18 platforms as well as on the facilities. In many cases --
19 which isn't the case for our company, but a lot of other
20 companies -- people that work on the platforms alternate
21 with people that work on-shore.

22 As you can well understand, the ability to
23 produce oil and gas safely is a tremendous concern to
24 everyone, so it's extremely important that these people

1 understand all the processes involved, from the point at
2 which the oil is extracted and the gas is extracted to
3 the point that the oil and gas go into marketable lines.
4 There's a lot of processes that go on. Any glitch along
5 the way can create a release of gas to the atmosphere or
6 an oil spill, and no one wants that. I think the
7 industry has proven over the last thirty years that it's
8 got an exceptional environmental record, from the
9 standpoint in the last thirty years total average amount
10 of oil that has been released into the ocean from any
11 spill whatsoever, from 27 operator platforms, averages 28
12 barrels a year. To put that in perspective, off the
13 coast of Santa Barbara called Oil Point, we have
14 approximately 5,000 gallons every day of oil that's
15 leaked into the ocean from natural seepage.

16 What this would do to our employees, it would
17 decrease their flexibility. Many of these employees,
18 which, I will say, on the offshore platforms and on-shore
19 facilities, are very highly paid employees -- these are
20 not minimum-wage people. These people typically make
21 between \$50,000 and \$70,000 a year. They're very highly
22 skilled. This is not a physical labor industry, it is a
23 technology -- an industry that uses some brawn, but
24 certainly requires the use of the brain.

1 If we were to implement the AB 60, it would
2 really unnecessarily burden these employees. Our
3 employees very much appreciate the compressed workweek.
4 Many of them have second jobs. A lot of them, as in
5 other industries, prefer to live as many as 150 or more
6 miles from their point of departure. And these people go
7 to platforms either via helicopter or boats, depending
8 upon the distance out and currents. In some instances,
9 in some state platforms, the people actually go home at
10 night and don't spend the night on the platform, but they
11 still work the 12-hour days.

12 These people enjoy, many of them, a second job.
13 We have employees that are in family businesses during
14 their 26 weeks of off time that they work. A lot of
15 these people do volunteer work. They enjoy the
16 opportunity to spend their quality time with their
17 families, to understand and have the ability for
18 participation in their children's school activities.

19 Safety and environment, as I mentioned, is our
20 primary concern. One of the things that we have found in
21 this industry, and a lot of companies have found the same
22 thing that we have, which is really in contrast to
23 construction: most of the accidents in our business tend
24 to happen in the first hour of shift work, primarily

1 because it's not a physical operation that we're dealing
2 with, so it's not a fact of being tired. Typically,
3 accidents occur because you have a change of operator.
4 Someone may have made a change to the status quo and did
5 not properly transfer that information to the next
6 operator. So, we've found that it typically is on the
7 first hour of work.

8 If we were to make other arrangements, as has
9 been suggested -- "Well, simply put a third shift on;
10 that'll take care of your problem" -- in a lot of the
11 platform stations, there aren't rooms for an additional
12 sixty or seventy people to be spending the night out
13 there. You obviously then have a 16 hours or so of
14 wasted down time. It's tough enough for a lot of these
15 guys and women to have 12 hours of down time between
16 working. They are very interested in getting the job
17 done, doing it right, and getting -- and getting home.

18 One of -- and I think that probably the bigger
19 reason for that, there are not enough workers if we
20 decided to add a third shift. Quite frankly, it's very
21 difficult today to get these skilled workers working in
22 the oil industry. Everybody today sees the high gasoline
23 prices and they think, "You must be doing really well."
24 I think that it's important to understand that's -- a lot

1 of that is taxes and refining, but you only have to go
2 back two years to look at the lowest oil prices of ninety
3 years. At that point in time, we lost 12,000 workers
4 from our industry, many of them from the offshore set.
5 So, if we wanted to go get those third-shift people, we
6 couldn't do it.

7 In summary, to implement this would mean,
8 basically, it's additional cost to the companies,
9 additional cost and burden to the employees. If you add
10 additional costs to these offshore operations, which you
11 need to understand are now in the hands of independent
12 companies -- with one exception, Exxon, all of these
13 platforms are held by independents. Why is that?
14 Because the majors that previously opened them found the
15 economics declining. So, these are marginal fields, and
16 these independents are much better at keeping them
17 operating.

18 So, what can happen with increased costs, you're
19 going to have premature abandonment on the fields, you'd
20 have additional costs and overhead to the oil companies,
21 and with premature abandonment of the fields, just
22 because we don't produce offshore doesn't mean it won't
23 be consumed. We produce 800,000 barrels of oil in
24 California, and we consume 2.3 million. What that means

1 is there would be increased tanker traffic. This tanker
2 traffic would be under foreign flags, with a lot less
3 control than we have over our offshore platforms today.
4 Ultimately, that could possibly mean even higher gasoline
5 prices.

6 Thank you very much for your time.

7 COMMISSIONER CENTER: Yeah. Just a comment,
8 maybe a question.

9 Right now, your industry considers itself not
10 covered by AB 60, and the Labor Commissioner would
11 possibly disagree with that -- disagree with that in
12 January. In order for the Industrial Welfare Commission
13 to discover what's going on with the industry, we have to
14 convene wage boards to interview affected workers and the
15 employers to possibly provide exemptions. Until we can
16 do that, then you're going to maybe be covered under
17 overtime. Would you support a separate order for your
18 industry? Otherwise, you possibly will be under Order 4
19 or some other order.

20 MR. ESON: I don't want to speak for the entire
21 industry. I think that Kim will be addressing that, from
22 a broad perspective. This is my own view.

23 COMMISSIONER CENTER: Well, until that position
24 is taken, then, we can't help you. That's a problem for

1 us and for you, I think.

2 Thank you.

3 Question?

4 COMMISSIONER COLEMAN: I have a question. Were
5 you surprised to learn that you were covered?

6 MR. ESON: We were surprised to hear that --
7 yes, that we were covered. We assumed we were not, which
8 is why we did not get involved in the process in the
9 Legislature.

10 COMMISSIONER COLEMAN: Okay. So, you weren't
11 involved in the AB 60 discussions?

12 MR. ESON: No. We just assumed that we were not
13 covered.

14 COMMISSIONER CENTER: Back to -- originally, I
15 was involved in the early, early drafting of the bill.
16 But once I got reappointed to the Industrial Welfare
17 Commission, I pulled out of it. In early discussions
18 with our people, we always considered all workers to be
19 covered in California. That's why the bill was drafted
20 that way. So, it surprised me a lot of people didn't
21 understand that after the bill was passed.

22 COMMISSIONER McCARTHY: I don't know if it's
23 relevant or of any assistance, but as the one member up
24 here who served the longest on this Commission, it

1 certainly was the operating assumption -- more than
2 assumption -- it was
3 -- as far as we were concerned, it was fact -- as I say,
4 that your industry was exempt from the wage orders that
5 were existing, as were the others under discussion today.

6 COMMISSIONER BROAD: I just had a quick factual
7 question. How many employees are employed on the 27
8 offshore platforms, all together?

9 MR. ESON: It would be an estimate, but I know a
10 lot of the companies. Probably in the neighborhood of
11 400 or 500. Once again, we're talking the onshore
12 facilities that relate to the platforms, because, again,
13 they are an integral part, and you need to have
14 continuity of the -- it's very important to understand
15 these flow streams and processes. You don't want to do
16 something small in the onshore facility and end up
17 creating a problem in the offshore facility. That's why
18 I'm getting a lot of this going back and forth. So, I'm
19 adding people that are on the onshore facilities to the
20 platform. In the neighborhood of 300 to 500 people.

21 COMMISSIONER BROAD: Well, wouldn't the -- now
22 I'm a little confused. I would assume that the onshore
23 facilities are part of the manufacturing wage order and
24 always have been. You're not drilling. They're not?

1 MR. ESON: No.

2 COMMISSIONER BROAD: Thank you.

3 MR. ESON: Thank you.

4 COMMISSIONER CENTER: Thank you.

5 MR. LEFLER: Commissioners, good afternoon. And
6 I'm Dave Lefler with Western Drilling of Taft,
7 California, one of the favorite spots to stop as you
8 drive through. But we're over on the west side of the
9 valley, in Kern County. Kern County is a large producing
10 oil state in itself; we're right behind California. We
11 produce about 650,000 barrels of oil a day, a tremendous
12 amount of asset for the local community.

13 What my concern is, and our employees' concerns,
14 is that they would lose the opportunity to continue to
15 work compressed work schedules such as Rod described.
16 And I'd like to talk about also exporting jobs out of
17 California, because I think sometimes we forget what some
18 of these actions that we take end up doing. And so, what
19 I want to talk about a little bit today is that.

20 We see that the implementation of AB 60, the 8-
21 hour overtime regulation, into our industry that has been
22 basically excluded -- not exempted, but excluded -- over
23 the years would increase our drilling costs
24 significantly. Currently, we're paying about 25 percent

1 more per hour for our drilling crews than they are
2 anywhere else in the U.S. So, we're paying our people
3 well.

4 The other thing that happens in our industry in
5 the area is that we have to compete with other -- other
6 capital investments for these companies. And so, if our
7 costs go up, the number of wells will go down that are
8 drilled in California. That means that jobs will be
9 exported out of California.

10 Currently, we're paying our drillers about \$20
11 an hour. They do get some overtime at the current time,
12 and so they make \$50,000 to \$60,000 a year, on these --
13 on their first job, their daylight job, so to speak. AB
14 60 would increase our costs by another 20 percent, and
15 therefore we'd be up about 45 percent more than other
16 areas and regions within the U.S. So, definitely, we'd
17 be diluting out of the area.

18 One recent development in our local economy in
19 Taft was that one of these drilling and service companies
20 went out of business and auctioned their rigs. Their
21 rigs did not stay in California. They went to Canada,
22 Oklahoma, and Texas. Jobs left with those rigs. Each
23 rig is about 28 people. That's 28 families every time
24 one of those moves out of the state.

1 Also, our employees enjoy the 12-hour shifts
2 because it compresses their workweek. They work seven
3 on, seven off, which I think was talked about here
4 before. It provides them with more continuous time off
5 with their families to do the things that they want to
6 do. Some of them have second jobs, as Rod had indicated.
7 And some of them, of course, do a lot of volunteer work.

8 Our employees came to us at Western Drilling
9 just a little over a year ago and asked to go on 12-hour
10 shifts. We did that. We implemented that for them. The
11 morale immediately increased. Their safety record
12 increased dramatically. We're having about one half of
13 the incidences -- recordable instances we were having a
14 year ago, so significant safety improvement.

15 Also, our employees have found that they like
16 having two weekends off a month now. Previously, they
17 had one weekend a month with their families, and now it's
18 two weekends. They basically work a half a year; they're
19 on vacation the other half. It's a wonderful schedule.

20 Also, for commute, our people travel anywhere
21 from about 100 to 150 miles to a rig site, so they're
22 traveling a lot, commuting a lot. This reduces the
23 number of times they travel, instead of the traditional
24 8-hour rotating schedule.

1 Another item that was touched on by Rod is the
2 increasing fuel costs. I believe that California will
3 experience an increase in gasoline pump costs if we
4 implement this within our industry. As production drops
5 because of the number of wells drilled, so will the mix
6 of low-cost crude oil from California. And as that
7 happens, it will be displaced with higher-cost imported
8 oil. Also, increased tanker activity along our coast
9 will bring increasing imports to support California's
10 lifestyle. And that's not going to change with a slight
11 increase in cost.

12 Thank you for your time and attention. Are
13 there any questions?

14 COMMISSIONER CENTER: Yeah, I have a question,
15 or a comment. I'm still bewildered here. The way I read
16 the statute, it's my opinion you'll be covered. I guess
17 that's the way the Labor Commissioner will read the
18 statute. It will be in court, I'm sure.

19 In order for our Commission -- and again, I'll
20 reiterate that -- to investigate your industry, we have
21 to convene wage boards. And later on, you go to court
22 and you lose your court case, maybe. Then you'd have to
23 come to us and petition for wage boards. That's a long
24 process. It would -- I would think it would be better

1 for your industry to convene wage boards right away,
2 because we're not determining whether you're covered or
3 not, we're just investigating your industry, for the
4 welfare of the workers, which might mean 12-hour shifts
5 on offshore oil facilities are better for the workers.

6 You know, I just wonder what your opinion is on
7 that.

8 MR. LEFLER: I think that's an area that we'll
9 have Ken address. I think one of the real issues brought
10 up by -- in Leslee's question was that we did not believe
11 -- and we still do not believe -- that we are covered by
12 this AB 60. The legislative intent, which was given to
13 us through our Assemblyman before was that it was not
14 Knox's intent to include our industry, or mining, or the
15 on-site construction in it. And that was their
16 understanding as a Democratic caucus, but that is -- it
17 got lost somewhere in the translation.

18 COMMISSIONER CENTER: Yeah, but that's --

19 MR. LEFLER: That's just a comment, and that's
20 our opinion.

21 COMMISSIONER CENTER: Yeah, I'm not -- but
22 again, the statute trumps our regulation.

23 Just -- I'd like to have it -- maybe you can
24 explain it to me, because I think there might be some

1 issues in your industry, but we can't start the process
2 until the process is started.

3 MR. LEFLER: We understand that. Thank you for
4 the opportunity.

5 MR. SULZER: I thought I'd rest with the last
6 points. One -- you indicated at the last hearing that
7 you expected to be sued by one side or the other. It may
8 be that we've got a collateral challenge in court as to
9 the jurisdiction of AB 60. I don't think that has
10 anything to do with if there's any legal --

11 AUDIENCE MEMBERS: (Not using microphone) Can't
12 hear! Microphone!

13 MR. SULZER: -- there's any legal reason not to
14 go ahead with the investigatory process, if it's the
15 IWC's opinion that our industry is covered, and go
16 through it. I don't think they're -- I think we can do
17 them both at the same time.

18 COMMISSIONER CENTER: That we can do wage boards
19 whether we think your industry is covered or not? Can
20 we?

21 MR. SULZER: You're saying that to me or asking
22 that?

23 COMMISSIONER CENTER: Yeah. Can we? To
24 investigate your industry and prepare in case you are

1 covered. I think it's beneficial for your industry.

2 MR. SULZER: I agree.

3 COMMISSIONER CENTER: Would you support that?

4 MR. SULZER: I don't see any reason why we don't
5 -- we'll get back to you -- I don't see any reason why we
6 wouldn't go on collateral paths. And this kind of leads
7 into my next set of comments, which is really on a
8 technical legal issue which really does address the wage
9 board issue.

10 And that is, we've heard some discussions and
11 understand that we may be -- our industry may be included
12 in an interim wage order. Even if these industries are -
13 - are covered by AB 60, assuming for purposes of
14 argument, our association believes that including us in
15 an interim wage order would be unlawful because AB 60
16 does not repeal or eliminate Part Four of the Labor Code,
17 which is Sections 1171 through 1182-point-whatever of the
18 Labor Code.

19 We believe that AB 60 -- number one, we believe
20 that AB 60 did not intend for the IWC to regulate
21 previously unregulated industries, without ever convening
22 a wage board at all, ever. We don't think that's true.
23 Obviously, for every other industry, there's been a wage
24 board, and they've been exempted, regulated, and so

1 forth. But there's never been a wage board for our
2 industry.

3 One reason that's an appropriate interpretation
4 here, the wage board -- historically, the wage board
5 process has been a substitute for other process, to
6 substitute for the APA, the Administrative Procedure Act,
7 from which the IWC is exempt. We don't -- we don't have
8 -- our industry will never have either one of those
9 practices ever. We'll have an interim wage order
10 governing us without ever going through the wage board
11 process, if we are included in your interim wage orders.

12 Having said that, Section 517 of AB 60 does say
13 the IWC can more or less regulate people covered by AB 60
14 without convening wage boards. Importantly, it does not
15 say "notwithstanding all the requirements of Part Four of
16 the Labor Code." That's the only requirement of Part
17 Four of the Labor Code that AB 60 accepts.

18 In order to get the oil industry or construction
19 or mining or logging, to get them regulated in the first
20 place, because they weren't -- they haven't been
21 regulated, you have to convene the process set forth in
22 Part Four. Okay? If you believe that wage boards aren't
23 required, then you still have to do the other processes
24 set forth in Part Four of the Labor Code. And those

1 processes are proposing regulations, sending out a notice
2 of hearing, I believe preparing the reports of the
3 public, get to hold hearings on those proposed
4 regulations in at least three cities, you have to notify
5 associations and employees of those hearings. And unless
6 and until the IWC does this, it follows these processes,
7 absent -- even absent wage boards, you can't validly
8 regulate a previously unregulated industry with respect
9 to overtime.

10 The statute could have clearly said none of
11 these requirements apply, go ahead and regulate
12 everybody. It doesn't say that. The only exception to
13 Section 1171, *et seq.*, is the appointment and convening
14 of the wage boards themselves. All the other duties of
15 the IWC are still there, they're still in the Labor Code,
16 they were not repealed.

17 And it's quite clear that the Legislature
18 considered this, because it did repeal a couple of
19 sections, or at least one section of Part Four of the
20 Labor Code, specifically. So, they did grasp and
21 understood this part of the Labor Code was there. At
22 best for the IWC, there's a conflict between two
23 statutes. And I believe that it's appropriate, however,
24 that the procedures of 1171, *et seq.*, other than

1 convening wage boards, must be followed before there's
2 any valid wage order that covers the oil industry. That
3 may not be true with respect to all the other industries,
4 but with respect to those four industries, it's got to be
5 true. It's the only way you can read these two statutes
6 together, if you read the exception for convening wage
7 boards in Section 517 appropriately.

8 Importantly, there's a recent appellate decision
9 that's as yet unpublished. It's Baker v. Veico Drilling.
10 Baker v. Veico Drilling was under the current Labor Code,
11 not under AB 60, but Veico Drilling does interpret Part
12 Four of the Labor Code, 1171, *et seq.* It says those
13 provisions are mandatory. They must be followed or you
14 are not regulated. And on that basis -- on that basis,
15 Veico Drilling was -- it was determined that they were
16 not regulated, they were excluded from regulation by DLSE
17 through the failure of the IWC to go through the other
18 processes, or the processes in 1171, *et seq.*, Part Four
19 of the Labor Code.

20 That's still in the Labor Code. People kind of
21 forgot about it, didn't look at it, and maybe thought the
22 language "without convening wage boards" erased that
23 whole part of the statute. Obviously, it did not. If
24 the Legislature intended to do so, it could have said,

1 like it said in the last legislation, "Notwithstanding
2 the provisions of Part Four." It did not say that, and
3 those provisions still exist, and they prevent the IWC
4 from regulating our industry in an interim wage order, or
5 any type of wage order, without going through those
6 processes. That's a statutory interpretation point.

7 Probably the bigger point, and why this is
8 somewhat confusing, is we believe that Section 517, which
9 says you can put together wage orders without convening
10 wage boards, we don't believe it was intended to regulate
11 anybody other than the people who had their 8-hour daily
12 overtime taken away, people in the wage orders that were
13 -- that had daily overtime taken away, 1, 4, 5, 7, and 9.
14 These were previously people who lost their daily
15 overtime, and the act is the restoration of daily
16 overtime. That's the title of it. We don't believe that
17 Section 517 was meant to cover previously completely
18 unregulated industries with respect to overtime.

19 The bottom line of this argument, I think, is
20 that if these industries are going to be regulated, the
21 Legislature would have to state so. And it turns the
22 argument on its head: we have to hold wage boards to
23 hold an exemption. That argument -- to create an
24 exemption. That argument is wrong. You have to hold

1 wage boards in order to regulate the industries through
2 the scheme that's set up by AB 60, and that is wage
3 orders, wage boards, and so forth. And that's still
4 mandatory, it's still in the Labor Code. AB 60 did not
5 repeal it, and the Legislature didn't say otherwise.

6 COMMISSIONER CENTER: Thank you.

7 And the Veico decision that's unpublished,
8 everybody has. They did not address AB 60, I don't
9 think, in that decision.

10 MR. SULZER: No. Correct. They specifically
11 said, "We're not addressing AB 60." However, the part
12 that I'm talking about is Part Four of the Labor Code.
13 They did address that and said that's mandatory. If you
14 don't do that, you're not regulated, period. That's the
15 holding. You can't -- that part of the Labor Code is
16 still in there. So, at best, you could argue it
17 conflicts with AB 60, but it doesn't conflict with AB 60,
18 because all AB 60 accepts is the actual convening of the
19 wage boards themselves. Other things the IWC is supposed
20 to do before putting out a wage order, holding a hearing,
21 proposing the regulations, doing it in three cities, et
22 cetera, need to be done before we can be regulated at
23 all.

24 So, as of January 1, we are not encompassed by

1 the 8-hour day. And if you were to put in an interim
2 wage order, say, January 15th, January 20th, without
3 going through the processes in Part Four, it would be
4 invalid, and certainly as to our industry.

5 COMMISSIONER BROAD: Okay. So, if that's the
6 case, then with respect to the other parts of the bill
7 that allow us to do things without convening wage boards,
8 we need to hold hearings in three different cities and so
9 on and so forth. Is that your position?

10 MR. SULZER: Which other parts?

11 COMMISSIONER BROAD: The parts that deal with
12 hospitals, and deal with stable employees, and deal with
13 the procedures for alternative workweeks, and deal with
14 commercial fishing. It's only you guys that that amounts
15 to?

16 MR. SULZER: I don't know the answer to that.
17 I'm talking about these industries that were previously
18 unregulated. My comments are limited to those
19 industries. I don't know the answer.

20 COMMISSIONER BROAD: But the statute --

21 MR. SULZER: But it does create an issue. As
22 you say it, it does create an issue. Can you regulate
23 anyone without going through 1171, *et seq.*, procedures
24 other than the wage boards?

1 COMMISSIONER BROAD: So, then, perhaps if we
2 were to --

3 MR. SULZER: I don't know.

4 COMMISSIONER BROAD: -- decide without convening
5 wage boards that we wanted, in a final order to be issued
6 before July, to permit hospitals to have 12-hour days,
7 and we didn't do what you're saying, then our decision
8 would be unlawful and they wouldn't be able to have them.

9 MR. SULZER: I can't address the hospitals
10 specifically, but my position would be you certainly have
11 valid wage orders. Section 21 says the old wage orders
12 are still in place, so --

13 COMMISSIONER BROAD: I believe, Mr. Sulzer, you
14 may be helping your client, but you're not helping some
15 other people in this room.

16 (Laughter)

17 COMMISSIONER BROAD: Now let me ask you this
18 question.

19 MR. SULZER: The answer is I don't know the
20 answer.

21 COMMISSIONER BROAD: Okay. You and I have
22 discussed this bill --

23 MR. SULZER: Yes.

24 COMMISSIONER BROAD: -- many times. It would

1 make a very good MCLE course for attorneys. Let me just
2 say my response to what you're saying.

3 This is a remedial statute, given liberal
4 construction under the precedent of the California
5 Supreme Court in previous cases. Section 510 applies to
6 every single worker in the State of California.

7 You began by saying -- every single employee in
8 the State of California. You began by saying, "Well,
9 where is the oil industry mentioned in here?" Well,
10 where is any industry mentioned in here? They're not in
11 AB 60 because the bill covers all workers.

12 And I think, in my opinion -- and obviously, you
13 can take this to a judge who's better prepared to make a
14 definitive decision on any of this -- but once you, I
15 think, agree that this is a statute of general
16 application, it covers everybody unless you can find an
17 exemption within the bill. And the exemptions are quite
18 clear, whether there's an alternative workweek, and so on
19 and so forth. With regard to your industry, the only
20 provision of the bill that deals with these four
21 industries says that the Commission --

22 "Nothing in this section requires the
23 Commission to alter any exemption from
24 provisions regulating hours of work that was

1 contained in any valid wage order in effect in
2 1997."

3 Now, I know that the first rule of statutory
4 construction is plain meaning. And I find nowhere in any
5 wage order of this Commission that there is an exemption
6 for these industries.

7 Now, you may be right that -- and you can take
8 it to court -- you may be right that we can't, on an
9 interim basis, do what we're doing. Well, then, perhaps
10 you're just left with the Labor Commissioner's
11 interpretation that, automatically, every worker who is
12 not otherwise exempted falls under Wage Order 4 on
13 January 1. And that may be where you are.

14 So, it's a conundrum, I think, for your
15 position, that any way you look at it, I believe that
16 they're covered. And the question is whether you want to
17 -- and you're perfectly free to do this -- whether you
18 want to resist that legally and, you know, take your case
19 to court, or whether you want to accept the Labor
20 Commissioner's view that these people are covered by Wage
21 Order 4. And if the Labor Commissioner is correct, your
22 industry will be racking up huge overtime costs, starting
23 on January 1, irrespective of what this Commission does.
24 Or you can take the view, I think suggested by our

1 chairman, that perhaps you support convening wage boards
2 and understand that on a temporary basis, that the
3 workers in these industries would be covered under those
4 provisions of AB 60 that cover every single worker in the
5 state.

6 So, anyway, that's my view of it, or response, I
7 guess. Thank you.

8 MR. SULZER: Any further questions?

9 COMMISSIONER CENTER: We're here to help.

10 (Laughter)

11 COMMISSIONER CENTER: Anybody else from the
12 industry?

13 (No response)

14 COMMISSIONER CENTER: Thank you very much.

15 Labor folks, I think.

16 Scott, do you want to go first? Building trades
17 and --

18 MR. WETCH: Thank you, Mr. Chairman. Scott
19 Wetch, with the State Building and Construction Trades
20 Council, on behalf of the more than 300,000 organized men
21 and women of the construction trade in California.

22 First, I'd like to say that we -- I want to make
23 just a few simple points. I don't want to be repetitive
24 of what other people have said, but we share the view

1 that Assembly Member Knox made earlier today, that AB 60
2 clearly covers the construction industry. Moreover, we
3 feel that the legislative history and record is clear to
4 this point. Anyone who participated in the deliberations
5 with AB 60 was aware the issue of it applying to on-site
6 construction was out there. Many of the opposition
7 groups that opposed AB 60 used that very argument in
8 their propaganda to lobby against the bill.

9 Now, what I want to do is look at the -- first
10 of all, associate myself with the opinion of Commissioner
11 Broad in regard to the statutory construction and the
12 reading of
13 -- the very plain reading of AB 60. A basic tenet of
14 statutory construction is that there is no such thing as
15 an implied exemption. An exemption, by definition, must
16 be affirmative. AB 60 covers California workers not
17 expressly exempted under the bill or an existing wage
18 order prior to 1998.

