

06-07--1

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

PUBLIC MEETING
WEDNESDAY, JULY 5, 2006

CAL/EPA BUILDING
BYRON SHER AUDITORIUM
1001 I STREET
SACRAMENTO, CALIFORNIA

REPORTED BY:

KATHY L. SWINHART
CSR NO. 10150

CAPITOL REPORTERS (916) 923-5447

1

□

1

PARTICIPANTS

2

INDUSTRIAL WELFARE COMMISSION:

3

DANIEL CURTIN, Chair
LESLEE C. GUARDINO
WILLIE WASHINGTON

4

Page 1

06-07--1

5 TIM CREMINS
6 HAROLD ROSE

7 STAFF:

8 DEANNA FONG, Legal Counsel
9 MARGUERITE STRICKLIN, Legal Counsel
STEPHANIE E. LEACH

10 ---o0o---

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CAPITOL REPORTERS (916) 923-5447

2

□

1

I N D E X

2

Proceedings

PAGE

3

Speakers:

4

Peter Cooper, California Labor Federation

5

5

Motion/Vote re: California Labor Federation
Petition

5

6

7

Barry Broad, Teamsters, et al.

8

8

Julianne Broyles,

31

California Chamber of Commerce

9		
10	Barry Broad, Teamsters, et al.	39
11	Jerry Haleva, National Armored Car Association	45
12	Lee Sandahl, International Longshore and Warehouse Union	46
13	Barry Broad, Teamsters, et al.	48
14	Motion/Vote to consider petition requesting IWC review and amendment of Wage Orders 1, 4, 7, 9 and 14	49
16	Angie Wei, California Labor Federation	53
17	Jovan Agee, United Domestic Workers of America	58
18	Liberty Sanchez, Teamsters, et al.	58
19	Billie Ann Jones, ACORN	60
20	Andrew Gross Gaitan, SEIU (interpreting)	62
21	Josefa Mercado, SEIU	
22	Raul Alcaraz, Youth Together	63
23	Nan Brasmer, California Alliance for Retired Americans	65
24	Richard Hopson, ACORN	66
25	(Continued next page...)	

CAPITOL REPORTERS (916) 923-5447

□

1

I N D E X (Continued)

2	Proceedings	PAGE
3	Speakers continued:	
4	Julianne Broyles, California Chamber of Commerce, et al.	69
6	Paola Mejia	74
7	Chris Jones, ACORN	77
8	Lara Diaz Dunbar, California Restaurant Association	79
9	Cynthia Rice, California Rural Legal Assistance Foundation	83
10		
11	Jim Abrams, California Hotel and Lodging Association	91
12	Carrie Young,	99

	06-07--1	
13	United Domestic Workers of California	
14	Fannie Brown, ACORN	99
15	Tom Martin,	101
	Small Manufacturers Association of California	
16	Henry Dill	103
17	Motion/Vote for approval of minutes for public	106
18	meeting held June 2, 2006	
19	Motion/Vote on finding re: inadequacy of the	107
20	minimum wage based on IWC investigation	
21	Motion/Vote for appointment of members of a	111
22	wage board established to review the adequacy	
	of California's current minimum wage	
23	Motion/Vote on the charge to the wage board	112
24	established to review the adequacy of	
	California's current minimum wage	
25	Motion/Vote to adjourn	126

---o0o---

4

CAPITOL REPORTERS (916) 923-5447

1

PROCEEDINGS
WEDNESDAY, JULY 5, 2006
8:35 A.M.

2

3

---o0o---

4

CHAIRPERSON CURTIN: Good morning. My name is Danny Curtin. I'm Chairman of the Industrial welfare Commission with the other Commissioners and for those of you who have come to the meeting.

8

We're going to go right in the first item on the agenda, which is consideration of a petition from the California Labor Federation requesting that the IWC conduct a review to raise and index the minimum wage.

12

The first order of business would be for anybody who wishes to comment on that. I also want to make it known to the people in the audience that we will be meeting in a series of meetings and hearings this morning, so that if you don't feel the need to testify now on this issue -- you're welcome to -- you will have another opportunity to

18 do that at, I believe, 10:30.

19 Is that when the second meeting -- 10:00, when our
20 next public meeting comes in.

21 Please identify yourself and if you wish to --

22 MR. COOPER: Yes, Peter Cooper, California Labor
23 Federation.

24 And I would simply urge you to set it for the hearing
25 set to start at 10:00. This is a very important issue.

CAPITOL REPORTERS (916) 923-5447

5

□ 1 Especially we would like to emphasize indexing and would
2 also appreciate refer -- you referring to our significant
3 amount of background documents about the importance of
4 raising the wage and indexing it. And look forward to
5 further discussion at 10:00 a.m.

6 CHAIRPERSON CURTIN: Thank you.

7 Stephanie, did everybody receive those packets?

8 MS. LEACH: Yes.

9 CHAIRPERSON CURTIN: We did. Okay.

10 Any further testimony?

11 Okay. Well, I'm going to put the motion before the
12 Commission to consider the petition and more or less merge
13 it into the next -- for the next meeting, for discussion at
14 the next meeting. So let's just do that.

15 I'll make the -- anybody -- I don't know if it's
16 proper for the Chairman to make the motion.

17 COMMISSIONER ROSE: I'll make the motion. I vote
18 that we do consider Item No. 1.

19 COMMISSIONER CREMINS: Second.

20 COMMISSIONER GUARDINO: Second.

21 CHAIRPERSON CURTIN: Any discussion?

06-07--1
22 Okay. Well, consider the petition approved for
23 review at the 10:00 meeting. And --
24 COUNSEL FONG: Well, do you need to vote?
25 CHAIRPERSON CURTIN: I'm sorry. Four to nothing

6

CAPITOL REPORTERS (916) 923-5447

□ 1 usually works for me, but all those in favor?
2 (A unanimous affirmative vote was cast.)
3 CHAIRPERSON CURTIN: Okay. Opposed?
4 (No response.)
5 CHAIRPERSON CURTIN: Okay. So the motion is moved.
6 Item No. 2 is the -- I don't know if this is a vote
7 item or just an announcement. It looks to me like an
8 announcement.
9 The letter that was received from the Treasurer's
10 office prior to the last meeting regarding the minimum wage
11 and indexing, it was unclear at the time whether that was a
12 petition or just a letter. And the Treasurer's office
13 called and we had several conversations to just clarify
14 that it was not a petition. They just wanted to make it
15 clear that they were supporting the effort by the
16 California Labor Federation to not only raise the wage, but
17 to attach it to an index.
18 So we will not consider their letter as a petition.
19 There's no need to take any further action on that.
20 If there's any comments at any time, please feel
21 free.
22 And then Item No. 3 on the noticed agenda for this
23 morning at 8:30 is the petition submitted by Barry Broad
24 requesting that the Industrial Welfare Commission review
25 and amend Wage Orders 1, 4, 7, 9 and 14 to: (A) eliminate

CAPITOL REPORTERS (916) 923-5447

1 exemption from overtime for commercial drivers whose hours
2 of service are regulated by the U.S. Department of
3 Transportation or the California Highway Patrol; and (B)
4 add language to specify that the overtime provisions are
5 applicable to independent contractor commercial drivers.

6 So we'll proceed right to public comment.

7 MR. BROAD: Good morning. Barry Broad on behalf of
8 the Teamsters and the Amalgamated Transit Union.

9 The current exemption for commercial drivers has a
10 little bit of a history attached to it which I'd like to go
11 over with you.

12 Before there was a Fair Labor Standards Act that --
13 starting in about 1911 with the railroads, the federal
14 government started to regulate the total hours of service
15 that train operators, then truck drivers, ship captains,
16 people who ran different modes of transportation. And what
17 those rules were were not labor regulations or overtime
18 provisions, but maximum hours that you would be on duty and
19 that you could actually drive or operate a commercial type
20 of vehicle or a train or whatever.

21 So that those were -- those were safety regulations
22 intended to prevent the person from getting so tired that
23 they would in all likelihood crash a vehicle. That was the
24 purpose of it.

25 And since it predated the Fair Labor Standards Act,

CAPITOL REPORTERS (916) 923-5447

1 when the Fair Labor Standards Act came into place, they
2 exempted -- and truck drivers were covered by this, I
3 think, in the early 1930s. They exempted those workers

4 from coverage from overtime who were covered by these hours
5 of service regulations.

6 Sometime thereafter, probably in 1949, California --
7 I haven't looked at how long ago, but I assume 1949 when
8 the sort of major wage orders came out. And certain --
9 although it was only women and children then, so there
10 weren't a lot of female truck drivers. But -- in the
11 1970s, they expanded it to men and so on. But it --
12 presumably back then they just adopted the same exemption
13 here.

14 And there is an exemption when you're in interstate
15 commerce -- or there is an hours of service regulation when
16 you're driving in interstate commerce and there is an hours
17 of service regulation when you're driving intrastate
18 commerce, meaning within points -- within the state of
19 California or within points between the state of California
20 and other places or freight coming from ports and so on.
21 They're pretty close to the same as one another.

22 what they allow is someone to drive a maximum of 10
23 hours -- or 11 hours interstate and 12 hours intrastate
24 actual driving time per day, 11 or 12 hours within a
25 15-hour on-duty period. So your workday is 15 hours long.

9

CAPITOL REPORTERS (916) 923-5447

□

1 Your actual driving time is 11 or 12 hours long.

2 Now, all of you presumably have driver's licenses.
3 Probably all of us in this room know what it's like to
4 drive without stopping for 11 hours. It's a long, long
5 day. And they're allowed to do this for -- in 70
6 consecutive on-duty hours, they're allowed to be on duty 60
7 consecutive hours. Or in 80 consecutive hours, they're
8 allowed to be on duty 70 consecutive hours. Then they have

9 to be off for 34 hours.

10 CHAIRPERSON CURTIN: Is that inter, intra again?

11 MR. BROAD: Pretty -- yeah.

12 CHAIRPERSON CURTIN: Okay.

13 MR. BROAD: So they have to have a rest after they've
14 reached the maximum.

15 Now, what's happened over the years is that what was
16 the maximum rate, the maximum limit on hours of service has
17 become the minimum -- has become the workday in much of
18 commercial driving. And it's pretty much of a nightmare of
19 a policy. It just doesn't work because the entire system
20 is based on Highway Patrol officers giving people tickets.

21 The economic incentive is to violate the rules. And
22 since the sanction is basically on the driver, him or
23 herself, as opposed to the company, if they load them up
24 with work that they can't possibly do without exceeding
25 their hours, the only sanction is on the driver if the

CAPITOL REPORTERS (916) 923-5447

10

1 driver is caught.

2 So the logbooks they keep are commonly referred to in
3 the industry as comic books, because they keep -- and lots
4 of times they keep dual books because they have to and
5 there's all kinds of fake stuff.

6 The National Transportation Safety Board did a big
7 study in the early 1990s and found that something like 31
8 percent of the truck accidents involved fatigue. Obviously
9 because imagine working 15-hour days over and over and over
10 again. A lot of times the employers -- and that doesn't
11 count getting to work or leaving work. So you could have a
12 commute time which isn't work on the other side of it. So

13 frequently drivers are basically getting three or four or
14 five hours of sleep at the most, day after day after day,
15 week after week after week, year after year after year.

16 So they've done these studies --

17 CHAIRPERSON CURTIN: May I ask you a question?

18 MR. BROAD: Yes, sir.

19 CHAIRPERSON CURTIN: Between the 70 hours and 80-hour
20 period, how much time is required to be off before --

21 MR. BROAD: 34 hours.

22 CHAIRPERSON CURTIN: For both?

23 MR. BROAD: Yes.

24 CHAIRPERSON CURTIN: Okay. Thanks.

25 MR. BROAD: The industry tried to move it to eight

11

CAPITOL REPORTERS (916) 923-5447

□ 1 hours a couple of years ago, but failed. Even the Bush
2 Administration couldn't -- couldn't do that one, but only
3 after the federal courts intervened and told them they
4 couldn't.

5 Anyway, the -- the number of accidents coincidental
6 with, you know, sort of divine intervention on a -- on a
7 literary scale, the number of accidents increases
8 dramatically when you hit about eight hours. That's what I
9 mean by it's literary. You know, we have overtime after
10 eight, and it's about eight when the trucks start killing
11 lots of people, and the truck at-fault accidents keep kind
12 of going up.

13 Now, the industry will come in there and say -- and
14 this is the thing with all accident statistics involving
15 trucks, planes, ships or anybody. They'll come in and
16 they'll say per million miles traveled, the accidents have
17 gone down. And the best way to dramatize why that is not a

18 good way of looking at the world is that, at the current
19 rate of airline crashes per million miles traveled and the
20 current increase in the number of miles traveled around the
21 world, that there will be one -- one jet falling out of the
22 sky a day every day at the same rate within about ten years
23 from now.

24 Now -- so you can actually get to the point where
25 even though -- unless the rate starts to fall dramatically,

12

CAPITOL REPORTERS (916) 923-5447

□ 1 the total number of accidents is really unacceptable from a
2 social policy perspective.

3 So we think that this policy is just bad, and that
4 what really makes sense -- now, the Fair Labor Standards
5 Act and the overtime system is for the most part a much
6 better way of limiting people's overall hours of work to
7 get them within an acceptable limit.

8 And -- because basically there is -- this really got
9 the IWC into trouble when we use this this way.

10 Basically there's a penalty that exists in overtime
11 for the employer. The employer pays an economic -- not a
12 legal penalty, but an economic penalty for people working
13 in excess of a certain number of hours. Therefore, it
14 basically doesn't happen very much. And when it does
15 happen, the employer is -- is financially on the hook to
16 pay more money. And, therefore, the incentive for the
17 worker is to pursue the -- their overtime because there's
18 a -- there's an economic incentive.

19 The incentives are all on the other side in the
20 commercial driver situation. So when you get down to the
21 real horrible part of the industry, say at the ports of

22 L.A. and Long Beach and Oakland where you have no employee
 23 drivers, everybody is called an independent contractor and
 24 they all drive a single truck, they all work for a motor
 25 carrier, they never work for shippers, they never set their

13

CAPITOL REPORTERS (916) 923-5447

□ 1 own rates, they wouldn't know how to do that, it's just an
 2 underground economy use of the term independent contractor,
 3 its purpose is to make sure that nobody is responsible for
 4 drug and alcohol testing, nobody is responsible for safety
 5 of the drivers, nobody is responsible for the condition of
 6 the vehicle, nobody is responsible for nothing. That's the
 7 purpose of it.

8 If you get there, all the incentive is -- on the
 9 driver is to keep driving in excess of the hours that they
 10 have. So, for example, they only pay people not by the
 11 hour, but by the load. So however many turnarounds -- you
 12 know, they get maybe 40 bucks to take a load in and out of
 13 the Port of Los Angeles. If they get two, they make maybe
 14 80 bucks a day. If they get three, right. So the pressure
 15 to do more even though it gets more and more crowded gets
 16 more and more problematic. So you wind up in a situation
 17 where -- as the Highway Patrol found when it looked at
 18 agricultural trucking in the mid '90s, that exceeding the
 19 hours, which are already enormous, is the -- is the -- is
 20 not the exception but the rule. That's what really
 21 prevails in the industry.

22 So, I mean, we're open to a lot of ways of doing
 23 this. We'd like to go to a wage board. We'd like to make
 24 it clear that the single truck owner-operator who works for
 25 a motor carrier and is a replacement for employee driver --

CAPITOL REPORTERS (916) 923-5447

□ 1 you know, they're indistinguishable and sometimes they have
 2 employees and sometimes they have independent contractors.
 3 But these people who employ no one else, own their own
 4 vehicle and rent themselves out for the day, that they
 5 should be covered by an overtime rule.

6 Now, we'd like it ideally to be the same overtime
 7 rule as everybody else. But, you know, if we got into a
 8 wage board on this, I'd be open to negotiating something
 9 related to the -- you know, the more excessive hours that
 10 drivers work, but something that would in the end police
 11 the hours of service system, create the kind of incentives
 12 that work in overtime, probably save a bunch of lives when
 13 it really comes down to it.

14 And I would anticipate that if you granted the
 15 petition and considered moving forward, a hearing in which
 16 you -- I guess you'd have to have another hearing to
 17 consider it where everybody could come in and scream and
 18 yell and all, but that I would anticipate that you would
 19 see the safety groups and perhaps the insurance industry
 20 and others saying, hey, this is a pretty good idea. You'll
 21 probably see the trucking industry having kind of multiple
 22 seizures because they'll say that the world will come to an
 23 end if we do this.

24 Although, usually the way they describe the end of
 25 the planet in their view is that interstate carriers have a

CAPITOL REPORTERS (916) 923-5447

□ 1 different rule than intrastate carriers, blah, blah, blah.
 2 But the fact of the matter is, you regulate all work that's
 3 performed in California whether it's performed by

4 interstate or intrastate motor carriers. And while someone
5 can try to service California from the other side of the
6 border in Nevada or Arizona or Oregon, it's a really big
7 state and that's really not much of a risk. And you would
8 have to be driving an awful long way at, you know, \$3.50 a
9 gallon to, you know, drive from Arizona to Southern
10 California to drive around Southern California for the day
11 and then go back to Arizona.

12 So we don't think that's really much of an economic
13 issue, and it's well within your authority to regulate this
14 stuff. It's an exemption that you created and it's an
15 exemption that you can eliminate.

16 So, with that, I will entertain any questions that
17 you might have.

18 CHAIRPERSON CURTIN: Any questions?

19 COMMISSIONER GUARDINO: Can you hear me?

20 How do the other states handle this? Are there --

21 MR. BROAD: They all have exemptions. You would be
22 plowing new ground.

23 COMMISSIONER GUARDINO: Okay. Thank you.

24 CHAIRPERSON CURTIN: Anyone else? Tim?

25 MR. BROAD: But I will add, you know, our state is

□ 1 not -- this is not -- I mean, trucking works different ways
2 in different states.

3 California is really, in the trucking industry, kind
4 of cut off from the rest of the country in the sense that
5 it's such a big state and it's so coastal that you really
6 have to service it. If you're in Vermont, you know, you
7 can -- or New Jersey or New York or whatever, you can --
8 you know, the trucking companies could be located anywhere

9 in the northeast and service all of the northeast. So
10 trucking is a lot more interstate in those places. And
11 then in other places like Iowa or Nebraska, you know, there
12 isn't that big of a population, so all there are are trucks
13 going through Nebraska or whatever.