19 As we all know, and as was stated here just a
20 few minutes ago, nowhere in either AB 60 or in existing
21 wage orders is there an exemption from daily overtime for
22 employees in the construction industry. The argument
23 that somehow the construction industry is exempt by
24 custom is not worthy of serious consideration.

1 In regard to testimony earlier from the
2 representative of the Associated General Contractors, we
3 also agree, simply, that the Commission does not have the
4 authority under AB 60 to provide some sort of a
5 moratorium effective January 1 from the provisions of AB
6 60. The Legislature specifically, in adopting -- in
7 their adoptive deliberations for AB 60, chose to specify
8 certain exemptions. To use the argument made by the
9 gentleman representing the drilling industry, certainly
10 in applying those specific exemptions, they considered
11 all exemptions and they chose not to explicitly exempt
12 the construction industry, and, for that matter, the
13 drilling and mining and logging industries.

14 Given the testimony from the Labor Commissioner
15 and her plans to enforce AB 60 effective January 1, and
16 given the obvious confusion and misinformation out there
17 amongst the construction sector in regards to AB 60, we
18 would urge the Commission to adopt an interim order to
19 ensure that employees, effective January 1, 2000, receive
20 daily overtime after 8 hours.

21 In addition, we would urge the Commission to
22 issue a notice to this effect, to be posted in
23 conspicuous places -- so all employers in the
24 construction industry -- we think that's vitally

1 important to clear the air on this issue as soon as
2 possible.

3 In conclusion, we would additionally urge the
4 Commission to act expeditiously to address the myriad of
5 other outstanding issues regarding working conditions in
6 the construction industry, and we will look forward in
7 the coming weeks and months to work with the Commission
8 to draft a wage order for the construction industry that
9 accomplishes that.

10 Thank you.

11 MR. HOLOBER: Good afternoon, Chairman and
12 members of the Industrial Welfare Commission. My name is
13 Richard Holober, representing the California Labor
14 Federation, AFL-CIO. We've just given you some written
15 testimony that covers various subjects regarding
16 implementation of AB 60.

17 On this question of coverage of these
18 industries, let me make it very clear that the Industrial
19 Welfare Commission and the Legislature have concurrent
20 jurisdiction over the subject matter of wages and hours
21 and conditions in California. And in the past, the IWC
22 had a fairly broad discretion in choosing coverage and
23 non-coverage. That discretion is now considerably
24 reduced as a result of AB 60.

1 So, we agree that the chairman's interpretation
2 is correct.

3 What you can do right now is quite limited in
4 terms of interim regulations that would effectuate AB 60.
5 The reason you want interim regulations, I think, is to
6 allow everybody in the state, employers as well as
7 workers, to understand as quickly and as clearly as
8 possible, what the new law is, what the responsibilities
9 are of employers, what the rights are of the workers.

10 Now, when we drafted AB 60, we tried to save the
11 Commission a little bit of the headache and some extra
12 work, knowing how much work you will be doing.

13 COMMISSIONER CENTER: Nice try.

14 MR. HOLOBER: Right.

15 (Laughter)

16 MR. HOLOBER: We think we did do that, although
17 we've got a lot of work to do. And we did that by saying
18 if an exemption was in a wage orders, which means it is
19 spelled out in English, in plain, simple English, in a
20 wage order that was in effect before January 1st of 1998,
21 that unless AB 60 specifically repealed that exemption or
22 eliminated that exemption, that was grandfathered, that
23 exemption was still in place.

24 So, for example, there is an exemption for the

1 immediate family members of the business owner. There is
2 an exemption for public employees. Those are not in
3 dispute. The IWC adopted those exemptions through a
4 process that was lawful, and they will remain in place.

5 So, we get to the question of these four
6 industries. There is no exemption in any wage order that
7 was in effect before 1998 for those four industries.
8 And, in fact, during the prior course of testimony,
9 hearings, discussions with the Director of Industrial
10 Relations, the industries that we're now talking about
11 were all discussed. In fact, opponents made a real point
12 of trying to encourage opposition by pointing out that
13 these industries will now, for the first time, be clearly
14 regulated.

15 Now, we're not making an opinion here on whether
16 DLSE and the Labor Commissioner was right or wrong in
17 their discretion that they had under the old regime not
18 to enforce wage orders. I know there's a dispute about
19 that, and we don't have a position on that. But the
20 point is, on January 1st of next year, those industries
21 are covered. We believe the chairman's correct, that if
22 they want to ask this Commission for an exemption,
23 there's a process. It's a fairly lengthy process, so if
24 they're interested in trying to move that along, they

1 would be wise to ask for you to begin a review.

2 Let me make one final comment about the
3 underground mining and smelting industry, because that is
4 somewhat unique here. And I was involved, representing
5 the California Labor Federation, when we negotiated the
6 bill, AB 739, with the California Mining Association.
7 And we would agree that that is a unique situation. That
8 situation resulted from a unique previous set of
9 circumstances. It's the only industry, private industry
10 in California, that had an 8-hour day law on the books.
11 In fact, overtime was prohibited; it wasn't a question of
12 being paid time and a half. You could not work more than
13 8 hours in the underground mining and smelting industry.

14 There was a collective bargaining exemption.
15 There was a federal court case, a Viceroy Gold case, that
16 concluded that unless there was a method for workers not
17 represented by a labor organization to also get an
18 alternative workweek, that the collective bargaining
19 exemption would no longer be valid. As a result of that
20 court case, we came up with a parallel way, through an
21 election, for workers who are not represented by a union
22 to have an alternative workweek.

23 In some ways, Section 750 is better language
24 than what we had in the wage orders because of some of

1 the procedures that guide the conduct of elections are
2 better procedures. So, in fact, we were trying, in
3 earlier drafts of AB 60, to recommend that the Commission
4 some of those election procedures. And you'll have the
5 opportunity to do that in the spring.

6 So, with that one special case of underground
7 smelting and mining, which we do believe is regulated by
8 another provision of the Labor Code, these industries are
9 covered. There's not much -- there's nothing the IWC can
10 do, short of convening wage boards to look at those
11 industries. If you don't put something out to the public
12 as a courtesy to help them comply with the law, then
13 those industries are going to proceed at their peril,
14 because the law is the law, and we trust that this Labor
15 Commissioner will enforce the law.

16 We also have other issues. I don't know if this
17 is the time to address those.

18 COMMISSIONER McCARTHY: I had some questions.
19 With regard to whether -- with regard to whether these
20 industries were exempt, you say they were not exempt.
21 Are you saying, then, that they were acting illegally all
22 of these years in not paying the time and a half?

23 MR. HOLOBER: No. What I'm saying is, first,
24 we're not entering an opinion on what would have been

1 correct or what would have been correct before 1998. I
2 know that there's a debate about that.

3 The point is this: the Labor Commissioner, as I
4 understand it, chose in its discretion not to enforce in
5 those industries. And we believe they will not have that
6 discretion on January 1st, because the statute clearly
7 covers them. Your interpretation of wage orders becomes
8 irrelevant on January 1st.

9 COMMISSIONER McCARTHY: But you don't have any
10 opinion whether or -- I mean, if you're saying they might
11 have been acting legally, then you're saying they might
12 have been exempt. If you're saying they were not exempt,
13 then it seems, by conclusion, or --

14 MR. HOLOBER: No. No.

15 COMMISSIONER McCARTHY: What am I missing here?

16 MR. HOLOBER: Well, we're here on AB 60, and
17 not --

18 COMMISSIONER McCARTHY: Well, you made comments
19 about what you thought the status was, though, prior to
20 this.

21 MR. HOLOBER: Yeah. My -- my -- let me repeat
22 my -- if an exemption is in a wage order, spelled out,
23 clearly spelled out, like members of the immediate of a
24 business owner, public employees. There are certain

1 transportation industry exemptions, cab drivers, there
2 are certain that are very clearly stated in the text of a
3 wage order. AB 60 allows those exemptions to remain in
4 place, until the IWC chooses to convene wage boards and
5 maybe change those exemptions.

6 If you look at the wage orders, you will not
7 find any reference in those wage orders to construction,
8 logging, drilling, and mining. Therefore, as
9 Commissioner Broad pointed out, they are covered under AB
10 60.

11 If you're asking me to --

12 COMMISSIONER McCARTHY: No, but you're -- but --

13 MR. HOLOBER: -- making a legal opinion as to
14 the back --

15 COMMISSIONER McCARTHY: No, I'm not asking a
16 legal -- I'm asking your judgment.

17 MR. HOLOBER: -- back pay owed to workers, I
18 don't have an opinion right now.

19 COMMISSIONER McCARTHY: Yeah. I mean, the
20 statute doesn't say "written." It says "exemption." And
21 so, I'm asking you if you thought they were exempt or not
22 exempt.

23 MR. HOLOBER: I think I've answered the
24 question.

1 COMMISSIONER CENTER: Yeah. It's my
2 understanding there's never been formal action by the IWC
3 to exempt those industries, and it's not mentioned in the
4 orders.

5 MR. HOLOBER: Well, let me -- I know there's
6 been verification in an unpublished opinion that just
7 came out. And if you look at Wage Order 4, the logical
8 conclusion there would be, if you look at who is covered,
9 for example, bundlers and bill-posters, whatever they
10 are, I would like you to show me when a wage board was
11 convened that set -- that dealt with conditions in the
12 bundling industry and the bill-posting industry, in the
13 copy-holding industry. There's a very lengthy list of
14 specific industries and occupations named. And then
15 there's a general statement that says, basically,
16 everybody else.

17 So, I think that decision is -- it was wise that
18 it was not published, because it's simply logical.

19 COMMISSIONER McCARTHY: Well, I would just add -
20 - say, with regard to whether or not they had a prior
21 exemption -- and I think your wording that -- well, that
22 the Labor Commissioner chose not to exercise their
23 discretion, I think the Labor Commissioner concluded they
24 were exempt, as did the IWC conclude that they were

1 exempt, whether it was
2 -- whether it was written or not.

3 And I'm not -- now, did the Labor Federation
4 file complaints, either with the Labor Commissioner in
5 years gone by or with the IWC, that you had a group here
6 that was not exempt that was actually illegally?

7 MR. HOLOBER: Okay. First, the -- you've got
8 two agencies. There's the Labor Commissioner and the
9 IWC. To my knowledge, the IWC has not addressed this
10 issue. The Labor Commissioner had addressed it by
11 choosing not to take cases that were filed, even though
12 cases have been filed in those industries.

13 So, I think this is really more of an issue for
14 the Labor Commissioner. We agree with what we heard
15 today, which is that AB 60 will cover those industries.
16 Now, there's a process to go through if those industries
17 want to seek an exemption. But AB 60 is going to be the
18 law on the 1st. It is a very broad question in terms of
19 coverage: you're covered unless there is a specific,
20 stated either in the bill or written in plain English in
21 a wage order, saying you're not covered. It's not an
22 interpretation question, whether the Labor Commissioner
23 made a right or wrong decision. We're talking about
24 January 1st, there are new rules. And I think those

1 industries need to be very careful that -- you know, they
2 could very well be racking up a very large judgment if
3 they don't comply.

4 COMMISSIONER CENTER: The reason I'm doing these
5 industries is I think they're holding a gun to their head
6 by not putting out wage boards, which I think we could
7 probably do if we had the votes -- and I don't think we
8 do right now. But I think it's to their benefit to open
9 up wage boards right now. Let's not argue whether
10 they're covered or not, but -- you know, but that's my
11 opinion.

12 And patient -- the nurses are next, so --

13 (Applause)

14 MR. MCKINNON: My name is Matt McKinnon. I'm
15 the executive secretary for the Machinists Union in the
16 State of California through the California Conference of
17 Machinists. And our organization represents
18 approximately 100,000 working and retired members in the
19 state, working in virtually every industry, including the
20 four industries that have been discussed today.

21 Where I'd like to start out is almost where the
22 last testimony left off. It is very clear to our
23 organization from the very beginning of supporting AB 60
24 that we wanted no more loopholes, no more holes, and let

1 the IWC work out where the exceptions should be -- no
2 exemptions. Now, what happened during the process of the
3 legislation was that there were exemptions made, and
4 there were debates and there were negotiations about
5 exemptions. These four industries discussed today did
6 not get exemptions, and we think AB 60 is very, very
7 clear on that point.

8 Now, with respect to the question of having wage
9 boards and wage orders, we do, however, favor going
10 through that process. We think that's the right thing to
11 do. We think that's the fair thing to do. Maybe in the
12 past in this process, some folks in labor didn't feel
13 that they were treated fairly. That doesn't mean we're
14 going to go stand away. We think that there are reasons
15 to have wage boards discuss the conditions in the
16 industry protected and make the rules, instead of having
17 checkerboard rules that were built up over sixty years,
18 with holes and exemptions and all kinds of things. AB 60
19 drew a line that's very, very clear. And from this point
20 forward, we need to have wage boards determine where we
21 go on that.

22 Of the four industries that are mentioned, the
23 one that we have the largest amount of members and other
24 workers that work with those members that would be

1 affected is in the lumber industry, in the logging
2 industry. And in the logging industry, I deal primarily
3 with two different companies. Neither of those companies
4 came to testify today. I talked to both of those
5 companies, and neither of them had major objections to
6 what I was doing. And, in fact, one of them said, "We
7 work people 8 hours a day because it's safer that way.
8 The only thing we want to talk to you about is lunch
9 breaks, because we have people working out in the cold
10 and the rain for hours. And can they work through their
11 lunch breaks? Is there a way of working that out?"
12 That's an appropriate place for a wage board to convene
13 and work out a wage order to figure out what the best
14 course is in that specific industry.

15 So, again, clearly, from the Machinists Union,
16 we think AB 60 is clear. We think it drew a line. We
17 think the exemptions that are in it are in it because
18 they were negotiated and put in it. Otherwise, it seems
19 to us that there ought to be wage boards and wage orders
20 issued.

21 Thank you.

22 MS. GATES: Good afternoon, commissioners and
23 staff. I think I'm probably going to make the nurses
24 very happy to hear that I believe I'm the last person to

1 testify on the construction industry.

2 (Applause)

3 MS. GATES: They deserve a commendation for how
4 long they have waited today to be heard.

5 I guess I'm the -- the construction group was
6 the second longest people to forbear, and I will go very
7 quickly. I have submitted to all the commissioners and
8 to the staff attorney a copy of oral testimony, which I
9 promise the chairperson here today that I will not read
10 into the record. And, in fact, I will make my testimony
11 very brief. The people who've already testified here
12 today involving the construction industry have most of
13 the ground that I thought I would need to cover, and now
14 I don't.

15 I need to introduce myself. My name is Patricia
16 Gates. I'm an attorney with the Law Offices of Van
17 Bourg, Weinberg, Rosenfeld, and Roger, and I'm here today
18 at the request of the Northern California District
19 Council of Laborers, and I'm here to speak in support of
20 daily overtime for all California construction employees.

21 I have to say that it was incredibly gratifying
22 to hear one construction industry employer actually raise
23 and testify that he was -- he encourages payment of time
24 and a half in the construction industry in order to

1 increase safety and decrease accidents on the job.
2 That's the kind of employer cooperation which is
3 incredibly gratifying, I would think, for a board like
4 this to hear.

5 I've heard other employer representatives
6 testifying today, and I was amazed at maybe their naïveté
7 to think that this board is supposed to do what's good
8 for business. This board has a very specific statutory
9 mandate, and that's to look after the welfare of working
10 people in the state. It is a partisan board.

11 I'd like to also say that as to the unpublished
12 opinion, the Veico decision that people from the oil
13 drilling industry have raised. I think that that
14 rebuttal is fairly and, actually, very adequately,
15 handled by one of the commissioners, Commissioner Broad.
16 I would say that in addition to what Commissioner Broad
17 said and, I think, what was implied in what he said, was
18 that this board not only has had broad statutory
19 authority that goes all the way back to 1913; the
20 legislative mandate and the legislative delegation of
21 power to this board, to the Commission, has grown over
22 time, culminating in 1998 -- or 1999, with the passage of
23 AB 60. So, I think what is implied is that whatever the
24 court reviewed, the court did not review the authority of

1 this Commission to act since AB 60. And that authority
2 was made even more broad.

3 There's -- I'd also like to say that AB 60 is a
4 -- is considered a remedial type of legislation. And I
5 think that this was already stated, but the particular
6 case that addresses this is a case known as Industrial
7 Welfare Commission v. Superior Court, and I briefed that
8 in the testimony that I gave to you. That decision was
9 made after employer groups managed to hijack the wage
10 orders issued by this Commission for a period of almost
11 ten years during the 1970's. Finally, in 1980, the
12 California Supreme Court in a unanimous decision said
13 that employer groups going into Superior Court to get an
14 injunction -- and these were injunctions that held up
15 enforcement of wage orders for every worker in California
16 -- they said those days were finished.

17 This is the last thing I will say. The Supreme
18 Court actually did an extraordinary thing; it exercised
19 original jurisdiction, at the request of then-Attorney
20 General George Deukmejian, and heard the case only three
21 months after the employers who were attempting to hold up
22 the enforcement of these wage orders, they -- the Supreme
23 Court heard that case three months after the first cases
24 were in Superior Court, and they took the case in the

1 next term and issued a truly extraordinary opinion, which
2 I hope every member of the Commission will read, because
3 it really constructs, almost like a -- almost like a law
4 school course, an MCLE course in itself -- about the
5 legislative history, the powers of this board, and also
6 the kind of authority that's given to interpret
7 legislation in a -- not in a narrow way, as the oil
8 industry would have us interpret it, but in a very broad
9 way, as is appropriate for remedial legislation.

10 And with that, I will end, unless there's any
11 questions.

12 COMMISSIONER CENTER: Getting back to the issue
13 of the wage boards, don't you think it's a benefit for
14 the industries to open up the boards if they want any
15 relief under AB 60?

16 MS. GATES: I think it would be a benefit to
17 industry to tailor their orders, their wage orders, to
18 the needs of their individual industries. That's the
19 idea of -- I think that's why there are, right now,
20 twelve industry orders and only three occupational
21 orders. The occupational orders are much more broadly
22 drawn.

23 COMMISSIONER BROAD: Mr. Chairman, I would be
24 prepared to make a motion at this time that we move

1 forward to convene -- and before I do this, I need to ask
2 our legal counsel a question.

3 Do we -- would the proper motion be four wage
4 orders, because there are four industries, or four wage
5 boards because there are four industries, or one wage
6 board that can make recommendations as to how many wage
7 orders there should be?

8 Sorry.

9 MS. STRICKLIN: That's really, I think, the
10 Commission's choice. I mean, if you are asking for a
11 suggestion for me, I would say it's going to be four wage
12 boards.

13 COMMISSIONER CENTER: I'm sorry. Could you
14 repeat that, please? To convene the four wage boards.

15 MS. STRICKLIN: Four wage boards.

16 COMMISSIONER BROAD: I guess the question I have
17 goes to the issue of -- there may be some issue where
18 construction is in one, and the other three industries
19 are in another one, or another two, or another three.
20 And what I want to make sure is that we would be
21 proceeding lawfully so that we would give ourselves the
22 maximum flexibility, based on what these wage boards or
23 wage board members recommend in making that kind of a
24 decision.

1 MS. STRICKLIN: I would think you would want
2 four different wage boards, because you would want people
3 who were somewhat familiar with those particular
4 industries. The differences between the two rather than
5 one, or deciding if they should all go into one, because
6 the wage orders are going to have more information than
7 just what, say, AB 60 does, in terms of overtime. There
8 are going to be things that are specific to that
9 industry, just as the person testified that the timber
10 industry one has a concern about being able to have lunch
11 time -- work through their lunch time. So, that may not
12 be a concern, necessarily, in construction, oil, mining.

13 COMMISSIONER BROAD: Yeah, although my concern
14 would be that you have the construction industry, which
15 clearly has probably several million employees working in
16 it, and the oil drilling industry, which may have several
17 thousand. And I don't know whether a separate wage order
18 is appropriate for 2,000 people or 1,500 people. It may
19 be that they should be in with these other resource-based
20 industries like timber.

21 MS. STRICKLIN: That might be a question for the
22 wage board.

23 COMMISSIONER BROAD: In other words, we would do
24 four wage boards and charge them with the issue of

1 whether they should be included?

2 MS. STRICKLIN: Yes.

3 COMMISSIONER BROAD: Would we then have the
4 power, if they came back, to create one for all of them,
5 or two or three or four? Would we --

6 MS. STRICKLIN: The Commission's duty with the
7 wage board report is to take -- once you get a two-thirds
8 vote of in the wage board, it would have to be included
9 in any regulation, if there is one put out, unless the
10 Commission finds that it would be detrimental to the
11 health and welfare of the employees.

12 So, it would depend on what the report of that
13 wage board was.

14 COMMISSIONER CENTER: Barry, let me -- before
15 you finish your motion -- and hoping that some of the
16 arguments some other commissioners, I would hope for a
17 second so the other commissioners are -- I wouldn't want
18 to second it and have the motion die, really.

19 COMMISSIONER McCARTHY: Well, in that case,
20 could I make a comment before you finish?

21 COMMISSIONER CENTER: Yes.

22 COMMISSIONER McCARTHY: Certainly the Commission
23 has every right to convene wage boards. That's not in
24 question. And it may very well wish to do so. And as

1 the chair has said, it may be in the advantage of some of
2 the industries where the dispute's taking place to
3 participate in it.

4 I would -- I would just suggest that you may --
5 there's not an immediate urgency. I think one may want
6 to wait perhaps a month, to the next meeting anyway,
7 simply to see if we can have the industries cooperatively
8 come on board.

9 For example, the mining industry, when you
10 raised the issue, Chuck, they said that it sounded good
11 but they'd like to get back to you.

12 So, rather than sort of coming across as
13 stuffing it down people's throat, perhaps I think maybe
14 the -- this can be discussed or we can get a response
15 back in the interim, and then, in any event, as the
16 Commission wishes, simply act next month.

17 So, I'm not arguing against the motion as much
18 as raising the point here that maybe -- the timing --
19 maybe one wants to wait till the next meeting.

20 COMMISSIONER COLEMAN: Yeah. I'm somewhat
21 inclined to agree with that. I know we've asked a couple
22 of the folks testifying their opinion about the wage
23 boards, but I just wonder, procedurally, whether we want
24 to give them the opportunity to think about that and then

1 petition the Commission to do that.

2 COMMISSIONER CENTER: Have them petition us,
3 rather than losing the vote.

4 COMMISSIONER BROAD: Well, I think, given those
5 statements, let's -- why don't we just wait till January?

6 (Laughter)

7 COMMISSIONER CENTER: And we might wait for
8 these industries to petition us, which might be way down
9 the road somewhere.

10 With that, we want to -- thanks for the
11 patience. I know people came in early and signed up, and
12 you've been here for a long time. One individual -- and
13 I hate to wait -- well, he was first on the list, I
14 think, and he's driven 145 miles. Is he still here?

15 AUDIENCE MEMBER: (Not using microphone) He's
16 third.

17 COMMISSIONER CENTER: He's third? Okay.

18 Okay. So, the nurses were first, then, right?

19 DR. SNELL: But he can go before us.

20 COMMISSIONER CENTER: Okay. Okay. Well, you
21 ladies are used to working 12 hours a day anyway.

22 (Laughter)

23 COMMISSIONER CENTER: Excuse me. Nurses -- I'm
24 sorry.

1 And you said you'd be brief too, Mr. Shadwick.

2 MR. SHADWICK: Well, first off, I have to make a
3 couple of comments. I'd very much like to thank
4 Christine Morse and Mike Moreno and your staff up there
5 in Sacramento. All phone calls, all faxes were received
6 in great courtesy, and I want that so noted for those
7 people.

8 COMMISSIONER CENTER: Thank you.

9 MR. SHADWICK: The reason why I'm here is I need
10 clarification, and I'm not an attorney. But I work for a
11 company called Time Clock Sales and Service. We have
12 seven offices in the state and over 100 employees. We
13 sell and service time clock equipment and software
14 throughout the whole state. So, I think, personally, we
15 have a liability factor in making sure that what we sell,
16 we know what we're telling our customers. Even though
17 we're not attorneys, on the back of our contracts it says
18 you tell us.

19 So, let me ask my first very important question,
20 is how do you recognize the 24-hour cycle? There is what
21 the company has their date change time each and every
22 day, and some companies may choose midnight, some
23 companies 3:00 a.m., some at 6:00 a.m. And they'll use
24 that as their guideline for their 24-hour cycle. I have

1 heard that your policy is that it's going to be the
2 employee, when they first punch in the first payday of
3 the workweek, as my interpretation.

4 COMMISSIONER CENTER: I think that's probably a
5 -- should be referred to the Labor Commissioner's office.
6 Would you like to -- or maybe even you could meet with
7 Miles.

8 MS. SAUNDERS: (Not using microphone) We have
9 it.

10 COMMISSIONER CENTER: Pardon?

11 MS. SAUNDERS: (Not using microphone) We have
12 it in that thing that we gave you, that unless they
13 designate what it's going to be, we're going to say that
14 it's midnight to midnight.

15 COMMISSIONER CENTER: That's how the Labor
16 Commissioner will enforce.

17 MR. SHADWICK: Okay. So, the companies cannot
18 take the rule of saying, "Our date change is six o'clock
19 in the morning."

20 MS. SAUNDERS: (Not using microphone) Yes, they
21 can.

22 MR. SHADWICK: Oh. Oh, yes, they can?

23 COMMISSIONER DOMBROWSKI: And if they don't do
24 that, then the Labor Commissioner's interpretation says

1 that they will be in default, for those employers who
2 don't pick a separate starting time. That's in the
3 document.

4 COMMISSIONER CENTER: Okay. And I haven't read
5 it yet.

6 MR. SHADWICK: All right. My next question is
7 the -- on the 24 hours, in order for companies here in
8 California to operate, you have companies that you
9 interface, and they have their own time payroll systems
10 outside of the state. And it helps me -- it may seem
11 strange -- but I would like to see put in the law for the
12 employees here in California that all time is set per
13 Pacific Standard Time, and not -- 24-hour Pacific
14 Standard Time, not Eastern Standard Time and Midwest
15 Standard Time, as far as designating their times. The
16 basic reason is that it's the Internet, other ways of
17 pulling in time and regulating what's going on in our
18 state outside of the state.

19 And then they'll stand there and say, "Well, we
20 do all of our payroll on the East Coast." And that's the
21 end of it. They won't talk any further than that.

22 So, we think, in California, it would help our
23 employees throughout the state. And that's basically my
24 area.

1 COMMISSIONER BROAD: Just so I understand this,
2 what you're saying is it should be the time -- employers,
3 wherever they're located, who are paying employees in the
4 State of California, use the time --

5 MR. SHADWICK: Pacific Standard Time.

6 COMMISSIONER BROAD: -- or whatever the time it
7 is in California at that time.

8 MR. SHADWICK: That's right.

9 (Laughter)

10 COMMISSIONER BROAD: And that makes sense to me.
11 I certainly wouldn't want to use Texas time here if we're
12 all on California time.

13 COMMISSIONER CENTER: Or in Asia.

14 COMMISSIONER BROAD: Or -- yeah.

15 MR. SHADWICK: Well, it may seem strange, but
16 you just told me earlier it's midnight, correct? It's
17 00:00, here in California, unless they establish their
18 time. But if they're in Texas, they're two hours behind
19 us -- or ahead of us, I should say. So, the two hours
20 that they're ahead of us, they're using that as their
21 guideline, which could be interpreted as Texas time and
22 not Pacific time, and you have to figure in the time.

23 COMMISSIONER BROAD: Well, I guess I'm confused.
24 I mean, the worker gets to work at eight o'clock in the

1 morning California time, right?

2 MR. SHADWICK: That's right. I agree with that.

3 COMMISSIONER BROAD: If the person works for
4 nine hours, they're going to get an hour of overtime, no
5 matter what time it is in Texas, right?

6 MR. SHADWICK: Well, I've seen differently.

7 The main thing I'm looking at, where a company
8 says, "These are my rules and this is how it's going
9 about," you know.

10 COMMISSIONER BROAD: Okay.

11 MR. SHADWICK: It may seem strange, but --

12 COMMISSIONER BROAD: It does.

13 MR. SHADWICK: As time goes on, I've seen it
14 many times.

15 The next thing is when you count your time. My
16 next question is when someone comes to work, are you
17 going to be counting -- are you allowed to count the time
18 in 24 hours or the quarter of an hour? Are you saying
19 when they come in five minutes late that they're allowed
20 to round the time back to eight or round forward to 8:15?

21 COMMISSIONER CENTER: All this stuff should be
22 referred to Miles Locker and the Labor Commissioner.

23 MR. SHADWICK: Okay. Then I'm done.

24 COMMISSIONER CENTER: And you might be able to

1 do that outside. He's the chief counsel for the Labor
2 Commissioner.

3 MR. SHADWICK: Okay. Thank you.

4 COMMISSIONER CENTER: Thank you. That's all a
5 Labor Commissioner interpretation. Thank you.

6 Yeah. I want to thank them for their patience
7 and hear the nursing industry now.

8 DR. SNELL: Chairman Center and commissioners, I
9 appreciate the opportunity to talk with you today. My
10 name is Dr. B. J. Snell. I'm the representative of the
11 California Nurse-Midwives Association and a practicing
12 certified nurse-midwife here in the State of California.
13 I've submitted to you written testimony that will speak
14 to a lot of what I'm going to talk about today, but
15 wanted to give you some of the information that will
16 preface many of those that will come after me.

17 It's come to our attention that the Industrial
18 Relations Department and attorneys that represent the
19 California employers are planning to implement AB 60 in
20 the realm of the certified nurse-midwife here in the
21 State of California. Many of us are employees. We work,
22 certainly, longer than 8 hours. If you review the
23 literature or know of anyone who has had a baby or been
24 in a family that has had a baby, they don't read the

1 Industrial Relations information on the wall, and they
2 certainly take longer than 8 hours to get here.

3 Continuity of care is certainly a premise that
4 is very important to our profession and certainly the
5 families that we serve. And the continuity of care has
6 been shown to reduce both problems that occur during
7 labor, birth, and pregnancy as well as improve our
8 outcome. And so, by taking away our ability to provide
9 longer than an 8-hour period of time with a family will
10 certainly compromise not only us as employees, but will
11 compromise the families that we serve.

12 We are primary care providers for women and
13 newborns, and from that have extensive background and
14 education in healthcare of women and newborns. We are
15 certified through the State Board of Registered Nursing
16 and have had to have completed an accredited program of
17 study at a post-baccalaureate level. Many nurse-midwives
18 are certainly prepared at the master's level as well.

19 The Nurse Practice Act, the regulations that
20 establish distinct requirements for the practice of a
21 certified nurse-midwife, would make it clear that we are
22 responsible for providing a different scope of practice
23 and a different scope of care than would be permitted by
24 a registered nurse. This is because of the care that we

1 do provide at the professional level for our clients.

2 According to the national standards as well as
3 state standards that are upheld here in the State of
4 California by the California Nurse-Midwives Association,
5 nurse-midwifery practice is the independent management of
6 women's healthcare, and nurse-midwives are committed to
7 maintaining a high standard of professional care. We
8 collect and assess client data, develop and implement our
9 plans of management, and evaluate the outcomes of our
10 care. And the practice of nurse-midwifery is -- a
11 hallmark of nurse-midwifery practice is the continuity of
12 patient care.

13 Clearly, the Nurse Practice Act and regulations
14 and the national state standards that -- national and
15 state standards provide documentation that nurse-midwives
16 function as professional who engage in work that is
17 primarily managerial, intellectual, and creative, and
18 requires the exercise of discretion and independent
19 judgment. Even though the Act specifically named
20 registered nurses, employees who engage in the practice
21 of nurses, for being exempted unless they meet certain
22 criteria, it is clear that nurse-midwives who provide
23 this care have not been employed to function only at the
24 level of the registered nurse. They have been employed

1 to improve the care of the patients and decrease costs of
2 the facilities that employ them. That is why the
3 additional post-graduate education is necessary and
4 required for us to be able to practice.

5 In the past, the vast majority of nurse-midwives
6 are either salaried employees, contract employees, or
7 have independent practices and businesses. And one of
8 our midwives that are here today will talk a little about
9 the independent practices.

10 Few CNMs -- certified nurse-midwives -- are paid
11 an hourly wage with overtime. They are -- they are
12 considered salaried employees, and therefore, overtime
13 does not apply to their wages. Salaries are commensurate
14 with their additional responsibility and the type of work
15 that requires the continuity of care that we need to
16 provide. Again, these responsibilities are above and
17 beyond those of the registered nurse at the staff level.

18 In summary, a large portion of the practice of
19 nurse-midwifery is caring for women and their newborns
20 that require longer than 8 hours at a time. If it occurs
21 that this Commission -- or the implementation of AB 60
22 does take effect January 1, many of the nurse-midwives
23 that are now practicing and providing care for women
24 throughout California will not be able to provide the

1 care that they've been providing in the past.

2 It may also impact the women in the state
3 because nurse-midwifery services are a mandated service
4 available to women under the rules and regulations of the
5 Health Care Financing Administration, and therefore both
6 Medicare and Medicaid or MediCal regulations require that
7 women have access to nurse-midwifery services. And those
8 services have been defined as not just providing
9 outpatient or ambulatory care services, but do provide
10 that continuity of care.

11 On a personal level, I am part of a group of
12 nurse-midwives that practice in Orange County. These
13 nurse-midwives are salaried within the organization and
14 therefore not impeded from the provision of continuity of
15 care. The group of midwives that I work with are
16 concerned about this change and the impact it will have
17 on their personal lives and their professional care.

18 In response to Assemblyman Knox's comments
19 earlier today, I agree that it is deplorable that there
20 may be a reduction of base pay in anticipation of the
21 implementation of this -- these regulations, and I
22 certainly would not support that practice. However, I
23 would appeal to the Commission to please review the work
24 of advanced practice nurse -- obviously, I'm specifically

1 speaking to nurse-midwives -- of those of us that do
2 practice in the continuity fashion and need to be able to
3 be there longer than 8 hours at a day. It would put us
4 at great stress to not be able to provide that care.

5 I would welcome any comments from the
6 Commission.

7 (Applause)

8 COMMISSIONER BROAD: I just have a question for
9 you. The statute's quite explicit, as you pointed out.
10 And your argument, if I understand it, is that you're not
11 employed to practice registered nursing, you're employed
12 to practice something else beyond registered nursing.

13 DR. SNELL: Beyond registered -- we are all
14 licensed as registered nurses.

15 COMMISSIONER BROAD: Okay. Okay. That was my
16 question.

17 DR. SNELL: We're certified as advanced
18 practice.

19 COMMISSIONER BROAD: And who certifies you?

20 DR. SNELL: The Board of Registered Nurses.

21 COMMISSIONER BROAD: So, in other words, you --
22 in effect, you're a registered nurse with a certified
23 specialty? Is that how --

24 DR. SNELL: That's correct. If I can draw an

1 analogy, physicians are licensed as medical doctors.
2 They then subspecialize in either obstetrics and
3 gynecology, family medicine, anesthesiology, and they
4 have additional certification, and therefore they
5 practice in that specialty. Nurse-midwives are in the --
6 have a similar parallel, in that we are licensed -- our
7 base license is as a registered nurse. However, we are
8 hired and practice as nurse-midwives, as our specialty
9 and our education allows us to do.

10 COMMISSIONER BROAD: Thank you.

11 COMMISSIONER CENTER: Thank you.

12 DR. SNELL: Thank you.

13 THE REPORTER: Commissioner Center, could -- I'd
14 like to get names before people start speaking.

15 COMMISSIONER CENTER: Okay.

16 THE REPORTER: Is that possible?

17 COMMISSIONER CENTER: Yes.

18 DR. SNELL: I'm sorry. I thought I just said
19 that. My name is Dr. B. J. Snell, S-n-e-l-l.

20 MS. MIELKE: Hi. My name is Ruth Mielke. I'm
21 also a certified nurse-midwife, and I actually also, in
22 addition to Dr. Snell, submitted written testimony, which
23 I will summarize at this time.

24 I'm a certified nurse-midwife, CNW, with a

1 practice downtown in Los Angeles. My actual practice is
2 at California Hospital Medical Center, probably a mile
3 from here. Since 1991 when we started the practice, we
4 have attended over 10,000 births of women in Los Angeles,
5 and the practice provided excellent care, shown in our
6 excellent outcomes.

7 And again, as Dr. Snell very well described, we
8 don't just practice in an 8-hour day. When we started
9 the practice, it was clear that we'd deliver a full scope
10 of women's health services that were needed to provide
11 care in a variety of settings. To date, the settings
12 include two different clinics, a third clinic which we
13 will starting as well, in addition to our in-patient or
14 the hospital work. As you are aware, it's a 24-hour-a-
15 day, seven-day-a-week commitment to provide that care.

16 And again, all of us familiar with childbirth do
17 know that the birth tends to occur when it needs to
18 occur, not when the time clock seems to telling us. I
19 work in a clinic that works a 10-hour day, and I work at
20 one that works an 8-hour day. I take calls in the
21 hospital -- that can be 12 hours or it can be 24 hours.
22 In my clinic last night, I saw patients that were
23 scheduled to see me in the afternoon. Many of them do
24 have dates within the next couple of weeks. At five

1 o'clock my second week, my day was over. A patient came
2 in with twins who needed to be seen. I would not give a
3 second thought, ever, due to the fact that patient needed
4 care, but I feel that if I'm compelled to be thinking
5 about an 8-hour or 12-hour, whatever hour day, that
6 patient care could be impacted.

7 I want to mention a little bit more -- and I
8 know we're referred to as nurses -- many of us here have
9 been practicing midwifery for many years. I've been
10 practicing as a midwife for fifteen years. I am
11 licensed, as mentioned before, as a registered nurse.
12 I'm also licensed as a nurse-midwife in the State of
13 California. Midwifery practice is much different than
14 the practice of a registered nurse.

15 I just want to spell out, very quickly, in
16 summary, those -- the differences. We do convey written
17 and verbal orders for medications, treatments, procedures
18 which must be carried out by nursing personnel, as would
19 a doctor. We do make independent decisions for
20 treatments, restrictions, or medication as needed. We do
21 independently manage normal women and their babies for
22 both outpatient services, birth, and post-partum care.
23 We are entitled to carry malpractice insurance, as would
24 a physician, you know, like a specialty. We're

1 credentialed by various provider groups. We are members
2 of independent physician associations, IPAs. Insurers
3 pay us for our service; we are reimbursed by third-party
4 payers, as would a provider physician be.

5 In summary, the profession of midwifery meets
6 the intellectual and independent decision-making criteria
7 required of exempt employees who are not, technically, in
8 a supervisory capacity. To implement AB 60 as this
9 language is currently written, by which we're seen as
10 registered nurses, prohibits the practice of midwifery
11 and will ultimately affect our ability to provide
12 excellent, cost-effective care to uninsured and under-
13 insured women, who comprise the bulk of our clients.

14 Thank you.

15 (Applause)

16 MS. BOGAR: Hello. My name is Susan Bogar, and
17 I'm a certified nurse-midwife as well. And I've
18 submitted written testimony to the committee, so I won't
19 repeat my testimony. But I just want to make a couple of
20 points.

21 I've been a nurse-midwife for seventeen years,
22 for ten in California. I've worked in several states,
23 always in my career as a nurse-midwife as a salaried,
24 exempt employee.

1 When I first heard about AB 60 and the fact that
2 attorneys were interpreting that nurse-midwives would now
3 be treated as nonexempt employees under this law, I was
4 astounded, because I don't quite understand how we are
5 supposed to perform our scope of practice, which the
6 state has enabled us to do by law, and be a nonexempt
7 employee. So, the assumption that sort of one-size-fits-
8 all, if you're not a manager you're a nonexempt employee,
9 you know, doesn't apply to my profession.

10 I hope that the intent of this law was not to
11 put nurse-midwives out of business. I fear that it
12 might. I have already spoken to midwives in this state
13 who've been told that as of January 1st, they're only to
14 work 8-hour days. And their employees, who are
15 physicians in small group practices, are starting to
16 conclude, "Why should we hire a midwife? You know, she's
17 not going to be able to deliver any babies, I'm going to
18 have to do all that extra work at night, she's just going
19 to work in the office." They're extremely threatened and
20 distressed by this. My employer has also concluded, on
21 advice of an attorney, that this should apply to nurse-
22 midwives. And I've had hours of argument with people in
23 the administration at my employer about this, that it
24 makes no sense. Like you say, it makes absolutely no

1 sense. We can't do our jobs under this law.

2 My concern, as I've heard you talking to people
3 from other industries, is that apparently, as of January
4 1, this is the law, and that we must make a request -- we
5 request that -- for a wage -- I think that's what I'd
6 want to know. I mean, what is our course of action here?
7 And it's going to take a year? Because you're going to
8 put people out of business.

9 COMMISSIONER DOMBROWSKI: The process is that
10 any commissioner can make a motion to call a wage board.
11 So, what you've presented is very useful to that ultimate
12 decision.

13 MS. BOGAR: So -- and my concern, though -- I
14 know how things tend to happen -- is that this could take
15 a really long period of time, and that -- and that people
16 are actually going to be prevented from practicing,
17 either by their employers, who are going to decide it's
18 not worth it to employ them any more, or they're too
19 expensive.

20 You know, we -- we function -- as you're
21 probably getting the drift of -- more similarly to a
22 physician provider than a registered nurse. And, in
23 fact, we compete in some -- in some ways. We compete in
24 the marketplace with them.

1 So, I -- you know, my -- I'm concerned for my
2 profession. I happen to work in a situation where
3 there's a number of us. You know, some of us may be able
4 to work under this law, but there are lots of midwives
5 out there in small practices, two or three people in the
6 practices. You know, there's no way you can comply with
7 this law in a situation like that.

8 COMMISSIONER CENTER: Thank you.

9 COMMISSIONER McCARTHY: Let me -- pardon me,
10 ma'am.

11 MS. BOGAR: Yeah.

12 COMMISSIONER McCARTHY: As I say, maybe -- this
13 is addressed to the other commissioners and to our
14 attorney as well. I think the case is -- you know, I
15 think the case is pretty compelling. Can we not
16 establish an exemption? I mean, as I read it, the copy
17 of AB 60, we may establish exemptions from the
18 requirement of overtime that the thing
19 -- provided that the employee is primarily engaged in the
20 duties which meet the test of the exemption. Employees -
21 - you know, this is sort of the professional exemption.

22 MS. BOGAR: Yes.

23 COMMISSIONER McCARTHY: And here it says we do
24 not -- all we have to do is conduct a review, and then we

1 do have to convene a public hearing, but we don't have to
2 convene a wage board to enact this. And, you know, I
3 think the case that's been made by the midwives is pretty
4 compelling, that -- I mean, if -- it seems to me, but I
5 can only speak for myself -- if, really, what we're
6 talking about is destroying a whole profession here, that
7 there is a means available for us to act in a very quick
8 fashion, as I say, so as to avoid that from happening.
9 Is that not correct?

10 COMMISSIONER CENTER: But we can't act until the
11 statute comes into effect.

12 COMMISSIONER McCARTHY: That's correct. But, I
13 mean -- so, I mean, there will obviously -- we can't do
14 that today, and --

15 MS. BOGAR: January 2nd, perhaps?

16 COMMISSIONER McCARTHY: I don't know.

17 (Laughter)

18 COMMISSIONER McCARTHY: But, you know, it
19 doesn't require the whole lengthy process of a wage
20 board.

21 COMMISSIONER CENTER: And I wouldn't hire the
22 attorney from the oil companies to help you there.

23 (Laughter)

24 MS. BOGAR: No problem. We don't have the money

1 for that.

2 COMMISSIONER McCARTHY: But, no, I just -- but I
3 want to appraise (sic) you of that, and that's something
4 you might want to keep before the board, the possibility,
5 given the -- given the kind of dire situation which you
6 face, of
7 -- you might want to keep that before the board, the
8 notion -- if the board is willing to have its own quick
9 review and then to call, as soon as possible, a public
10 meeting so as to be able, if the Commission chooses, to
11 go forward and grant the exemption so that it can be done
12 quickly.

13 MS. BOGAR: Can we request that of you?

14 COMMISSIONER McCARTHY: What's the process,
15 actually, on that?

16 MS. STRICKLIN: There are several. You could
17 petition the Commission, which is one of the things
18 Commissioner Center mentioned.

19 AUDIENCE MEMBERS: (Not using microphone) Talk
20 louder. Louder!

21 MS. STRICKLIN: -- which is one of the things
22 Commissioner Center mentioned before. You can petition.
23 There's a procedure where the Commission has 120 days
24 within which to decide to deny the petition or have a

1 wage board.

2 But it seems to me, under AB 60, the healthcare
3 industry in general does have an exemption until July 1st
4 of 2000, for the 12-hour shifts. So --

5 MS. BOGAR: Yeah, but we sometimes exceed 12
6 hours. I mean, there's one thing in midwifery here,
7 dealing with women in labor, but we're not -- we don't
8 work in shifts. We're not shift workers. That's why
9 this is a big problem for us.

10 MS. STRICKLIN: So, it seems to me that you
11 would want to go -- either a commissioner could propose
12 that an exemption should be made for registered certified
13 midwives, or you could petition --

14 MS. BOGAR: Advanced practice nurses.

15 MS. STRICKLIN: Advanced -- whatever the title
16 is -- I'm sorry -- or you could petition the Commission
17 for an exemption. Those are your two routes.

18 COMMISSIONER McCARTHY: Well, but we don't need
19 a wage board, do we? I mean, can't we -- if we were --
20 as I read this, if we -- this states --

21 MS. STRICKLIN: What are you reading from?

22 COMMISSIONER McCARTHY: Pages 8 and 9, Section
23 9, Article 515 -- that if we -- we have within our
24 authority, basically, to, as I understand it, give them

1 an exemption on the basis of professional qualifications,
2 which would avoid the necessity to hold a wage board, if
3 we chose -- if the Commission chose to do that.

4 MS. STRICKLIN: If the Commission chose to do
5 that. I'm not sure where you're reading from, if that's
6 Section 515.

7 COMMISSIONER McCARTHY: It says, "The Industrial
8 Wage (sic) Commission may" --

9 MS. STRICKLIN: What section of 515?

10 COMMISSIONER McCARTHY: Section (a). Section
11 (a).

12 COMMISSIONER CENTER: You'd better look at
13 Section (f).

14 COMMISSIONER McCARTHY: (f)?

15 Well, I'm not saying we do that. I'm just
16 saying that if there is a possibility of doing this, that
17 these midwives should be at least appraised (sic) of that
18 so that there's -- you know, as I say, it's up to the
19 Commission to decide whether to --

20 COMMISSIONER CENTER: The thing to do would be
21 to file a petition.

22 COMMISSIONER McCARTHY: Right. All right. And
23 get a copy of the bill.

24 COMMISSIONER COLEMAN: I have a question. If

1 this profession already meets the professional exemption
2 test, though, then wouldn't they be exempt under the
3 current statute?

4 COMMISSIONER CENTER: Up to 12 hours.

5 MS. STRICKLIN: No. If you --

6 COMMISSIONER COLEMAN: No, the professional
7 exemption.

8 COMMISSIONER CENTER: Oh, professional
9 exemption.

10 MS. STRICKLIN: The only thing in AB 60 that's -
11 - they're registered nurses --

12 COMMISSIONER COLEMAN: Right.

13 MS. STRICKLIN: -- an exemption, are
14 administrative or executive -- I believe that's -- that's
15 the problem.

16 MS. BOGAR: That's the problem.

17 MS. STRICKLIN: And now if you're talking about
18 a registered nurse, I think that's why Commissioner Broad
19 asked you the question if you were hired to do something
20 other than a registered nurse. If there's something more
21 or above that, then perhaps this doesn't apply to you.

22 But that's -- that's why I think probably a
23 petition to show the differences between what a
24 registered nurse does and a certified midwife would be

1 helpful, or for a commissioner to make that motion, that
2 perhaps that be looked into. Those are the two routes
3 that I see.

4 COMMISSIONER COLEMAN: And you can make a motion
5 for that?

6 COMMISSIONER CENTER: Yes. Well, let's -- it
7 doesn't go into effect until January 1st.

8 MS. BOGAR: So, state your motion! Come on,
9 folks! You all appear to have unanimity on there.

10 (Applause)

11 MS. BOGAR: Do it!

12 COMMISSIONER McCARTHY: Well, I guess the
13 question is whether we have the legal authority to make -
14 - to implement an appeal process within a bill that
15 doesn't take place till January 1st.

16 COMMISSIONER CENTER: It doesn't exist till
17 January.

18 COMMISSIONER McCARTHY: Legally, that's the
19 problem. I'm with you, but I don't know if we can do it.

20 MS. BOGAR: Okay.

21 MS. GLATLEIDER: Good afternoon. Thank you for
22 this opportunity to speak before you. My name is Pauline
23 Glatleider. I'm a certified nurse-midwife practicing at
24 California Hospital, also here in downtown Los Angeles.

1 I am also a member of the medical staff at California
2 Hospital, and I'm an employee in the hospital.

3 Currently, there have already been changes made
4 in the way that I can practice midwifery, so that my
5 ability to be able to be with a woman throughout her
6 whole labor is not possible. If you would calculate out
7 what it would cost if we were hourly wage earners, it
8 would be prohibitive to pay someone time and a half or
9 double time when a woman's labor exceeds 12 hours, 18
10 hours. Further, I think it's already been commented on,
11 and I will second that, that we do meet the criteria for
12 a professional exemption, based on the scope of our
13 practice.

14 I'd like you to know that California has the
15 most nurse-midwives in the United States. If, in fact,
16 we are found to be nonexempt employees, this can have
17 consequences for our profession across the country. The
18 American College of Nurse-Midwives totally supports our
19 position that we are professional exempt employees, if we
20 are employees or if we're in our own practice.

21 Finally, I just want to also reiterate that
22 research has shown that continuity of care by the same
23 care provider has -- has implications on the outcomes for
24 mothers and babies, both in their pregnancies -- in a

1 study that was done in the early '60s and most recently,
2 it has been shown that the care of nurse-midwives through
3 the labor and birth process can significantly reduce the
4 morbidity of women and babies, significantly reduce
5 Caesarean section rates. We have, as was said, cared for
6 over 10,000 women in our practice at California Hospital,
7 and consistently our Caesarean section rate has been
8 between 3 and 4 percent, an excellent outcome for babies.
9 And that has been consistent over almost a ten-year
10 period.

11 So, I would urge you to perhaps make a motion
12 today that, in fact, as soon as you meet in January, that
13 this will be one of the first things on the table so that
14 it will not interrupt our ability to care for women --
15 for women and babies.

16 And currently, things have changed in our
17 practice, and unless there's some immediate relief, we
18 will
19 come -- it may affect how we care for women -- it will
20 affect how we care for women and outcomes for moms and
21 babies.

22 COMMISSIONER McCARTHY: Well, I'd like to -- you
23 know, are there -- are there witnesses against taking a
24 contrary view with regard to this?

1 (Show of hands)

2 COMMISSIONER McCARTHY: Well, then I think we'll
3 withhold any possible motion till we hear both sides. I
4 think that's only fair and reasonable.

5 COMMISSIONER CENTER: Yeah.

6 COMMISSIONER McCARTHY: Don't you?

7 MS. EVERETT: I just want to say quickly that I
8 work 12-hour shifts. I want to keep my 12-hour shifts.
9 Hospitals can't afford to pay us time and a half, and our
10 wages are already --

11 COMMISSIONER CENTER: State your name and --

12 MS. EVERETT: Oh, I'm sorry. Hi. My name is
13 Cindy Everett, E-v-e-r-e-t-t.

14 They're already trying to cut down on --

15 COMMISSIONER CENTER: What are you, a registered
16 nurse?

17 MS. EVERETT: Registered nurse.

18 AUDIENCE MEMBER: (Not using microphone) Can't
19 hear.

20 MS. EVERETT: They're already cutting down our
21 wages for the time and a half, already taken away 12-hour
22 shifts. We all want to work our 12-hour shifts, and
23 we're all very upset --

24 AUDIENCE MEMBERS: (Not using microphone) Can't

1 hear you! Can't hear you!

2 MS. EVERETT: Sorry. I just want to say I'm a
3 registered nurse. We want to keep our 12-hour shifts.
4 We want to work our 12-hour shifts. We work three days a
5 week. We have time for our family, we have time for
6 school that we won't have with 8-hour shifts. We have
7 long drives to work. And I have up here, if the
8 Commission wants it, a copy of the proposed plan --
9 whatever you call it -- where the wage goes down.

10 COMMISSIONER CENTER: How, originally, you guys
11 established a 12-hour shift was by election.

12 MS. EVERETT: Yes.

13 COMMISSIONER CENTER: I mean, when you
14 established the 12-hour shifts?

15 MS. EVERETT: Originally -- I started working
16 there over -- about ten years ago, mainly because of the
17 12-hour shift.

18 COMMISSIONER CENTER: So, you're okay until July
19 1st.

20 MS. EVERETT: No. They say, as of January 1st,
21 they're putting us on 8-hour shifts. Most of the nurses
22 are leaving.