14 California is so big and the economy is so big that
15 just to give you an example, we have the first and second
16 largest ports in the United States, Los Angeles and Long
17 Beach, which service the whole country. But 50 percent of
18 the freight that arrives overseas stays in Southern
19 California. That's how big just this local part of our
20 economy is. 50 percent goes back east and 50 percent stays
21 here to service the local economy.

22 So a lot of that freight just moves around on trucks.
23 It doesn't move around on trains, obviously. And it's
24 always going to be moving around unless we depopulate,
25 which is not very likely. And so in a way what other

17

CAPITOL REPORTERS (916) 923-5447

□ 1 states do or don't do isn't as much of a concern.

2 I mean, I could see that issue, my gosh, if we do
3 this in New York, then all the trucking companies can
4 service us from New Jersey and Connecticut or something.
5 That's not likely to happen here because we have these
6 thinly populated states with very tiny economies compared
7 to California sitting on the other side. And what is of
8 their economy is mostly real estate. I mean, you know,
9 that's Arizona and -- they're just -- they're just not big
10 manufacturing places. They don't compete with California.
11 California has, you know, this enormous population.

12 So it's just not much of a concern. If it was, we'd

13 be concerned about it obviously, and we don't want to take
14 away jobs from our folks based on a rule that would make
15 their lives a lot better.

16 But -- so I -- so, you know, Ms. Coleman, I'm not --
17 or sorry. Guardino. I'm a little behind the times.

18 CHAIRPERSON CURTIN: We got a sign up here, too.

19 MR. BROAD: Yeah, I know. I know.

20 COMMISSIONER WASHINGTON: Mr. Chairman.

21 CHAIRPERSON CURTIN: Go ahead, willie.

22 COMMISSIONER WASHINGTON: Barry, I have a question.

23 You're referring to the plowing new ground. And mine
24 is that we basically regulate employers and employees. And
25 my understanding of the proposal is that we would now be

18

CAPITOL REPORTERS (916) 923-5447

□ 1 regulating independent contractors. And my independent
2 contractors -- my concept of this independence with EDD and
3 all of the other regulations is that many people do that
4 specifically to avoid many of the rules that we now have in
5 California that regulate employees and employers.

6 And while I haven't given it a lot of thought and had
7 anybody doing any research on it, I have some concern about
8 whether or not the Commission has the authority to go and
9 overturn something that applies not just in this instance,
10 but in many other instances.

11 And, you know, we're talking about a very slippery
12 slope here. People who have other businesses not in the
13 transportation industry, I suspect once that became some
14 form of law regulation, that there would be other attempts
15 in other industries and all to do likewise. And I just
16 don't know if we can get there from here or not.

17 MR. BROAD: Well, I think you can because you would
Page 16

18 be -- because I'm suggesting doing something very narrow,
19 which is the one-truck owner-operator who works for a motor
20 carrier probably on a long-term basis, not -- we're not --
21 and has no employees of their own. They're probably in all
22 likelihood -- in reality, Mr. Washington, they're probably
23 employees anyway.

24 I mean, if you were to -- for precisely the reason
25 that you mention, which is to say the employer of those

19

CAPITOL REPORTERS (916) 923-5447

□ 1 drivers determines their status as independent contractors.
2 It generally isn't a choice that the driver makes. It's
3 kind of like this is how you work the job. It's not the
4 classic situation where I decide tomorrow I'm going in the
5 trucking business, I'm going to be the next trucking
6 entrepreneur. These are circumstances very narrowly drawn
7 where the company that hires them tells them what their
8 status is.

9 It's an odd circumstance that you could actually
10 become a business against your will in -- in our culture to
11 some extent for precisely the reason you mention, to avoid
12 the rules that involve employees. It's a major problem.
13 It's a major source of the underground economy, and
14 trucking is the problem.

15 The problem I have not covering them or we have is
16 that it will simply accelerate the incentive -- if we were
17 to do this for only employees, it would accelerate the
18 incentive to call people independent contractors and then
19 deny them everything and put them in a worse place. It's
20 kind of a Hobson's choice. And that's why we want to
21 explore this question of how to properly, you know, deal

22 with those people.

23 It's not -- you know, I -- I just don't -- we already
24 have a state law, interestingly enough, that got passed a
25 few years ago that's also unique in the country, that

20

CAPITOL REPORTERS (916) 923-5447

□

1 defines -- that says one-truck owner-operators,
2 notwithstanding their independent contractor status, that
3 the -- that the trucking company they work for -- and it
4 applies to trucking companies who hire these people -- have
5 to maintain total control over their safety of operations
6 and of the vehicle and so forth.

7 Because what was happening is they were calling
8 people independent contractors. They weren't being drug
9 and alcohol tested. They were saying go test yourself
10 because you're in business. And, of course, as one would
11 expect, someone who has a substance abuse problem is not
12 likely to respond to the request that they go test
13 themselves. And so what happened was the substance abusers
14 were moving into that sector of the trucking business
15 because you could get away with it.

16 And then the employers -- employee drivers were then
17 left spending for drug and alcohol testing and thinking why
18 are we doing this when these other -- you know, when all
19 these other guys are over there abusing the situation.

20 Same with the condition of the vehicle. Same with
21 their hours of service limits in which they weren't -- the
22 companies were not paying any -- quote/unquote, paying any
23 attention to it because they didn't have to.

24 So we actually have a state law that parallels this,
25 and my thought would be to say that this would apply to

CAPITOL REPORTERS (916) 923-5447

1 those drivers who meet that direction and control test
 2 that's already there, and perhaps cross-reference that
 3 there is a clear precedent in state law, and so it wouldn't
 4 be very difficult for this Commission to look at that in
 5 that -- in that way.

6 Like I say, I'm sort of open to this. This is
 7 plowing new ground. I think we can make some progress here
 8 and improve safety and improve the conditions for these
 9 folks without, you know, causing the world to come to a
 10 giant halt. So --

11 COMMISSIONER WASHINGTON: Have you explored this with
 12 EDD? Keep in mind that they have a list of qualifications
 13 for establishing that you are an independent contractor.
 14 We've been wrestling with those for years.

15 And I understand that the driving may be somewhat
 16 unique in itself, but we've been wrestling with that for
 17 years as to how you establish that and have this huge
 18 litany of things that you have to go through. And I'm
 19 somewhat surprised that a driver who ordinarily, in order
 20 to be on the road, would need drug and alcohol tests and
 21 things of this nature, that even if I were to establish a
 22 relationship I was an employer, one of the things that you
 23 would have to show me in order to become one of my
 24 contractors would be those list of things and all.

25 In other words, I'd want to see that you have the

CAPITOL REPORTERS (916) 923-5447

1 certificate and have to see that your vehicle had been
 2 inspected and meet those requirements. And since I don't
 3 know, I'm assuming that most of these contractors are

4 having to at least make those kind of compliance just to
5 get hired by that employer, I would suspect.

6 MR. BROAD: Well, I think it probably -- it's -- to
7 be quite honest with you, most of the time when these
8 folks' status is challenged, they're determined to be
9 employees, and then they just, you know, pay the guy off.

10 Or the trucking company which frequently is --
11 doesn't own any trucks and doesn't -- it's just a broker of
12 freight, they just -- you know, like the Port of Los
13 Angeles, if the loads move for 80 bucks, they take 40
14 bucks. That's -- and they basically dispatch these guys.

15 What they do, Willie, is you go to work -- these are
16 largely immigrant drivers with no capital. So you go to
17 work and the trucking company leases you the vehicle or
18 sells you the vehicle. Then they take you down to
19 someplace like -- they actually -- under interstate rules,
20 if they're in interstate commerce, they're actually
21 supposed to take control of you if you're working under
22 their operating authority.

23 So they get around that by trying -- by taking them
24 down to the PUC in California and getting them -- or the
25 DMV, rather, and getting them State operating authority.

23

CAPITOL REPORTERS (916) 923-5447

□ 1 They just pay the money, you know, or they borrow the money
2 from the -- you know, from their future rate, and they --
3 that they're going to get, and they get them State
4 operating authority. Then they sell them insurance -- you
5 get the picture -- and, you know, they set them up. So
6 what -- so all the risk is on them.

7 So what happens is, they then are supposed to be
8 inspected at their terminal, which is their house in Los

9 Angeles, so they're never really there for an inspection.
10 And when they are there, if they fail the inspection, it's
11 not the motor carrier that fails the inspection, it's the
12 driver.

13 And since they're, quote/unquote, independent
14 contractors, of course they can't talk to each other about
15 anything because that would violate the anti-trust laws
16 because, of course, the anti-trust laws are set up to make
17 sure that immigrant drivers who are called, you know,
18 independent contractors can't talk to each other because
19 that would be a -- you know, that would bring down the U.S.
20 economy because they're the equivalent of U.S. Steel in
21 1910.

22 CHAIRPERSON CURTIN: I'm not sure about that, Barry.
23 I don't think I'm allowed to talk to these other
24 commissioners here. There's a whole lot of reasons for all
25 that.

24

CAPITOL REPORTERS (916) 923-5447

□ 1

MR. BROAD: Not in private.

2 Anyway, it's pretty much of a -- of a real jungle out
3 there. And we wouldn't bring this to you if we thought
4 that the current system was working in the slightest.

5 In some areas of trucking it works in kind of the
6 higher end of trucking. But -- you know, they're not
7 violating it over in United Parcel Service, Federal Express
8 land or, you know, working for the supermarkets or the big
9 manufacturers or whatever. It's in the ports and it's in
10 ag hauling. It's in, you know, the bottom end of things
11 where the -- the profit is very, very low and you want
12 to -- you know, there's an incentive to create this kind of

13 a system.

14 There's nobody operating hardly at all in the ports
15 of Los Angeles and Long Beach and Oakland that uses
16 employees at all any more. It's gone away. So we have a
17 big problem here if you move forward without in some way
18 dealing with that issue.

19 CHAIRPERSON CURTIN: Can I ask you a couple things,
20 Barry. You raised some things that really got my
21 attention.

22 One was the -- the accident correlation to the time
23 on the road. Do you have stuff that points out that --

24 MR. BROAD: Yeah. I will give you -- there's a
25 National Transportation Safety Board study of driver

25

CAPITOL REPORTERS (916) 923-5447

□ 1 fatigue that's kind of the seminal study in this area. It
2 was done about 1990.

3 CHAIRPERSON CURTIN: So -- but are we looking for --
4 we're not looking for the long-haul trucking issue here
5 compared -- I mean, I'm assuming what you're telling us,
6 the problem lies in more of a short-term, short haul, just
7 repeated driving --

8 MR. BROAD: I think mostly -- you know, if people are
9 going -- leaving the state of California and driving -- you
10 know, driving from a point here and leaving the state of
11 California, they're sort of out of state now and out of the
12 jurisdiction of the IWC anyway --

13 CHAIRPERSON CURTIN: Okay. So --

14 MR. BROAD: -- at that point.

15 CHAIRPERSON CURTIN: But when you are driving in
16 California, even though --

17 MR. BROAD: whether you're an interstate or not --

18 CHAIRPERSON CURTIN: -- you are under the --

19 MR. BROAD: Right.

20 CHAIRPERSON CURTIN: -- rules and regulations of
21 California.

22 MR. BROAD: Yeah. I mean, it's really when -- I
23 mean, your jurisdiction is people who work in the state of
24 California, are employed or engaged to do work in the state
25 of California.

26

CAPITOL REPORTERS (916) 923-5447

□ 1 CHAIRPERSON CURTIN: Okay. And this doesn't really
2 work unless the independents are covered.

3 MR. BROAD: Well, I think it works -- it works, but
4 it creates what you might call perverse incentives.

5 CHAIRPERSON CURTIN: Exactly.

6 MR. BROAD: Which we -- which I know that any of us
7 who deal in this area are constantly struggling with, this
8 question of whether we, you know, put our finger in the
9 dike over here that, you know, the dam collapses over here.
10 And that is an issue.

11 And that's I think why if you -- if you are so
12 inclined and send this to a wage board, I think that you
13 can instruct the wage board to consider this issue,
14 consider, you know, different ways of doing it.

15 The wage board process, when it's working best, is
16 quite deliberative. And you get people who know what
17 they're talking about, who, you know, come from the
18 industry.

19 My suggestion that you would start with -- if --
20 since -- you know, there -- there's exemption in every wage
21 order, but most truck drivers are employed under wage Order

22 9, which is the transportation industry wage order. And
 23 that would probably cover 90 percent of what you're talking
 24 about and probably where 99 percent of the abuses are.

25 Frankly, if you're a driver who's employed in the

27

CAPITOL REPORTERS (916) 923-5447

□ 1 movie industry, you know, we just don't see the issues. Or
 2 if you're a driver who's employed in the retail industries
 3 by the retail employer, which is when they would be covered
 4 by the retail wage order, we don't really see that there's
 5 an issue.

6 Those employers, any of them that have their own
 7 trucking operations are big enough that they -- there's no
 8 incentive for them to -- it's just not worth violating
 9 these rules. They're usually well-capitalized. It's in
 10 the transportation issue that's the major issue.

11 So I would recommend and request that you start with
 12 wage Order 9 if you're so inclined and, you know, we'll see
 13 what happens. If it comes back to you after a wage -- a
 14 wage board and there's just so much hullabaloo about it,
 15 which could very well be when Ms. Stephanie Williams shows
 16 up for the Trucking Association, that I -- you know, you
 17 could always vote to do nothing and change nothing or
 18 whatever.

19 I mean, we could go to a rule that said, hey, you pay
 20 double time only when you exceed the hours of service
 21 limits. You could -- there's a million ways to do this
 22 between daily overtime after eight hours a day and nothing,
 23 and we're open to making progress is what I'm telling you.

24 CHAIRPERSON CURTIN: Barry, my impression -- and I
 25 don't mean to interrupt -- okay. Go ahead, Willie.

CAPITOL REPORTERS (916) 923-5447

1 COMMISSIONER WASHINGTON: Back to that point that was
2 in my last question. I think you've pretty much laid that
3 out for me, and that is Wage Order 9 seemed to be the
4 problem. But your petition would require there was a wage
5 board convened -- under your petition, you'd have to cover
6 them all because your request covers multiple wage orders.
7 And I was wondering if you had the same type of experience
8 and statistics that would apply to all of the others.

9 For example, you name Wage Order 1 and 4, the ones
10 that I've only worked with in the past and so forth. And I
11 was not aware that the type of abuse that you described
12 existed to any great extent in those two wage orders. So I
13 was wondering why it was so broad if 99 percent of the
14 problem is Wage Order 9.

15 It seems to me like concentration on Wage Order 9
16 would be --

17 MR. BROAD: Yeah, you know, I considered that,
18 Willie. And the fact of the matter is, the exemption is in
19 all wage orders, but I -- you know, frankly, given your
20 limited budget and other matters, I -- you know, I would
21 be -- you know, you could grant these petitions in whole or
22 in part. You could start with Wage Order 9 and see how it
23 goes. You can -- and I would be perfectly happy to start
24 with Wage Order 9.

25 The answer is, I have not seen statistics that break

CAPITOL REPORTERS (916) 923-5447

1 out the accidents among commercial drivers by the class of
2 employer that they have. Because basically the accident
3 statistics are derived from when there's an accident. And

4 at that point they -- they list who the trucking company is
 5 and, if it's a manufacturer that has a trucking operation,
 6 they'd list that. But I've never seen the statistics
 7 analyzed -- analyze it by industry or trucking subgroup, if
 8 you will.

9 You know, whether a dump truck operator -- and my
 10 assumption is that dump truck folks get in a lot fewer
 11 accidents because they're not on the freeway, they're not
 12 on the highway as much. They're doing short-haul stuff
 13 during the construction day, which tends to be, you know, a
 14 regular workday. You know, they're not in round-the-clock,
 15 24-hour operations and so on. But that's my sense having
 16 been around this stuff for the last 20 years.

17 I would say you would see the worst problems in the
 18 segments of the industry with the biggest safety concerns
 19 where they're pushing the hours of service limits all the
 20 time.

21 And so I think on balance you could start with wage
 22 order 9. We'd be more than happy to do that. If there
 23 then became a subsequent need to look at the other wage
 24 orders, we'd be perfectly happy to do that in the future.

25 You know, fortunately or unfortunately the process of

30

CAPITOL REPORTERS (916) 923-5447

□ 1 the IWC is you have to do one wage order at a time. So
 2 even though an exemption may cross every single wage order,
 3 you can't change it across every single wage order. And
 4 that's just the system as it exists.

5 It probably makes sense so that, you know, you don't
 6 get crazy things happening too suddenly. So -- you just
 7 want them to happen -- crazy things to happen --

8 CHAIRPERSON CURTIN: Any other questions, comments?
 Page 26

9 Are there any other speakers on the issue?
10 You've got -- according to Barry, you've got 37
11 minutes. No, kidding.

12 MS. BROYLES: Good morning, Mr. Chairman,
13 Commissioners. Julianne Broyles from the California
14 Chamber of Commerce here to ask for a denial of the
15 petition presented by Mr. Broad and the California
16 Teamsters Council.

17 California Chamber, of course, covers a number of
18 industries that would be affected by such a petition and
19 would ask that the Commission keep in mind a couple of
20 issues.

21 First of all, independent contractor status. You
22 have no ability to cover independent contractor status.
23 The National Labor Relations Act gives you no ability to
24 cover independent contractors.

25 We have in the Labor Code, Labor Code 2750.5 which

CAPITOL REPORTERS (916) 923-5447

□ 1 lays out what an independent contractor can and cannot be.
2 Again, you may not change the Labor Code. Bearden versus
3 Borax, the recent decision, was very clear on the fact that
4 you do not have the ability to provide future exemptions or
5 more exemptions than what the Labor Code sets out.

6 On top of that, you're going into a number of areas
7 that are governed by federal law other than the Fair Labor
8 Standards Act by going into the Department of
9 Transportation area and who regulates and who may not
10 regulate interstate commerce.

11 California is a very large market. We are the
12 largest import/export in the United States. We have two --

13 as Mr. Broad pointed out, two of the largest ports with
 14 that issue. In fact, there is a bill I'm sure that you may
 15 be aware of, Senate Bill 1213 on this issue dealing with
 16 independent contractor port drivers that is being
 17 considered by the Legislature today in its current session.
 18 And we have significant issues that are along the same
 19 lines.

20 Independent contractor status, again, is not
 21 regulatable via the Labor Code or versus the National
 22 Relations Act. And what they're trying to do with their
 23 port owner-operator drivers is to permit them to organize,
 24 which is what gets down to the root of this petition. It's
 25 something that's trying to convert one type of worker into

32

CAPITOL REPORTERS (916) 923-5447

□ 1 another type of worker so they may be organized, and,
 2 again, we would oppose that on this basis. Ask you to deny
 3 the petition.