23 COMMISSIONER BROAD: I guess I'm a little
24 confused. There's nothing -- AB 60 does not alter any

1 12-hour shifts for nurses. It couldn't conceivably be
2 changed until July 1.

3 MS. EVERETT: Well, that's not what's happening
4 in my hospital.

5 COMMISSIONER BROAD: Well, is it possible that
6 your employers are just taking this opportunity to lower
7 your wages, and that's what this is really about?

8 (Audience murmuring)

9 MS. EVERETT: It's just that my nurse supervisor
10 isn't here, and I would love for you to talk to them, and
11 you can ask them those questions. But I thought we need
12 to know.

13 COMMISSIONER BROAD: Well, I mean, there's a
14 real difference here. You know, what offends me here is
15 it may be -- it may be, or it may not be, that there's a
16 legal problem with what they're doing. What offends me
17 greatly is that these employers would lower your wages
18 and change your shifts and do all this stuff, and then
19 blame AB 60, blame the Legislature, blame the Governor,
20 and blame us!

21 (Applause)

22 MS. EVERETT: Well, if you want to say -- I've
23 given you the plans, a copy of the plans, for you.
24 They'd probably say that -- for the overtime is what

1 they're done, is told us that we will not get time and a
2 half. When it comes through, we will still get -- our
3 base rate's been decreased -- we would still come home
4 with the same paycheck. We would still come home with
5 the same paycheck, due to the time and a half. Do you
6 understand that?

7 COMMISSIONER CENTER: Not really, but I don't
8 understand what your employer is doing to you either.

9 MS. FURILLO: Well, we do. We can clarify. We
10 understand exactly what the employer is doing. We can
11 clarify that.

12 MS. MARSHUTZ: Excuse me. I was number two on
13 the list.

14 MS. FURILLO: Yes. My name is Jill Furillo. I
15 am a registered nurse and representative of the
16 California Nurses Association. We represent 30,000
17 registered nurses in California, and we represent over
18 100 nurses in hospitals and healthcare facilities in the
19 State of California.

20 And actually, I have to say that we're currently
21 engaged in an unprecedented campaign to organize
22 thousands more nurses in facilities up and down the
23 state. We've actually -- we haven't seen anything like
24 this in the State of California, ever, the requests for

1 representation by unions. And I guess we have to ask why
2 is this happening? Why is this happening now?

3 The biggest factor out there right now has to do
4 with this issue. The nurses and families fell victim
5 again to the hospital industry's drive for maximum
6 profits at the expense of caregivers who keep these
7 hospitals afloat. Since December 1st, we have received
8 over 250 phone calls, letters, and e-mail messages from
9 nurses who are frightened, hysterical, and extremely
10 confused about what's going on with AB 60. With little
11 more than maybe three days' notice, they have been told
12 that they must vote to lower their own pay or lose their
13 12-hour shifts. And they're saying this is because of AB
14 60.

15 These are pseudo-elections, and they're bogus,
16 phony, and completely unnecessary under the provisions of
17 AB 60, as we all know. Hospitals have an exemption till
18 July 1st, 2000, at which time the Industrial Welfare
19 Commission will be convening wage boards and wage orders
20 to -- to consider what this issue is going to be. But
21 yet the hospitals have decided to act, even though they
22 were one of the few industries that were given an
23 exemption under this law. They have decided to act
24 against the nurses.

1 Thousands of nurses will be taking significant
2 losses in pay, benefits, and their retirement
3 compensation. And I have to tell, I believe the nurses
4 already do not have the best retirement compensation, for
5 many, many reasons. All of us know this is unnecessary.
6 I have in my hand a document that was circulated by the
7 California Healthcare Association. That is the industry
8 association representing most of the hospitals in the
9 state. And it's very interesting what the document says,
10 because what it says is that if you -- if you were
11 compliant with the law prior to 1998, then you do not
12 have to go through this process, meaning if you had -- if
13 you were on 12-hour shifts and you had had an employee
14 vote, then you're fine until July 1st, 2000. So, then we
15 start hearing from thousands of nurses that, well,
16 they're being told they're not fine, according to their
17 hospital attorneys, which then makes us believe that
18 they're out -- they were out of compliance with the law
19 prior to 1998.

20 And actually, what we want --

21 THE REPORTER: Ms. Furillo --

22 MS. FURILLO: Okay, okay.

23 COMMISSIONER CENTER: Okay. Are you ready now?

24 MS. FURILLO: Yeah. Okay. So, we've been

1 somewhat -- we find that it's very possible that many,
2 many hospitals in the state were out of compliance with
3 the law prior to 1998 and are now having these bogus
4 elections, which really are not even required under the
5 current law, up until January 1st, because we all know
6 that those wage orders were eliminated by the previous
7 IWC.

8 I think the real facts -- those are the real
9 facts that they're not telling the nurses. They don't
10 know -- hospitals already decided to eliminate the
11 previous wage order that they never requested and
12 repeatedly violated -- that they never respected. Now
13 they are here with -- you know, crying about their
14 problem, but the reality is, is that they were violating
15 the law before.

16 They have engaged in abusive practice against
17 the nursing staffs with these, quote, "bogus" elections
18 and lowering the pay of the nurses. And this is
19 abominable.

20 We are witnessing the kind -- they're going
21 after nurses, whipping up all kinds of untrue statements
22 about AB 60, they're not -- they're not really playing up
23 the fact that they, in fact, do have this exemption, and
24 so the nurses are very confused.

1 The fact remains that in our facilities and
2 under our contracts, thousands of nursing staff, nurses
3 and nurse practitioners that we represent, will continue
4 to work 12-hour shifts and will continue to do so with
5 the exemption that they have. We have always supported
6 the previous wage order that did allow the nurses to have
7 12-hour shifts with an employee vote. It was the
8 hospitals that came before this body to argue that that
9 be eliminated, and that's why we are on them. It was the
10 greed of the hospital industry.

11 I think that what we really need to do there is
12 to look at -- the IWC should investigate the recent
13 abusive practices of the hospital industry in cutting
14 nurses' salaries, benefits, and pension. I think there
15 needs to be an investigation. And I think that what need
16 to do, and the CAN is calling upon the IWC to
17 investigate, fully investigate those hospitals that may
18 have been out of compliance with the law, because, in
19 fact, there may be thousands and thousands of nurses in
20 the state that could potentially be due back wages and
21 back wages for the time and a half after 8 hours, if
22 their -- if their employers did not have the employee
23 vote.

24 We know that this Commission is going to be

1 considering wage orders in the future. Our position has
2 always been that nurses need to have protection, whether
3 it's a 10-hour shift, an 8-hour shift, a 12-hour shift.
4 Protections need to be in place for the nurses so that
5 they're not abusing -- and the hospital industry is again
6 showing their true colors, that they're really out for
7 greed and they're not out to protect the nurses.

8 So, we look forward to working with you on
9 crafting those wage orders that will take into account
10 the work that all of our nurses do in the practice of
11 nursing. And I would contend that registered nurse-
12 midwives, or nurse practitioners, they are engaged in the
13 practice of nursing, and I think we need to craft the
14 wage order so that we can look at what everybody's doing
15 and the work that's done in the future.

16 COMMISSIONER CENTER: Thank you.

17 Let me get back on -- was there Pauline -- there
18 was no -- all right.

19 COMMISSIONER BROAD: Settle down, now.

20 MS. MARSHUTZ: My name is Nancy Marshutz, and
21 I'm a certified nurse-midwife. And I'm not mad at
22 anyone.

23 (Laughter and applause)

24 MS. MARSHUTZ: I feel that that I am an advanced

1 practice nurse and have received additional education and
2 licensure to practice differently than someone who does
3 shift work. That's what does make a difference between
4 an advanced practice nurse and a nurse who does punch in
5 on the clock.

6 I not only have worked as a nurse since 1960 to
7 1983, but then I became a nurse practitioner from
8 California State and also became a nurse-midwife with
9 USC. My responsibilities have been both with private
10 practice since 1984, and also I've worked as a staff
11 nurse-midwife at a local hospitals. Both positions have
12 responsibilities of a nurse-midwife, caring for -- for a
13 full-scope care of well women interdependently with the
14 physician. Our care does not rely upon a time clock, as
15 has been said before. The California Legislature even
16 recognized this when they amended the Nurse Practice Act
17 to require special certification and licensure for nurse-
18 midwives to practice as an advanced practice nurse.

19 Although we have "nurse" in our title, it just
20 means that we have a foundation of knowledge of nursing.
21 Our scope of practice includes ambulatory care in ante
22 partum and partum and post-partum periods, and knowledge
23 of caring for well women from puberty to menopause. In
24 hospitals, some nurse-midwives are on hourly and per-diem

1 status. I have experienced both, and our care for the
2 well women does not limit itself by a time clock.

3 Limiting such a flexible position would affect
4 our ability to compete with other professions, but most
5 importantly in loss of services to our clients.

6 COMMISSIONER CENTER: Excuse me. Could I do a
7 time out?

8 We're going to be here all night. If you have
9 written testimony --

10 MS. MARSHUTZ: It's very short.

11 COMMISSIONER CENTER: Okay. Just -- and anybody
12 else, if you have written testimony, just submit it and
13 summarize.

14 And how many more midwives want to talk?

15 MS. MARSHUTZ: One more.

16 COMMISSIONER CENTER: Okay.

17 MS. MARSHUTZ: So, we think that it's going to
18 be cost-prohibitive for a person to measure what we do to
19 individualize and personalize this care.

20 And I would like to ask for an amendment or an
21 exemption for nurse-midwives and other advanced practice
22 nurses from the bill limitations and ask that we not be
23 lumped together with nursing. We have been exempt for
24 overtime within our profession for many years and feel

1 that it would restrict our practice and the value to our
2 community.

3 Thank you.

4 COMMISSIONER CENTER: Thank you.

5 MS. JENKINS: Hello. My name is Betsy Jenkins,
6 also a certified nurse-midwife. I have submitted written
7 testimony, so I won't repeat it, except to reiterate what
8 has already been said.

9 I think the passage of AB 60 is a threat to
10 midwifery practice by not making us exempt from the
11 overtime laws. I think one of the hallmarks of midwifery
12 care is support and comfort to women during labor, which
13 cannot be done in an 8-hour shift. Midwives are
14 independent and collaborative professionals, which
15 includes knowledge, judgment, authority, and
16 accountability required to manage patient care. We are
17 requested that we retain our professional exempt status
18 and not be subject to the overtime regulations that are
19 in AB 60.

20 Thank you.

21 COMMISSIONER CENTER: Thank you.

22 Okay. Now I've got to get back on the list.

23 I have Pauline -- yeah, she's already spoken,

24 Pauline --

1 MS. GLATLEIDER: (Not using microphone) I've
2 already spoken.

3 COMMISSIONER CENTER: Okay, sorry.
4 Charlet Rogers.

5 We're only doing nursing still, though.

6 MS. ROGERS: My name is Charlet Rogers, and I'm
7 work in intensive care at Holy Cross -- Providence Holy
8 Cross in Mission Hills, which is in the northeast San
9 Fernando Valley, a very busy trauma center.

10 Two issues here. Continuity of care is relevant
11 to all areas of practice. Even though --

12 (Applause)

13 MS. ROGERS: Even though in-hospital nurses work
14 at an hourly rate, when I get a trauma admission, it does
15 not wait for me to have lunch. The trauma patient who's
16 bleeding or in respiratory distress, or any other patient
17 who is not having a baby, does not wait to -- is not
18 stabilized while we're changing shifts and giving reports
19 to the oncoming shifts. So, continuity of care is, as I
20 said, an issue for all areas of patient care.

21 Number two, I can only speak for the hospital
22 that I work at. We also took a reduction in our hourly
23 rates of pay unless we worked nine hours or less, and
24 then we'd go back up to premium pay. Premium pay is also

1 paid for PTO and for, quote-unquote, "nonproductive"
2 time, which means meetings, things like that, that are
3 not directly patient care-related.

4 I am not privy to -- to the hospital
5 administration, so I really have no idea if they're
6 telling us lies or giving us a fish story or not. I just
7 -- I'm not in a position to know that. However, at my
8 hospital, based upon the -- how I've been treated, which
9 has been very well in the years that I've been there --
10 I've been at Holy Cross for eighteen years. They were
11 bought by Providence about three or four years ago. And
12 again, these past three or four years have also been
13 happy.

14 I do believe -- what we were told -- let me just
15 backtrack a little bit. What we were told is not that
16 we're going -- they're reducing our rates of pay because
17 of AB 60, but because the hospital cannot afford to pay
18 overtime at what was our straight-time rates, that the
19 amount that was given to us for the two sister hospitals
20 in our regional area was something like \$5 million.
21 Again, is that a true number? I have no way of knowing.

22 But anyway, AB 60 was not blamed by our
23 administration, simply that they just, pure and simple,
24 didn't have the money to pay us the overtime at our

1 present straight-time rate. So, what they did was they
2 factored -- they -- I'm not going to go through all the
3 math, but they factored that our net pay is the same.
4 When we voiced our concerns about PTO and if we get sent
5 home early if the census drops, we get our premium pay.

6 Holy Cross is in a low-income area. Most of our
7 -- well, I won't say "most" -- that's an exaggeration --
8 many of our patients do not have insurance. But I know
9 that the hospital does struggle for money. We have three
10 units, 24-bed units, eight beds each. We have monitor
11 equipment that -- other kinds of equipment that we have
12 to wait to be replaced because I do believe that they
13 don't have the funds.

14 Anyway, basically, that's what I wanted to say.
15 The continuity of care is not just a midwife issue; it's
16 for all patients, all nursing areas. I do not believe
17 that my hospital is pulling a fast one on us. I'm no
18 dummy. It may perhaps -- if I'm naïve about this -- but
19 I'm no dummy, believe me. I -- I just don't believe it.

20 The other issues regarding 12-hour shifts, you
21 have a whole generation of nurses who know nothing but
22 12-hour shifts. I've been a nurse since 1979, and 12
23 hours have been in place throughout many hospitals,
24 probably since 1981, 1982. You have a whole generation

1 of nurses who have based a lifestyle on the 12-hour
2 shifts. It would be a definite hardship to take that
3 away from us, for all the reasons that have been repeated
4 before -- the extra time, the increased education, for
5 our families, to work extra jobs for extra income.

6 Thank you.

7 (Applause)

8 COMMISSIONER BROAD: I have a question for you.
9 Is it common for nurses on 12-hour shifts, say working
10 three 12-hour shifts in a row, to work more than one job?

11 MS. ROGERS: Yes.

12 COMMISSIONER BROAD: So, you actually may be
13 working two or three jobs.

14 MS. ROGERS: No. What many of us do is we will
15 work overtime at our home hospital. But it varies. I
16 don't -- I would have no idea what percentage it was.
17 But I can make -- and if I work an extra day, one extra
18 day a week, that's 48 hours a week -- I can increase my
19 income by \$1,000 per month. That isn't a lot.

20 COMMISSIONER BROAD: Let me just recount a small
21 conversation I had with a nurse who's a friend of mine.
22 She came over to my house. I asked her, "What about the
23 12-hour shifts?" She said, "Yeah, nurses really want to
24 keep those 12-hour shifts." And I said, "Well, you know,

1 there's this argument about continuity of care." And she
2 -- so, I said, "Tell me about continuity of care and all
3 this."

4 And I want you to react to this, because I'm
5 telling you the honest truth, what she told me.

6 She said, "Well, it's great -- it may be
7 wonderful for certain lifestyle choices, but after you're
8 -- it's four o'clock in the morning and you've worked
9 eight hours already, those last four hours, you're not
10 doing any favor for your patients. You're tired, you
11 make mistakes."

12 (Audience murmuring)

13 COMMISSIONER BROAD: That's what she said.

14 MS. ROGERS: Could I comment on that?

15 COMMISSIONER BROAD: Okay.

16 MS. ROGERS: Every -- every article that I have
17 read has not borne that out, at all. There is one
18 article that I read relative to that was on, quote-
19 unquote, "middle-aged" nurses getting tired. But they
20 saw no --

21 (Laughter)

22 MS. ROGERS: -- no evidence of a threat to
23 patient safety, in any literature that I've read. And I
24 was at the library doing research on it, and I couldn't

1 find it. This goes back to research from the early
2 1980's.

3 COMMISSIONER BROAD: God bless the young, huh?
4 (Laughter)

5 COMMISSIONER CENTER: Well, we're no spring
6 chickens either, Barry.

7 COMMISSIONER BROAD: Yeah, I know.

8 COMMISSIONER CENTER: Thank you.

9 Like I said, any other nurses that want to
10 comment on the reduction of their wage rates?

11 (Show of hands)

12 COMMISSIONER CENTER: Would -- you guys are all
13 saying the same thing? Would you -- who --

14 AUDIENCE MEMBER: (Not using microphone) We
15 willingly -- we work a lot of 12-hour shifts, and we
16 willingly agreed to work those same 12-hour shifts for
17 straight time. We've had to -- agreed to that
18 (inaudible). We love 12-hour shifts.

19 COMMISSIONER CENTER: But everybody's aware that
20 AB 60 allows you to do that until July.

21 (Audience shouting)

22 AUDIENCE MEMBER: (Not using microphone) It
23 says that you can work that 12 hours, but you have to get
24 time and a half for the last four. Hospitals -- our

1 hospitals (inaudible).

2 (Audience murmuring)

3 COMMISSIONER CENTER: Well, why don't we --
4 yeah, why don't you come up, Richard? Give them
5 something to react to.

6 COMMISSIONER BROAD: Yeah.

7 (Applause)

8 MR. SIMMONS: I actually have -- my name is
9 Richard Simmons, by the way, for the record. I'm an
10 attorney with the law firm of Sheppard, Mullin, Richter &
11 Hampton. I'm here today to represent the California
12 Healthcare Association.

13 I actually have some comments that I think would
14 be of benefit to the IWC to hear. I would like to enter
15 them into the record. We do not have any written
16 statements that embellish this or reflective statements -
17 - I would like to talk to them -- but I would also like
18 to offer some responses to the IWC based on questions and
19 issues that have been raised.

20 I will tell you that I think that 95 percent --
21 literally, 95 percent of what Ms. Furillo said, although
22 perhaps well intended, was absolutely wrong. It did an
23 injustice to the healthcare industry, it did an injustice
24 to the intellect of nurses who choose not to be

1 represented in the healthcare industry, it does an
2 injustice to the patients in the industry, and it is,
3 frankly, offensive. And I would be happy to talk to her
4 intelligently and show her how she's wrong later.

5 I also disagree with some of the statements that
6 the --

7 (Applause)

8 MR. SIMMONS: -- and suggestions that any
9 hospital that wishes to can simply ride the flow and keep
10 what is currently in effect until July 1st, 2000, is
11 incredibly overly simplistic, and it is not the option
12 that hospitals that intelligently consider the options
13 that are available will choose. And I'll be happy to
14 explain that to you so you understand why people of good
15 faith and good intentions can reach different conclusions
16 and, apparently, those that have not yet surfaced before
17 this Commission.

18 I have -- I'll be happy to respond to your
19 questions, no matter how technical they are, at the
20 outset or at the end. But there are some points that I
21 think the Commission should hear generally, about the
22 issues that are truly significant in the healthcare
23 industry. And if it pleases you, I will start with those
24 and then respond to your technical questions, or I'll

1 deal with your technical questions first.

2 COMMISSIONER CENTER: Make your statement first.

3 MR. SIMMONS: Thank you.

4 I would -- I would begin by saying that
5 historically, the California Healthcare Association has
6 worked as closely with this Commission as any trade
7 association that represents employers. I've known Mr.
8 Broad for years. We have not always agreed; in fact,
9 we've occasionally even had wagers on wage boards years
10 ago. But we have been here and we have acted in good
11 faith. We have sought out the assistance of the Division
12 of Labor Standards Enforcement for years and years and
13 years. We've done everything we could to seek the advice
14 of the government, the enforcement officials, and the IWC
15 to make sure the members of CHA were fully apprised of
16 the law, their rights, their obligations. And I think it
17 is an industry that is as compliant as any in the state.
18 And I think the records of the enforcement history will
19 reinforce that point.

20 In any event, we're here in good faith today.
21 And the fact of the matter is the California Healthcare
22 Association, CHA, represents many, many members who
23 collectively employ over 350,000 employees in the
24 healthcare industry in California. Many of the members

1 of CHA, of course, operate hospitals that operate 24
2 hours per day, 365 days per week (sic). They have unique
3 staffing needs, special requirements that are recognized
4 -- have been recognized by this Commission since 1974
5 when it first proposed a 10-hour shift just for
6 healthcare, and have been recognized by Congress as well.
7 Congress, the state Legislature, and this Commission have
8 historically recognized the special staffing needs that
9 exist in this organization.

10 Without getting into all of the issues in great
11 detail, I think, due to time constraints and in deference
12 to the fact that other people, obviously, need to speak
13 and are entitled to speak, I want to focus on four issues
14 this afternoon: first of all, 12-hour shifts, without
15 question the most important, dynamic, challenging issue
16 before the Commission as far as healthcare is concerned;
17 secondly, the 8-in-80 overtime standards, which are
18 critically significant and are not receiving attention as
19 warranted; thirdly, the meal period issues -- and I will
20 submit now that I've provided a petition signed by 90
21 nurses of one hospital, passed to me last night, not
22 solicited, just when they heard I was going to be here
23 today -- each of the 90 nurses indicated her or his own
24 reasons for wanting to have amendments to the meal period

1 rules -- that is submitted to you -- and finally, the
2 exemption that is provided in AB 60 for certain union
3 employees. Those are the four things that I'd like to
4 talk about.

5 And I would like to commence by talking about
6 12-hour shifts, the first and the foremost issue before
7 you, from the healthcare industry's perspective. I think
8 we have to start off with the acknowledgment that no one
9 disputes that nurses want 12-hour shifts. California
10 Nurses Association was not here today saying it does not
11 want 12-hour shifts or its members don't want 12-hour
12 shifts. I think they would submit -- at least if, you
13 know, put under oath -- that every collective bargaining
14 agreement they negotiate for nurses contains 12-hour
15 shifts, and indeed, 12-hour shifts at straight time.
16 They know they cannot succeed without giving nurses 12-
17 hour shifts.

18 Hospitals will tell you the very same thing.
19 Hospitals need to give 12-hour shifts to nurses and other
20 employees. It has become an incredible retention tool to
21 retain qualified, skilled, professional nurses. And by
22 the way, besides anything that this Commission or the
23 Legislature could say, let's make it real clear, nurses
24 are professionals. You call them what you want; they're

1 professionals. No doubt about it.

2 (Applause and cheering)

3 MR. SIMMONS: (Inaudible). Beyond that, if you
4 take a look at what the unions say and what management
5 says, the nurses are fully capable to speak for
6 themselves. They're more articulate than I could ever
7 hope to be. They'll tell you they want 12-hour shifts.
8 There's no question about that.

9 The question is whether you're going to give
10 them the right to do that, whether the Legislature is
11 going to give them the right to do that. And we have to
12 look historically at what this Commission has recognized.
13 It has heard hundreds of registered nurses and other
14 healthcare employees testify since 1980 about the need
15 for flexibility. What is going on right now, with what
16 we you would describe as a reduced rate, what Mr. Knox
17 described as a slashed rate in order to use a pejorative
18 term to reach a conclusion, what I'd like to call an
19 adjusted rate -- but that's all semantics, that's all
20 words.

21 What it is, is exactly what had to happen in
22 1980, before the Industrial Welfare Commission first
23 recognized that 12-hour shifts should be allowed at
24 straight time. And what had to happen back then was you

1 paid a straight-time rate for the first 8 hours, you paid
2 time and a half that straight-time rate for hours over 8,
3 so you could give to nurses essentially the same pay that
4 they received for 40 hours for 36 hours of work. That
5 was the goal. It was not to take advantage to anybody.
6 It wasn't because hospitals are devils. It's not because
7 they were the devil incarnate. They were not balls of
8 fire (inaudible), you know, oppress employees. They
9 tried to do the right thing. That's exactly what they're
10 trying to do right now.

11 In 1993, finally, the Industrial Welfare
12 Commission, after a series of years and after a series of
13 amendments, expanded the wage order provisions in 4 and 5
14 to allow hospitals to give nurses and other healthcare
15 employees the opportunity to work 12-hour shifts at
16 straight time with a 12 and 40 standard. It truly was
17 perfection in terms of the employees and employers. It
18 benefited thousands of employees, thousands of patients,
19 and many, many hospitals. It benefited everybody. It
20 was a win-win situation. But, of course, it ended, or
21 things changed, on January 1st, 1998. And we all know
22 what happened on that date.

23 But setting that aside, we have to realize that
24 healthcare is plagued with critical labor shortages.

1 We're not talking about business here; we're talking
2 about lives, we're talking about patients, we're talking
3 about your parents, your spouses, your children, your
4 family members; we're talking about labor shortages that
5 healthcare organizations must address in order for people
6 to save lives, what nurses are really there to do. They
7 want to make a fair, honorable wage, clearly. Hospitals
8 want to pay that. But they're there to save lives. If
9 you really ask them what nurses are there for, they care
10 about patients. That's why they got into the profession,
11 that's why they've elected to stay in the profession, not
12 because of all the legal gobbledy-gook they were talking
13 about today. We need to provide them the opportunity to
14 do what they want to do, which is to practice their
15 profession.

16 Now, what we ask and what we urge the Industrial
17 Welfare Commission to do is to provide opportunity, not a
18 grace period that's going to expire on July 1st that
19 really is meaningless when you really examine it
20 carefully, but to provide hospitals the opportunity to
21 provide healthcare employees, nurses and other healthcare
22 employees, the opportunity to maintain existing 12-hour
23 shifts. Lord knows, if AB 60 had not occurred, 12-hour
24 shifts at straight time would still be in effect. There

1 would not have been any bump in the road.

2 AB 60 is, in fact, what has caused people to
3 have to make changes. There's no doubt it. It's
4 intellectually dishonest to suggest that anything else
5 has occurred here. What has happened? AB 60 has
6 happened. We want to be able to preserve 12-hour shifts
7 as they exist. And number two, we want the opportunity
8 to create new 12-hour shift programs. As new hospitals
9 open, as new units open, as employees realize that they
10 prefer 12-hour shifts, we want the right to accommodate
11 them. And you know what? We want the same right to
12 accommodate the nurses that are not represented the
13 unions than the small minority of the nurses who choose
14 to be represented by the unions, because nonunion nurses
15 have the same rights. They have the same rights --

16 (Applause)

17 MR. SIMMONS: (Inaudible).

18 In any event, the proposed language that has
19 surfaced through the Industrial Welfare Commission,
20 frankly, is inadequate to accomplish our goals. It is
21 inadequate for several reasons.