4 CHAIRPERSON CURTIN: The one thing that Barry brought
 5 up that caught my attention in terms of the general public
 6 are the accidents. That if there is, in fact, a
 7 significant rise in the accident rate after a period of
 8 hours on the road, I mean, that -- I think that would be
 9 worthy of review from -- from this panel.

10 I don't think we should approach this issue from the
 11 organizing and not organizing point of view, obviously.

12 Do you have any comment on that, if there really
 13 shows to be a significant eight-hour everything seems to be
 14 working just fine, and then they go eight to ten and it
 15 goes up, and then they go from ten to twelve and it goes
 16 off the charts?

17 MS. BROYLES: There are a couple of other bodies --
 Page 28

18 and certainly the Industrial Welfare Commission can take up
19 issues. Whether or not they would be upheld in other legal
20 forums is another question.

21 But there are other forums where safety issues are
22 actually examined, such as the Occupational Safety and
23 Health Standards Board, the National Transportation Safety
24 Board, the Department of Transportation, all who have
25 regulatory authority over the industry in question.

33

CAPITOL REPORTERS (916) 923-5447

□ 1 Again, that's -- you're talking about a 16-year-old
2 report. I would probably think that there are other issues
3 that have come into play. I seem to recall a number of
4 different rules that have come into play in the last 10
5 years dealing with driver safety, more frequent checks.
6 Again, when you do stop at scales, they are checking the
7 books. And, again, there are enforcement mechanisms out
8 there, that's what the issue is, and they're not enforcing
9 those hours.

10 California has certainly a -- a huge tangle of laws
11 that employers and/or businesses are required to cover in
12 their business operations and their employment relations.
13 When you look at those, if they're not being enforced,
14 you're looking at the enforcement mechanism rather than
15 adding more laws. That if they're not doing the job right
16 now, you find ways to increase the enforcement budget like
17 we've done with the Labor and Workforce Development Agency
18 or with the Occupational Safety and Health division in --
19 by increasing the inspection and increasing the enforcement
20 side.

21 But more layers of laws or inapplicable -- passing of

22 inapplicable laws that are then -- have to be struck down
23 by court order we think is not the way that you really want
24 to proceed. Let's make it useful enforcement, useful use
25 of our time as employers and/or employees or independent

CAPITOL REPORTERS (916) 923-5447

□ 1 contractors, which is a legitimate status recognized by the
2 courts, recognized in various types of law, whether it's
3 the Unemployment Insurance Code or the Labor Code or the
4 Fair Labor Standards Act or the National Labor Relations
5 Act.

6 All of those different areas do provide some level of
7 regulation of the industries in question. We think that
8 there are better ways to go about this. We'd ask for a
9 denial of the petition.

10 CHAIRPERSON CURTIN: Do you know if those other
11 agencies have the authority to regulate the wage overtime
12 issues or can they regulate the actual amount of hours
13 worked?

14 MS. BROYLES: The National Labor Relations Act has a
15 strict prohibition upon coverage of labor law -- of
16 independent contractors, you have that, or in collective --
17 and the ability to collectively bargain in independent
18 contractor status.

19 We see you have in the California Labor Code in Labor
20 Code 2750.5 is the layout of there is a rebuttable
21 presumption that the person is an employee. But if he's an
22 independent contractor and the contract struck between the
23 service provider and the service recipient meets those
24 levels of -- of requirements, then that independent
25 contractor status stays.

CAPITOL REPORTERS (916) 923-5447

1 with the issue of overtime, again, I don't believe
 2 that there is anything in the Labor Code. And, again,
 3 Bearden v. Borax does -- did take a specific statement and
 4 action by the Industrial welfare Commission and state that
 5 you had no ability to go beyond what the statute currently
 6 states and provide a -- a wider coverage or different
 7 coverage from what statute permits. And I think that's --
 8 that's -- you know, it's there, it's a reality.

9 There is other court cases that have come down in the
 10 last few months that actually question the ability of the
 11 Industrial welfare Commission to have even established a
 12 couple of wage orders, such as wage Order 16 and 17.
 13 That -- again, that you have to look at what your legal
 14 authority is to cover this area and whether you're wasting
 15 everyone's time by venturing into an area where you have no
 16 ability to regulate in the first place.

17 CHAIRPERSON CURTIN: Okay. Any other questions?

18 COMMISSIONER ROSE: Yes.

19 These independent contractors that are doing their
 20 thing, do any of them belong to the Chamber of Commerce?

21 MS. BROYLES: We look at the issue of ports and the
 22 ability of the businesses. We have different companies
 23 across every industry, Commissioner Rose, in every type.
 24 whether -- I have not looked specifically for the
 25 independent port owner-operator drivers. I have looked

CAPITOL REPORTERS (916) 923-5447

1 specifically at the issue of whether or not the Industrial
 2 welfare Commission has the ability to regulate that type of
 3 employment status.

4 COMMISSIONER ROSE: Okay. Now, the people that they
5 contract to, do they belong to the Chamber of Commerce?

6 MS. BROYLES: Not to my knowledge.

7 COMMISSIONER ROSE: Okay. Thank you.

8 MS. BROYLES: But I can check, and I will report back
9 to you if they are.

10 COMMISSIONER CREMINS: I had a question on -- I had a
11 question on control and discretion.

12 Seems to me that the nature of the industry is
13 changing quite a bit, and I don't know whether it's the
14 influx or the flow of the ports or the change in the
15 economy. But what do you think on just control and
16 discretion? If you have no control and discretion, you're
17 truly not an independent contractor, I wouldn't think.

18 MS. BROYLES: Again, there are 20 common law factors
19 in general. There are different layers of laws. The
20 Employment Development Department has twenty-four; the Fair
21 Employment and Housing Act has three. But all of it deals
22 on control of that.

23 That if I have control -- if I have contracted for a
24 project and I have no other control over that as the
25 service recipient, then I have a legitimate independent

CAPITOL REPORTERS (916) 923-5447

37

1 contractor relationship.

2 If that is examined and found to be a
3 misclassification, there are a variety of penalties that
4 can be brought against a business that inappropriately or
5 misuses the independent contractor relationship, including
6 back taxes, back wages, interest on those, penalties on
7 those.

8 On average it's one classification runs about \$25,000

9 in terms of just the penalties and back wages that might be
10 applied that go back up to three years and four years in
11 some circumstances. Then, of course, there is the IRS
12 recalculation, there is the FTB recalculation and the
13 penalties that come along with that.

14 It's not something that somebody is looking to do on
15 an operating basis because it takes out a small business
16 who frequently uses independent contractors for a variety
17 of purposes. And, again, Mr. Washington -- Commissioner
18 Washington was correct when he pointed out there are a
19 variety of different areas where independent contractor
20 status is legitimate, is appropriate.

21 Again, if this is what they're doing, then there are
22 other ways to control the issue and there are ways to go
23 about it rather than asking the Industrial Welfare
24 Commission to take an action that they have no legal
25 ability to do.

□ 1 CHAIRPERSON CURTIN: Okay. Any other questions?

2 Barry.

3 MR. BROAD: Well, let me just say a couple of things.

4 With regard to the National Labor Relations Act, it
5 prohibits independent contractors from being covered under
6 that Act, and, therefore, they have no right to collective
7 bargaining.

8 what -- wage and hour regulation is governed by the
9 Fair Labor Standards Act, and it leaves the states the
10 right to regulate completely in the area of wage -- wages,
11 hours and those wage and hour type of issues as long as you
12 keep -- you don't go -- a state does not go beneath the

13 minimum standard established by the Fair Labor Standards
14 Act.

15 However, you know, my feeling about this issue about
16 independent contractors is I think Ms. Broyles has a point,
17 and it's well taken. I mean, I'm not sure this is the
18 place to argue with -- about this. I think clearly you can
19 cover employees and the -- the -- it sounds like the
20 depth -- the real issue here is not whether this exemption
21 makes sense for employees or not, but whether we're going
22 to get into the area of independent contractors, whether
23 they're true independent contractors or not.

24 The other side of the coin from my anxiety of that,
25 not covering independent contractors is that if there's

39

CAPITOL REPORTERS (916) 923-5447

□ 1 overtime available for working in excess of a certain
2 number of hours if you're an employee, that those drivers
3 who are misclassified will have a huge incentive to pursue
4 their rights. And I think they will pursue their rights,
5 and it will probably result, as has been the case, in a
6 reclassification of a large number of those drivers into a
7 more realistic determination of their status. So in the
8 end, it probably will work out okay.

9 And there are areas, for example, in -- as you know,
10 in the last 20 years, there was a huge number of retail
11 employees who were classified as exempt from overtime by
12 calling them assistant managers and so on. And then a
13 whole series of cases were lost in the industry over
14 treatment of those employees in the retail sector, and they
15 basically have had to be reclassified as employees back
16 again. So the law sort of righted itself, and that was
17 based on your -- your rules about those classification

18 decisions.

19 So, frankly, I'm not -- you know, hearing this
20 discussion, I'm sort of persuaded that it's perhaps too
21 much of a morass to go into, and I'm perfectly fine with
22 just dropping that portion of it and leaving it to a
23 discussion of what is clearly your jurisdiction, whether to
24 end an exemption that exists in your wage orders for
25 employee drivers, and then we'll just see what happens

40

CAPITOL REPORTERS (916) 923-5447

□ 1 afterward if you pass it.

2 Thank you.

3 CHAIRPERSON CURTIN: Barry, before you go.

4 MR. BROAD: Yes.

5 CHAIRPERSON CURTIN: Do you know the conditions -- I
6 mean, your argument sort of revolves around ports and I
7 guess in the ag industry. Do you know the conditions that
8 exist for drivers at other ports particularly on the west
9 coast, but specifically ports --

10 MR. BROAD: Well, the port driver situation is like
11 one of the worst places, but --

12 CHAIRPERSON CURTIN: Is it similar in other states?

13 MR. BROAD: It's similar in every place in the United
14 States. It's a national problem.

15 And just to give you an example of how problematic it
16 is, the Transportation Security Administration looked at
17 the driver pool in New York and Newark I think about four
18 or five months ago, and there's about 9,000 drivers. They
19 found that 500 of them didn't have licenses at all. And
20 about half, because of other standards, were -- had
21 disqualifying criminal offenses, which, you know, don't --

22 don't allow you to actually operate a commercial motor
23 vehicle.

24 So the problem is a situation where, particularly in
25 some parts of trucking, the bottom has dropped off in the

41

CAPITOL REPORTERS (916) 923-5447

□ 1 underground economy. And I think you understand what I'm
2 saying. They're -- it's very hard for a legitimate
3 employer to compete.

4 Now, it varies from place to place in different -- in
5 different parts of the industry. There are huge pressures
6 in the trucking industry because since it's been
7 deregulated in 1979, 1980, there's huge pressures on
8 drivers to compete, to -- to make -- to work longer hours.
9 Because there's only -- there's only so many variables.
10 There's speed of the truck -- that's a big cause of
11 accidents -- there's hours on the road, and there's the
12 equipment and how well it's maintained. Those are the
13 things that you can mess around with.

14 CHAIRPERSON CURTIN: The size of the load.

15 MR. BROAD: Right, and the size of the load.
16 Exactly.

17 So -- you know, so you get problems of over weights,
18 bald tires, exceeding hours of service and speeding, which
19 are, you know -- and traditionally drugs was the other
20 problem because, you know, speeding -- you need speed to
21 speed. And, you know, that was -- there was a time when
22 the trucking companies handed the stuff out just to keep --
23 you know, they don't do that any more because of drug and
24 alcohol testing, but -- mandatory drug and alcohol testing.

25 But the fact of the matter is, there are huge

CAPITOL REPORTERS (916) 923-5447

1 pressures in this industry. And, you know, we think there
2 needs to be some break on those pressures that will benefit
3 the drivers and benefit public safety.

4 And I think you can look at -- clearly you -- public
5 safety -- this is where I just have a disagreement with Ms.
6 Broyles. Public safety is related to what you regulate,
7 intimately related to what you regulate. Because it's not
8 only the safety of the workers, but it's the safety of
9 people around them, and that's I think well understood in
10 wage and hour law. You know, you don't -- it's not just
11 can we -- can we -- we don't want people to work too many
12 hours so that they don't stick their hand in the machine,
13 but we don't want them to drop something that will hurt
14 another worker or hurt the public.

15 Because people who work are in contact with the
16 public, and nobody is in more contact with the public than
17 a commercial driver. Their workplace are the public
18 highways. So there's a special relationship between what
19 they do and what happens with the public.

20 That's why the safety stuff is so regulated. And
21 ironically, that's -- originally, as I pointed out,
22 historically that was the reason why they didn't regulate
23 the hours because they said we're already comprehensively
24 regulated, so we don't need to do that.

25 well, that's just proved to be a bad policy. It

CAPITOL REPORTERS (916) 923-5447

1 hasn't worked very well, and we have, you know, 80 years of
2 history to tell us that.

3 So we would ask that you move forward with this.

4 If -- and I'm perfectly happy with dropping the independent
5 contractor piece of it if that makes everybody more
6 comfortable. Thank you.

7 CHAIRPERSON CURTIN: But I'm not sure I -- this
8 condition you're talking about pretty much exists in every
9 port where you have independent contractors? Or are there
10 other ports in the country -- I'm just looking to see if
11 there's models or if this is just a national condition
12 that --

13 MR. BROAD: It's a national condition peculiar to the
14 ports. They used to be serviced up till about 20 years by
15 trucking companies with regular employee drivers and a few
16 independent contractors to do the overflow and kind of the
17 normal kind of trucking industry model.

18 And they just --

19 CHAIRPERSON CURTIN: Okay.

20 MR. BROAD: The bottom fell out.

21 CHAIRPERSON CURTIN: So you're offering to amend --
22 now I don't know legally, since it wasn't noticed, can
23 we -- can we address an amended petition?

24 COUNSEL FONG: Well, I --

25 MR. BROAD: Oh, I'm sorry.

44

CAPITOL REPORTERS (916) 923-5447

□ 1

COUNSEL FONG: Oh.

2 The petition, you can look at it and decide which
3 parts of it you want to --

4 CHAIRPERSON CURTIN: Okay.

5 COUNSEL FONG: -- move forward and --

6 CHAIRPERSON CURTIN: Okay.

7 COUNSEL FONG: -- and consider.

8 CHAIRPERSON CURTIN: I think the question of safety

9 is extremely compelling here, not just for the driver but
10 for the people who are driving next to the driver, which is
11 often all of us, and is worthy of a look.

12 So I'd like to ask if there's a motion to put this on
13 the table in the amended form.

14 MR. HALEVA: Mr. Chairman, are you entertaining --

15 CHAIRPERSON CURTIN: Oh, I'm sorry. More comments.

16 MR. HALEVA: Mr. Chairman, Commissioners, Jerry
17 Haleva on behalf of the National Armored Car Association.

18 We would join the Chamber in urging that you not move
19 forward with this issue for two reasons.

20 Number one, we think that if there were compelling
21 safety issues, as the Chair just alluded to, those issues
22 would have been raised at the national level by those
23 agencies that are responsible for regulating interstate
24 commerce.

25 And moreover, while I respect Mr. Broad, I think his

45

CAPITOL REPORTERS (916) 923-5447

□ 1 description of this as plowing new ground would instead
2 rather reinforce California's growing tendency to deny
3 economic realities.

4 These exemptions exist in all the other states for a
5 reason, and we think that California should honor that
6 exemption and recognize that, in fact, if the safety issues
7 were as predominant as he has raised, that the federal
8 authorities would have caused investigation to be held at
9 the federal level to deal with these.

10 Thank you.

11 CHAIRPERSON CURTIN: Thank you.

12 Okay. Before I go forward, any comments?

13 MR. SANDAHL: Good morning. Lee Sandahl from the
14 International Longshore and Warehouse Union. And I've
15 actually had the opportunity to work in almost all of the
16 ports on the west coast here within the last year and at
17 least visit them even back -- even up in Canada.

18 And what you have here in the ports is you have a --
19 pretty much a race to the bottom group of truckers who are
20 not unionized. And I think at this point if there's
21 anything that we can do to raise their economic standard,
22 it will certainly rectify a lot of the safety issues and
23 the other problems that you're hearing here this morning.

24 CHAIRPERSON CURTIN: Thank you.
25 Okay. Any further comments?

CAPITOL REPORTERS (916) 923-5447

46

1 COMMISSIONER CREMINS: More a question.

2 Does the wage board have the discretion to narrow or
3 expand the scope?

4 CHAIRPERSON CURTIN: I believe once it's in the hands
5 of the wage board, they can look at it any way they like.
6 We give them a charge, which sort of outlines what they're
7 supposed to do, which is what we're going to do in our
8 public meeting for the minimum wage issue in general.

9 But once they have it -- and Deanna can tell me if
10 I'm wrong -- they can come back with any recommendation
11 they so choose. And I assume that once it gets to this
12 Commission, we have the ability to adopt, amend or
13 otherwise -- am I correct?

14 COUNSEL FONG: That's correct. You set the charge to
15 the wage board. They look at it within those parameters.
16 They can also suggest if amendments are necessary within
17 the charge. And they bring it back to you for final

18 consideration.

19 CHAIRPERSON CURTIN: Right.

20 COMMISSIONER GUARDINO: From a process standpoint,
21 would we -- would the process be then to have a full
22 hearing as a next step and then make the decision about a
23 wage board so that people on both sides --

24 CHAIRPERSON CURTIN: Yes.

25 COMMISSIONER GUARDINO: -- could have an opportunity

47

CAPITOL REPORTERS (916) 923-5447

□ 1 to look at the issue?

2 CHAIRPERSON CURTIN: We have to do that. We can't
3 establish a wage board until we have a public hearing.
4 Correct?

5 COUNSEL FONG: That's correct.

6 CHAIRPERSON CURTIN: Okay. That would be the next
7 step. This is basically just saying it's worth taking a
8 look at it.

9 Okay. Motion as amended? And Barry on the floor?

10 COMMISSIONER GUARDINO: So to clarify the amendment,
11 it would be to focus on Wage Order 9 and to focus the
12 investigation on employees versus the independent
13 contractors.

14 CHAIRPERSON CURTIN: Yes.

15 COMMISSIONER GUARDINO: And intrastate or employees
16 that are employed in the state of California.

17 CHAIRPERSON CURTIN: Right.

18 MR. BROAD: Well --

19 CHAIRPERSON CURTIN: Whoops.

20 MR. BROAD: Let me just state, interstate, this is
21 where it gets a little bit confusing.

22 Some people -- it's the nature of the freight that
23 can determine whether it's interstate or intrastate. So
24 we -- so, for example, port drivers would be hauling
25 interstate freight even though they may take it five miles.

CAPITOL REPORTERS (916) 923-5447

□ 1 So we would want it to be interstate activity with -- in
2 which the driver works wholly within the state of
3 California. And obviously intrastate is that by
4 definition.

5 COMMISSIONER GUARDINO: Okay.

6 MR. BROAD: Okay.

7 COMMISSIONER GUARDINO: I think that would be an
8 important point of discussion.

9 CHAIRPERSON CURTIN: Okay. So do we have a motion to
10 that effect?

11 COMMISSIONER CREMINS: I move.

12 CHAIRPERSON CURTIN: Second?

13 COMMISSIONER ROSE: Second.

14 CHAIRPERSON CURTIN: Discussion?

15 COMMISSIONER WASHINGTON: Yes. I -- I still have the
16 concern that the area which we're going to be discussing
17 this is one that I believe belong elsewhere.

18 My concern is that we're talking about a safety
19 issue, and I can assure you that every safety issue that
20 Mr. Broad has raised would be of the utmost concern to me.
21 However, I believe that it's outside of what it is that the
22 IWC does. And so it's my concern that we're talking about
23 looking at something in which we have very little way of
24 curing.

25 Here we're talking about simply trying to put some

CAPITOL REPORTERS (916) 923-5447

1 disincentive for people to maybe work longer hours who
 2 themselves have contracted to do that, who considered to do
 3 that, so to speak. And while I certainly have no reason to
 4 disbelieve what Mr. Broad has said relative to the folks
 5 being somewhat coerced or whatever to work the long hours,
 6 I think that that has several other means -- EDD, CHP and
 7 all the -- and Occupational Safety and Health are three of
 8 the entities that come to mind that are better suited to
 9 take care of the issues that have been raised here this
 10 morning.

11 And so I do have a concern with us going down the
 12 road and spending a lot of time here on something that
 13 really won't cure the problem that I've heard presented
 14 this morning.

15 CHAIRPERSON CURTIN: I also might think we should ask
 16 our legal counsel, that maybe an exploration of this before
 17 we -- I mean, we could set it for the next meeting if
 18 that's the will of the Commission, but perhaps we could get
 19 a preliminary legal opinion as to just how much authority
 20 we might have in this area.

21 So that rather than put it off until the next
 22 meeting, we could start the ball rolling. But if it -- if
 23 the indications are that it's not terribly likely on a
 24 legal basis, we wouldn't have to proceed further.

25 Could we add that to the motion?

CAPITOL REPORTERS (916) 923-5447

1 COMMISSIONER CREMINS: Please.

2 CHAIRPERSON CURTIN: Okay. I don't see Marguerite
 3 here so, Ralph, you're going to have to deliver the bad

4 news.

5 MR. LIGHTSTONE: Mr. Chairman, glad to do it.

6 CHAIRPERSON CURTIN: Okay. Good.

7 Okay. Any further discussion?

8 COMMISSIONER GUARDINO: I would just echo some of
9 willie's concerns, but I would say that we've heard some
10 interesting issues raised here. And I think our charge is
11 really to look at the wage and hour issues related to
12 employees and their working conditions, so I think there's
13 some aspect of this that we should look at.

14 But I am a little bit worried about some of the
15 jurisdictional questions, so having some legal opinion on
16 that would be very useful. And I think it's a new issue,
17 so I think frankly we just need to learn a little more
18 about it.

19 CHAIRPERSON CURTIN: I think a lot more, actually,
20 but good point.

21 Okay. Any further discussion? All in favor?

22 COMMISSIONER ROSE: Aye.

23 COMMISSIONER CREMINS: Aye.

24 CHAIRPERSON CURTIN: Do we have the names on that?

25 why don't we identify for the record. Do we want to have a

51

CAPITOL REPORTERS (916) 923-5447

□ 1 roll call vote? Did we talk about that?

2 Okay. Harold Rose. Aye?

3 COMMISSIONER ROSE: Aye.

4 CHAIRPERSON CURTIN: Tim Cremins.

5 COMMISSIONER CREMINS: Aye.

6 CHAIRPERSON CURTIN: willie Washington.

7 COMMISSIONER WASHINGTON: No.

8 CHAIRPERSON CURTIN: Leslee Coleman.

9 COMMISSIONER GUARDINO: Guardino.

10 CHAIRPERSON CURTIN: Guardino.

11 COMMISSIONER GUARDINO: Aye.

12 CHAIRPERSON CURTIN: And I guess I don't need to
13 vote. Three to one, motion passes.

14 Okay. So we are now going to go -- we are going to
15 take a short break until 10:00 because we have to before
16 our public hearing for, well, the other business that has
17 come before us. We'll tell you at 10:00. Thank you.

18 (Recess taken.)

19 CHAIRPERSON CURTIN: Okay. I've asked the
20 Commissioners to step back in. And those in the public,
21 we're going to call the public hearing to order. I'm sorry
22 it took so long.

23 I have to read these things, so bear with me.

24 Okay. We're holding this public hearing as part of
25 the Industrial Welfare Commission's investigation to

CAPITOL REPORTERS (916) 923-5447

□ 1 determine whether to call a wage board to study the
2 adequacy of the present minimum wage. The present minimum
3 wage is established at \$6.75 an hour in the IWC's
4 industrial and occupational wage orders and in Minimum Wage
5 Order 2001. The purpose of the hearing is to receive
6 public comment regarding whether the present minimum wage
7 may be inadequate to supply the cost of proper living to
8 employees.

9 Being the public, you're now welcome to comment.
10 Anybody wish to comment?

11 MS. WEI: Mr. Chair and Commissioners, Angie Wei on
12 behalf of the California Labor Federation.

13 Good morning, Mr. Rose.

14 Thank you for this opportunity. We're looking
15 forward to having the petition to raise and index the
16 minimum wage set forth by the California Labor Federation
17 to be sent to the wage board, the wage board which is
18 titled to review the adequacy of the minimum wage.

19 And I just want to remind both the public and the
20 Commissioners that Labor Code 1178.5 -- what the charge of
21 the wage board really is. It's to report to the Commission
22 its recommendation of a minimum wage adequate to supply the
23 necessary cost of proper living to and maintain the health
24 and welfare of employees in the state.

25 The charge of the wage board is to figure out the

CAPITOL REPORTERS (916) 923-5447

1 adequacy of the minimum wage. It's not to measure what the
2 impact of a minimum wage increase -- what its impact on
3 business will be. It's not to hear what the impact on our
4 number of jobs will be or whether or not the issue --
5 raising the minimum wage is a, quote/unquote, job killer.
6 The whole purpose of the wage board is to pull together
7 both employee and employer sides to review the adequacy of
8 the minimum wage. And we're looking forward to that.

9 within our petition, we have submitted quite a few
10 documents to support the notion of indexing the minimum
11 wage. These documents -- we've reviewed the binder at the
12 front table, and these -- not all of these documents appear
13 in the binder.

14 We are concerned -- we just want to flag for the
15 Commission that the wage board considers only materials
16 that are submitted at this public hearing, is our
17 understanding, that goes forward to the wage board. No

18 additional material can be submitted at that point to the
19 wage board. So we're concerned at this point that the
20 materials that we've submitted are not reflected in the
21 complete binder.

22 And also, the copies of the petition -- of our
23 petition that's been made available to the public included
24 in our submission about a page and a quarter of attachments
25 that have also not been distributed. So that's not -- I'm

54

CAPITOL REPORTERS (916) 923-5447

□ 1 hoping that this -- all this material is just going to
2 clearly go to the wage board and will be available.

3 CHAIRPERSON CURTIN: Slow down a second. I'm sorry.
4 Slow down a second, Angie. I missed that.

5 Are you saying there's stuff in there that we haven't
6 distributed yet in your packet?

7 MS. WEI: We have a list of attachments that we
8 submitted with our petition. And in reviewing the binder
9 at the front table at the entrance of the hearing, our
10 materials -- the attachments are not in there. And that's
11 our substantiation and our documentation.

12 CHAIRPERSON CURTIN: Okay. Could you hold a second?

13 MS. WEI: Sure.

14 CHAIRPERSON CURTIN: Stephanie.

15 MS. LEACH: Good morning, Angie.

16 All of the Commissioners have received that and it
17 will be in the wage board packets. Those binders were
18 meant to be just for public comments, and we just put the
19 first portion, the letter portion of your petition without
20 the reference materials. But everything will be in the
21 full packet.

22 MS. WEI: Very good. That's appreciated. We just
23 wanted to make sure that our documentation is submitted to
24 the wage board.

25 when we get to the wage board, we're going to spend

CAPITOL REPORTERS (916) 923-5447

□ 1 some time to review what the adequacy of the minimum wage
2 is. Currently our minimum wage is 6.75 an hour. It is an
3 annual salary of about \$14,000. The federal poverty level
4 itself for a family of three -- to be above the federal
5 poverty level, it's \$15,670, which translates into an
6 hourly wage of \$7.84. Even under today, our minimum wage
7 is a dollar and eleven under the federal poverty level.

8 Now, the federal poverty level is calculated for the
9 entire -- well, for the 48 contiguous states of the United
10 States, and it's one level across the country. It doesn't
11 take into account metropolitan, regional, state
12 differences.

13 And I think documentation will prove that California
14 is the most expensive at least out of the 48 contiguous
15 states to maintain a family. Our housing costs are the
16 highest. Our gas prices have constantly and persistently
17 been the highest. Our food costs are high.

18 And so the federal poverty level, while it's a proxy
19 at this point we can use to determine the adequacy of the
20 minimum wage, it really is a proxy that doesn't meet the
21 needs of California's economy. It's not reflective of what
22 our reality is.

23 Even beyond the kind of federal poverty level
24 numbers, if you take a look at the California Budget
25 Project study, which everybody is aware of at this point,

CAPITOL REPORTERS (916) 923-5447

1 they calculate that to meet a bare minimum standard of
 2 living in California for a family of three, you'd need a
 3 wage, an hourly wage of \$12.44, far higher than where our
 4 minimum wage is today.

5 So when we take this information, we're looking
 6 forward to participating in the wage board because we think
 7 the evidence is very clear. Our current minimum wage keeps
 8 workers in poverty. A dollar increase in the minimum wage
 9 maintains workers in poverty. And we hope that the wage
 10 board will concur unanimously across labor and management
 11 that when you work full time, you should at least be above
 12 the federal poverty level.

13 And we think that the way to try and get some workers
 14 out of poverty, bring some dignity on the job is to index
 15 the minimum wage. Indexing is paramount. The federal
 16 poverty level is indexed. It takes into account the
 17 reality of what it takes year to year on an annual basis to
 18 survive. If the federal poverty level is going to go up,
 19 our minimum wage should go up. The cost of everything has
 20 gone up. Our minimum wage should be able to go up.

21 Washington and Oregon have minimum wages that are
 22 indexed, and their economies are doing well. They've been
 23 growing. If you look at the data in Oregon in the
 24 restaurant industry, restaurants have been growing. Jobs
 25 have been growing in the restaurant sector in Oregon. And

CAPITOL REPORTERS (916) 923-5447

1 the restaurant industry here is crying for Chicken Little
 2 that the sky will fall down if we index like Oregon and
 3 Washington did.

4 For these reasons, we look forward to the wage -- the
5 creation of a wage board. We look forward to our petition
6 being sent there and for a robust and empirical discussion
7 to happen there.

8 Thank you for this opportunity.

9 CHAIRPERSON CURTIN: Could I ask you, Angie, do you
10 know when Oregon and Washington indexed?

11 MS. WEI: Oregon -- both were done by ballot
12 initiative. I believe Washington was done in 2004 and
13 Oregon in 2002, but I need to look and confirm that.

14 CHAIRPERSON CURTIN: Okay. Thanks.

15 Is that microphone -- anybody else? Any other public
16 comments?

17 Could you check that microphone. Okay. We're good.

18 MR. AGEE: Mr. Chair and members of the Commission,
19 my name is Jovan Agee representing United Domestic Workers
20 of America.

21 We represent 55,000 home care workers in the state,
22 and we ask for your support on the Labor Federation's
23 minimum wage increase with indexing.

24 MS. SANCHEZ: Mr. Chair, members, Liberty Sanchez on
25 behalf of the Teamsters, Amalgamated Transit Union,

□ 1 Machinists, IFPTE Local 21, ESC, United Food and Commercial
2 workers Union, Unite Here, SCOPE and AFTRA all in support
3 of the petition before you today.

4 You know, a lot of statistics are bandied about and
5 cited when we have these conversations. I'm always most
6 appreciative when we have actual minimum-wage workers
7 testifying before you so they can, you know, illuminate for
8 you and before the Legislature the plight and the

9 circumstances under which they have to live.

10 But -- I'm not a minimum-wage worker, but I am a new
11 mother. And I can tell you specifically, you know, what it
12 costs me to pay for certain things that my little guy
13 needs. Daycare, you know, \$200 a week minimum. We have --
14 you know, if I'm providing him with formula, a jar of
15 formula is \$23 a jar for one week. Diapers, 17.98 on sale.
16 You know, wipes another \$3.97.

17 So all of that adds up to about \$250. So if I were a
18 minimum-wage worker bringing home a weekly wage of \$270,
19 that would leave nothing for rent, for utilities, for food,
20 for clothing, for anything.

21 So what we're basically telling minimum-wage workers
22 is that they have to make the choice to not have children
23 because they can't support them. I mean, that's
24 unconscionable. People should be able to work a job,
25 support their families, pay the rent, keep the lights on

CAPITOL REPORTERS (916) 923-5447

59

□ 1 and have kids.

2 We -- we really, really, really request that you
3 undertake the duty that is before you, to look not at the
4 impact on business which we don't think is negative. If
5 you look at what minimum wage earners spend their increases
6 on, it is putting the money back into the system. They're
7 not going to be, you know, storing away money and not
8 having it put back into businesses in California. It will
9 be put directly back into the stream of commerce in
10 California.

11 So we strongly urge you to undertake your
12 responsibility and review the minimum wage and increase it

13 as is so desperately needed. Thank you.

14 MS. JONES: Good morning. My name is Billie Ann
15 Jones. I am an ACORN member, I'm a widow, and also I'm up
16 here today speaking about minimum wage.

17 California has become an incredibly prosperous state,
18 and it's considered one of the largest economics (sic) in
19 the world. Yet the major -- the majority of the state's
20 labor force has not been able to reap the benefits of the
21 prosperity. By supporting and increasing the minimum wage
22 with indexing, working families will be finally able to
23 share California's success.

24 I am a minimum-wage worker. I work in an employment
25 agency. I have come to Sacramento -- I think I still have

□ 1 a job when I get back -- today to speak out against the
2 fact that we need minimum wage support with indexing. The
3 cost of living is enormous, continuously going up. Gas,
4 food, rent, utilities, all these costs continue to rise.
5 Especially in the Bay Area where I'm from, Richmond,
6 California. Where I live, with indexing my wage will not
7 keep up with the cost that's rising.

8 I am here today to say, again, as I was here before,
9 you're in authority. You're supposed to protect and help
10 the people who are poor or who are without. You're here to
11 make decisions. It's hard for us to support our loved
12 ones, support ourselves much.

13 Also dealing with health costs. You know, what can
14 we do? We making minimum wage. We either have to catch
15 the bus or drive, which gas prices are going up. It's hard
16 to pay our rent. Food costs are high. Not only that, but
17 you have medical costs you have to pay. If you don't pay,

18 they end up billing you and then you have a collection
19 bill. So you have stress and anxiety.

20 what I would like to know is that if you have any
21 kind of compassion, think how it feels or even try it for a
22 month. \$6.75 an hour? Get real. We deserve better than
23 that.

24 If you had nobody to work at all dealing with minimum
25 wage, where would you be? Someone has to do it. So why

61

CAPITOL REPORTERS (916) 923-5447

□ 1 not take care of your people the best way. This is
2 California. We deserve the best. Thank you.

3 (Ms. Mercado's statement is in Spanish and
4 interpreted by Mr. Gaitan.)

5 MS. MERCADO (through interpreter): My name is Josefa
6 Mercado. I work as a janitor. I'm a member of 1877. I've
7 been working for about 33 years as a janitor.

8 And we're here to ask that the wages go up at least
9 connected to the cost of living because everything is going
10 up. And it's worse now than when I started working as a
11 janitor and the minimum wage was four dollars and
12 something. And everything is even -- even more expensive
13 related to what they are now. So we -- we need your help
14 to get up -- at least up to the cost of living. Because
15 workers have families and children and need to pay to take
16 care of their kids and the cost of sending -- for food, for
17 sending them to school.

18 And I know what that is because I have six children,
19 and I had to go through the -- the expenses of raising them
20 and taking care of them, and I know what those costs are.

21 And that's -- that's why we're asking for your help

22 to raise -- to keep up with the cost of living. Because
23 gas and food and everything is going up, and we can't -- we
24 can't afford it.

25 And I'm the only income in the house. I'm alone, my

CAPITOL REPORTERS (916) 923-5447

□

1 husband doesn't work, and we can barely make it. There's
2 very little that he gets from Social Security to be able to
3 work. That's why I have to keep working. And that's why
4 I'm here to ask that you raise the wage up to the cost of
5 living. It's very important.

6 Thank you.

7 MR. ALCARAZ: Hi. My name is Raul Alcaraz. I'm here
8 today on behalf of Youth Together, an organization
9 dedicated to social and educational justice. We work with
10 the youth primarily from working class communities of color
11 in Richmond, Oakland and Berkeley.

12 To our base, it is critical for California to approve
13 a minimum wage plan that includes an increase and indexing.
14 Many of our students' families work at least two jobs to be
15 able to support each other and support their children. We
16 believe that a raise in the minimum wage is the fair thing
17 to do as the cost of living continues to increase.

18 Living in California amongst vast amounts of wealth,
19 a state that has the fifth largest economy in the world,
20 there are no excuses to deny the working class a higher
21 standard of living. Again, it is not uncommon for families
22 to have two to three jobs in order to support themselves
23 and survive.

24 I have one student at Richmond High School. Her name
25 is Avillene. She's 17 years old and migrated with her mom

CAPITOL REPORTERS (916) 923-5447

1 from Colima, Mexico. The single mother works two jobs.
 2 "She's barely home, and we might not have enough money for
 3 the next month's rent," Avillene one day confided in me.
 4 "I'm going to have to find a job."