22 First, of course, it would be designed to --

23 COMMISSIONER CENTER: What proposed language is
24 that?

1 MR. SIMMONS: The language that deals with
2 healthcare. It's some of the language that has floated
3 up before the IWC.

4 COMMISSIONER CENTER: We haven't provided
5 anything yet, have we?

6 MR. SIMMONS: No. I don't think it's been
7 released publicly, but it's been floated around. People
8 have seen it.

9 COMMISSIONER CENTER: Where did you hear that?

10 MR. SIMMONS: What difference does it make?

11 COMMISSIONER CENTER: Because it's not a public
12 document. That's what difference it makes.

13 MR. SIMMONS: How exactly does that -- well, if
14 you've seen it or not, let me talk about language
15 theoretically, from a concept, if I may, because if there
16 is language out there -- and I'm just going to
17 hallucinate some language -- I'll talk about and I'll
18 tell you why it's inadequate. And if I'm wrong, then
19 please excuse me.

20 If there is language in effect that refers to
21 12-hour shift arrangements being limited to licensed
22 employees who are engaged directly in patient care
23 activities, that language is, unfortunately, inadequate,
24 however well intended it may be. The language that may

1 exist also would narrow, in fact, shrink the grace period
2 provided in AB 60 so it will expire either on July 1,
3 2000, or, if earlier, the date that the IWC issues new
4 rules. So, that will even contract the exemption so it's
5 more narrow than the statute itself authorizes.

6 Furthermore, the statute doesn't confine the
7 grace period that AB 60 offers to licensed employees or
8 employees directly engaged in patient care. In short, if
9 that language exists -- and I hope that I'm wrong -- I
10 hope it doesn't exist --

11 COMMISSIONER BROAD: You are wrong.

12 MR. SIMMONS: But if it does exist -- great --
13 then it should not confine the duration of the grace
14 period, it should not confine it to licensed employees,
15 and it should not confine it to employees engaged in
16 patient care positions.

17 So, if the IWC does consider language for 12-
18 hour shifts, we would ask that it be made available to
19 all healthcare employees.

20 It should also be remembered that you have
21 departments that consist of both patient care and non-
22 patient care employees who work the same schedules. For
23 example, if a housekeeping employee works in a patient
24 care area, that employee may work a 12-hour shift along

1 with the RN. There are many other examples I could give
2 you.

3 COMMISSIONER BROAD: Excuse me. So, your
4 position is that this is about nurses who are engaged in
5 continuity of care, but janitors should work 12-hour
6 shifts without overtime in hospitals?

7 MR. SIMMONS: No. I didn't --

8 COMMISSIONER BROAD: What's the rationale for
9 that?

10 MR. SIMMONS: Well, Mr. Broad, I didn't mention
11 continuity of care. I do intend to mention it, but not
12 in the context in which you've raised it. So, if you
13 allow me to state my view --

14 COMMISSIONER BROAD: Please.

15 MR. SIMMONS: -- you can criticize it, once it's
16 been stated. But until I do, I'd just as soon have the
17 opportunity to speak for myself.

18 The bottom line is that we have healthcare
19 employees, both nursing and other employees, who work 12-
20 hour shifts. While continuity of care may, in fact, be a
21 justification for 12-hour shifts, and it may, in fact, be
22 a reason why 12-hour shifts make eminent sense in the
23 healthcare industry, it is not the only reason. The
24 reason the IWC authorized 12-hour shifts for all

1 healthcare employees in the past is because employees
2 liked it. They can work a compressed schedule of longer
3 but a fewer number of days, which gives them more days
4 off for other things.

5 It is true, as you said, that some people may
6 choose other things that include other employment. Other
7 people may choose other things that involve caring for
8 their family or spending time with their family, or
9 pursuing educational interests or travel interests or
10 recreational interests. There are all sorts of things
11 you can do with four days off.

12 COMMISSIONER CENTER: Can you wrap it up in
13 about two minutes, do you think?

14 MR. SIMMONS: Okay. Thank you.

15 Well, the bottom line is that 12-hour shifts
16 promote flexibility. They promote the interests of
17 employees, their families, their patients, and they do
18 promote continuity of care. But that shouldn't result in
19 overlooking the other things that they provide.

20 Now, your charge, of course, as has been -- as
21 you have been reminded about, includes protecting the
22 welfare of employees. Let's talk about the healthcare
23 employees and their welfare.

24 Given the critical labor shortages that exist in

1 California, if you remove the authority for flexible
2 scheduling that already exists, then it's going to
3 exacerbate staffing problems that already exist due to
4 labor shortages. If you exacerbate staffing problems,
5 that's going to increase the stress for the employees,
6 that's going to compromise the care of employees --
7 excuse me -- the care of patients and the nurturing of
8 employees, and it's going to lead to even greater
9 attrition, which will be a cycle that will undermine the
10 welfare of employees. It will disrupt the lives of
11 nurses who, as has already been said, in some cases have
12 worked 12-hour shifts their entire career, twenty years.

13 So much for 12-hour shifts, an important issue.
14 Let me talk about the other issues that are important as
15 well.

16 The second issue I need to address is 8-in-80's.
17 California employers have been allowed to use an 8-in-80
18 overtime system under Section 7(j) of the Fair Labor
19 Standards Act, and formerly Section 3(c), now Section
20 3(b), of Wage Order 5, for many, many years. That
21 recognizes the unique staffing issues in the healthcare
22 industry. It is allowed in every state of which I am
23 aware in the nation. If California abandons or
24 diminishes the authority for 8-in-80 overtime systems, it

1 would be a tragedy. And they are used by the vast
2 majority of hospitals in California and in the entire
3 nation.

4 So, what we urge the Industrial Welfare
5 Commission to do with respect to 8-80 -- 8-in-80
6 arrangements is to preserve the existing rules. And I
7 know there's some debate as to whether you may do so. I
8 believe, based on my reading of the statute, that you
9 absolutely can. You're allowed to preserve exemptions,
10 and it is an exemption from a normal 40-hour standard.

11 Third area: meal periods. There are three
12 issues associated with meal periods that are of critical
13 concern in the healthcare industry. The first is that
14 current law allows an employee to waive their meal period
15 if the nature of their work prevents them from taking 30
16 minutes off.

17 COMMISSIONER CENTER: Excuse me. We need to
18 kind of wrap it up, because we're going to start losing
19 commissioners here pretty quick.

20 MR. SIMMONS: Okay. I appreciate that. I
21 suppose the best thing I can do is note that the meal
22 period issues are truly of great significance. And if I
23 may, I would submit further documentation --

24 COMMISSIONER CENTER: In writing to us, please.

1 MR. SIMMONS: -- that addresses that issue for
2 you.

3 And finally, the collective bargaining proviso -
4 - and I can say that in 30 seconds. I lectured recently
5 with the general counsel of the Labor Commissioner, in
6 whom I have great respect -- I think he is truly a
7 scholar in the labor area -- and while we both lectured
8 to the State Bar Association, I thought he made the
9 astute point that unless overtime is paid for all
10 overtime hours -- meaning all overtime zones, hours over
11 8 in a day, unless premiums are paid for all overtime
12 zones, including hours over 8 in a day and hours over 12
13 in a day and 40 in a week -- then the overtime exemption
14 for collective bargaining agreements would be
15 unavailable.

16 I understand the Labor Commissioner may have re-
17 evaluated that issue. I understand that there's room for
18 debate, but I would ask the IWC to clarify its position
19 on that point so we have clarity and we know what the
20 rules are.

21 Beyond that, I'll be happy to entertain any
22 questions you may have.

23 COMMISSIONER CENTER: Just a question. Now,
24 January 1, AB 60 goes into effect. There's an exemption

1 for nurses up until July, if they had a legal election
2 and then two-thirds vote.

3 MR. SIMMONS: There's some (inaudible) in that.
4 May I explain it?

5 (Audience murmuring)

6 COMMISSIONER BROAD: Quickly.

7 COMMISSIONER CENTER: Yeah, quickly, if you
8 could.

9 COMMISSIONER BROAD: Well, in a nutshell, it's
10 not an exemption, it's a grace period.

11 COMMISSIONER CENTER: Right.

12 MR. SIMMONS: AB 60 has both grace periods and
13 grandfather provisions. That provision is a grace period
14 that says, "If you can demonstrate that you complied with
15 all of the pre-1998 standards, then you can continue what
16 you have until July 1st, 2000." That's true. But you
17 also have other options. And the problem is, as of July
18 1, 2000, if you don't -- if you ride that grace period
19 out, you'll have far fewer options available to you then,
20 if the IWC or the Legislature doesn't act, than are
21 available to you right now, which is why so many
22 hospitals are reacting to the options now.

23 COMMISSIONER CENTER: Okay. And just a
24 question. Okay. Now, you're reducing wage rates to

1 comply with the overtime, and not knowing what IWC will
2 do. If, by chance, IWC does act and does an exemption,
3 will you reinstate the wage rates?

4 AUDIENCE MEMBERS: (Not using microphone) Yes.
5 Yes.

6 MR. SIMMONS: Absolutely. Obviously, it's a
7 hospital-by-hospital basis, and hospitals try to do what
8 employees want them to do, which is why they're going
9 through voting procedures now, even though they don't
10 have to, by the way.

11 Can I give you some insight? The statistics I'm
12 hearing on the adjusted rate system is that upwards of 70
13 or 80 or 90 percent of the employees who have voted,
14 through a process that isn't even required, have said,
15 "We want 12-hour shifts. We're happy to go through the
16 adjustment in the rates in order to maintain 12-hour
17 shifts under the limitations that exist in AB 60." It's
18 done with full disclosures, group meetings, things that
19 aren't even mandated by the law, because employers want
20 to do the right thing.

21 COMMISSIONER CENTER: Well, let me continue on.
22 So, let's talk about the IWC on 12-hour shifts.

23 MR. SIMMONS: Well, here's the dilemma there.
24 And, by the way, there are some open legal questions, and

1 I don't want to say that there are clear answers to all
2 of these questions.

3 The Statement of Basis to the wage orders right
4 now specifically talks about the ability to go to a
5 reduced rate system, systems that, as I said earlier,
6 were allowed back in 1980. But the Statement of Basis
7 actually authorizes it. So, to suggest here it may be
8 legal, it may be not be legal, it's clearly legal and the
9 IWC has said so explicitly in its Statement of Intent and
10 Statement of Basis.

11 Now, you have language in AB 60 that talks about
12 reduced rates being impermissible after January 1st of
13 the year 2000. I don't know, frankly, whether that
14 simply would outlaw reduced rates in connection with 10-
15 hour shift programs that were rejected, or whether or not
16 you were going to interpret that to outlaw any type of
17 rate reduction. But if, in fact, you do construe it
18 broadly to outlaw any type of rate reduction -- and I
19 refer to the opposite interpretation, of course -- but if
20 you did construe it that way, then hospitals that wait
21 until July 1 will have no option other than basically to
22 go out of business or to offer only 8-hour shifts, where
23 employees won't even have the option to work 12 hours.
24 That's the dilemma that AB 60 creates.

1 Hospitals didn't create it. Hospitals didn't
2 want it. I don't think you saw a lot of hospitals
3 supporting AB 60. So, there you have it. We didn't
4 draft it. Nobody called me and asked me.

5 (Laughter)

6 MR. SIMMONS: Wally Knox didn't call me and say,
7 "Richard, I understand you" --

8 COMMISSIONER CENTER: The Chamber didn't support
9 it either, I don't think.

10 MR. SIMMONS: Yeah. " -- and what do you think
11 about this legislation? Do you have insight to the
12 healthcare industry?" I didn't get that call. My phone
13 did not ring.

14 Any other questions?

15 COMMISSIONER BROAD: Yeah. I have some
16 questions.

17 I think you're probably right that there's
18 nothing that prevents people from lowering base wage
19 rates before January 1. The concern is -- the concern is
20 what the chairman said, which is, then, you lower the
21 base wage rate, then, to go to a 12-hour shift, if we
22 indeed vote to continue 12-hour shifts for nurses, and
23 then you leave people at the same rate of pay. Now,
24 you're saying that you wouldn't do that because you just

1 want to make people --

2 MR. SIMMONS: Whole.

3 COMMISSIONER BROAD: -- you just want to make
4 it whole and stay even. So, you wouldn't oppose, then, a
5 provision in the wage order, then, that would require
6 that they be kept whole, that the former base wage rate
7 be reinstated as a condition precedent to having a 12-
8 hour shift like that?

9 MR. SIMMONS: Well, I can go beyond that. I
10 agree with your point, by the way, the theme of your
11 point. And I don't have any problem with that. I know
12 of no hospital that would be unwilling to do that. I
13 think I'd like to see the language, by the way. I'd like
14 to see my version of that language drafted rather than
15 yours. But in concept, I do agree with you.

16 But let me tell you one other thing. I think
17 employees can be disadvantaged from a benefit
18 perspective. I'd like to see them made whole there too,
19 as would hospitals, because some disability programs,
20 some life insurance programs, pay benefits based on
21 straight-time earnings without regard to overtime. And
22 we would like them to get full benefits, completely. So
23 -- and I think hospitals would be fully supportive of
24 that.

1 COMMISSIONER BROAD: Well, I think the hospital
2 industry could take a lot of the -- of the stress of what
3 it's done here out of the whole process by formally
4 taking that position and writing to the Commission and
5 saying that it would propose to do that.

6 MR. SIMMONS: Well, can I get a reading from the
7 commissioners right now? Can I ask you -- I know you
8 can't vote because it's before January 1st -- would each
9 of you vote in favor of that, were it submitted?

10 COMMISSIONER BROAD: I don't think it's
11 appropriate to ask us to commit to something that we
12 haven't seen.

13 MR. SIMMONS: Well, you asked me to commit to
14 something. You wanted the industry to commit to
15 something.

16 COMMISSIONER BROAD: You don't have to -- you
17 don't have to --

18 (Applause and cheering)

19 COMMISSIONER BROAD: The industry -- the
20 industry doesn't have to do anything. I haven't noticed
21 that the industry has done anything affirmative,
22 generally, in this area at all. So, you know, you don't
23 support increases in the minimum wage --

24 MR. SIMMONS: Well, do you want --

1 COMMISSIONER BROAD: You don't have to do
2 anything.

3 MR. SIMMONS: Okay. Let's say we do it. Let's
4 say we do what you asked. Will you give us your
5 indication right now -- obviously, you reserve the right
6 to change your mind -- but would you support it, Mr.
7 Broad?

8 COMMISSIONER BROAD: Support what?

9 MR. SIMMONS: If there were a proposal to allow
10 12-hour shifts at straight time, where people were --

11 COMMISSIONER BROAD: I would certainly be more
12 receptive to it, I'll tell you that much.

13 MR. SIMMONS: Well, let's face it. That's what
14 would have happened had AB 60 never come along. It would
15 have just been status quo.

16 COMMISSIONER BROAD: Well, AB 60 would have
17 never come along if what preceded AB 60 had never come
18 along. So, that's -- but let me ask you this question.

19 I still -- the nurses that have come before us,
20 we've only really heard from nurses. We haven't heard
21 from anybody who works -- and midwives -- but a lot of
22 people work in hospitals, you know, I mean, janitors and
23 food service people, and parking lot attendants and
24 security guards, and secretaries, and all kinds of people

1 work in hospitals. And what's different about the good
2 old days with the last IWC and the last administration,
3 what's different is the fact -- the passage of AB 60.
4 And AB 60, I believe, instructs this Commission to be
5 very wary about deviating from the basic 8-hour-day
6 standard.

7 Now, what is the rationale for making a parking
8 lot attendant at a hospital be able to be required to
9 work 12-hour shifts, and a parking lot attendant at a
10 movie theater who could not? What's the difference?

11 MR. SIMMONS: Well, first of all, I don't -- I
12 don't agree with the premise, that -- the premise is that
13 parking lot attendants don't want to work it and they'd
14 be forced to work it. My view is that thousands of
15 employees in the state have voted in favor of 12-hour
16 shifts on a voluntary basis by two thirds of their
17 number. And it's not just nurses. It is parking lot
18 attendants, if the employer and employees agree to it.

19 And let's face it, you guys recognized it -- you
20 didn't, but AB 60 recognized it, because the eleventh-
21 hour amendment added the authority for 4-10 arrangements
22 or other flexible arrangements that were in effect on
23 July 1, 1999, on individual -- on an individual basis. A
24 lot of employees want it.

1 My reason for justifying it is that employees
2 want flexibility. Congress recognized it when they
3 repealed the 8-hour standard in the Walsh-Healey Act,
4 back in 1986. The Industrial Welfare Commission has
5 recognized it. Thousands of people throughout the state
6 have recognized it. You've had hundreds of people
7 testifying over this process of hearings, and you'd had
8 hundreds more testify in 1980, 1986, 1989, and 1993, all
9 of which resulted in the expansion of flexibility.
10 People want it. They're knocking at your door. They're
11 beating down your door. They say, "We want flexibility."
12 That's why it should be allowed.

13 (Applause)

14 AUDIENCE MEMBER: Can I ask a question? I would
15 like to know why nurses, who are college-educated
16 professionals, are being considered in the same category
17 as parking lot attendants.

18 COMMISSIONER BROAD: Actually, the issue is
19 whether parking lot attendants should be treated
20 differently from other parking lot attendants.

21 AUDIENCE MEMBER: No, no, that is not the issue.

22 COMMISSIONER BROAD: Yeah, I think it is.

23 AUDIENCE MEMBER: The issue is, why are nurses
24 being in the same category as other workers who are not

1 considered to be professionals, as far as a college-
2 educated type of profession. It is blue-collar work and
3 white-collar, if you will, or whatever.

4 COMMISSIONER BROAD: Well, if you want my
5 opinion, my opinion is that there are many people who are
6 -- who are white-collar that have always been permitted
7 or required to be paid overtime. It's not -- it's not --
8 this is not a distinction people who use their brains and
9 use their hands. It is -- it is the law of the land that
10 people get overtime.

11 AUDIENCE MEMBER: (Inaudible).

12 COMMISSIONER BROAD: Yes, it is.

13 COMMISSIONER CENTER: No more questions from the
14 floor. We've got a speaker up here.

15 Maybe you can come up and address the
16 Commission.

17 I was on the Commission when the 8-hour day was
18 repealed, along with Mr. McCarthy, and the other labor
19 vote thought he was voting for a study to repeal the 8-
20 hour day. That's how much the populace spoke on that,
21 and I don't think he ever did get what he was doing. But
22 that's old history on that, so --

23 COMMISSIONER McCARTHY: Mr. Chair, if I could
24 make one -- the issues before the -- that the nurses have

1 brought forward today are really two distinct issues. I
2 -- you know, I mean, we have the issue that's under
3 consideration, which is a very serious issue. The other
4 issue, also serious, which is different, was the
5 situation with the midwives. So, before -- I know some -
6 - I think some of the commissioners have to catch a
7 plane, so I would just like to introduce a quick motion,
8 if I may, before we continue with the testimony here,
9 that -- that one of the first items of business in the
10 next meeting is consideration of the exemption on
11 professional grounds for midwives.

12 AUDIENCE MEMBER: (Not using microphone)
13 Advanced practice nurse is a term, is an umbrella term,
14 for midwives, some of whom are specialists, nurse
15 practitioners, nurse anesthetists, who have not yet had
16 the opportunity to talk.

17 COMMISSIONER McCARTHY: Well, I -- we can
18 broaden that if we wish. I guess, at the moment, since
19 we've
20 heard --

21 MR. SIMMONS: Is it who shouts the loudest, or
22 are we going to just let people comment out of the
23 audience?

24 COMMISSIONER McCARTHY: Well, I introduced a

1 motion, and we can introduce other ones if somebody
2 wishes. But I'll stick with that motion with regard to
3 the issue that was brought up with the midwives, that we
4 at least consider it at the next meeting, given the
5 seriousness of charges there.

6 Second to it?

7 (No response)

8 COMMISSIONER McCARTHY: Well, this is very --
9 this is different. I mean, some of the others, we will
10 have a hearing before July 1st. On the basis of what the
11 midwives said, as I said, this is a little -- this is of
12 greater urgency and immediacy in terms of their
13 professional survival, from what I can tell. So,
14 considering one at the next meeting doesn't preclude
15 considering anything else at a later meeting.

16 COMMISSIONER COLEMAN: Can I ask, procedurally?
17 What we can do is agendize that for the next meeting as
18 one of the first acts of business.

19 COMMISSIONER CENTER: Well, if you want to make
20 a resolution to do that, that's fine, but I don't think
21 we can make motions on the statute until it comes into
22 effect in January.

23 COMMISSIONER McCARTHY: No, I'm not making a
24 motion on the statute. I just made -- my motion was to

1 consider, to put on the agenda consideration of this at
2 that point. That's all my motion was, not prejudging how
3 the Commission will decide or vote on it, just to
4 consider at least at the time.

5 Well, that's the motion.

6 COMMISSIONER COLEMAN: I second.

7 COMMISSIONER CENTER: Call the roll.

8 COMMISSIONER COLEMAN: Aye.

9 COMMISSIONER DOMBROWSKI: Aye.

10 COMMISSIONER McCARTHY: Aye.

11 Barry?

12 COMMISSIONER BROAD: Aye.

13 COMMISSIONER CENTER: Aye.

14 You guys should have helped Barry on his motion,
15 too, you know.

16 Okay. I guess --

17 (Pause)

18 MS. CONNOLLY: Hello?

19 COMMISSIONER CENTER: Hello. Excuse me.

20 Please.

21 MS. CONNOLLY: My name is Kathleen Connolly,
22 C-o-n-n-o-l-l-y. I'm a registered nurse at Providence
23 Hospital in Burbank.

24 COMMISSIONER CENTER: Excuse me.

1 Could you pass those outside, please?

2 All right.

3 MS. CONNOLLY: I've only been a (inaudible)
4 nurse for (inaudible). The actual facility that I am
5 employed by has 12-hour shifts since the mid-1980's. But
6 I'm one of the nurses that Mr. Knox talked about that has
7 taken a big cut in pay. It ended up to be 16.66 percent.
8 No matter how you dress it up, it's a still a big -- big,
9 big cut in pay.

10 I do not want to work as a nurse five days a
11 week taking care of sick, dying patients working eleven
12 to seven p.m., the shift that I would have to work
13 (inaudible), apparently. I feel that the hospitals did
14 try to do what they could, but what they're telling us is
15 that we don't matter. How do you run a hospital without
16 nurses? It's decreasing our morale and will be a big cut
17 in pay. (Inaudible) the correct pay for the time worked.
18 With the new pay scale, there are different rates that
19 need to be paid out, making it easier for mistakes to be
20 made. Some of us have two jobs to maintain our
21 lifestyle.

22 On a selfish note, healthcare is not --
23 healthcare (inaudible). My hospital will lose me and
24 some experienced and valuable nurses. I will not be

1 practicing in a field that does not also promote employee
2 satisfaction.

3 I have submitted 31 letters from 12-hour
4 employees in favor of 12 hours who like an assurance of
5 their base pay premium (inaudible). (Inaudible) and we
6 have to take our pay, but if we are exempt, we will go
7 back to the base pay that we are now, base pay for 12
8 hours straight.

9 AB 60 needs to be clear as far as healthcare is
10 concerned. I urge you to reinstate Wage Order 4 and 5 so
11 we can continue to give quality care and maintain a 12-
12 hour, flexible work schedule in return for our previous
13 base pay.

14 (Applause)

15 COMMISSIONER CENTER: Bill Hoffman.

16 (No response)

17 COMMISSIONER CENTER: Charles Long.

18 Did Kathleen Connolly already speak?

19 COMMISSIONER BROAD: That was her.

20 AUDIENCE MEMBER: (Not using microphone) She
21 just spoke.

22 COMMISSIONER CENTER: Gee, I'm doing good here.
23 It's getting late.

24 Oh, which one are you?

1 MR. LONG: Charles Long.

2 COMMISSIONER CENTER: Okay, Charles.

3 MR. LONG: Do we still have the front row open
4 to us?

5 COMMISSIONER CENTER: Why don't you -- yeah,
6 people who've already spoken. I guess everybody's
7 waiting

8 -- we're going to go through the list now. We've got --
9 these are all with you?

10 MR. LONG: Yes.

11 COMMISSIONER CENTER: All right. Go ahead.

12 If you have written, if you could submit it to
13 us, maybe, and summarize.

14 MR. LONG: I've done it already.

15 COMMISSIONER CENTER: Pardon?

16 MR. LONG: I've done it already.

17 COMMISSIONER CENTER: Okay. And you're just
18 going to summarize your written testimony?

19 MR. LONG: I'm not even going to summarize my
20 written testimony. I am open to specific questions.

21 COMMISSIONER CENTER: Okay.

22 MR. LONG: We consider it here that you are here
23 to help us, and I would like to understand, or gain some
24 understanding. After being here all day, I'm more

1 confused than ever.

2 AUDIENCE MEMBER: (Not using microphone) Can't
3 hear you.

4 MR. LONG: I understand -- or I think I
5 understand that we are covered, we have been covered,
6 under Wage Order Number 4. After hearing testimony
7 today, I'm not sure if that wage order is still in effect
8 after January 1st, 2000.

9 COMMISSIONER CENTER: Yeah. Order 4 will be --
10 is -- will be in effect in January.

11 MR. LONG: Not AB 60, but Wage Order Number 4.

12 COMMISSIONER CENTER: Yeah. Wage Order 4 will
13 still be in effect in January.

14 MR. LONG: It still will be in effect.

15 COMMISSIONER CENTER: What kind -- what kind of
16 industry are you involved in?

17 MR. LONG: Well, it's oil -- our -- the
18 customers we serve are the oil industry. We store and
19 transfer -- and transport oil for the refineries in the
20 L.A. area.

21 COMMISSIONER CENTER: Were you covered under
22 overtime -- by the daily overtime law?

23 MR. LONG: I'm sorry.

24 COMMISSIONER CENTER: Are you covered -- are you

1 working -- what are your hours?

2 MR. LONG: We work in 12-hour shifts.

3 COMMISSIONER CENTER: 12-hour shifts. And you
4 were doing that prior to the repeal of the 8-hour day?

5 MR. LONG: We've been on 12-hour shifts for
6 seven years.

7 COMMISSIONER CENTER: Because of the exemption
8 for the oil industry?

9 MR. LONG: That's -- Wage Order Number 4 covers
10 (inaudible) professionals. We fall into that, machine
11 operators.

12 COMMISSIONER CENTER: How were you working 12-
13 hour shifts without overtime?

14 MR. LONG: Equipment operators. This is in Wage
15 Order 4.

16 COMMISSIONER CENTER: Okay. Go ahead and I'll
17 try to figure out where it is. Go on.

18 MR. LONG: Well, my question is, if Wage Order
19 Number 4 is still in effect after January 1st, then we
20 should be able to continue working on 12-hour shifts.