5 In her senior year of high school, Avillene was
 6 forced to work 40 hours a week at the same time as going to
 7 school in order to help her mom with the house bills. This
 8 case is not unique or rare at all. It reflects a very
 9 common reality that working class people experience on a
 10 daily basis.

11 By deciding not to consider the adequacy of raising
 12 the minimum wage with no indexing, you will be -- you will
 13 be a great contributor to perpetuating the cycle of
 14 violence -- I mean, sorry -- the cycle of poverty that
 15 drives people into wage slave labor or into the underground
 16 economy. Therefore, this is also an issue of public health
 17 as well as public safety.

18 If the minimum wage had to -- if the minimum wage had
 19 kept pace with inflation since 1968, it would have reached
 20 8.29 an hour in 2002.

21 To conclude, today getting a good job to the families
 22 we work for means fighting to make them decent. Beyond
 23 increasing minimum wage with index, we also have to support
 24 organizing unions, building a movement for national health
 25 care, and defending and expanding Social Security.

CAPITOL REPORTERS (916) 923-5447

1 We urge you today to be -- act responsibly and in the
 2 benefit of our -- of your constituency. We need a minimum
 3 wage increase with index, a move that is long overdue to

4 the people of California. Thank you.

5 MS. BRASMER: I'm Nan Brasmer. I'm with the
6 California Alliance for Retired Americans, and I'm here to
7 ask for an increase in the minimum wage with indexing
8 because of all the senior workers we have out there who are
9 supplementing rather pitiful pension plans or Social
10 security benefits and are unable to buy their food and pay
11 their rent without doing so.

12 It's really important to them to have something
13 adequate after all their years of contributing to our
14 society and its growth that we not abandon them by forcing
15 them to work at minimum wage jobs at McDonalds and other
16 fast food restaurants and at wal-Mart where they can't
17 afford not to work.

18 So I'm here to ask you to please increase the minimum
19 wage and to index it so that they can anticipate a slight
20 raise as their cost of living goes up along with all the
21 rest of us.

22 And then I brought you a piece of really important
23 information. At the rate of \$5,383.33 an hour, the average
24 CEO in U.S. corporations makes more money before lunchtime
25 than the California minimum-wage worker makes in a year.

CAPITOL REPORTERS (916) 923-5447

1 Thank you.

2 MR. HOPSON: Good morning, Mr. Chairman and the
3 Commission. I want to thank you. I appreciate the
4 opportunity to appear before you and to talk to you about
5 the positive impact of an increase of the minimum wage with
6 indexing in our hard-working families.

7 My name is Richard Hopson, and I'm with ACORN. I'm
8 from the Oceanview neighborhood in San Francisco.

9 As you've heard already from Billie Ann, many of our
10 members struggle every day to make ends meet in California.
11 This is why ACORN is supporting the struggle for the
12 minimum wage with indexing.

13 Minimum-wage workers perform some of the least
14 attractive and most essential jobs in our economy. What we
15 would like to see happen is we would like the indexing to
16 be attached to the minimum wage to protect the minimum-wage
17 workers from falling further behind.

18 Indexing is based on the Consumer Price Index, a
19 measure of price increases in the market. Without a
20 minimum wage index, workers become less able to afford the
21 goods and services that are subject to inflation.
22 Economists agree that the eroded value of the minimum wage
23 is a principal factor contributing to the rise of
24 inequality in our country. With no indexing, any minimum
25 wage statute will give way to wage inequality in every

CAPITOL REPORTERS (916) 923-5447

66

□ 1 subsequent year.

2 Another aspect of attachment to indexing is that it
3 allow businesses to plan ahead for the regular raises
4 rather than being forced to respond whenever the issue
5 arises.

6 It also will get rid of the need for it to be a
7 political issue. We should not be playing politics with
8 people's lives. Many of our minimum wage earners don't
9 have a voice in the political process. This is what
10 ACORN -- this is the reason why ACORN is here, is to stand
11 up for them and say they deserve a voice.

12 whenever the politics of this comes up, it always

13 amazes me that the politicians will say, no, this person
14 earning \$6.75 an hour doesn't deserve 10 cents more or 15
15 cents more, yet they are willing to give themselves \$20,000
16 raises.

17 The support for indexing is growing state by state.
18 Currently, as was stated earlier, Washington and Oregon
19 indexed their minimum wages through successful ballot
20 measures years ago. Voters in Nevada and Florida cemented
21 the trend in 2004 approving minimum wage increases with
22 annual indexing by 68 percent and 71 percent respectively.

23 Polls are continuing to show strong voter support for
24 raising the minimum wage with annual increases.

25 CHAIRPERSON CURTIN: Excuse me one second.

67

CAPITOL REPORTERS (916) 923-5447

□ 1 what was -- you said Florida and what was the other
2 state?

3 MR. HOPSON: The other state was Nevada.

4 CHAIRPERSON CURTIN: They passed measures to --

5 MR. HOPSON: In 2004.

6 CHAIRPERSON CURTIN: Yeah, for indexing the minimum
7 wage?

8 MR. HOPSON: Yes.

9 CHAIRPERSON CURTIN: And when does it go into effect?

10 MR. HOPSON: That I don't know at this moment, but we
11 can get you that information.

12 CHAIRPERSON CURTIN: Okay.

13 MR. HOPSON: Also, there are currently four
14 additional states moving minimum wage increase proposals to
15 the November 2006 ballot. These states include Ohio --
16 these are all with indexing -- Ohio, Colorado, Missouri and
17 Arizona.

18 So what we are here today to do is to ask you to help
19 the hard-working families of California by approving a
20 measure for a minimum wage increase with indexing.

21 Thank you.

22 CHAIRPERSON CURTIN: Excuse me. One more question.

23 The four states you just mentioned, were those -- are
24 those efforts being made through the ballot?

25 MR. HOPSON: Yes, yes. Yes, they are going through

68

CAPITOL REPORTERS (916) 923-5447

□ 1 ballot --

2 CHAIRPERSON CURTIN: Okay.

3 MR. HOPSON: -- measures.

4 CHAIRPERSON CURTIN: Thanks.

5 we'll go to this microphone.

6 MS. BROYLES: Thank you, Mr. Chairman, Commissioners.

7 Julianne Broyles from California Chamber of Commerce here
8 on behalf of not just the California Chamber, but a number
9 of other associations that have signed on to our comments.

10 Comments were provided to the Commissioners and are
11 submitted not only on behalf of the California Chamber of
12 Commerce, but the California Cleaners Association,
13 California Farm Bureau Federation, California Grocers
14 Association, the California Lodging Industry Association,
15 the California Manufacturers and Technology Association,
16 the California Retailers Association, the California Nevada
17 Automotive Wholesalers Association, the California Hotel
18 and Lodging Association, the California Restaurant
19 Association and the National Armored Car Association.

20 we have a number of points that we would like to have
21 the Commission consider including into the charge when a

22 charge is given to a wage board to review the adequacy of
23 the minimum wage.

24 The California Chamber and the California Employers
25 Coalition does believe that there are a number of ways to

CAPITOL REPORTERS (916) 923-5447

□ 1 make California much more economically viable, much more
2 attractive and better for all citizens regardless of
3 whether it's through other policies or other avenues.
4 we're committed to helping you find other ways to increase
5 the economic vitality of this state whether it's for its
6 employees or for its employers, but we do want to make sure
7 that there are issues included in the charge.

8 First of all, we want to make sure that you all
9 understand that increasing the minimum wage to 7.75 per
10 hour will make California home to one of the highest
11 minimum wage rates in the nation.

12 Also, the statutory limits are still present and
13 still apply on what the Industrial Welfare Commission may
14 or may not add to a charge when examining the minimum wage
15 including indexing. There's no statutory authority that we
16 were able to discover that would permit you to consider
17 adding indexing to minimum wage increases. And we think
18 that you should also make sure that you look at other
19 issues that are tied into the minimum wage, such as an
20 exempt worker status, what the impact of that is, because
21 that is directly tied to minimum wage rates because you
22 have to double whatever the minimum wage rate is into the
23 base salary of what you take to maintain a manager status
24 here in California.

25 Again, we think that removing other barriers to

CAPITOL REPORTERS (916) 923-5447

1 productivity and wage growth is a better way to improve
2 California's economy.

3 We want also for you to take into consideration that
4 today California employers pay approximately \$3,300 more
5 for minimum wage employees than other -- than other states
6 in our nation. By increasing it another dollar, that would
7 increase the difference between those employers in other
8 states who do not have a minimum wage rate higher than the
9 federal minimum wage rate, would increase that to \$5,380 in
10 terms of what we pay a minimum-wage worker here in
11 California versus what you pay a minimum-wage worker in
12 other states doing comparable work.

13 Keep in mind that when you're increasing the dollar
14 rate, you're not increasing productivity or any other
15 issue. You're just increasing the base wages and the base
16 costs for producing our service or our product here in
17 California.

18 In terms of other issues that are tied to minimum
19 wage rate increases, keep in mind that collective
20 bargaining agreements usually have some type of trigger
21 that also increase collective bargaining wage rates
22 whenever a minimum wage increase goes into effect.

23 As well as public works contracts, the dreaded
24 double-asterisk COLA which also triggers a recalculation of
25 a public works project.

CAPITOL REPORTERS (916) 923-5447

1 CHAIRPERSON CURTIN: Excuse me. The dreaded
2 double-asterisk COLA?

3 MS. BROYLES: Dreaded. I'm sorry. I thought I would

4 inject some note of levity into our discussion today, but I
5 apologize if that is offensive to you, Mr. Chairman.

6 However, it is -- it is a fact and it does increase
7 the cost of public works. Whether it's levee repairs or
8 construction of roads or building of affordable housing,
9 all of those costs increase again when minimum wage
10 increases go into effect, and we don't believe that that
11 should be ignored in any discussion if the adequacy is
12 examined.

13 We do have great issue with the issue of indexing.
14 We do not believe that Labor Code 1173 gives you any
15 statutory authority to examine indexing as part of your
16 review of the adequacy of the minimum wage.

17 And, again, referring to a recent court case -- and I
18 have a copy here, and I can supply other copies to the
19 Commission -- of the recent Bearden v. Borax decision that
20 was issued in April of this year, if I might be permitted
21 to read:

22 "In this case, the appellate court held that an
23 exemption adopted by the Industrial Welfare Commission
24 exceeded the statutory exceptions to, in this instance,
25 meal and rest period requirements authorized by the

CAPITOL REPORTERS (916) 923-5447

1 California Legislature."

2 And the court held in part, and I quote:

3 "The authority of an administrative agency to adopt
4 regulations is limited by the enabling legislation. An
5 administrative regulation must be within the scope of
6 authority conferred and in accordance with standards
7 prescribed by other provisions of law."

8 And they are quoting Government Code 11342.1 in that
Page 62

□

9 particular citation. The court does go into great detail
10 in terms of the scope of your authority.

11 We do want to also remind that there are other costs
12 that are significantly impacted with a minimum wage
13 increase. And that includes our health care costs. That
14 includes our ability to provide health care coverage for
15 our employees. It also impacts our ability to provide
16 other benefits or other mandated coverage such as our
17 workers' Comp premiums. All those things are based on our
18 overall base payroll costs, and anytime that base payroll
19 cost goes up, our cost for those benefits that are based on
20 base payroll costs also increase.

21 We have a question -- or not a question, but
22 definitely a concern about the rapid pace of implementation
23 that is being proposed in the petition. Your proposed
24 petition -- excuse me. The petition proposes to implement
25 the increase within a nine-month period. And we do know

73

CAPITOL REPORTERS (916) 923-5447

□ 1 that rapid implementation can have radical results.

2 A good example would be a few years ago an
3 unemployment insurance benefit increase was put into place
4 that had a very rapid rate of implementation. It broke the
5 back of the Unemployment Insurance Trust Fund. We want to
6 make sure that when you consider these issues, you also
7 look at the rate of implementation, the ability of the
8 economy to absorb those -- those -- that implementation of
9 a higher increased base wage on the California economy.

10 Again, we do think that there are other ways to make
11 California's economy much more successful for the average
12 California employee and the average California employer.

13 Small businesses almost always will be the ones bearing the
14 brunt of this particular type of increase because they do
15 employ most of the minimum-wage workers here in California
16 and would ask you to also make sure that those issues are
17 included in any charge to a wage board.

18 CHAIRPERSON CURTIN: Thank you.

19 Any questions? Any further testimony?

20 MS. MEJIA: Good morning. My name is Paola Mejia,
21 and I'm a citizen of California. I've been living here in
22 California for the past 12 years.

23 My parents are both immigrants, and they been working
24 really, really hard. My grandpa worked until he was 70,
25 which was a few years ago, and he was working for 6.75 an

74

CAPITOL REPORTERS (916) 923-5447

□ 1 hour. Everybody in my household except my brother who --
2 still works in my house.

3 There's never enough money. We're always short of
4 money, and I'm sure you hear it all the time. But it's
5 different to be in that position than to hear it. It's
6 different to see your parents working so much that
7 sometimes they work two and three jobs that you don't see
8 them, that you get home from school and there's no one
9 there waiting for you.

10 Or, you know, you see your little brother who has a
11 play, but, guess what, no one can go because everybody is
12 working. Oh, well, too bad. We'll send an aunt to go
13 watch him. And we wonder why, you know, families are, you
14 know, separated so much. It's because parents can't be
15 there for their kids because they have to work and support
16 them.

17 You know, like -- like we heard, there's a lot of
Page 64

18 high school students who have to work. And the only ones
19 getting minimum wage are not young teenagers nor
20 part-timers. There's a lot of adults who are working full
21 time.

22 I would really -- if I will take the time -- please
23 take the time and consider would you be able to do the work
24 you do right now for 6.75 an hour? would you be able to
25 have your, you know, home or your house or apartment?

75

CAPITOL REPORTERS (916) 923-5447

□ 1 would you be able to give food to yourself and your
2 children? would you really be able to do that at 6.75?
3 6.75 times 80, which is 80 hours, full-time job is
4 540. That's not counting tax -- after taxes. And right
5 now, getting a place is not \$300. It goes -- a room, just
6 a single room, it goes from \$400 to \$700.

7 I think that it's very important for everybody to
8 look at this issue. Because if we really want California
9 to be better and to move forward, we have to really help
10 the working class.

11 The majority of the working class are people of
12 color. Look at the people who are in McDonalds and Jack in
13 the Box; majority of people of color. Look at who's ending
14 up in prison; majority of people of color. Look who's not
15 graduating from high school; majority of people of color.
16 And then you look at all -- why they're ending up there.
17 Maybe because they can't find jobs. Maybe because their
18 jobs are paying them very low. And I think that it's a
19 matter that we really should consider.

20 Yeah, I'm young, but I look at my parents and I don't
21 want my brother to go through that. I want my brother to

22 be able to see my parents. I want my cousins to enjoy
23 their parents. I want my family and the rest of the
24 citizens to be able to enjoy their families, to be able to
25 work, to get a wage that they could support themselves.

CAPITOL REPORTERS (916) 923-5447

□

1 I hate seeing people crying and stressing because
2 they cannot pay the rent, because they cannot pay the car
3 and they end up taking BART and they end up taking longer
4 hours and they end up taking more than two jobs. That's
5 not fair.

6 without the people, we wouldn't be here. And I think
7 that it's our commitment to all of us to make sure that the
8 working class is taken care of. 6.75 is nothing. 7.75 is
9 nothing compared to what we have to pay for our food, for
10 our education, for a room, for our vehicles, insurance.

11 And like I said, I really want you to think about
12 would you be able to work and do the job you do right now
13 for 6.75?

14 Thank you.

15 CHAIRPERSON CURTIN: Thank you.

16 MR. JONES: Good morning. My name is Chris Jones,
17 and I'm also a member of California ACORN. But I don't
18 want to talk for ACORN right now. What I want to do is I'm
19 going to open this window for the panel to see and look
20 inside my life as a long-time minimum-wage earner.

21 I had three kids and a wife, and I worked
22 two-and-a-half minimum wage jobs six days a week. I was
23 only home from 3:00 to 5:00 a.m. in the mornings, so I
24 didn't see my kids at all.

25 when I did come home and the wife was on my back

CAPITOL REPORTERS (916) 923-5447

□ 1 about we still don't have enough money to make ends meet,
2 you know, I would try to run. I would try to hide. I
3 haven't seen my family, but now I'm trying to run away from
4 them.

5 My boys looked at me as like a -- our dad is an Uncle
6 Tom. He works for the man. You're right, I work for the
7 man and the other man and sometimes the other man, too, you
8 know, trying to get things done for them.

9 well, to make a long story short, it never worked
10 out. I never had any anticipation of getting a raise. I
11 didn't have any hope. You know what that's like? That
12 means I couldn't take a day off to take my family to the
13 show. I couldn't take any time off to get my boys into
14 Little League. I couldn't take time off to go to the
15 school when the school kept calling about what my boys was
16 doing.

17 In the end, my oldest son is doing 30 years because
18 Dad wasn't there in the formative years when he really
19 needed a man. My second son, he's doing a triple life
20 sentence up in Pelican Bay right now because Dad wasn't
21 there.

22 You know, luckily for me I got sick, I took time off
23 of work for being sick, and my youngest son is not locked
24 up. He did a little bit, but he's out. Now I'm raising --
25 helping to raise my grandkids because minimum wage is still

CAPITOL REPORTERS (916) 923-5447

□ 1 affecting my family.

2 You know, I'm here today to say that with indexing
3 you give people a little bit of hope. You know, if you

4 know you're going to get a raise, then maybe you could take
5 that day off maybe once in a while. Maybe you only have to
6 work one-and-a-half jobs instead of two-and-a-half jobs.

7 You know, you could give somebody a dollar raise but,
8 hey, as fast as you give it, the prices go up, it's not
9 there.

10 I'm here today just to let you look inside this
11 window. I hope you see the picture, and I hope everything
12 is not just black and white because you got to have some
13 feeling in your heart for your fellow man that's out there
14 trying to make it.

15 This country really, really strives every day on the
16 back of that minimum-wage, that low-wage earner because,
17 hey, we know the CEOs don't do anything.

18 I have to close the window now and I have to go, but
19 keep it in mind. Thank you.

20 CHAIRPERSON CURTIN: Thank you.

21 MS. DUNBAR: Lara Diaz Dunbar on behalf of the
22 California Restaurant Association.

23 First of all, I wanted to address the indexing
24 proposals before you.

25 It is the CRA's, the California Restaurant

□

1 Association's position that the IWC cannot and should not
2 index the minimum wage. In addition to numerous policy
3 reasons, we believe that it is prohibited from doing so
4 under California law. Not only is there no legal authority
5 that permits IWC to rely upon indexing, but California law
6 and case law certainly prohibits the IWC from indexing.

7 We've submitted written comment, and included in our
8 written comment is a more detailed analysis of relevant

9 case law and also the relevant provisions in the Labor Code
10 supporting our assertion. But in summary, basically using
11 indexing as a calculator for determining increases in the
12 minimum wage would usurp IWC's role and responsibility
13 mandated by law.

14 The Labor Code basically provides certain
15 requirements that must be made prior to even assessing the
16 adequacy of the minimum wage or even prior to the
17 evaluation of it and certainly prior to enacting a minimum
18 wage increase. This may include a full review, full
19 investigation, appointing a wage board and at least one
20 public hearing.

21 Also, wage board proceedings and public hearings
22 serve critical functions as they provide forums to provide
23 interested parties to voice their concerns and opinions,
24 apprise IWC of relevant facts and present arguments for and
25 against any proposed changes.

CAPITOL REPORTERS (916) 923-5447

80

□

1 I'm sure that everybody here certainly appreciates
2 the fact and the opportunity to comment to you today on
3 this very important decision before you. And ensuring that
4 IWC follows the procedural requirements that are mandated
5 by law insures that people will continue to be able to
6 attend public hearings, the people that are affected or the
7 people that have knowledge and all the right skills and
8 provide comments.

9 Again, there is numerous case law that we've cited to
10 in our legal analysis that you have before you.

11 In addition to this, we believe that there are --
12 that there are very -- there are numerous bad -- I mean,

13 numerous policy reasons against indexing.

14 The CRA is certainly opposed to indexing, and we
15 believe that putting minimum wage on auto pilot and just
16 looking at one economic factor, inflation, and ignoring
17 everything else, like the overall strength of the economy,
18 the unemployment rates, you -- it will result in minimum
19 wage increases at times where our economy just cannot
20 absorb the higher costs.

21 For instance, during times of high inflation, high
22 employment and low productivity growth, inflation would
23 trigger increases in the minimum wage, and that would just
24 result in higher unemployment.

25 Further, it leads to a cost push inflationary spiral

81

CAPITOL REPORTERS (916) 923-5447

□ 1 where higher wages feed off of or result in higher price
2 increases, therefore pushing inflation higher, therefore
3 pushing the wage higher, and it will just spiral out of
4 control and unemployment would definitely rise.

5 In addition to our views on the indexing as stated in
6 the June 2nd hearing, we just want to say about the minimum
7 wage in general that we believe that the minimum wage, the
8 current minimum wage is near the historic average as
9 adjusted for inflation. So we're not convinced that there
10 is a need right now for the minimum wage to increase. But
11 we certainly agree that the IWC should review the adequacy,
12 and we look forward to being a partner in the full debate.

13 I just want to point out, too, that increase in the
14 minimum wage does have a big impact on our industry, the
15 restaurant industry. But importantly and overall, it does
16 affect employees and may hurt employees overall.

17 If employers, especially small employers just cannot
Page 70

18 absorb the higher costs of a minimum wage increase, it will
19 result in shorter shifts for employees, job losses for
20 employees, and higher prices which employees would have to
21 pay as a result of that minimum wage increase. And so
22 these factors have to be looked at.

23 Again, just in our industry especially we're
24 frustrated, because when a minimum wage increase goes up,
25 it's only the highest paid employees who get a raise. And

82

CAPITOL REPORTERS (916) 923-5447

□ 1 this is because it's the tipped employees who make minimum
2 wage in the restaurant industry, and typically they make
3 between fifteen to thirty dollars in addition to the
4 minimum-wage earnings. Whereas the back-of-the-house
5 employees who make higher than minimum wage, but certainly
6 still at the lower end of the pay scale, you know, will not
7 receive an automatic benefit.

8 If you increase labor costs, it makes it very
9 difficult to give other employees increases. It makes it
10 very difficult to make ends meet. Again, it would lead to
11 lower hours, job loss, forgoing expansion and raising
12 prices. And this ultimately has a detrimental impact on
13 the employee. So, for these reasons, we oppose indexing.

14 Thank you.

15 CHAIRPERSON CURTIN: Thank you.

16 MS. RICE: Good morning. My name is Cynthia Rice. I
17 am from California Rural Legal Assistance, and I am here
18 today to urge the Commission to appoint the wage board for
19 the purposes of increasing the minimum wage and applying an
20 indexing factor for future increases.

21 Let me begin by pointing out that CRLA, Inc. -- it

22 will come as no surprise to most people in this room --
23 believes that the analysis of the case law and statutory
24 and constitutional authority for the IWC presented by the
25 Chamber of Commerce and the Restaurant Association is

CAPITOL REPORTERS (916) 923-5447

□ 1 wrong. The case law that they rely upon does not construe
2 the unique and -- and, in fact, fundamental function of
3 this board to set wages based upon the needs of the work
4 force.

5 If the -- if the Commission, by way of wage board,
6 determines that indexing is critical to ensuring the
7 welfare and well-being of California workers, it is within
8 their constitutional and statutory purview to apply
9 indexing to the minimum wage in the future.

10 The AFL's petition has completely and adequately
11 supported the motion that indexing is critical in these
12 incredible times in California.

13 Much of the -- much of the criticism of the increase
14 in minimum wage suggests that this is an urban issue that
15 affects a relatively small part of the work -- work force.
16 In fact, CRLA is a rural program. We have offices in 22
17 rural counties. Our eligibility for our services is
18 determined on an annual basis by reference to the CPI at
19 the federal level.

20 Every year for the last five years, the number of
21 poor people in our service areas in those counties has
22 increased due to the impacts of the economy on rural areas
23 and the increases in the cost of living and the decreased
24 ability of people using current minimum wages to put food
25 on their table, to drive to work and pay for the -- put gas

CAPITOL REPORTERS (916) 923-5447

1 in their tanks and to pay for their housing.

2 This has increasingly been a problem in areas like
3 Fresno County, Kern County in general, Stanislaus County,
4 San Joaquin County, down in the southern part of Santa
5 Clara County, where what were once rural areas are now
6 turning into new urban populaces and becoming extended
7 bedroom communities for major urban areas.

8 Tracy to San Francisco is not an uncommon commute
9 these days. That has driven up housing prices as well as
10 impacted the -- increased the impact of the increase in gas
11 prices on minimum-wage workers in these traditionally rural
12 areas where folks would flee to when they could no longer
13 afford to live in San Francisco or San Jose or Los Angeles.

14 This is a pattern that is occurring throughout
15 California and can only be addressed by an increase in the
16 minimum wage with an indexing factor that will adjust
17 automatically for those types of -- of economic fluxes in
18 the future.

19 With respect to the argument that this will drive
20 inflation and put small businesses out of business, again,
21 I would refer you to the AFL's comment and its direction to
22 this Commission that what their real, real purview is is to
23 determine the well-being of the workers and, in fact, those
24 issues are collateral. But, in fact, those issues are also
25 a smoke screen.

CAPITOL REPORTERS (916) 923-5447

1 There is no evidence that's been support -- that's
2 been indicate -- that's been submitted, at least that's on
3 review, that shows that any of the states that have

4 implemented indexing have resulted in any significant
5 impact in inflation or any significant impact in the
6 incidences of failed businesses.

7 In fact, if we look at organized labor and we look at
8 most non-minimum-wage businesses in the country, there is
9 an annual review process that results in an automatic
10 increase in wages.

11 I was struck -- struck by the comment of the earlier
12 person about how good it would be to be a minimum-wage
13 worker and know that every year you might get an increase.
14 Isn't that what the American dream is all about, receiving
15 rewards every year for staying around, doing work, being a
16 part of the working community?

17 That has not driven inflation, that has not driven
18 businesses out of business even though there's been a
19 practice under organized labor through union contracts with
20 automatic increases and through unorganized labor as -- as
21 an element of competing with other good employers. It will
22 no more drive inflation if it -- if it is attached to the
23 minimum wage. It will merely keep those workers at a same
24 pace as other workers.

25 Finally, with respect to the impacts of -- of the

□ 1 financial decline in earning power -- in buying power that
2 the minimum wage has suffered, that has impacted not only
3 the individual workers but our social services in our
4 counties. As I said, the number of poor people that my
5 organization can serve under the federal poverty guidelines
6 has increased. That number -- that increase has also had
7 an impact on provision of medical services, on provision of
8 general assistance, on provision of TANF benefits or

9 welfare benefits.

10 As the minimum wage -- the value of the minimum wage
11 decreases, somebody has to pick up that tab, and that is
12 you and me and the other taxpayers. In fact, the
13 minimum-wage worker taxpayers, some -- their taxpayer money
14 goes to the -- to the State to pay for their health
15 services, their children's health services and the health
16 services of other minimum-wage workers who can't afford to
17 pay their own bills.

18 Indexing is a way that will help alleviate this
19 impact both on the individual family and on the social
20 infrastructure, and I urge you to appoint a commission and
21 thoroughly examine these issues.

22 Thank you.

23 CHAIRPERSON CURTIN: Thank you.

24 Questions? Could you come back. Thanks.

25 Commissioner Washington.

CAPITOL REPORTERS (916) 923-5447

87

□

1 COMMISSIONER WASHINGTON: Ms. Rice, you raised an
2 issue that I have a question relative to. And it's going
3 to be a long one, because I have to qualify it.

4 I'm sure that you're aware that for many years I
5 represented manufacturers and I worked this issue of wages
6 and hours, overtime and things like that for quite a long
7 time. I was a part of the debate and the subsequent
8 passing of AB 60, and I've seen the results or the effect
9 of AB 60 after it had been incorporated into the Labor
10 Code.

11 I'm pretty well convinced because we have continued
12 to have an interest in having greater flexibility in terms

13 of daily overtime and things of that nature and as an
 14 employer representative I've fairly concluded that anything
 15 that the Industrial Welfare Commission wish to do that was
 16 specifically not granted within the purview of the now
 17 Labor Code that now restricts them was not doable.

18 And I've had labor argue that with the different
 19 attempts by regulatory folks, whether it had to deal with
 20 meal periods and things of that nature that the IWC is
 21 interested in. And the only thing that caused me to ask
 22 this question relative to how the IWC could do something
 23 with indexing was the Constitution.

24 Now, I hold the Constitution to be higher than the
 25 Labor Code. So I would be interested to find out how then

88

CAPITOL REPORTERS (916) 923-5447

□ 1 would the Industrial welfare Commission under the auspices
 2 of the Constitution be able to get indexing?

3 MS. RICE: The power and authority for the State
 4 Legislature to establish the IWC was -- was initially
 5 established statutorily and then by way, I believe, of
 6 initiative was established -- was -- was amended into the
 7 California Constitution. It is by constitutional
 8 authorization in California that the Legislature can
 9 statutorily establish the IWC and has established it as it
 10 currently exists. And that statutory mandate and the -- it
 11 comes from the constitutional mandate, which is to
 12 determine the welfare of -- of employees in the State of
 13 California.

14 And it is from that flow, it is from this fundamental
 15 constitutional acknowledgement of the need for California
 16 as a state to ensure the welfare of its workers that --
 17 that your duties and obligations flow and your powers.

18 COMMISSIONER WASHINGTON: And I guess it gets back to
19 my original question, then.

20 If that authority allows us to do that indexing, why
21 then wouldn't we be able to act in other areas that does
22 fall -- and both the courts and the petitions and so forth
23 that have been entered have been, you know, summarily shot
24 down that it's not something that the IWC can do. And
25 there is nothing in the Constitution or anything in that

89

CAPITOL REPORTERS (916) 923-5447

□ 1 that specifically goes to indexing, so clearly it's not
2 something that is authorized in the Constitution. It just
3 says that the Legislature can constitute this Commission,
4 and that you have authority to act within reason.

5 And now current law and the case law that have arisen
6 so far as a result of AB 60 has said that unless it
7 specifically allows this Commission to do something, that
8 we really are unable to do those things anymore that they
9 used to be able to do relative to individual wage orders,
10 you know, whether or not you're talking about overtime,
11 daily overtime and things of that nature. My impression
12 now is that that's no longer available to this Commission.

13 MS. RICE: I would differ with your characterization
14 of the case law as indicating that -- that there is any
15 limit on the -- general limit on the power of the IWC.

16 what the case law says is that the Legislature is
17 empowered to do a number of things. One of them is to
18 establish the IWC, which it did. Another is to establish
19 other standards.

20 Once it establishes another standard, then the IWC
21 cannot conflict with that standard by establishing

22 something that does not further the legislative intent of
23 the statute that it passed.

24 That's what happened with the construction of AB 60,
25 the meal and rest periods, is that it was construed -- the

CAPITOL REPORTERS (916) 923-5447

1 court -- the courts that construed those provisions and
2 struck them determined that the IWC had acted in direct
3 contravention of a separate statutory action that the
4 Legislature had taken. Not that they had exceeded their
5 authority under their general power to -- to set the
6 minimum wage, but that they had contravened another
7 legislative act.

8 That is not a situation that is here. There is
9 nothing in the Labor Code that says that you can't do
10 indexing. That would have to be the scenario that was
11 present in order for that lengthy case law to apply in the
12 manner that the Chamber and the Restaurant Association is
13 suggesting.

14 COMMISSIONER WASHINGTON: Thank you.

15 MR. ABRAMS: Good morning, Mr. Chairman, members of
16 the Commission. I'm Jim Abrams with the California Hotel
17 and Lodging Association. And I would just say as a prelude
18 we endorse the comments that have been made by the Chamber
19 of Commerce and the California Restaurant Association. I
20 don't wish to repeat them for you.

21 I would like to set out a few thoughts that I hope
22 you will keep in mind should you decide that you are going
23 to call a wage board to examine this issue.

24 First of all, there is often a discussion at these
25 hearings about the fact that the minimum wage won't support

CAPITOL REPORTERS (916) 923-5447

□ 1 a family of three or a family of four. And with all due
 2 respect, the minimum wage was never intended to support a
 3 family. Now, whether it should be or should not be is not
 4 the issue.

5 The minimum wage is designed, intended, as set out in
 6 the Labor Code, to determine whether or not it provides the
 7 proper cost of living for individuals, for employees.
 8 whether someone chooses to be married or not married,
 9 chooses to have an extended family, chooses to have more
 10 than one person living in a household is up to that
 11 individual. And for many of us who have families, two
 12 jobs, two wage earner families are becoming the norm.

13 But the minimum wage -- and should you send this to
 14 the wage board, we respectfully ask that the charge to the
 15 wage board set forth specifically that the inquiry is to be
 16 focused on what the proper costs of necessary living is for
 17 an employee, not for a family of two, three, four or
 18 something else.

19 And while it is certainly true that in a perfect
 20 world we would all like to have cars and houses and
 21 everything else, the minimum wage isn't intended to bring
 22 every employee in the state of California to a dream level,
 23 quote/unquote. It's intended to provide the proper cost of
 24 necessary living.

25 So we would ask that any charge to the wage board,

CAPITOL REPORTERS (916) 923-5447

□ 1 should you decide to appoint one, tell the wage board, Here
 2 is exactly what it is the minimum wage is intended to do.
 3 Here is the standard of living that it's intended to

4 provide. And while it would be nice to be able to have one
5 wage earner in a household supporting a whole family,
6 that's not what the IWC's charge is as delegated by the
7 Legislature.

8 Secondly, I do respectfully submit that because the
9 indexing issue has become such a -- a large part of the
10 discussion that's before the Commission right now, that
11 because there is a serious legal question whether indexing
12 is with -- in fact, is within the purview of the IWC as far
13 as its legal authority is concerned, and to harken back to
14 your comments when the petition that the Teamsters put
15 forward at the hearing earlier this morning, we really need
16 to get an answer to that I think so that the wage board,
17 should you call one, should you choose to call one, does
18 not spend time looking at indexing if in fact it is not a
19 legally viable option for the Commission. So we would ask
20 that that be taken into consideration as well.

21 I would point out, by the way, that during 2000 when
22 we all acknowledge we had a recession building, and 2001
23 when we had continuing recession and 9/11, inflation when
24 you compounded it for those two years was over 5 percent.
25 So inflation kept going up -- which is neither a good thing

1 nor a bad thing; it's just a fact of life -- when the
2 bottom was falling out of the economy.

3 Just looking at the lodging industry in particular --
4 and no question, travel, tourism were among the industries
5 hardest hit especially after 9/11 -- I know that the Unite
6 Here, which is the union that represents, if not all,
7 certainly the vast majority of union employees in the
8 lodging industry, 25 percent of their employees within a

□

9 month's time were out of work.

10 And I feel very sorry for those people, and I don't
11 mean to make it sound like a light point. But inflation --

12 CHAIRPERSON CURTIN: Excuse me. That was after --
13 post 9/11?

14 MR. ABRAMS: Post 9/11.

15 CHAIRPERSON CURTIN: Immediate post 9/11 response
16 or --

17 MR. ABRAMS: That was a post -- that was a response
18 to 9/11 along with the airlines and everybody else. And --
19 and, yes, the recession also, but that was the
20 precipitating factor.

21 And so you have inflation going up and obviously
22 throughout the economy generally and in particular
23 industries specifically you had real dislocation.

24 And so I put that forward to you, but I think the
25 real question is is indexing even something legally the

□ 1 Commission could do.

2 Also, I think it's important as you look at what's
3 happening in other states, that it's -- that you -- the
4 vast majority of the states in this country, good, bad or
5 indifferent, are still following the federal minimum wage.

6 And Mr. Broad -- and I really sincerely applaud the
7 presentation he made to you earlier this morning, but he
8 made a very telling point about how competition really ends
9 up driving -- these are my words not his -- competition
10 ends up driving what happens in a lot of industries.

11 And in California, it is a very high cost of living,
12 no question about it, but we are the highest cost of doing

13 business in the country. There is a correlation.

14 And we are competing -- and I don't care what the
 15 industry is, whether it's lodging, technology, biomed or
 16 anything else -- with companies in other states where there
 17 is a 5.15 minimum wage; where there is, with the exception
 18 of maybe California and a couple of others, no daily
 19 overtime; where there is, with the exception of California
 20 and three or four other states, tip credit; all of which
 21 goes to provide a different economic base within which the
 22 employers with whom we are all competing, even for travel
 23 and leisure business, have to -- have to compete, and it
 24 sets the floor for what we can afford to do. And I think
 25 Mr. Broad put it well, the competition drives the floor out

95

CAPITOL REPORTERS (916) 923-5447

□ 1 at some point in the equation.