21 COMMISSIONER CENTER: You were -- what happened
22 was -- a couple years ago was a repeal of the 8-hour day.
23 Were you working 12-hour shifts then at straight time,
24 prior to that?

1 MR. LONG: Yes. For the last seven years, we've
2 been working 12-hour shifts, actually, and were being
3 paid overtime after 40 hours a week.

4 AUDIENCE MEMBER: (Not using microphone) Well,
5 that's what it says in the wage order, is after 40 hours
6 a week.

7 COMMISSIONER CENTER: That was not prior to the
8 elimination of the 8-hour day. Prior to that, it was
9 overtime after 8 hours. But you were paying -- you were
10 paying 12-hour days prior to that repeal of the wage
11 order?

12 MR. LONG: Yes. At least I -- I thought we
13 spoke to you, I believe to you, in 1989 and '90, in
14 Sacramento. And about a year after that -- well, about
15 two years after that, we began working 12-hour shifts.

16 COMMISSIONER CENTER: I wasn't on the IWC in
17 '89.

18 MR. LONG: Okay. Well, the Commission.

19 COMMISSIONER CENTER: Maybe we should have --
20 because I'm not sure if you were exempt going in there or
21 not. Maybe Marcy should go talk to you.

22 But overtime will be in effect in January.

23 MR. LONG: Overtime after 8 hours a day?

24 COMMISSIONER CENTER: Yes. Yes. Unless you

1 have a specific exemption in your industry.

2 MR. LONG: Well, that's my understanding. Well,
3 we don't -- you say industry, and we're not part of the
4 oil industry. The oil industry is our customer.

5 COMMISSIONER CENTER: Then I would think you
6 should have been covered under the 8-hour day prior to
7 the repeal.

8 MR. LONG: So, we shouldn't have been -- we
9 should not have been allowed to work the 12-hour shift
10 for the last seven years?

11 COMMISSIONER CENTER: I think -- yeah, we can't
12 -- you should talk to the Labor Commissioner on that.
13 That's a Labor Commissioner issue, not one of our issues.
14 Yeah.

15 Yeah.

16 MR. LUSSI: I think what we're trying to do is
17 we're trying to see if we are an exemption. And I know
18 we have heard about that. I want to know how we can go
19 and get an exemption. People are -- I heard you guys
20 refer to healthcare workers and janitors in the same
21 sentence. I don't see why if a group of people,
22 employees, want to work an 8-hour day or a 10-hour day or
23 a 12-hour day, why can't we let them? I mean, why are
24 you guys -- you guys have the ability to grant

1 exemptions.

2 COMMISSIONER CENTER: No, we don't.

3 MR. LUSSI: Through a process.

4 COMMISSIONER CENTER: Through a process for
5 specific industries. But the law changed in January.
6 That order changed, how we do that. I don't think we can
7 grant you an exemption just --

8 MR. LUSSI: Well, in AB 60, you guys have a
9 provision to grant exemptions. That's what it says,
10 doesn't it?

11 COMMISSIONER CENTER: For -- for industries.

12 MR. LUSSI: For industries.

13 COMMISSIONER CENTER: And what's your --

14 MR. LUSSI: My question is, why --

15 COMMISSIONER CENTER: Explain your industry to
16 me first.

17 MR. LUSSI: I'm an operator for Edison, a
18 pipeline operator for Edison. We transport and store oil
19 for refineries. We work at a rotating 12-hour shift, 24
20 hours a day. Without a 12-hour shift, it goes back to 8;
21 there's no 9's or 10's or anything else.

22 My question is, if a working group wants to stay
23 on the 12-hour shift, why are we not allowed to do that?

24 COMMISSIONER CENTER: You could go to 10's, but

1 the law changed --

2 MR. LUSSI: There's no provision for us to go to
3 10's because there's 24 hours in a day. This is our
4 problem, and the same with the nurses and the janitors
5 and the parking lot attendants. We want it, not our
6 companies. We want it. It's better for us. So, I don't
7 understand why we cannot get an exemption as an industry.

8 COMMISSIONER CENTER: Because the law was passed
9 by the Legislature. We cannot change the law.

10 MR. LUSSI: But you do have a provision --

11 COMMISSIONER CENTER: Not to change the law.

12 MR. LUSSI: -- for an exemption to industries.

13 That's my only question. My concern is --

14 COMMISSIONER CENTER: Certain industries.

15 MR. LUSSI: -- we want to vote to take this, and
16 I don't understand that -- it says in the bill that
17 you're available or allowed to give provisions to
18 industries. And I wanted to know, why can't that happen,
19 because I heard you say before that you're not allowed --
20 it goes through a long process.

21 COMMISSIONER CENTER: We can do certain things,
22 but once the law goes into effect, we cannot supersede
23 the law. And the law changes in January, which really
24 limits the exemptions we can grant. There are specific

1 industries named in the law.

2 MR. LUSSI: But we cannot grant exemptions above
3 and beyond those certain industries?

4 COMMISSIONER CENTER: We can institute wage
5 boards for industries. And you need to get your industry
6 people to gather and petition that.

7 MR. LUSSI: We have. I think we've presented
8 that to you.

9 COMMISSIONER CENTER: That's a process. Then
10 we'll have to investigate your industry and do it that
11 way. We just can't grant an exemption without
12 investigating your industry.

13 MR. LUSSI: Yeah. I realize you can't do that
14 on the spot. But there is a process.

15 COMMISSIONER CENTER: Yeah. Yeah, a process.

16 MR. LUSSI: Okay. Thank you.

17 COMMISSIONER CENTER: Matthew Bartosiak.

18 AUDIENCE MEMBER: (Not using microphone) He's
19 here. He just stepped out.

20 AUDIENCE MEMBER: (Not using microphone) Next.
21 Go on to the next name.

22 COMMISSIONER CENTER: Rita McGuire.

23 (No response)

24 COMMISSIONER CENTER: Denise Smith? Has she

1 spoken yet?

2 (No response)

3 AUDIENCE MEMBER: (Not using microphone) Here's
4 Matt.

5 COMMISSIONER CENTER: Oh, there's Matt.

6 AUDIENCE MEMBER: (Not using microphone) Hurry
7 up! Make it quick!

8 AUDIENCE MEMBER: (Not using microphone) May I
9 make a comment?

10 COMMISSIONER CENTER: Yes.

11 AUDIENCE MEMBER: (Not using microphone) Can
12 you limit the speakers to maybe five minutes?

13 AUDIENCE MEMBER: (Not using microphone) Or
14 two!

15 COMMISSIONER CENTER: I think we'll limit it to
16 two minutes so we can get out of here.

17 MR. BARTOSIAK: I can do it.

18 COMMISSIONER CENTER: Okay.

19 MR. BARTOSIAK: Thank you very much. My name is
20 Matt Bartosiak, with the Employers Group. We're a
21 nonprofit human resources association. We help 5,000
22 member companies statewide, representing 2.1 million
23 employees. We help those companies manage human
24 resources. One of our main activities is advocacy, and

1 I'm here today to -- and I was here with some employer-
2 members with us, and they had to leave.

3 I'm here today to talk about, of course, AB 60
4 and flesh out some of the rules. Before I go into the
5 comments, I'd like to make just a comment. I know you
6 have a lot of people who want to testify all the time,
7 and you try to do it in a cohesive, efficient fashion.
8 But, again, one of these rooms, if one gets up earlier,
9 like two production employees I had that are going to be
10 taking (inaudible) two people here, employees, production
11 workers who came here, unpaid all day, and wanted to talk
12 about their desire to work 12-hour shifts. But I can
13 have written testimony submitted.

14 Allow me, in the next three and a half minutes,
15 to quickly go over our comments and questions regarding
16 AB 60.

17 AUDIENCE MEMBER: (Not using microphone) Quiet!

18 MR. BARTOSIAK: Thank you.

19 My first set of comments will revolve -- and I
20 have not seen the drafted regulations, so you'll have to
21 pardon me if these have been addressed.

22 Still, my first comment addresses -- revolves
23 around alternative workweek issues. The bill does call -

24 -

1 COMMISSIONER CENTER: Are these written comments
2 you're going to submit to us?

3 MR. BARTOSIAK: You already have these comments.
4 I submitted them in advance.

5 COMMISSIONER CENTER: So, briefly summarizing
6 them is what we're going to do.

7 MR. BARTOSIAK: I'm just briefly summarizing
8 them.

9 Regarding the -- AB 60 calls for the Commission
10 to address a designation of work units. And I -- we ask
11 the Commission to be as loose and broad, if you will, as
12 it has been in the past. It's been an enforcement policy
13 in the past that work units were broadly defined and were
14 left up to the objective business criteria. We ask that
15 that remain, because if it's too cumbersome or if there's
16 too many classification rules, they will be less useful
17 in the work environment, for both employers and
18 employees.

19 Menu of options. I just did take a brief peek
20 at the menu of options draft rules, and I do see that
21 there is some employer control of those so you don't have
22 everybody signing up for one menu and then the rest
23 remain unstaffed, the other options. If indeed the draft
24 says that, we applaud that.

1 The disclosure requirement rule for AWS's -- for
2 alternative workweek schedules -- where they're supposed
3 to give complete disclosure, I -- again, I have not read
4 the draft, but we think it's prudent that the disclosure
5 requirements be in a comprehensive fashion, yet in an
6 efficient fashion, one or two weeks, perhaps, and
7 conducted in a process that allow the interest and the
8 momentum of interest in (inaudible) and they keep the
9 process moving. For company employees who can't work the
10 alternative workweek schedules, we suggest that, again,
11 we leave it up to the employer's discretion as to what
12 reasonable accommodation means. I know, in terms of
13 employees who are eligible to vote, that reasonable
14 accommodation must be attempted, and it may be attempted
15 for people who join the unit later. And again, we ask
16 that the Commission consider giving employers, who know
17 the needs of their business, true flexibility in defining
18 what is reasonable accommodation -- accommodation.

19 There are some other issues, like can an
20 alternative workweek schedule be rescinded? Like
21 previous law, after twelve months in practice, the
22 employees may petition to have the vote repealed upon a
23 two thirds vote -- a two thirds petition. They have a
24 process. The Commission is called to stipulate or lay

1 out conditions under which employers may dissolve the
2 alternative workweek schedule. Such a concept was not in
3 the previous law, and we strongly encourage the
4 Commission to, again, give broad flexibility for an
5 employer to disband an alternative workweek arrangement
6 when it realizes it doesn't work, and not have to jump
7 through a thousand hoops to do so. If the schedule
8 doesn't work, let's not wait till we can't get product
9 out of the door until we're ready to disband a schedule
10 that clearly doesn't work.

11 My remaining two comments revolve around other
12 issues that AB 60 addressed. We may very well be calling
13 on you for exemption issues. I'd just like to --

14 COMMISSIONER DOMBROWSKI: Please. We're really
15 out of time. And if you have written testimony, we will
16 read it.

17 MR. BARTOSIAK: Okay. In closing, then, I'll
18 make just one closing comment regarding the outside
19 salespeople and the exemption issues and the meal periods
20 and all these things that you may review. When one does
21 review these elements and these constructs of yours, we
22 ask for broad rules, flexible rules, and concise rules so
23 that the personal needs of employees and the business
24 needs of employers may be met.

1 Thank you.

2 COMMISSIONER DOMBROWSKI: Rita McGuire?

3 COMMISSIONER BROAD: She left.

4 COMMISSIONER DOMBROWSKI: Denise Smith.

5 (No response)

6 COMMISSIONER DOMBROWSKI: I'm going to go
7 through this thing -- Gabo Briones, Children's Hospital.

8 MS. WILSON: I'll take it.

9 COMMISSIONER DOMBROWSKI: Okay.

10 MS. WILSON: My name is Karla Wilson. I'm an
11 advanced practice nurse in pediatric oncology at
12 Children's Hospital, and I'm here with several of my
13 colleagues, and we are representing over 100 advanced
14 practice nurses at Children's Hospital.

15 From what has been said earlier today, it's very
16 clear that the members of the Commission do not really
17 understand what nurses do, let alone what advanced
18 practice nurses do.

19 AUDIENCE MEMBER: (Not using microphone) Can't
20 hear you.

21 MS. WILSON: Oh, sorry.

22 Advanced practice nurses, as the midwives so
23 well expressed earlier, are nurses who have advanced
24 degrees, or they have extensive experience and training

1 in specialized areas. Many of us are certified in our
2 area of specialization, just as I'm certified in
3 pediatric oncology nursing. Advanced practice nurses
4 include nurse practitioners, clinic nurse specialists,
5 case managers, and there are a whole list of other types
6 of titles of nurses, et cetera.

7 We have 24-hour accountability for our patients.
8 We do not work in shifts. We care for patients across a
9 continuum of areas. We're the ones who are involved
10 doing things such as procedures in oncology like bone
11 marrow (inaudible) and biopsies, lumbar punctures. We do
12 physical exams. We do education to patients. We are the
13 source of contact for patients when there are problems.
14 Patients are followed by us whether they are in the
15 hospital or whether they're at home or in the clinics.
16 We are the --

17 COMMISSIONER DOMBROWSKI: Is there -- because
18 we've heard from your industry, and I think the best
19 resolution -- is there anything that hasn't been said
20 that you need to say?

21 MS. WILSON: I think one of the major issues
22 that has not been said is that AB 60 impedes
23 professionalizing nurses. And with this, we will have an
24 exit of nurses from the State of California. We are

1 already in a nursing shortage. It is going to get worse.
2 And you will not have anyone to assist you with your
3 healthcare in the future.

4 And I think that nurses need to be exempt from
5 this bill because we are professionals. And we work in
6 creative ways. We are using our intellect, we are
7 working with patients, and the only nurses that are
8 exempt in this bill are nurses who do administration of
9 staff. And there is a whole category of nurses, from the
10 bedside nurses to administrators that are nurses, and
11 nurses as a profession should be exempt from this bill so
12 that we can practice nursing.

13 Thank you.

14 (Applause)

15 COMMISSIONER BROAD: I understand your
16 perspective, but we cannot exempt nurses. That is clear
17 in the statute. We can agree, for example, to permit
18 nurses to work 12-hour shifts. We can do that. But we
19 cannot repeal a statute passed by the Legislature and
20 signed by the Governor that is very clear on its face.

21 So, while I understand your frustration, that
22 message is something that you have to take to the
23 Legislature. If you want to take something to us that we
24 can act on, it really is over the question of whether we

1 should approve shifts for nurses longer than 10 hours a
2 day. That's the issue.

3 MS. WILSON: I don't work shifts. I've never
4 worked shifts in the thirty-two I've been an advanced
5 practice nurse. And there is no other state in the
6 country that advanced practice nurses work shifts. Other
7 professionals, lawyers, educators, scientists, et cetera,
8 they do not work shifts.

9 COMMISSIONER BROAD: I know. But, look, you
10 have to understand that there are limits of what
11 administrative agencies can do and what the Legislature
12 can do.

13 This is what the bill says:

14 "Registered nurses employed to engage in
15 the practice of nursing shall not be exempted
16 from coverage under any part of the orders of
17 the Industrial Welfare Commission unless they
18 individually meet the criteria for exemptions
19 established for executive or administrative
20 employees."

21 That is the final word. We cannot change that. We
22 cannot

23 -- you may be right, but we cannot change that.

24 The message that you're bringing, "We don't want

1 to be covered by any rules involving overtime, any wage
2 and hour rules; we want to be exempt like doctors are
3 exempt now, we want to be exempt like" --

4 MS. WILSON: I want to be exempt like any other
5 professionals.

6 COMMISSIONER BROAD: Okay. You want to be
7 exempt like doctors or lawyers. That is specifically not
8 permitted by this statute. Therefore, to change that,
9 you have to change the law. We can't change the law.

10 And I think you're going to have to respect that
11 that is a fact.

12 MS. WILSON: And then can you give us the
13 information of how we go about changing the law and how
14 we identify the exemption?

15 AUDIENCE MEMBER: (Not using microphone) Or
16 amending.

17 MS. WILSON: Or amending the law, or amending AB
18 60, or the criteria or the definitions.

19 COMMISSIONER DOMBROWSKI: There is
20 representation, which I'm sure you have some affiliation
21 with, that handles that for you. I mean, it's --

22 MS. WILSON: I am not a member of CNA, if that
23 is who you are referring to.

24 COMMISSIONER DOMBROWSKI: I don't know -- I

1 don't know who you're -- who you're represented by.

2 MS. WILSON: I have written my legislators.

3 COMMISSIONER DOMBROWSKI: Pamela Melton.

4 AUDIENCE MEMBER: (Not using microphone) Are
5 you going out of order? Is there a list? I don't
6 understand.

7 COMMISSIONER DOMBROWSKI: I'm still on the first
8 page.

9 COMMISSIONER CENTER: The first page.

10 MS. MELTON: Thank you very much.

11 COMMISSIONER CENTER: Which list, this one or
12 the other one?

13 AUDIENCE MEMBER: (Not using microphone) What
14 happened to this morning's?

15 AUDIENCE MEMBER: (Not using microphone) What
16 happened to this morning's list?

17 AUDIENCE MEMBER: (Not using microphone) The
18 one that was out there.

19 COMMISSIONER CENTER: That's the one, the first
20 page, this morning.

21 AUDIENCE MEMBER: (Not using microphone) No, I
22 don't think so.

23 AUDIENCE MEMBER: (Not using microphone) No, I
24 don't think so.

1 COMMISSIONER CENTER: That's it. This is AB 60,
2 first page, that we had this morning.

3 MS. MELTON: It's spelled M-e-l-t-o-n.

4 COMMISSIONER CENTER: You can take the chair
5 again. You did a good job moving it along.

6 MS. MELTON: Mr. Chairman, commissioners, thank
7 you. I would like to ask for an exemption for 12 hours
8 for the particular industry I'm representing here today.
9 I work for a nonprofit group in northern California, and
10 we serve children and adults with developmental
11 disabilities. Often they're dual-diagnosed. We're
12 mandated by the Department of Social Services and other
13 agencies to provide 24-hour care and respite care.

14 And the flexibility in the schedule we have now
15 works very well. Employees have come to us and said,
16 "How are we going to handle AB 60?" Again, they do what
17 they do out of passion for bringing these consumers the
18 highest -- to more independence in their lives.

19 We also provide a three-to-one ratio, which,
20 again, in San Mateo County, we have an unemployment rate
21 of 1.9 percent. We're struggling with that also.

22 And I think that's all I have to say. We're
23 reimbursed by the hour by the state, and reimbursable at
24 \$7.59 an hour. In March of this year, we took a check

1 and we decided we just couldn't pay our employees that
2 wage, and we increased it to \$10.00 an hour, which is the
3 bottom. But we're still working to try and increase that
4 wage. And if this goes through, we're not able to have
5 the flexibility, then it's going to be difficult for us
6 to continue to raise -- have a livable wage.

7 COMMISSIONER DOMBROWSKI: Nancy Payne?

8 (No response)

9 COMMISSIONER DOMBROWSKI: Mike Murrey.

10 MR. MURREY: Good afternoon, commissioners.

11 I'll try to be brief so that you can on with our day.

12 My issue deals with alternate work schedules.

13 I'm Mike Murrey. I work for Staples'

14 Distribution Center in Rialto, California. Our employees
15 currently are on 10-hour work schedules.

16 In the law, Policy 1980, "Alternative
17 Workweeks," it consisted of hours and days agreed upon.
18 This resulted in overtime for days not part of the
19 regular schedule. Now, in AB 60, there is no mention of
20 overtime for work in excess of the days scheduled. And
21 you have talked about the time and a half situation, but
22 when it gets to the double time, it gets rather
23 confusing, by saying that double time on those days
24 worked beyond the regularly scheduled workday.

1 I guess my question for you -- I notice that you
2 put out a new, revised version -- and I had a couple of
3 quick questions. One would be, are the days to be
4 stipulated in the alternative workweek schedule? It
5 appears so when you read the double-time provisions. If
6 the days are stipulated, when does overtime become
7 mandated on days not part of the schedule?

8 Let me give you an example of one of our work
9 schedules, and maybe this will help clarify. Our
10 employees -- or we call them associates -- will work
11 Monday and Tuesday, be off Wednesday, Thursday, work
12 Friday and Saturday. Now, usually Wednesday is
13 designated by us as an overtime day; they would be
14 scheduled overtime. But there are occasions when an
15 employee will call in sick on Monday. Should I have to
16 pay the double time -- time and a half and then double
17 time on Wednesday? I would hope we wouldn't, because
18 that's -- you know, that's rewarding someone for not
19 coming in to work. We would prefer looking at it after
20 they work 40 hours in a week.

21 Do you have any comment on that?

22 If you could look at, I'd thank you.

23 COMMISSIONER CENTER: Yeah. You could send us a
24 letter, if you want.

1 MR. MURREY: I already -- you have it.

2 COMMISSIONER CENTER: Okay. Thank you.

3 MR. HOLOBER: Thank you. Richard Holober,
4 California Labor Federation.

5 COMMISSIONER DOMBROWSKI: It's not three minutes
6 five. We're going to cut it off at six o'clock. So,
7 let's try to accelerate, for everybody.

8 MR. HOLOBER: I will try to be brief. But, you
9 know, I just want to make a preliminary comment.
10 Last -- this prior year, up until whenever the

11 day was in July that the bill was signed by the Governor
12 --

13 COMMISSIONER CENTER: Could you speak into the
14 microphone?

15 MR. HOLOBER: Yes.

16 This bill, this new law, went through exhaustive
17 hearings, meetings, testimony, discussions with various
18 parties on every conceivable side of the issue. I don't
19 think there is another piece of legislation that has been
20 vetted as thoroughly as this bill. And I'm disturbed
21 that on the strength of the testimony of two witnesses
22 who started raising an issue, which we believe is very
23 dubious jurisdiction here for the IWC, that commissioners
24 were making motions and setting things for hearing. We

1 spent an enormous amount of time working on this
2 legislation, and we hope that the Commission will allow
3 for the proper process here for testimony, for proper
4 notice, so that it's not just a question of who grabs the
5 mike and makes the most noise.

6 On the question of the hospital industry, I want
7 to make a couple of comments. First, while I think
8 you've heard from the attorney half of the story -- the
9 attorney for the Hospital Association -- there's a whole
10 other half of the story that you have not heard, and that
11 has to do with the economics of this industry and the
12 amazing cost savings that the hospitals achieve when they
13 go from an 8- to a 12-hour shift. And this was discussed
14 at length over a period of about twenty years on this
15 subject. And the final word was the voters voted, and
16 elected a Governor and a Legislature that believe in the
17 8-hour day as a standard. So, it's not a question of did
18 they bring 500 people to one hearing. We brought 500 or
19 1,000 or 2,000 people to hearings as well.

20 The hospital industry has been the most
21 aggressive industry for twenty years in getting
22 exemptions that nobody else in the State of California
23 ever had. First they got the 12-hour, 36-hour week.
24 That wasn't good enough. They got the 12-hour day, 40-

1 hour week. That wasn't good enough. They got the 80-
2 hour biweekly payroll period. That wasn't good enough.
3 They also got exemptions from who can be designated as an
4 administrator, an executive, or a manager that no other
5 industry in California ever got. And that wasn't good
6 enough.

7 So, finally, they came to this Commission and
8 said, "We don't want our folks voting on this; we would
9 like to impose it. Please get rid of the voting
10 procedure. We don't want to have any regulations at
11 all." And really, part of what you're seeing today is
12 the product of the greed of the employers in that
13 industry.

14 Regarding the questions of nurse midwives and
15 other advanced practice nurses, I think there is a real
16 question before the Commission of whether the so-called
17 advanced practice nurses are covered by the registered
18 nurse language. Now, we rewrote that language. The old
19 language said registered nurses are professionals;
20 however, they are not exempt unless they meet certain
21 criteria that would qualify them either as an executive,
22 administrator, or professional. Well, that's redundant
23 language -- that's confusing language: they're not
24 professionals unless they meet the definition of a

1 professional.

2 We removed that last phrase. So, now they are
3 not exempt unless they meet the standard definition for
4 an administrative, like someone who supervises a nursing
5 department, or an executive. They can no longer be
6 exempted as professionals. We recognize that they are
7 professionals. We also recognize that they are protected
8 by overtime. The same is true with licensed pharmacists.
9 So, those are two professions that are now given
10 different standards than other professions.

11 Just a couple of quick points here. On some
12 procedural matters, I don't know -- I haven't read your
13 interim regs, but I think there's a real issue here about
14 who could continue to work a 10-hour day on an individual
15 basis if they were working that 10-hour day on July 3rd,
16 1999. The issue here is whether that was a voluntary
17 arrangement or not. And our -- we would argue that if an
18 employer imposed a longer than 8-hour day without a vote
19 under the old rules, and if that was a condition of
20 employment, that is not voluntarily working. So, in that
21 case, we don't believe that an employee would voluntarily
22 continue working -- because their only choice here is to
23 quit their job -- most workers are reluctant to do that.

24 So, we hope you will pass some very tight

1 definitions on who could continue to be considered
2 voluntarily working a 10-hour day.

3 The other point I wanted to make was that I
4 think we need to adopt procedures to repeal alternative
5 workweeks. AB 60 requires you to do that during the
6 spring. But the question is, what happens after January
7 1st until you adopt final wage orders? Under the old
8 wage orders, there was a process to petition and have a
9 vote to repeal an alternative workweek. And we want to
10 make sure that those kinds of procedures are back in
11 force before you come up with your final procedures.

12 I think there is a huge issue here regarding the
13 healthcare industry, regarding what the hospitals are
14 doing to workers. You know, you're seeing an expression
15 of anger, concern, and fear. This is something that the
16 hospitals, I think, have brought on themselves. There's
17 absolutely no reason that they need to act until summer.
18 And I think what they're doing is really hurting their
19 standing here.

20 And I realize there's probably little, if
21 anything, you can do about it. But I think any
22 expressions you could make would be -- would be helpful
23 to, you know, admonish them from continuing that.

24 COMMISSIONER McCARTHY: I'd like to just make a

1 couple comments.

2 You know, you made the point, you said, well,
3 when you drafted the bill, you said you spoke to everyone
4 so we don't have to consider this. It's certainly my
5 impression you didn't speak to the midwives as a group.
6 That was pretty clear to them here, and maybe the
7 advanced practice nurses. Maybe they just don't count.

8 MR. HOLOBER: They testified at the hearings.

9 COMMISSIONER McCARTHY: The midwives did?

10 MR. HOLOBER: Yeah. Representatives testified
11 at the hearings before the Legislature made its decision.

12 COMMISSIONER McCARTHY: Okay. That was -- well,
13 apparently they did. Well, I stand corrected in that
14 case.

15 So, a lot of them seem not to have been aware of
16 it and don't seem to have their input. But whatever the
17 case may be, leave it at that.

18 Go ahead. That's fine.

19 MR. HOLOBER: Well, you know, just one other
20 comment. I realize you're not bound here by NLRB
21 standards, but the NLRB would consider those kinds of
22 advanced practice nurses to be -- share a common
23 community of interests with other registered nurses and
24 would be in the same bargaining unit. I think that's

1 just a point you should look at when you make your
2 decision.

3 COMMISSIONER DOMBROWSKI: Thank you.

4 COMMISSIONER CENTER: Sonia Moseley.

5 And again, in deference to time, if you'd bring
6 something new forward so -- we've got one hour.

7 MS. MOSELEY: Good afternoon. I gave you my
8 statement --

9 COMMISSIONER CENTER: Thank you.

10 MS. MOSELEY: -- so I won't go over that. But I
11 do have to address the issue. I'm currently -- I'm here
12 -- Sonia Moseley, Executive Vice President of the United
13 Nurses Associations of California, AFSCME. I represent
14 some 10,000 registered nurses, and among them are 300
15 advanced practice nurses, which include registered nurse
16 practitioners. I represent 100 physicians assistants,
17 pharmacists, et cetera. I have a group of nurse-midwives
18 that are asking to come into our union. And I can tell
19 you, the reason they want to join the union is they do
20 want to be covered with overtime.

21 I know there's a group who don't want to be
22 covered, but I ask you to look at this issue. You need
23 to know it's not necessarily universal, and it's not just
24 nurses, or advanced practice nurses, that are already

1 represented. The ones that belong to my union are very
2 happy that the overtime will be working, and they know
3 they're working and should be paid appropriately. So, I
4 would just ask, before you act upon anything, you need to
5 be talking to a broad group of this classification.

6 And it's absolutely true what Richard said,
7 nurse anesthetists and nurse practitioners have been put
8 into our bargaining units; it's the same occupation that
9 registered nurses are. But they are considered employees
10 under the National Labor Relations Act and would be
11 covered as such.

12 The only thing that I would ask -- and I have it
13 written -- is I concur with the position that's been
14 presented to you by the California Labor Federation. And
15 it appears that there need to be some interim regulations
16 --

17 COMMISSIONER CENTER: Grab the mike.

18 MS. MOSELEY: -- some interim regulations with
19 respect to -- it seems like there's a dispute over
20 whether we're covered in the interim if we have a
21 collective bargaining agreement which calls out for
22 straight-time 12-hour shifts. Some of the employers are
23 questioning that. And for the nonunion -- for the
24 nonunion nurses, again, I really sympathize with their

1 wages having been cut 14 to 16 percent. If there's
2 anything that can happen to give them some relief in that
3 area, it would be kindly appreciated.

4 Thank you.

5 COMMISSIONER CENTER: Thank you.

6 Bob McCloskey.

7 MS. ROWE: (Not using microphone) He's not
8 here.

9 COMMISSIONER CENTER: Ethel Rowe.

10 MS. ROWE: (Not using microphone) She's here.

11 COMMISSIONER CENTER: All right. You're the one
12 that had to stay, then.

13 MS. ROWE: My name is Ethel Rowe, spelled
14 E-t-h-e-l, R-o-w-e. I'm a representative from SEIU Local
15 399. I submitted my testimony to you. And being here as
16 long as everybody else, I've heard a lot of testimony, so
17 I'm going to cut this short.

18 And I just want to ask the IWC to please quickly
19 help resolve some of the misunderstanding that some of
20 the employers have. We have a collective bargaining
21 agreement. We're now -- with different employers cutting
22 wages, it's an open season for them. We've told them
23 that they are exempt. They continue to say that they
24 have to do this, and we don't think that they should be

1 doing it, so we ask you to act properly to help us
2 address these employers.

3 Thank you.

4 COMMISSIONER CENTER: Thank you.

5 Susan Mye (sic).

6 MS. NYE: (Not using microphone) Nye.

7 COMMISSIONER CENTER: Nye. Sorry.

8 MS. NYE: (Not using microphone) Ethel and
9 Richard more than covered it.

10 COMMISSIONER CENTER: Okay.

11 Mary McCulley.

12 MS. McCULLEY: My name is Mary McCulley, and I'm
13 a nurse practitioner employed in Los Angeles. And I'll
14 keep it very brief. I've submitted written testimony
15 also.

16 One thing I just would really to make clear, I
17 think that my colleagues, the certified nurse midwives,
18 presented very eloquently about the importance of
19 advanced practice nurses being considered separately. I
20 currently support professional nurses, and I wish they
21 were all exempt, but I'm not going to address that issue.

22 Nurse practitioners, nurse anesthetists,
23 certified nurse-midwives, and clinical nurse specialists
24 are all designated by the Board of Registered Nursing in

1 California as advanced practice nurses. Most of us hold
2 graduate degrees and have had to go through training and
3 extra education to be able to provide patient care as a
4 provider.

5 We do not work at the bedside, we do not work
6 shifts. We work in physician extender roles. In my
7 position, I work in an intensive care unit with a medical
8 team to provide care to patients. And for us to be
9 restricted to 8 hours would definitely take away from
10 patient care and quality that we are able to provide as
11 providers.

12 I think you have before you so many issues
13 because nursing is such a diverse profession, even in the
14 advanced practice group. But I think that if you can
15 just keep in mind that what we do is a different type of
16 role, as professionals in the advanced practice role.
17 And to restrict does definitely make a difference in what
18 we're able to do in our profession. And it definitely
19 will impact our hiring in California. I certainly would
20 consider working in another state if I'm not able to
21 practice and provide the care as a nurse practitioner
22 that I'm able to do now.

23 I'm not going to prolong this because I know
24 we've all been here a long time. I just would like to

1 ask that if you do look at the nurse-midwife or if you
2 look at the advanced practice group as a whole, because
3 we all operate under similar statutes that they were
4 talking about.

5 COMMISSIONER CENTER: Thank you.

6 Robert Cantone.

7 (No response)

8 COMMISSIONER CENTER: No?

9 Bob Tollen.

10 MR. TOLLEN: (Not using microphone) I'm here,
11 and in view of the hour and what we've submitted to you
12 in writing, we'll take a pass.

13 COMMISSIONER CENTER: Very good.

14 MR. TOLLEN: From the California Ambulance
15 Association. Thank you.

16 COMMISSIONER CENTER: Right. We'll review your
17 written testimony.

18 Francine Alba.

19 MS. ALBA: Hi. I'm Francine Alba, A-l-b-a. I'm
20 here representing -- from the board of -- I'm on the
21 board of directors of the Sherman Oaks Chamber of
22 Commerce, and we have fifty restaurants, over 4,500
23 people. I run four restaurants, and another owner, whose
24 letter you have -- she had to leave -- she has seven

1 restaurants. And together we sat and formulated what we
2 wanted to send to you.

3 The first thing that I have learned, after being
4 here all day, that I think is evident for everybody, is
5 that one suit does not fit all. It seems to me that the
6 thing that wasn't considered when this measure was put
7 out is that there are a myriad of people that want
8 choices. I'm a little bit confused, quite honestly, as
9 to who thought it was their right to take choices away.

10 (Applause)

11 MS. ALBA: Last time I looked, that's what I
12 meant -- we still live in America, which means freedom of
13 choice. That means an employer has the freedom to run
14 their business within the Department of Labor standards,
15 and if it wasn't good enough for an employee, they could
16 go down the block to work with somebody else. As an
17 employee, I certainly had the choice when I was working;
18 if I didn't like the employer that I was working for, I
19 could leave.

20 The restaurant industry in particular has far
21 too much competition to force hours on anyone. We barely
22 can get waiters and waitresses to comply with sanitary
23 and uniform standards that we need in the industry. We
24 certainly cannot force hours on anybody.

1 I feel that in our time, it is no longer
2 necessary for these kinds of measures to be taken to
3 protect the worker. The Department of Labor does a fine
4 job of that. To their credit, the workforce is
5 enormously sophisticated in their labor rights. Even
6 those who do not speak fluent English can teach you a
7 thing or two about the labor laws.

8 (Laughter)

9 MS. ALBA: I have found the Department of Labor
10 to be fair, to uphold the laws that need to be done, and
11 I have found the workforce, in ten years of running
12 restaurants, that it's very clear that if there anything
13 they feel is unfair, that they will go and seek counsel
14 from the Department of Labor. So, I am totally confused
15 as to why choice is being taken away from everyone
16 involved.

17 Now, my last round with Wally Knox, who, by the
18 way, is my -- my representative and his constituency.
19 Through our Chamber, we had many meetings with him at the
20 eleventh hour of this measure going through, and I'm here
21 to tell you that Wally told us, myself included, that you
22 were the hope for those who were not exempted.

23 I have sat here for eight hours today hearing
24 you tell people that you cannot do anything about

1 exempting them. There's a bit of confusion there,
2 wouldn't you say?

3 COMMISSIONER McCARTHY: You're right.

4 MS. ALBA: Technically, a lot of the restaurants
5 that I came with this morning, a lot of the restaurant
6 runners and owners, we are competitors, but we stand
7 together in this.

8 I want you to know that AB 60 will be thwarted,
9 and I'm going to tell you how -- not by the employers.
10 We're going to comply, because we have turned into
11 dutiful little labor keepers. We keep the labor laws to
12 the letter of the law because we cannot afford to do
13 anything else. And I'm going to tell you how it's going
14 to be thwarted. It's going to be thwarted by the very
15 people that were meant to be helped by this law.

16 Our people who work in the restaurant industry
17 will do the following: they will be -- we will have to
18 cut the shifts at 8 hours. You've already heard
19 testimony today from a very fine restaurateur on how
20 market is way too small to be able to absorb this.

21 However, these very people that you are
22 attempting to help will then take -- and they will then
23 drive, causing more congestion and more traffic, to the
24 next job. Instead of working the 10 or 12 hours that

1 they wanted to work by their choice, they're now going to
2 work 16 because they are going to get a second job.

3 When we put notices up -- because we like to
4 warn everybody way in advance of everything that's going
5 to happen -- we were inundated. I have a package for all
6 of you to read of those letters.

7 There's a faction of the workforce in the
8 restaurant that's being very overlooked. First of you,
9 you have to remember there's two kinds of restaurant
10 industry: there's the big, huge, corporate industry with
11 bigger margins, and then there's the smaller groups that
12 I'm here to speak for. Within that group, there is a
13 huge workforce that is growing daily, that I'm sure is
14 not new to you -- not just in our industry -- it's
15 everywhere -- it's the single mother. They have a
16 particular problem, in that they have to both be a mother
17 and they have to work. We have a huge number of these
18 gals. And they make their own schedules.

19 We pride ourselves, in our company, and most of
20 the people that I know, in letting our employees make
21 their own schedules. We feel, "Happy schedules, happy
22 employees, happy campers result in happy customers."

23 They make their own schedules. They want to go
24 to school. They have visitation from the dad, or not.

1 They have difficulty in childcare. So, they all make
2 their own schedule, and we let them do that.

3 When we put this notification up, they were the
4 first people we heard from, because they're going to be
5 cut at 8 hours. What's worse is they can't make the
6 money that they were used to making, and they can't
7 extend their daycare situation to now continue to work
8 for the amount of hours that they were used to working in
9 a few days over a whole week.

10 The other group that we heard from was students,
11 because they work their school schedule around. They
12 work a couple of long days for that money that they need.
13 They are being supported by parents, but they need extra
14 money, and they have to work in school, at their
15 schoolwork. We're going to lose most of that workforce
16 because they cannot work 8 hours. Many of them work
17 split shifts, or they'll come for a couple of days with
18 long hours, and we won't see them again till the next
19 week.

20 COMMISSIONER CENTER: A question. But, first,
21 what do you propose we do to resolve this?

22 MS. ALBA: Well, my question to Wally Knox was
23 why wasn't the restaurant industry being exempt, because
24 we have so many problems in this state that are

1 indigenous to only California -- such as tip credit and
2 other things that we haven't -- have not been given to
3 this industry. But he said it was too late for that
4 because he had heard from enough of us. He told me we
5 needed to come to you, that you were the guys that
6 anybody that got messed over or glossed over, glossed
7 over for exemption, it would be handled with the IWC.

8 We need flexible schedules, is what we need.

9 COMMISSIONER CENTER: It's our opinion that we
10 don't have the authority to exempt now because of the
11 statute. I think your resolution is going back to the
12 Legislature, if that's your problem. But I don't know
13 what we can do for you.

14 MS. ALBA: You don't know -- you don't know what
15 you'll do for me.

16 COMMISSIONER CENTER: I don't know what we could
17 -- what we could do for you.

18 MS. ALBA: I'm glad I got up at six o'clock in
19 the morning to come and hear that!

20 COMMISSIONER McCARTHY: Well, I'm confused. I
21 mean, as I say, this is all new and it's understandable
22 there's confusion. But the bill, which I have in front
23 of me -- and maybe, as I say -- I'm not saying I'm not in
24 error -- but to read you the exact language, the bill,

1 you know, that we're talking about, would,
2 " -- authorize the Industrial Welfare Commission
3 to review, retain, or eliminate exemptions from
4 the hours requirements that were contained in a
5 valid wage order in effect in 1997, and would
6 authorize the Commission to establish additional
7 exemptions therefrom for the health or welfare
8 of employees in any occupation, trade, or
9 industry, until January 1st, 2005."

10 That sounds to me like we can make exemptions. And as I
11 say, I know -- I know there's honest disagreement.
12 Nobody here, none of us, is trying to sell you a bill.
13 But that's my interpretation. And --

14 MS. ALBA: Well, the author of the bill himself
15 told me at Art's Deli in Studio City, with the rest of my
16 Chamber, please come to the IWC hearings if we were left
17 out of the exemptions, and he does see that the
18 restaurant industry does have some unique problems
19 indigenous only to the restaurant industry.

20 COMMISSIONER BROAD: Okay. Let me ask you this
21 question. Basically, from 1913 to January of 1998, you
22 were under the system that we're going back to on January
23 1 of 2000. So, this is my question to you. You had this
24 thing, whatever it is, all this flexibility, for exactly

1 two years, but in the previous years -- and I know
2 there's been restaurants in the State of California in
3 all that time, including yours, presumably -- you
4 functioned under the system that we're going -- how did
5 you manage to function with single mothers and students
6 and so forth in the period for that industry from January
7 -- from 1913 to January of 1998?

8 MS. ALBA: Well, I can't speak for 1913, but
9 there was a big, huge, riotous celebration when it went
10 back to the 40-hour week for the staff. As I said, the
11 restaurant employers themselves will just have to employ
12 more people and have strict standards of the 8-hour day.
13 And that's how we did it.

14 However, we do have employees that are crying
15 out -- and I promised I would cry out with them and for
16 them -- that they want to be able to have the choice.
17 And really, that's what I'm here about, is choices. I
18 don't understand why the choices have been taken away. I
19 don't understand why free enterprise is no longer free
20 enterprise. I don't understand why the government -- I
21 don't understand why your staff are not being subjected
22 to AB 60.

23 (Applause)

24 MS. ALBA: When Wally -- when we met with

1 Senator Alarcon and Wally and the rest of our guys who
2 represent us, we asked them if their staff was going to
3 be held under this measure, and they said no. Clearly,
4 it must be -- there must be some people besides the
5 unions that need to be thought about -- besides union
6 people, there must be other people that need to be
7 consider when you consider implementing this measure.

8 COMMISSIONER DOMBROWSKI: Ma'am, you have an
9 effective association, the Restaurant Association, that's
10 involved with us. Jon Ross spoke here this morning. I
11 mean, the question, I don't think, is that -- we do have
12 the authority to establish exemptions. The question is
13 how you get three votes.

14 So, I would suggest you work on the process
15 through your association.

16 COMMISSIONER CENTER: Put your guys to work.

17 MS. ALBA: Well, I'm here because I don't want
18 to sit back and let somebody else do the work that hasn't
19 been accomplished fully. And I want you to know that
20 there are real, living, breathing people out there who
21 are going to be affected by this, that there are gals who
22 have problems, that have a child and need to work. We
23 employ all these people, they're all our employees. And
24 they want the freedom of choice, because I think that's

1 what we're about.

2 And, yes, we have talked to CRA about this.

3 Thank you.

4 COMMISSIONER CENTER: Okay. Thank you.

5 James Martens.

6 COMMISSIONER BROAD: He spoke.

7 COMMISSIONER CENTER: He already spoke.

8 MR. SIMMONS: If I can make a point, I was in a
9 -- yeah -- I was listed as a group, and these people came
10 at in at a quarter to nine this morning, and they have
11 not --

12 COMMISSIONER CENTER: I'm going through the
13 list.

14 MR. SIMMONS: But they're just not on the list,
15 because they were listed as a group. That's my point.

16 COMMISSIONER CENTER: Well, when we get done
17 with the list, they can speak, if we're still here at
18 six.

19 AUDIENCE MEMBER: (Not using microphone) We've
20 also been here early. We've all been here early.

21 COMMISSIONER CENTER: Is there James Martens
22 here, please?

23 COMMISSIONER BROAD: He spoke.

24 COMMISSIONER CENTER: Okay.

1 Debbie Harns (sic). Debbie Harns (sic).

2 AUDIENCE MEMBER: Harris.

3 COMMISSIONER CENTER: Harris, sorry. Okay.

4 MS. NOWICKI: I'm last on the list, I think.

5 I'm Donna Nowicki, N-o-w-i-c-k-i, Children's Hospital of
6 Los Angeles. I'm a nurse practitioner and family
7 practice nurse.

8 And the only thing I'm going to add to what's
9 been said already is just, one, I want advanced practice
10 to be looked at again, because I think there's some
11 misunderstanding of what advanced practice does. And
12 number two, then, if jobs really are being threatened --
13 if I leave -- I start at 6:15 -- if I leave at 2:45 in
14 the afternoon, I leave when the emergency rooms are just
15 getting busy, when the clinics are just getting busy.
16 I'm a consultant. They call me. They expect me to be
17 there.

18 They're threatening with substituting nurse
19 practitioners with physicians' assistants, because
20 physicians' assistants are not mentioned in this bill.

21 So, our jobs are being threatened, and I just --
22 I just want to leave that where it is. I'll send you a
23 letter.

24 COMMISSIONER CENTER: Thank you.

1 MS. NOWICKI: Thank you.

2 COMMISSIONER CENTER: Susan Carson.

3 MS. CARSON: I think everything's in my
4 testimony I'll give you.

5 COMMISSIONER CENTER: Thank you.

6 Fred Mills.

7 (No response)

8 COMMISSIONER CENTER: Marianne Cotter.

9 (No response)

10 COMMISSIONER CENTER: Cynthia Everett.

11 AUDIENCE MEMBER: (Not using microphone) She
12 already spoke.

13 COMMISSIONER CENTER: Kari Ratterich (sic), from
14 Longs Drugs.

15 (No response)

16 COMMISSIONER CENTER: Jane Downs.

17 MS. DOWNS: I'll be very brief. My name is Jane
18 Downs, D-o-w-n-s. I come with no union or lawyer. I'm a
19 self-made woman. I have a company called Along Came
20 Mary! Productions. We are a catering and party
21 production company.

22 We are an industry all of our own. We are a
23 party production and catering company. We range in
24 events from 100 people to 5,000 people. We employ people

1 sometimes one day a week for 12 hours. Sometimes these
2 people work for us ten times in a year, and that's it.
3 But sometimes it's 500 people at a time, and that's the
4 volume for us.

5 I'm sure that AB 60 was not meant to devastate
6 small businesses, but it will. It will hurt us very
7 badly. We would like to ask for an exemption. I don't
8 know who to go to. We don't have a union or labor
9 organization. We are unto ourselves.

10 On a related note, when the law changed a couple
11 of years ago so that it was a 40-hour workweek, we raised
12 what we pay people. We don't pay one person under \$10.00
13 an hour, not one. And we did that to allow for the
14 change so that people would get basically what they got
15 before. And so, when that law changed, we thought it was
16 there for good. We didn't think that it would change in
17 a couple of years based on some legislation.

18 So, I think we stand alone. I doubt if there
19 are other people in my industry here, but I'm fighting
20 for my company. This would be a huge -- hundreds -- at
21 least, I think, between \$50,000 and \$100,000 a year this
22 would mean to us in overtime. We had a party last week
23 for 8,000 people. We had 600 people employed. They
24 worked on an average of 12 to 14 hours in one day.

1 That's all they worked the rest of the whole week.

2 That's all. Thank you.

3 COMMISSIONER CENTER: Thank you.

4 (Applause)

5 COMMISSIONER CENTER: Hermie --

6 MS. MONTANI: (Not using microphone) Yes.

7 Hermi Montani, right here.

8 COMMISSIONER CENTER: Yeah.

9 (Laughter)

10 COMMISSIONER CENTER: Bingo.

11 MS. MONTANI: You know, I have the same problems
12 as everybody, and I come in front of you to talk to you
13 about a solution.

14 I am in the cheese manufacturing business, and I
15 come here not to represent my employer; I come here to
16 represent my employees. My employees were very much in
17 tune with what the law was before. And you know how it
18 is, once you get a taste of something good, you don't
19 want to go back to that other stuff, in reference to what
20 you mentioned before. We worked 8 hours, and that was
21 life, and that's all they had. Now they got a taste of
22 12 hours. At the beginning, they didn't really want it.
23 They got a taste of 12 hours.

24 We have single moms. And what they do is they

1 switch and they take care of each other's kids, because
2 we have two teams, Team A and Team B. We have fathers --
3 this is a small community -- that's about 300 employees.
4 We have fathers that take turns in coaching the soccer
5 team for their kids, because they all go to the same
6 soccer team. We have the coaches and the assistant
7 coaches.

8 And our employees, we met with our employees, we
9 heard the petition, we went to an attorney. We wanted to
10 find out could we do what they wanted. They said no, the
11 law didn't allow it. We came with -- they came up with a
12 solution: "Do the alternative workweek, 10-hour day, pay
13 us 2 hours of overtime, so we end up working 12 hours.
14 You're happy, we're happy." One week, they work three
15 days; the following week, they work four days. At the
16 end of the pay period, because we have biweekly pay
17 periods, they end up working over 80 hours, 84 hours, but
18 they end up getting paid like 12 or 13 hours of overtime.
19 We as an employer do not mind paying that overtime.

20 So, what I am here to ask of you -- and I
21 submitted information that was written up by our
22 employees, because we wanted to be as real as possible --
23 you have to dot all your i's and cross all your t's;
24 otherwise, you get slapped.

1 I'd like for you to please consider that, read
2 it, and say yes to our employees. They can have 12
3 hours. We're willing to pay the overtime. So, if you do
4 say yes, is it going to be before January 1st?
5 Otherwise, I have been practically interviewing employees
6 up the ying-yang, not knowing if we're going to hire them
7 or not. And I'm being honest with them, and I told them
8 that maybe we will hire them throughout the rest of the
9 year because our business is growing. Okay?

10 And that's all I'm here to ask. I come with a
11 solution. I have the same problem as everybody else, but
12 I come with a solution. And I'd like for you to please
13 consider that solution and allow us to put that forth.

14 Do you have any questions?

15 COMMISSIONER McCARTHY: No, but I have a quick
16 comment. I realize the lateness of the day, so I'll keep
17 it brief.

18 But, you know, the Commission does have, as I
19 say, authority, it seems to me, to make many exemptions,
20 but in reality, the number of exemptions that can
21 possibly be granted, simply for calendar reasons if
22 nothing else, is limited.

23 And I would really urge people to not get
24 sidetracked necessarily exclusively with this Commission.

1 I mean, there are other ways of skinning a cat. And I
2 would urge you, all of you, anyone who's upset, to write
3 their legislators --

4 MS. MONTANI: We did. I did.

5 COMMISSIONER McCARTHY: -- and write the
6 Governor and --

7 MS. MONTANI: I did.

8 COMMISSIONER McCARTHY: Well, do it again. Do
9 it more often. I mean, it's the old premise: if you
10 can't make them see the light, maybe they'll feel the
11 heat.

12 And --

13 MS. MONTANI: Well, I didn't vote for this
14 Governor.

15 COMMISSIONER McCARTHY: Well, whatever. I
16 wouldn't say that in your letter, but I -- no, I am
17 serious, that there is -- you know, maybe in the longer
18 term, whatever --

19 MS. MONTANI: I voted for people that I think
20 are really good; I don't care what party they belong to.

21 COMMISSIONER McCARTHY: But I -- turn the heat
22 on.

23 MS. MONTANI: I did. And you know what?
24 They're already third-degree burned, and they're still

1 not feeling any pain, you know, because he's not the one
2 that has to deal with the rest of us labor people.

3 Thank you.

4 COMMISSIONER DOMBROWSKI: Hang on.

5 COMMISSIONER CENTER: Please --

6 COMMISSIONER DOMBROWSKI: Just as a take-off of
7 what you said, I talked with Commissioner Broad about
8 this, and I'm going to submit a letter to the Labor
9 Commissioner, but a couple of companies that contacted us
10 and raised a question about, if they voted in alternative
11 workweeks and these alternative workweeks entailed
12 working more than 10 hours, but they were willing to pay
13 overtime for anything over 10 hours, was that
14 permissible? And as far as we can see, from our
15 perspective, we think that is. And we're going to submit
16 that to the Labor Commissioner and just get that abated.

17 MS. MONTANI: Thank you. I really, really
18 appreciate even that you're considering that thought,
19 really. I really do. Thank you.

20 COMMISSIONER CENTER: Thank you.

21 Bob Hay.

22 MR. HAY: My name is Bob Hay, H-a-y, General
23 Manager of Poly-Tainer, Incorporated, a plastics flow-
24 molding, manufacturing and molding company, in Simi

1 Valley, 250 employees. We're working 12-hour shifts. We
2 are on 24-7. Our machines run continuously. All our
3 employees, it's the same deal. Everybody wants to stay
4 on 12-hour shifts. Once they've been there, they don't
5 want to go back. Yeah, we may have before, but we don't
6 want to do it again.

7 So, if you feel comfortable with going to AWS,
8 voting in a two-thirds vote on that 10-hour straight time
9 and 2 hours overtime, I mean, is that something I can
10 take back and implement tomorrow?

11 COMMISSIONER BROAD: Well, I suggest that you
12 take a look at AB 60. I'm willing to sign the letter
13 asking for an interpretation of this with Commissioner
14 Dombrowski.