2 And so one of the factors that the IWC has looked at
 3 in the past when considering the minimum wage is to be sure
 4 that if in fact the minimum wage goes up, it does no harm.
 5 And I'm not here to get into the debate about whether
 6 increasing the minimum wage causes people to lose their
 7 jobs, if they -- the professors and the academia people can
 8 go on that all day long, but it's not a closed system.

9 At some point people who are competing -- and the
 10 vast majority of people in the lodging industry are small
 11 businesses. Two-thirds of the hotels in this state are
 12 under 150 rooms in size; half of them are under 75 rooms in
 13 size. They are all competing, and they've got to decide
 14 what to do.

15 And it's not so much the unemployment, that the
 16 people who get the minimum wage are going to lose their
 17 job. And, again, I'll leave that for the academic debate

18 that's been going on for 20 years. But there is no
19 question that there is a disemployment effect; that people
20 work fewer hours, new people are hired either not at all or
21 at lower numbers, and benefits and amenities that are given
22 are curtailed.

23 One of the most important is health insurance. At
24 some point people who provide health insurance are going to
25 have to say to themselves, I can no longer afford this or I

96

CAPITOL REPORTERS (916) 923-5447

□ 1 can no longer afford it all by myself. I have to either
2 cancel altogether or get my employees to pay more because
3 of all the costs that continue to go up.

4 And it's not one thing drives all of the others. It
5 is all a closed system in the sense that they all are
6 related variables.

7 So we would like the Industrial welfare Commission,
8 if you choose to call a wage board, to direct the wage
9 board to look at what harm might be caused and the extent
10 to which harm might be caused by an increase in the minimum
11 wage should they consider one.

12 Also, we would ask that the Industrial welfare
13 Commission ask the wage board, should you call one, to look
14 at the impact on the State's budget. A great many people
15 who work for the State of California or who are paid by the
16 State of California indirectly arguably are minimum-wage
17 employees or in that general area of compensation. And so
18 we feel it's important that the impact on the State budget
19 be factored in as well.

20 Also, and again on the assumption that you call a
21 wage board, we would ask that any -- the wage board

22 consider that if there is in fact an increase in the
23 minimum wage, that there be a proportionate increase in the
24 meal and lodging credits that are in most of the wage
25 orders and that have typically followed suit if, as and

CAPITOL REPORTERS (916) 923-5447

1 when the minimum wage is increased.

2 So minimum wage is not designed to solve all social
3 ills, dealing with people of color and people not of color,
4 with the crime problem and everything else. And I wish and
5 I think we all wish that we had a magic wand that could
6 make all those problems go away with one regulatory
7 governmental decisionmaking conclusion, but we can't. The
8 minimum wage is designed to provide the proper cost of
9 living for an employee.

10 And we would lastly ask that the Industrial welfare
11 Commission urge the wage board, if you call one, to look at
12 the extent to which the supply and demand in the economy
13 right now is in fact doing exactly that. Very few people
14 work at the minimum wage, mainly because -- and it's not
15 because of union versus nonunion. It's because supply and
16 demand dictate that higher wages and benefits be provided.

17 Thank you.

18 CHAIRPERSON CURTIN: Thank you.

19 Questions?

20 COMMISSIONER CREMINS: Anybody that speaks before us
21 that starts quoting statistics, could you please provide
22 their source so we have something to look at?

23 MR. ABRAMS: Yes, sir. Referring to the inflation
24 factor, sir?

25 COMMISSIONER CREMINS: whatever you came up, yes.

CAPITOL REPORTERS (916) 923-5447

1 MR. ABRAMS: Yes, sir. I'd be happy to. Certainly.

2 COMMISSIONER CREMINS: I'd appreciate that.

3 CHAIRPERSON CURTIN: Any other questions?

4 Okay. Next.

5 MS. YOUNG: Good afternoon. My name is Carrie Young.

6 I represent the United Domestic Workers of California.

7 I'm here to ask you because I am a minimum-wage
8 worker. And it's not a point whether I'm trying to support
9 a family. Some of us are just trying to support ourselves.
10 And if any of you tried to manage with the income that we
11 have, you would find it very difficult.

12 And the money that you give, it's going to trickle
13 down back into the economy, to the guy that's running the
14 motel, the guy that's running the taco shop on the corner.
15 He's going to spend that dollar somewhere, so it's going to
16 come back in.

17 But I just ask that you consider, okay, maybe we
18 can't support a family, but maybe we can support one
19 college student that might be the next president. Maybe we
20 can help him. I would just ask you to consider each
21 individual person as somebody that needs that money, like
22 me.

23 Thank you very much.

24 CHAIRPERSON CURTIN: Thank you.

25 MS. BROWN: Good morning. My name is Fannie Brown,

CAPITOL REPORTERS (916) 923-5447

1 and I'm here with ACORN. But I just came up to say is I
2 would appreciate if you would increase the minimum wage
3 with indexing.

4 And you might just say why or you're a low-wage
5 worker. No, I was not a low-wage worker. I'm retired now,
6 but I've had to take on an in-home health care job because
7 my medical insurance a month is \$446.40 a month. That's
8 not including paying \$20 for a doctor visit, thirty --
9 twenty -- \$25 for a prescription.

10 And I -- not only that, I have a disabled son that's
11 had to move back home because he could no longer afford to
12 take care of himself on his own. I have six other children
13 that I have taken in. And that's not including the
14 Medicare -- medical for my children nor my disabled son.
15 And that means that somebody else has to pick that up.

16 So I know what it is to be in a position where you
17 can turn nowhere, you have nowhere else to go but to go
18 back to work. I have six small children at home, and I
19 have a disabled son, but I had to go back to work in order
20 to pick up my medical.

21 And with that little increase, no, it's not enough.
22 If we index it, if we give the increase, it's not enough.
23 It will never be enough. But what we have to look at is
24 whatever little bit we give to the minimum-wage worker is
25 going to be some kind of help. And then maybe in the long

100

CAPITOL REPORTERS (916) 923-5447

□ 1 run it will cause families to be able to stay together and
2 do what they need to do for their families.

3 Right now I've had to go back to work. I have six
4 small children at home ranging from the age of seven to
5 fourteen, I have a disabled 41-year-old son at home, and
6 I've had to go back to work after being retired. So, you
7 know, that wage higher with indexing, we would really
8 appreciate it.

9 Thank you.

10 CHAIRPERSON CURTIN: Thank you.

11 MR. MARTIN: Good morning. My name is Tom Martin.
12 I'm here on behalf of the Small Manufacturers Association
13 of California. I'm also the owner of People Management
14 Professionals.

15 The Small Manufacturers Association of California is
16 an organization representing more than 1,000 small
17 manufacturing companies in California. And we reluctantly
18 joined with Governor Arnold Schwarzenegger in support of
19 the minimum wage increase of 50 cents in 2007 and an
20 additional increase of 50 cents in 2008.

21 We also support the Governor's position opposing
22 annual indexing of future increases in the minimum wage
23 to -- to the Consumer Price Index, especially the
24 California Consumer Price Index for all urban consumers.

25 If you're aware, in 2005 the Governor vetoed a bill

101

CAPITOL REPORTERS (916) 923-5447

□ 1 by Sally Lieber, and his veto statement included:

2 "The minimum wage has been" -- "has not been
3 increased since 2002, and I believe it is now appropriate.
4 This is a position I made very clear to the author.
5 However, I have also made it clear that I do not support
6 automatic increases, indexing" -- and this is quoting the
7 Governor, again -- "to the wage that relieves elected
8 officials of their duty to consider all of the impacts each
9 increase to the wage will have on workers and businesses."

10 As you know, the highest minimum wage in the
11 nation -- and by the way, in answer to your question, it
12 was 1998 when Washington voted their increase, and they've

13 had an increase of a dollar ninty-three since 1999. Also
 14 Oregon increased -- voted theirs in in 2002, and they've
 15 had an increase of 60 cents since 2003.

16 As you know, the highest minimum wage in the nation
 17 is San Francisco. In 2004, San Francisco through the
 18 electorate raised the city's minimum wage to \$8.50 with the
 19 mandate that each year thereafter on January 1 it would be
 20 increased based upon the CPI. In 23 months, it has already
 21 increased to \$8.82, an increase of almost 4 percent during
 22 a period when the cost of living has barely moved.

23 California's currently tied as the ninth largest
 24 minimum wage in the country. With the two fifty-cent
 25 increases, it will grow to about the fifth largest. The

102

CAPITOL REPORTERS (916) 923-5447

□ 1 four that may remain ahead are San Francisco, Oregon,
 2 Washington and Vermont. And I'm not familiar that --
 3 according to the federal government, Nevada is not one and
 4 the other states that he mentioned is not one that have
 5 indexing at this point.

6 while San Francisco uses the exorbitant California
 7 CPI, the other states use the federal CPI which does not
 8 grow as quickly. More importantly if you allow the state
 9 minimum wage to be indexed by law, you're assuring raising
 10 inflation and no one will have responsibility.

11 As runaway wages drive businesses out of the state,
 12 everyone will be blameless. Just as the Legislature has
 13 received pay increases of 277 percent over the past 16
 14 years with no one to blame, so too will be the unlimited
 15 minimum wage grow without responsibility.

16 we sincerely ask that the wage petition by the Labor
 17 Federation and State Treasurer Phil Angelides be carefully

18 reviewed and rejected as perpetuating unrestricted
19 inflation.

20 Thank you.

21 CHAIRPERSON CURTIN: Thank you.

22 MR. DILL: Hello. My name is Henry Dill. I'm from
23 Modesto, California.

24 I came to this hearing just to sit and observe and
25 listen, and some of the things I hear I just don't believe,

103

CAPITOL REPORTERS (916) 923-5447

□ 1 some of the things that people say, like the minimum wage
2 is -- is not that important.

3 when I entered the work force, it was very important.
4 It was what I based my future on. And through the years,
5 the minimum wage increased chasing the cost of living. I
6 mean, you know, minimum wage is there to help people,
7 people make -- make a decent living, you know. It's not
8 there to, you know, raise families. To help people make a
9 decent living, to help people plan their futures.

10 You know, when I entered the work force, we had a
11 minimum wage, and that's where I knew I could start at, and
12 I based my future on that. And as minimum wage increased,
13 it gave other people who entered the work force a future,
14 where they could start from. They don't have to start way
15 down below, you know. It's a fair price for a job that's
16 done.

17 And it -- it makes the employers aware of what
18 people's needs are because sometime they forget. They talk
19 about -- this guy was talking about most of the people
20 don't -- are not on minimum wage. Everybody I know started
21 on minimum wage. That was a base where we -- we based our

22 lives on.

23 A minimum wage increase should be mandatory because
24 the economy goes up, things get to be more expensive. It
25 costs more to buy beans and rice, you know. And I think it

104

CAPITOL REPORTERS (916) 923-5447

□ 1 should be -- they talk about this index. I'm not familiar
2 with the index. All I know is that minimum wage is good,
3 it's a good thing, and I believe that the majority of
4 California -- the majority of the people in California base
5 their income on minimum wage, base their futures on it.

6 I mean, for somebody to sit up here and say that, you
7 know, it's not that important, it doesn't need to happen, I
8 just don't believe it. I was sitting back there not -- you
9 know, I wasn't going to say nothing, but I was sitting back
10 there listening to what some of these people had to say. I
11 just don't believe it, you know.

12 I'm an (unintelligible) employee, and we work for
13 what we get, you know, and we have to have a base. And
14 we're not talking about minimum wage to raise a family.
15 We're talking about minimum wage to start with me, because
16 I'm the future of my family. If I can make a minimum wage,
17 then I'll take care of my family, you know.

18 And I don't want -- I don't want, you know, people
19 not to think that, you know, I'm trying to take advantage
20 or trying to beat the employer or something like that. No.
21 I give a fair day's work, and I expect to get a fair day's
22 pay, you know. And I do have a future.

23 Minimum wage for me is a starting point for people
24 who enter the work force.

25 Thank you.

CAPITOL REPORTERS (916) 923-5447

□

1 CHAIRPERSON CURTIN: Thank you.
2 Any further testimony?
3 You know, there was a gentleman that asked me if he
4 could testify -- I don't see him in the audience --
5 regarding the trucking issue we talked about earlier. I
6 guess he left. Okay. Yeah, well, we'll make sure his
7 position gets -- gets heard. That's the one thing we're
8 going to make sure happens here, everybody gets heard.
9 Any further comments?
10 Okay. I guess at this point we move from the public
11 hearing, which was your turn, to the public meeting, which
12 is essentially our turn.
13 And the first thing, the first order of business for
14 the Commission is the approval of the minutes from the
15 meeting held June 2nd. You've all received copies.
16 And if I hear a motion to approve, we will (sotto
17 voce conversation among some panel members) -- okay.
18 Harold.
19 COMMISSIONER ROSE: Yes, I move that we accept the
20 minutes as -- or approve the minutes as accepted.
21 CHAIRPERSON CURTIN: Okay. Second?
22 COMMISSIONER GUARDINO: Second.
23 CHAIRPERSON CURTIN: Okay. All in favor? And I'm
24 going to ask each of you to vote individually so they can
25 record it.

CAPITOL REPORTERS (916) 923-5447

□

1 Harold Rose.
2 COMMISSIONER ROSE: Yes.
3 CHAIRPERSON CURTIN: Tim Cremins.

4 COMMISSIONER CREMINS: Aye.
5 CHAIRPERSON CURTIN: willie washington.
6 COMMISSIONER WASHINGTON: Aye.
7 CHAIRPERSON CURTIN: And Leslee Guardino.
8 COMMISSIONER GUARDINO: Aye.
9 CHAIRPERSON CURTIN: Okay. That's four to zero. The
10 minutes are approved.

11 Consideration and finding by the IWC regarding
12 adequacy of the minimum wage based on the IWC
13 investigation.

14 At this point, we're going to discuss whether we
15 believe that it's adequate or not. And then we are going
16 to -- if we believe it's not adequate, we're going to make
17 a motion to establish a wage board.

18 Now, let me see if I've got this in proper order.

19 Okay. I think that's about it. Yes.

20 So any discussion? Or any motion? Let's start with
21 a motion.

22 Okay. Motion to find that the minimum wage may be
23 inadequate to supply the cost of proper living would be
24 appropriate at this stage.

25 Anybody want to make that motion?

107

CAPITOL REPORTERS (916) 923-5447

□ 1 COMMISSIONER GUARDINO: So moved.
2 CHAIRPERSON CURTIN: Okay. Moved by Leslee Guardino.
3 Second?
4 COMMISSIONER WASHINGTON: I'll second the motion.
5 CHAIRPERSON CURTIN: willie washington.
6 Okay. Any discussion?
7 Okay. Seeing no discussion, we'll move right to the
8 vote whether it's inadequate.

9 The motion is that the minimum wage may be inadequate
10 to supply the cost of proper living and all those who
11 briefed that motion.

12 We'll start with Commissioner Rose.

13 COMMISSIONER ROSE: Yes.

14 CHAIRPERSON CURTIN: Okay. Commissioner Cremins.

15 COMMISSIONER CREMINS: Aye.

16 CHAIRPERSON CURTIN: Commissioner Washington.

17 COMMISSIONER WASHINGTON: Aye.

18 CHAIRPERSON CURTIN: Commissioner Guardino.

19 COMMISSIONER GUARDINO: Aye.

20 CHAIRPERSON CURTIN: Okay. We'll move on to the
21 appointment of the members of a wage board established to
22 review the adequacy of California's current minimum wage.

23 We've actually reviewed this rather quite a bit
24 individually. There has been applications submitted as
25 outlined in the last meeting, the June 2nd meeting. I

108

CAPITOL REPORTERS (916) 923-5447

□ 1 believe the deadline for people willing to and wishing to
2 serve on the wage board was June 23rd.

3 we did receive a number of -- of recommendations.

4 And there has been one slight change raised by Commissioner
5 Rose that one of the members submitted by the -- nominated
6 by Jim Abrams actually doesn't reside in California, works
7 in California but does not reside in California, so we're
8 going to ask the Commissioners to scratch that name, Doug
9 Cornford.

10 And after some discussions with interested parties,
11 I'm going to propose that the addition of Gary Monahan as
12 the alternate nominated by Assemblyman Van Tran be

13 considered by this Commission.

14 So there's three elements to the wage board. There's
15 the employer representatives, employee representatives, and
16 then there's a non-voting representative who chairs the
17 commission. The recommendations after conversation with
18 interested parties would be as follows. I'll read the
19 proposed names and we can discuss them.

20 The employer representative side would be:

21 Julianne Broyles from the California Chamber of
22 Commerce; Acie Davis from the Davis & Adams Construction;
23 Kevin Dayton from Associated Builders and Contractors of
24 California; Lara Diaz Dunbar, California Restaurant
25 Association; Jim Abrams, California Hotel and Lodging

CAPITOL REPORTERS (916) 923-5447

1 Association; Heidi Dejong Barsuglia from the Retailers
2 Association; and as alternates, Thomas J. Martin from
3 People Management Professionals and Gary Monahan as the
4 owner of Skosh Monahan -- Skosh Monahan's, whatever that
5 might be, city councilman from Costa Mesa.

6 On the employee representative side, I would like to
7 propose:

8 And I don't know exactly the pronunciation here, it's
9 Jovan or Jovan Agee from the Domestic Workers -- a
10 representative from the Domestic Workers and a member of
11 AFSCME; Barry Broad from the California Teamsters Public
12 Affairs Council; Lee Sandahl as an alternate from the
13 International Longshoreman and Warehouse Union; Angie Wei
14 from the California Labor Federation; Allan Clark from the
15 California School Employees Association as an alternate;
16 Chris Jones from California ACORN; and Josefa Mercado from
17 SEIU Local 1877.

18 And for the non-voting representative to chair the
19 meeting and prepare the report for the Commission, I would
20 like to propose Paul Cohen.

21 COMMISSIONER ROSE: Excuse me.

22 CHAIRPERSON CURTIN: Yes. I'm sorry.

23 COMMISSIONER ROSE: You failed to mention Mark --

24 CHAIRPERSON CURTIN: Oh, I missed Mark Schacht --
25 okay, thank you very much -- from the California Rural

110

CAPITOL REPORTERS (916) 923-5447

□ 1 Legal Assistance Foundation. And thank you for that.

2 And then as the non-voting chair of the meeting, Paul
3 Cohen, who is a councilman from San Rafael City Council and
4 also a member of the Northern California Carpenters
5 Regional Council.