15 However, if you read -- and I don't want to be --
16 - I'm going to say this on the record, and I'm not -- I'm
17 not trying to confuse you, but Section 511(b) of the
18 Labor Code, which is a new section, says:

19 "An affected employee working longer than
20 eight hours but not more than 12 hours in a day
21 pursuant to an alternative workweek schedule
22 adopted pursuant to this section shall be paid
23 an overtime rate of compensation of no less than
24 one and one-half times the regular rate of pay

1 of the employee for any work in excess of the
2 regularly scheduled hours established by the
3 alternative workweek agreement and for any work
4 in excess of 40 hours per work."

5 Then it goes on to say for hours beyond 12, it's double
6 time. And that seems quite clear on its face to me, that
7 if you have a regularly scheduled 4-10 arrangement and
8 you require employees to work two more hours, that you
9 would owe one and a half times their normal rate of pay,
10 overtime pay, for hours 10 through 12, or 10 and 11.
11 That is my sense of what the statute --

12 MR. HAY: 11 and 12. 11 and 12.

13 COMMISSIONER CENTER: Yeah, 11 and 12.

14 COMMISSIONER BROAD: Yeah. 11 and 12 -- I'm
15 sorry. 11 and 12. That, to me, seems quite clear on the
16 face of the statute. And the difficulty --

17 MR. HAY: Well, the problem --

18 COMMISSIONER BROAD: -- the difficulty for us is
19 that it's not really appropriate for us to sit up here
20 and pass on people's individual questions as such. That
21 is the interpretive role of the Labor Commissioner. And
22 we're not meant -- it's not meant to dodge this. And
23 perhaps it's appropriate for us, when we issue this
24 interim wage order, that on the back of that wage order

1 where we are allowed to put our reasons for why we're
2 doing what we're doing, that we address this issue. And
3 I would encourage you to write us and say, "Please
4 address this issue when you draft your Statement of
5 Reasons."

6 And hopefully, between now and that time, we'll
7 have an opinion back from the Labor Commissioner. It may
8 already be in the document that the Labor Commissioner
9 gave to us today. I don't know -- we've haven't had a
10 chance to read that. So -- and you should probably read
11 that as well.

12 But, I think, in the meantime, you know --

13 MR. HAY: Well, here is the issue, though. I
14 mean, I've talked to at least a dozen lawyers. I mean,
15 you can't get the same guy to say the same thing in the
16 same sentence. I mean, they're constantly changing their
17 view of what is this animal and how do we skin it.

18 And so, as they look at it, they said, "Well, if
19 you do that, then you're really running 12-hour shifts,
20 and that's not what the law is trying to do. They're
21 trying to get you to go to like four 10's, something that
22 lends to 40 hours a week."

23 COMMISSIONER BROAD: Well, see, I disagree with
24 that. What the law says is that if you work a person

1 beyond 8 hours a day, you pay time and a half, beyond --

2 MR. HAY: 12, double.

3 COMMISSIONER BROAD: Right. It is a -- overtime
4 is a penalty, in effect. It's always been a penalty on
5 employers for working longer than, quote, the "standard"
6 8-hour day. When you have an alternative workweek,
7 you're sort of shifting that arrangement of what the
8 standard day is. And that's what AB 60 does, in my
9 opinion.

10 And then, I think the bill quite clearly says
11 that beyond that schedule, you have to pay overtime.
12 Now, that doesn't say you can't go beyond that schedule.
13 And, you know, with all deference -- I know -- I'm a
14 lawyer, married to a lawyer, and know a lot of lawyers --
15 but a lot of lawyers can be wrong too, and a lot of
16 lawyers can give advice which, you know, may get their
17 clients into litigation rather than solving a problem.
18 But I think you can get a more definitive answer by
19 writing the Labor Commissioner and getting an answer.
20 And I think that that's something that you can take to
21 the bank.

22 MR. HAY: Okay.

23 AUDIENCE MEMBER: (Not using microphone) Where
24 can we get a copy of that -- I mean, what they just gave

1 you?

2 AUDIENCE MEMBER: (Not using microphone) He
3 indicated that it would be on the Web within a week.

4 COMMISSIONER CENTER: On the Web site?

5 AUDIENCE MEMBER: (Not using microphone) On the
6 DLSE Web within a week.

7 MR. HAY: Then, unless you have any other
8 questions, I've already submitted testimony. And I just
9 wanted you to have this, but I don't think these people
10 have a clue, what the hell they're talking about, because
11 this is really going to effect these manufacturing
12 facilities in the most negative fashion. And I told that
13 to Wally while he was here, and I gave him a copy of what
14 I submitted to you.

15 I don't want to take any more time.

16 COMMISSIONER CENTER: Thank you.

17 Is this Gabie Lopez?

18 MS. LOPEZ: I just want to say that I wasn't
19 going to be here today. The only reason I came in was
20 that, this morning, one of my employees brought four
21 sheets of signatures that various employees got together.
22 And I knew Bob was coming -- and he's my co-worker that
23 just came and spoke to you about the problems that
24 they're going to have if we go back to 8 hours. Two of

1 them are single members who -- the way we work, they are
2 able to live in the same home. Both of them work 12
3 hours. They get overtime every week. They each have two
4 children. But because of the way they work, they're able
5 to not pay childcare, not have to pay for carpooling
6 because they swap cars.

7 So, where is helping the employees and where is
8 it hurting them? I just -- I don't know. The only
9 reason I came in is to bring the petition that they
10 signed. It is in Spanish. Well, basically, they think
11 that it's our decision to go back to five days, 8-hour
12 days -- five 8-hour days. And they basically are
13 petitioning for, please, the company to take them into
14 consideration.

15 And what I just told her was, understand that
16 this isn't something that we are doing. It's something
17 that the company cannot afford the cost to continue to
18 work 12 hours. And that's why we'll go back to the 8
19 hours.

20 So, even though it is in Spanish, it was
21 something that they brought to me in the morning, and I
22 thought that the least I could do was would bring it in
23 and submit it to you with the letter that Bob drafted.

24 COMMISSIONER CENTER: Thank you.

1 Thomas Halter.

2 (No response)

3 COMMISSIONER CENTER: John Zaimes.

4 (No response)

5 COMMISSIONER CENTER: James Davis.

6 MR. DAVIS: Hi. James Davis. And after sitting
7 here all day, I've learned two things: one, the Labor
8 Code has nothing to do with delivering babies; and,
9 number two, if you masturbate long enough, you go blind.

10 (Laughter)

11 MR. DAVIS: The reason I'm here is I'm one of
12 the plaintiffs' counsel who are prosecuting the class
13 action cases on the exempt employee issue, where
14 companies are taking a thousand employees at a time and
15 saying they're exempt, and then working them 80 or 90 or
16 100 hours a week.
17 And when you approach them on it and you say, "But" --
18 they're entitled to individual prove-ups of exempt status
19 -- "when are you going to do it?," the answer is, "Never.
20 You can't make us. We don't got to."

21 And what I would like to see, and what I'm
22 requesting of the Commission, either in the wage orders
23 themselves under the section that refers to
24 administrative, professional, managerial exemptions, or

1 on the note on the back, simple language that says, "You
2 have to do the audit before you make them exempt. You
3 can't make them exempt by a blanket rule, work them
4 hundreds of millions of dollars of overtime, and then
5 wait to get caught." It's a criminal violation to not
6 pay wages. And it shouldn't take plaintiffs' counsel
7 suing companies for hundreds of millions of dollars to
8 get the companies to realize this isn't how the system
9 works. And somebody needs to do something about that.

10 COMMISSIONER BROAD: Well, let me just ask you
11 this question -- I mean, I'm quite sympathetic to this,
12 and there's been tremendous abuse of this in the last
13 decade -- but, I mean, if we require them to somehow
14 perform an audit, they're just going to fake the audit if
15 they want to reach the right result. So, what's your
16 response to that?

17 MR. DAVIS: The answer is, is that we have the
18 experts that do those sort of audits for us. And we know
19 that the audits can't be faked, for the simple reason
20 that, one, you look at what the company's manuals and
21 procedures and policies are. One of the things that I
22 always ask the defense experts and the company presidents
23 is, "Why don't you just incorporate the statutory
24 language in your manual and then train your managers so

1 that they know what 'exempt' means?" That seems like a
2 real simple thing. "We don't want to, we never have,
3 we're not going to."

4 And in regards to the time, it's very simple.
5 You do you time studies. And despite the fact that I've
6 taken on a labor expert who says, "Well, yeah, I watched
7 the guy for six hours," "Yeah, but did you watch him for
8 a year?," because that's the issue. "Nobody ever does
9 that."

10 And that's why -- what we would like to see is
11 the just the power to be able to go in on a preliminary
12 injunction and say, "If you haven't audited the class of
13 1,000 people, don't treat them as exempt." The burden is
14 on the employer, but there's no enforcement, other than
15 paying money, a million dollars down the road.

16 COMMISSIONER CENTER: We're going to have a
17 special hearing on duties and exemptions and -- later on.
18 You should be at that hearing to testify --

19 MR. DAVIS: Thank you very much.

20 COMMISSIONER CENTER: -- and bring some data.

21 Thank you.

22 B. J. Snell.

23 DR. SNELL: (Not using microphone) I've already
24 testified.

1 COMMISSIONER CENTER: Okay. M. K. --

2 MS. DETE: (Not using microphone) Dete.

3 COMMISSIONER CENTER: Dete.

4 MS. DETE: (Not using microphone) Ginny

5 Pinkerton will read our remarks, for the California

6 Association for Health Services at Home.

7 COMMISSIONER CENTER: Are they written remarks?

8 MS. PINKERTON: Brief, yes. Yes.

9 COMMISSIONER CENTER: Okay, because we're down
10 to fifteen minutes, ten minutes, to get out of here, so -

11 -

12 MS. PINKERTON: Well, if there's such a thing as
13 triple time, I think we're on it now.

14 My name is Ginny Pinkerton, and I'm the chair of
15 the board of directors for the California Association for
16 Health Services at Home, or CAHSAH. And I was an owner-
17 operator of a home care agency for eight years, and I'm
18 now the director of quality management for a company
19 called AccentCare.

20 I want to thank you, at this late hour of the
21 evening, for permitting me to share the concerns of
22 CAHSAH and home care providers, which I don't believe
23 I've heard too much of today.

24 The California Association for Health Services

1 at Home represents home care providers throughout
2 California, including licensed Medicare-certified home
3 health agencies, hospices, home care aide organizations,
4 home infusion pharmacies, home medical equipment dealers,
5 as well as independent clinicians, rehabilitation
6 agencies, and so on. And the hallmark of home care is
7 the ability to provide affordable, personalized care in a
8 setting that the client and the patient prefers, which is
9 in their own home. And as you've heard from the midwives
10 earlier, a lot of times these situations don't follow an
11 8-hour workday.

12 There are approximately 1,180 home health
13 agencies in California. And in the past two years, 235
14 agencies of those agencies were closed. However, there
15 is an expected increased need for registered nurses for
16 home health, at about 11.37 percent over the three-year
17 period of 1997 to 1999. And that is the second highest
18 rate of growth for all our employer categories.

19 The need for home care will only increase over
20 time. Baby Boomers will reach the age of 60 by the year
21 2006, in waves of more than one million per year on a
22 national basis. And California seniors age 65 and older
23 will reach 4.1 million statewide by 2005. So, the need
24 for home care is growing. And that reflects not only the

1 public preference for home and community-based care
2 rather than institutional care, but California's policy
3 preference as well, which includes the concept of aging
4 in place and independent living for the elderly and the
5 disabled.

6 This will manifest itself in the need for
7 additional skilled home care providers and home care
8 aides, as noted by the Development Department's
9 projections, which project an approximate increase of 81
10 percent in the need for personal home care aides and so
11 on in the healthcare industry by the year 2002. With the
12 need and desire for healthcare expected to increase, the
13 need for flexibility to provide these services in the
14 homes of the disabled and the elderly will become
15 increasingly important.

16 Many home health and hospice agency patients
17 require visits that are beyond the normal workday to
18 receive needed medical services in their home. Without a
19 flexible work environment, which has been discussed many
20 times today, interruptions in patient care as a result of
21 shift changes will only increase. Not only will the
22 provisions of AB 60 disrupt continuity of care received
23 by patients, it limits both agency and staff flexibility
24 in responding to patient needs in the home.

1 For example, a developmentally disabled child
2 receives skilled nursing care in the home 12 hours a day.
3 Because of the nursing shortage, which has also been
4 discussed today, and for continuity of care reasons, it's
5 critical to have that shift covered by one nurse. This
6 patient would then be institutionalized if home care
7 providers cannot provide that shift care.

8 The other example would be a family of a loved
9 one who's dying able to maintain that person at home only
10 because of the respite provided at night by 12-hour shift
11 care and the availability of hospice nurses at any hour
12 of the day and night -- again, affordable because of the
13 exemption from overtime. The hospice patient also needs
14 an evening or night visit for pain control or assisting
15 with other end-of-life issues. Without this flexible
16 care, the terminal client would be more than likely
17 ending their life in a skilled nursing facility without
18 their family present.

19 You know, I won't even really talk to you much
20 about the employee flexibility issues that are also
21 critical in the home care industry. That's what attracts
22 nurses to this industry. And if that ability were
23 compromised or not maintained, it would not only impact
24 the ability of employees to maintain that flexible work

1 schedule, but also serious access to care issues as well.

2 Another point I wanted to just make very
3 quickly, and that is the cost of overtime. And the
4 reason I bring that up is important, is that
5 approximately 83 percent of home health care in
6 California is paid for by Medicare and MediCal programs,
7 neither of which provide for overtime. Medicare
8 decreased its reimbursement for home health services by
9 20 percent with the Balanced Budget Act of 1997, and the
10 MediCal program is on a fixed reimbursement schedule,
11 which does not allow for any overtime.

12 So, for example, a child, a ventilator case, a
13 ventilator-dependent child or a child with G2, a
14 medically fragile child that needs 16 hours of care of
15 home, you know, what's the option then? The option of an
16 agency with slim margins is to reduce the care to that
17 child, reduce the care to that senior, or reduce benefits
18 to employees.

19 So, we would urge you again to continue to
20 consider maintaining that 12-hour shift exemption for our
21 industry.

22 Thank you.

23 COMMISSIONER CENTER: Thank you.

24 Who's all left to testify?

1 (Show of hands)

2 MR. DIAZ: Well, there's a problem -- I have a
3 question, Mr. Chairman.

4 COMMISSIONER CENTER: Yeah.

5 MR. DIAZ: I drove 175 miles to get here to be
6 the first one to sign in on the sheet, and I have not
7 been called, nor has the colleague. We've lost a couple
8 of our witnesses.

9 COMMISSIONER CENTER: Well, I called the first
10 one on the sheet. What sheet were you on?

11 MR. DIAZ: The first sheet for testifying on AB
12 60, this morning, when they opened the doors to the
13 building. But that's here nor there.

14 COMMISSIONER CENTER: Yes.

15 MR. DIAZ: We had submitted some testimony in
16 Sacramento. We represent the California Nursing Home
17 Association.

18 COMMISSIONER CENTER: Written testimony or oral?

19 MR. DIAZ: Well, it was submitted in writing,
20 but we also had individual owners here today.
21 Unfortunately, somewhere that list is missing. I spoke
22 with the clerk about four hours ago, what happened to it,
23 and it's not there. And we also still have an owner-
24 operator here. But I know the time is running late.

1 We ditto most of the comments by all the
2 professional nursing categories. We have a significant
3 labor shortage.

4 Without making it an issue, I just wanted to
5 make you aware that we were one of the first people to
6 sign in.

7 COMMISSIONER CENTER: Okay.

8 MR. DIAZ: And that sheet is not --

9 COMMISSIONER CENTER: Well, part of the problem
10 --

11 THE REPORTER: What is your name, sir?

12 MR. DIAZ: Joseph Diaz.

13 COMMISSIONER CENTER: There's just a couple of -
14 - if you didn't get the copy of the draft orders that's
15 on the Internet, at www.dir.ca.gov, and also you can
16 submit written testimony, if you don't get to testify, to
17 that e-mail address or to the IWC at 1121 L Street, Suite
18 300, Sacramento.

19 MS. VERA-SCHUBERT: Commissioner?

20 COMMISSIONER CENTER: Yes.

21 MS. VERA-SCHUBERT: I have not heard from my
22 industry at all, and I'm not sure if you're calling it a
23 night. But I also got up super-early, and I had a big
24 problem to find out who would take care of my kids if I

1 came.

2 COMMISSIONER CENTER: Anybody else that has not
3 heard from their industry here?

4 (Show of hands)

5 COMMISSIONER CENTER: Which industry are you
6 from?

7 AUDIENCE MEMBER: (Not using microphone) We're
8 pharmacists. I don't know if that's healthcare or what,
9 but --

10 MS. VERA-SCHUBERT: Yeah. I'm also a
11 pharmacist. And if I could come up --

12 COMMISSIONER CENTER: Why don't both of you come
13 up together?

14 MS. VERA-SCHUBERT: Okay. I'm a pharmacist.
15 Thank you very much.

16 My name is Monica Vera-Schubert, and I'm a
17 community pharmacist and have been for over ten years.

18 If you talk about the image of pharmacists --
19 and that was mine fifteen years ago when I decided to go
20 to college and what I wanted to do -- I thought of a
21 pharmacist as a person who stands behind a counter and
22 transfers pills from one container to the next. That
23 image still stays alive, and I feel that that is one of
24 the reasons for this law. And I can tell you, when I

1 worked in a pharmacy as a college students, my eyes
2 opened up.

3 Since I've been a pharmacist, I've been able to
4 -- I feel I've been able to make an impact in lives.
5 I've seen not only myself, but other pharmacists,
6 actually deal with drug interactions, catch and counsel
7 prescriber errors, combat food-drug interactions. Who
8 best but the pharmacist would know about medication?

9 But not all just about the profession, but
10 talking about my personal life also, when I chose --
11 choose a company to work for, a 12-hour shifts, it was
12 for purely reasons that were financial, but now it evolve
13 to the reasons of having two small kids. I want to be at
14 home with my kids. I love working seven days out of the
15 fourteen. I won't be having that luxury any more.

16 I have -- when I -- when my kids were small, I
17 hired babysitters in the house. Those stories that you
18 hear about kids being abused? That happened to me. My
19 biggest worry is to leave my kids alone with a stranger.
20 And right now, I'm very lucky to have my parents take
21 care of my kids. When my parents become senior citizens,
22 they can't do it past the schedule that I've been blessed
23 with. So, I'm asking you.

24 Also, in my free time, as a lot of other

1 pharmacists enjoy their free time, we go out and we do
2 patient education. Right now, I work in a pharmacy
3 school and we go out to the L.A. Unified School Districts
4 to kids that are under-served, that are absent, because
5 they don't understand asthma. I go out and I teach them
6 all about asthma.

7 Also -- and I'll talk about it real quick -- I
8 go to mentor. I talk to kids -- again, under-served
9 areas -- about the importance of higher education.

10 So, please, I'm asking you to consider
11 pharmacists as health professionals, but also consider
12 them -- consider the time and their lives, the schedules
13 that they've adapted to, and how it will affect not only
14 them, but their families.

15 Thank you.

16 MS. FLASTER: Annette Flaster, staff pharmacist
17 at a hospital for thirty years. And I just have a couple
18 of things to say.

19 I was very disappointed when I found out that we
20 were going to be -- lose our professional status -- and
21 that's basically what it becomes. After thirty years,
22 I've been told that I really don't know if I'm being
23 taken advantage of, and that I'm a fool if I work 10-hour
24 shifts.

1 And another thing that -- you know, nurses have
2 their shifts, they -- you know, they deal with the
3 patients directly. We don't deal with them, necessarily,
4 directly. However, when there is a rush in the hospital
5 and things get busy, you can't leave exactly at the time
6 you're supposed to leave. Now that I work for a private
7 corporation, they are very indignant. You have to check
8 out. We don't pay overtime.

9 Well, for years, you just stayed and you worked,
10 and that was it. You know, you didn't make a big deal
11 about it. You just did your job and you went. And now
12 you can't take the risk of checking out, coming back,
13 helping your colleague. And then what happens if you
14 should get injured? You know, you're not under
15 compensation any more because you're back -- you're not
16 there. But you can't see somebody working along and
17 possibly, you know, having the patient care jeopardized
18 because of things like that, in a timely manner, because
19 there isn't the staff. And this is specifically --

20 COMMISSIONER DOMBROWSKI: Excuse me. Excuse me.

21 MS. FLASTER: Yes, sir.

22 COMMISSIONER DOMBROWSKI: Is your bottom point
23 that you want to have 12-hour days?

24 MS. FLASTER: I personally work 10-hour shifts.

1 COMMISSIONER DOMBROWSKI: Today, under the law,
2 you can go into four 10-hour days.

3 MS. FLASTER: Well, I'm not sure what the
4 company will do because it's a big corporation.

5 COMMISSIONER DOMBROWSKI: Okay.

6 MS. FLASTER: However, the thing is, it's not
7 just that. It's the fact that it's overtime. Why should
8 one hour of pharmacy work be more important than another
9 hour? In my mind, every hour I work is equally valid as
10 another hour. I don't think a pharmacist should be paid
11 overtime. You know, that -- that, in fact, limits my
12 working ability. Right now, I can go work at a sister
13 hospital --

14 COMMISSIONER DOMBROWSKI: Well, just --

15 MS. FLASTER: -- and work an extra day and, you
16 know, not have to worry about it because I'm an exempt
17 employee. So, I can work here extra and there extra, and
18 I can work and earn my keep.

19 COMMISSIONER DOMBROWSKI: I understand. And we
20 -- just -- we have heard testimony now in three different
21 -- or two different hearings from pharmacists, so the
22 issue is not -- has been brought in front of the IWC.
23 And I, obviously, am one who is sympathetic to that, as
24 my other commissioners know.

1 We are trying to figure out how to address that.

2 MS. FLASTER: Right.

3 COMMISSIONER DOMBROWSKI: But I know there's one
4 other gentleman who wants to talk, and we're running out
5 of time.

6 MS. FLASTER: Do I pay malpractice insurance?
7 Am I no longer suable if I'm not a professional? That's
8 my question, you know. And I don't like the idea that,
9 you know, my representative, Wally Knox, felt that they
10 know better how to run our lives and take away, again,
11 personal freedoms that are not -- you know, why don't
12 state employees have to have the same restrictions put
13 upon them as private-sector employees? How are they
14 better? I don't think they are. I mean, that's my
15 point.

16 COMMISSIONER CENTER: Thank you.

17 MR. GOLDSTEIN: Hi. I'm Morrie Goldstein. I
18 work for the Guild for Professional Pharmacists. That's
19 the largest bargaining unit for pharmacists in the State
20 of California.

21 I've submitted some documentation to you, and
22 that was to ask for an exception -- exemption for the
23 graveyard, or nighttime-graveyard pharmacists. This is
24 not -- I'm not here for the union pharmacists, of course,

1 so that bargaining unit will override this AB 60 without
2 a problem. What we're concerned about is the other
3 pharmacists, the nonunion pharmacists. I'm telling you
4 that, if you can, look for an exemption for these seven-
5 day-on, seven-day-off graveyard pharmacists, which they
6 love, and that's the lifestyle for them.

7 I've never been in a meeting where everybody --
8 all the employees were so damn happy. I really feel bad
9 for the pharmacists here, what an unhappy group they are
10 -- I'm going to have to yell at them. All the guys here
11 seem to be -- the employers seem to be treating them
12 perfectly. I'm sorry. We're glad that you passed AB 60.
13 It's terrific. We support it wholeheartedly.

14 There are certain exemptions, just like we
15 talked about. But let me tell you, if all employers --
16 and if there are any still left here, they should listen
17 -- if all of you treated your employees as happily as --
18 as graciously as all the other people here do, or at
19 least seemingly does, we wouldn't have this bill. This
20 bill came about because pharmacists were being treated
21 sub-human. A bathroom break was unheard of.

22 Barry, I think you've heard some of these
23 stories through the CPHA, and I won't repeat any of them.
24 Anyway, do consider the exemption for the graveyard

1 pharmacists.

2 Thank you.

3 COMMISSIONER CENTER: Thank you.

4 And I'd announce that our next hearing will be
5 at the California State Capitol, June -- excuse me --
6 June, I wish it was June, but it's not, it's January --
7 January 28th in Room 4203, I think. And we'll get notice
8 out. We're looking at ten, maybe earlier.

9 And thanks for everybody --

10 COMMISSIONER DOMBROWSKI: Chuck, just one thing,
11 I think, before you close.

12 We don't know if it's John's last meeting or
13 not, and I just would like to have the Commission
14 recognize his efforts in the last four years.

15 COMMISSIONER CENTER: Yes. And especially
16 because I served with John --

17 (Applause)

18 COMMISSIONER CENTER: -- during some very
19 volatile hearings on the repeal of the 8-hour day.

20 COMMISSIONER McCARTHY: Oh, this is nothing,
21 really!

22 COMMISSIONER CENTER: Yeah, this is easier.

23 COMMISSIONER McCARTHY: I won't tell you what
24 happened.

1 COMMISSIONER CENTER: We had guns at one
2 hearing. It was pretty cool.

3 Thanks for everybody's cooperation.

4 Do you want to make a motion to adjourn?

5 COMMISSIONER DOMBROWSKI: So moved.

6 COMMISSIONER CENTER: Sorry.

7 AUDIENCE MEMBER: (Not using microphone) I just
8 have one question for you on something that you said that
9 --

10 COMMISSIONER BROAD: How about afterwards?

11 COMMISSIONER CENTER: Yeah, afterwards.

12 AUDIENCE MEMBER: (Not using microphone) Oh,
13 I'm so sorry.

14 COMMISSIONER CENTER: Anybody make a motion to
15 adjourn?

16 COMMISSIONER DOMBROWSKI: So moved.

17 COMMISSIONER BROAD: Second.

18 COMMISSIONER CENTER: All in favor, aye?

19 (Chorus of "ayes")

20 COMMISSIONER CENTER: Motion carries.

21 Thank you.

22 (Thereupon, at 6:00 p.m., the public
23 meeting was adjourned.)

24 --o0o--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

CERTIFICATE OF TRANSCRIBER

--oOo--

21
22
23 I, Cynthia M. Judy, a duly designated
24 transcriber, do hereby declare and certify under penalty

1 of perjury under the laws of the State of California that
2 I transcribed the five tapes recorded at the Public
3 Meeting of the Industrial Welfare Commission, held on
4 December 15, 1999, in Los Angeles, California, and that
5 the foregoing pages constitute a true, accurate, and
6 complete transcription of the aforementioned tapes, to
7 the best of my abilities.

8

9 Dated: December 30, 1999

10

11

CYNTHIA M. JUDY, Transcriber

12

13

14

15

16

17

18

19

20

21

22

23