6 So I'd like to put that out as a motion and open the
7 floor for discussion.

8 Second?

9 COMMISSIONER WASHINGTON: No, question.

10 Paul Cohen on --

11 CHAIRPERSON CURTIN: On the back side. I'm sorry.

12 COMMISSIONER WASHINGTON: Oh.

13 COMMISSIONER GUARDINO: I'll second the motion.

14 CHAIRPERSON CURTIN: Thank you.

15 Okay. Any discussion?

16 Okay. Seeing none, let's vote.

17 Counselor Rose.

18 COMMISSIONER ROSE: Aye.

19 CHAIRPERSON CURTIN: I mean Commissioner Rose.

20 Commissioner Cremins.

21 COMMISSIONER CREMINS: Aye.

22 CHAIRPERSON CURTIN: Commissioner Washington.
23 COMMISSIONER WASHINGTON: Aye.
24 CHAIRPERSON CURTIN: Commissioner Guardino.
25 COMMISSIONER GUARDINO: Aye.

CAPITOL REPORTERS (916) 923-5447

□ 1 CHAIRPERSON CURTIN: Okay. Four nothing. That will
2 be the wage board.

3 Our next charge is to -- actually to give the wage
4 board a charge to discuss what they're supposed to discuss
5 and at least get them started. And there was quite a bit
6 of discussion from the public on this, and we've all
7 received a draft proposal.

8 I would like to ask just from the legal counsel point
9 of view if I should read the proposal.

10 COUNSEL STRICKLIN: If you wish, yes.

11 CHAIRPERSON CURTIN: I think it would be a good idea.
12 Okay. So I'm going to propose or put on the table as
13 a motion this draft proposal for the findings and charge to
14 the 2006 minimum wage board.

15 Findings pursuant to Labor Code Section -- and you'll
16 have to bear with me on this, it's a page and a half. I'll
17 read it quickly and as clearly as I can.

18 Findings pursuant to Labor Code Sections 1178 and
19 1178.5 for the IWC's action to select a minimum wage board.

20 In 2006, the Industrial welfare Commission -- excuse
21 me -- hereinafter IWC, received three requests that the IWC
22 conduct a review to raise the minimum wage summarized as
23 follows:

24 (A) May 18, 2006 petition from Governor Arnold
25 Schwarzenegger requesting the IWC to conduct a review to

CAPITOL REPORTERS (916) 923-5447

1 raise the minimum wage by one dollar implemented in two
2 phases of 50 cents over a nine-month period;

3 (B) April 26, 2006 letter from Senator Abel Maldonado
4 requesting the IWC conduct a review to raise the minimum
5 wage by one dollar implemented in two phases, 50 cents to
6 be effective on September 1, 2006 and July 1, 2007;

7 And (C) on May 30th, 2006, a petition from the
8 California Labor Federation requesting the IWC conduct a
9 review to raise and index the minimum wage.

10 In response to the request, the IWC conducted a
11 preliminary investigation in accordance with Labor Code
12 Sections 1173, 1178 and 1178.5. The IWC investigation
13 included an investigative public hearing on July 5th, 2006,
14 in Sacramento regarding the adequacy of the current
15 California minimum wage. At and in conjunction with the
16 public hearing, oral and written testimony regarding an
17 increase to California's minimum wage of 6.75 per hour were
18 offered and considered.

19 In addition to that part of the investigation
20 conducted at the public hearing, the IWC received and
21 reviewed research materials obtained by staff as well as
22 materials submitted by the public. This information
23 included but was not limited to documents submitted by the
24 California Labor Federation, the California Chamber of
25 Commerce and the California Budget Project as well as other

CAPITOL REPORTERS (916) 923-5447

1 documents provided to the IWC by the public at the July
2 5th, 2006 hearing.

3 The IWC also reviewed data on the minimum wage paid

4 in other states as well as the bill on minimum wage
5 currently under consideration by the California
6 Legislature.

7 After considering all of the evidence related to the
8 minimum wage investigation, on July 5, 2006, the Industrial
9 Welfare Commission found that the minimum wage may be
10 inadequate to supply the cost of proper living and selected
11 a wage board consisting of an equal number of employer and
12 employee representatives and a non-voting chairperson to
13 consider and make recommendations regarding the adequacy of
14 the State minimum wage.

15 Charge to the 2006 minimum wage board: The IWC
16 charges you to consider all material provided to you for
17 review; and after you review it, to report to the IWC your
18 recommendations on the following matters consistent with
19 the basic statutory responsibility to insure that the
20 minimum wage is adequate to supply the cost of proper
21 living:

22 (1) The adequacy of the current minimum wage of 6.75
23 per hour and whether the State minimum wage should be
24 increased;

25 (2) If you determine that the minimum wage should be

□ 1 increased, you should make recommendations as to: (A) how
2 much the minimum wage should increase; (B) the timing of
3 such an increase -- in other words, will the increase occur
4 at one time or be phased in over a period of time; and (C)
5 whether the minimum wage should be indexed.

6 (3) If you determine that the minimum wage should be
7 increased, you should make recommendations as to the
8 adequacy of the amount which may be credited against the

9 minimum wage for meals and lodging in Section 10 of IWC
10 wage Orders 1 through 15 and Section 9 of IWC wage Order
11 16.

12 In investigating this matter and making
13 recommendations to the IWC, you may consider but are not
14 bound by the IWC's traditional determination to raise these
15 credits by the percentage increase in the State minimum
16 wage.

17 The information provided to the -- by the IWC will
18 include transcripts of testimony and other documents
19 previously presented to the IWC. The IWC requests that the
20 wage board review these materials prior to the date of its
21 first meeting.

22 Okay. That's the charge which we need to act on, and
23 it's on the table. It's been seconded.

24 Discussion?

25 COMMISSIONER WASHINGTON: Mr. Chairman, yes.

115

CAPITOL REPORTERS (916) 923-5447

□ 1 Going over this, I raise concern that under Item 2(C)
2 that what should be the minimum wage -- should the
3 determination be made that the minimum wage will be
4 increased, are to make recommendations as to -- and item
5 (C) is whether the minimum wage should be indexed or not
6 causes me some concern.

7 We're talking about an action here that we know that
8 is clearly within our purview that could be tainted by an
9 item that we have some discussion and some major concern as
10 to whether or not we have any power to do that or not. And
11 I believe that unless there's some process there, it could
12 preclude a positive action if the board was to decide to

13 move forward with a minimum wage increase by being engaged
14 in lawsuits and having to go through the process of trying
15 to determine whether or not the Industrial Welfare
16 Commission has the power if it comes back with a
17 recommendation that the minimum wage should be indexed or
18 not.

19 So I do have a concern with that provision of the --
20 of the instruction to the wage board.

21 CHAIRPERSON CURTIN: Appreciate that, Commissioner.
22 We did discuss this with legal counsel, and we were
23 given the impression -- and I'll let her speak for herself
24 at some point -- that this would require some considerable
25 legal review. And I didn't want to wait for the charge

1 with the -- with the legal review before the charge.

2 If it is determined during this process that we do
3 not have the legal right to do this by our counsel and
4 we're given that advice, I believe we will -- whatever
5 steps we need to amend it, it will be amended but -- we
6 will try to amend it.

7 But to hold the process up, which could be a lengthy
8 investigation would actually push the determination back
9 past year's end. So I thought we would move forward and
10 let the legal issue take its own course. And, you know, it
11 may be moot either way, whether they determine it needs to
12 be raised.

13 If they don't determine it needs to be raised,
14 there's no legal issue. If they determine it needs to be
15 raised without indexing, then there's no legal issue. If
16 they do determine that indexing is necessary and it comes
17 to us, then at that point I believe the legal determination

18 would be critical in moving forward.

19 And I believe I'll turn it to Marguerite to see if
20 that's a fairly fair rendition of our conversation.

21 COUNSEL STRICKLIN: There's been no formal request
22 made to our office yet, so if that's something that you
23 intend to do, you need to let me know. That would proceed
24 on to the Attorney General's opinion unit. That would not
25 come from me.

117

CAPITOL REPORTERS (916) 923-5447

□ 1 CHAIRPERSON CURTIN: I see.

2 Okay. Well, we could amend the motion to ask
3 officially if you're interested in --

4 COMMISSIONER WASHINGTON: Mr. Chairman, could I ask
5 counsel to clarify that a little further.

6 CHAIRPERSON CURTIN: Uh-huh.

7 COUNSEL STRICKLIN: Generally a formal request for an
8 opinion from the Attorney General's office comes from the
9 opinion unit, not the specific counsel for a particular
10 commission or department or agency.

11 In general, if you want my general view as to what
12 the -- whether there can be (unintelligible), I can give
13 you that, but that would not be a formal opinion from the
14 Attorney General's office.

15 CHAIRPERSON CURTIN: You want to ask for that?

16 COMMISSIONER WASHINGTON: Well, you know, I wanted to
17 move forward on the petition as it was originally
18 construed, and I think that this adds to the original
19 petition that was presented. So we've -- you know, in
20 adding this in there, we've added something that was not in
21 the original petition as -- as I read it.

22 CHAIRPERSON CURTIN: Well, actually we have two
23 petitions in front of us --

24 COMMISSIONER WASHINGTON: Right.

25 CHAIRPERSON CURTIN: -- which we merged into one wage

1 board.

2 And one of the petitions includes a request for a --
3 a (unintelligible) indexing.

4 COMMISSIONER WASHINGTON: Did I already vote for
5 that?

6 CHAIRPERSON CURTIN: I think you did.

7 And again, I -- the key element here is that we are
8 under fairly rigorous time constraints, I mean, both by
9 statutory requirements that we have to hold the hearings
10 under the proper time constraints, and to get the increase
11 in place by January 1, we have to have a decision sometime
12 this year.

13 So to -- to sort of push the process back to try to
14 determine whether we have the authority to do indexing or
15 not may push the whole process back so that we're not
16 timely for a wage increase if we decide to do that by
17 January 1.

18 And again, in fact, it may be moot because of the
19 outcomes of the proceedings. So as we move along, we may
20 decide to ask for a formal opinion or we just may move
21 along and see if the question is actually going to be
22 raised in the process.

23 Is that the pleasure of the -- of the Commission?

24 As it stands now, we're asking them to review the
25 indexing. And if they come back with a recommendation that

CAPITOL REPORTERS (916) 923-5447

1 indexing is called for, then I think at that point it's
2 actually very, very important or imperative that we get a
3 legal -- a legal opinion.

4 COMMISSIONER ROSE: If the wage board comes back and
5 says that -- raise the minimum wage and index it, we set
6 the indexing aside, we could still raise the minimum wage,
7 and at that time get a legal opinion or whatever is needed
8 to deal with the indexing because the indexing wouldn't
9 take place for at least a year anyway.

10 CHAIRPERSON CURTIN: I think that's an accurate --

11 COMMISSIONER WASHINGTON: I'd ask the counsel to
12 comment on that, the --

13 COUNSEL STRICKLIN: The only recommendation that the
14 IWC is required to put out for further public comment is
15 one that receives a two-thirds vote of the wage board. And
16 if there is a two-thirds vote of the wage board that there
17 be indexing, then you could put that out for public comment
18 and ask for a legal opinion, you could choose to set it
19 aside. You have various options at that point in time.

20 COMMISSIONER WASHINGTON: And that would have no
21 impact on the other section relative to the increase of the
22 minimum wage? It would be two separate items?

23 COUNSEL STRICKLIN: You could put out two proposals
24 at that point, so no.

25 CHAIRPERSON CURTIN: The Commission itself --

CAPITOL REPORTERS (916) 923-5447

1 COUNSEL STRICKLIN: Yes, it could.

2 CHAIRPERSON CURTIN: Is your comfort level going up?

3 COMMISSIONER WASHINGTON: I'm -- well, I -- to be

4 quite serious with you, you know, I just don't want to box
5 myself in so that later on I'm finding myself having to
6 vote against myself on an issue. And I just want to make
7 it clear that at this point I don't know and I haven't --
8 have not been convinced that we should be in the indexing
9 area myself, and I want to be able to vote that position at
10 the proper time.

11 So the reason I was asking for clarification is that
12 I don't want to get an issue which I have to make a vote
13 that's really against my -- my belief to what we can do.

14 COUNSEL STRICKLIN: As I was saying, the two-third
15 vote would be what would be required to put it out for
16 public comment, further public comment unless there is a
17 finding -- the other option is unless there's a finding
18 that there's no substantial evidence to support indexing in
19 the record.

20 Now, I don't know whether you'd find that or not.
21 But assuming you did and you had that requirement to put
22 out discussion with regard to indexing, the Commission
23 itself could also have another proposal which did not
24 include indexing.

25 CHAIRPERSON CURTIN: So we'd have considerable

□

1 flexibility.

2 My concern is the timing, that if we push it back for
3 a legal opinion, we then will not be able to meet the
4 public hearing requirement and so on and so forth and to
5 get this done within a timely manner for an increase as of
6 January 1 if we decide to have an increase.

7 And again, if we don't decide to have an increase,
8 the issue is moot at least for this session of the

9 Industrial Welfare Commission.

10 COUNSEL STRICKLIN: I just want to be clear that with
11 the -- am I on? -- that with the required two-thirds vote
12 which I -- you know, historically, that's not something
13 that's come out of a wage board, so that's why I'm not too
14 worried about it.

15 But assuming it does, you would be required to accept
16 it unless -- unless there's no substantial record for that.

17 COMMISSIONER WASHINGTON: Precisely my point.

18 I know that in the past when a wage board comes back
19 and there is a two-thirds vote, that the Commission has
20 found themselves obligated to do that. And so --

21 COUNSEL STRICKLIN: Obligated to put it out for
22 comment, yes, and to accept -- unless within that
23 additional public comment period there becomes evident
24 (sic) to the Commission that there's no substantial
25 evidence to support indexing, which may or may not come

122

CAPITOL REPORTERS (916) 923-5447

□ 1 from any opinion you request or anything else you received
2 from the public.

3 COMMISSIONER GUARDINO: So we would still have the
4 opportunity at that point to make a decision about indexing
5 and get the legal opinion then.

6 CHAIRPERSON CURTIN: Okay. Further conversation?

7 COMMISSIONER WASHINGTON: Well, I just want to be on
8 record that I have great reservations about the inclusion
9 of this at this point and that I will continue to raise
10 that issue whereas you are able to move this forward
11 without having unanimity among the Commissioners.

12 So with that in mind, I'll let you call for the vote.

13 CHAIRPERSON CURTIN: No more public comment. Sorry.
14 MS. BROYLES: Just a question.
15 CHAIRPERSON CURTIN: Okay. I think we've -- we'll
16 take that into consideration, and we have a motion on the
17 floor.
18 Commissioner Rose.
19 COMMISSIONER ROSE: Aye.
20 CHAIRPERSON CURTIN: Commissioner Cremins.
21 COMMISSIONER CREMINS: Aye.
22 CHAIRPERSON CURTIN: Commissioner Washington.
23 COMMISSIONER WASHINGTON: No.
24 CHAIRPERSON CURTIN: Commissioner Guardino.
25 COMMISSIONER GUARDINO: Aye.

123

CAPITOL REPORTERS (916) 923-5447

□ 1 CHAIRPERSON CURTIN: Okay. The motion has passed.
2 The charge has been reviewed and approved.
3 I want to say a couple of little things here.
4 where are we? Yeah.
5 Okay. The wage board meeting, this is pretty
6 critical, August 4th. It's going to be August 4th,
7 Department of Health Services auditorium, 1500 Capitol
8 Avenue in Sacramento.
9 I want to make this clear that there will be no
10 public testimony at this event, this meeting. This is not
11 designed really for a public hearing. This is for -- the
12 public is allowed to attend the meeting, but not to speak
13 at the meeting. And this is really designed for the wage
14 board members to hash this issue out over an extended
15 period of time amongst themselves with a non-voting chair
16 to keep the conversation civil and moving along.
17 So I don't -- I mean, if there's people who feel a

18 need to show up, please go ahead. But there's no, you
19 know, political content to anybody showing up if that means
20 anything.

21 Any written testimony or other information that the
22 public wants the wage board to consider -- this is another
23 important item -- in its deliberations must be received by
24 the Industrial Welfare Commission no later than 5:00 p.m.
25 July 20th.

124

CAPITOL REPORTERS (916) 923-5447

□ 1 So any documents, please move them along to Stephanie
2 as soon as possible. And if they come in after 5:00 on
3 July 20th, no matter how important or how relevant or how
4 earth-shattering they are, they will not be considered.

5 And that ends this portion of the meeting. We have
6 to once again adjourn for closed session. We're having to
7 review some litigation which is done in closed session, and
8 we will come back after that conversation to adjourn
9 essentially.

10 Thank you very much.

11 (Closed session.)

12 (The following proceedings were tape-recorded live
13 and thereafter transcribed.)

14 CHAIRPERSON CURTIN: There is going to be a motion
15 here in a minute to adjourn. Do we have to ask for any
16 further public comment?

17 COUNSEL STRICKLIN: (Inaudible from the tape.)

18 CHAIRPERSON CURTIN: Any new business to be brought
19 before the Commission?

20 COUNSEL STRICKLIN: And I also would --

21 CHAIRPERSON CURTIN: Don't hesitate to come up here.

22 COUNSEL STRICKLIN: I also would advise, if you could
23 just give a general -- or I can give a general --
24 CHAIRPERSON CURTIN: I would prefer you give the
25 general --

125

CAPITOL REPORTERS (916) 923-5447

□ 1 COUNSEL STRICKLIN: (Inaudible from the tape) --
2 Small versus Brinderson, which is currently in the Court of
3 Appeal in the Fourth Appellate District Division.

4 CHAIRPERSON CURTIN: Jot it down.

5 Okay. That's it. So I'm going to make a motion to
6 adjourn.

7 COMMISSIONER GUARDINO: Second.

8 CHAIRPERSON CURTIN: Second. All in favor?

9 (A unanimous affirmative vote was cast.)

10 CHAIRPERSON CURTIN: Okay. That's unanimous.

11 Thank you.

12 (The public hearing was adjourned at 12:15 p.m.)

13 ---o0o---

14

15

16

17

18

19

20

21

22

23

24

25

CAPITOL REPORTERS (916) 923-5447

□

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, KATHY L. SWINHART, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing those proceedings;

That I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 126 herein constitute a complete, true and correct record of the requested proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on the 17th day of July 2006.

KATHY L. SWINHART
CSR NO. 10150

CAPITOL REPORTERS (916) 923-5447