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

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LESLEE C. GUARDINO
WILLIE WASHINGTON
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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.

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.

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
do that at, I believe, 10:30. Is that when the second meeting -- 10:00, when our next public meeting comes in. Please identify yourself and if you wish to --

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

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

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

CHAIRPERSON CURTIN: Thank you. Stephanie, did everybody receive those packets?

MS. LEACH: Yes.

CHAIRPERSON CURTIN: We did. Okay.

Any further testimony?

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

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

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

COMMISSIONER CREMINS: Second.

COMMISSIONER GUARDINO: Second.

CHAIRPERSON CURTIN: Any discussion?
Okay. Well, consider the petition approved for review at the 10:00 meeting. And --

COUNSEL FONG: Well, do you need to vote?

CHAIRPERSON CURTIN: I'm sorry. Four to nothing usually works for me, but all those in favor?

(A unanimous affirmative vote was cast.)

CHAIRPERSON CURTIN: Okay. Opposed?

(No response.)

CHAIRPERSON CURTIN: Okay. So the motion is moved. Item No. 2 is the -- I don't know if this is a vote item or just an announcement. It looks to me like an announcement.

The letter that was received from the Treasurer's office prior to the last meeting regarding the minimum wage indexing, it was unclear at the time whether that was a petition or just a letter. And the Treasurer's office called and we had several conversations to just clarify that it was not a petition. They just wanted to make it clear that they were supporting the effort by the California Labor Federation to not only raise the wage, but to attach it to an index.

So we will not consider their letter as a petition. There's no need to take any further action on that. If there's any comments at any time, please feel free.

And then Item No. 3 on the noticed agenda for this morning at 8:30 is the petition submitted by Barry Broad requesting that the Industrial Welfare Commission review and amend Wage Orders 1, 4, 7, 9 and 14 to: (A) eliminate
exemption from overtime for commercial drivers whose hours
of service are regulated by the U.S. Department of
Transportation or the California Highway Patrol; and (B)
add language to specify that the overtime provisions are
applicable to independent contractor commercial drivers.

So we'll proceed right to public comment.

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

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

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

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

And since it predated the Fair Labor Standards Act,
when the Fair Labor Standards Act came into place, they
exempted -- and truck drivers were covered by this, I
think, in the early 1930s. They exempted those workers
from coverage from overtime who were covered by these hours of service regulations.

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

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

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

Your actual driving time is 11 or 12 hours long.

Now, all of you presumably have driver's licenses. Probably all of us in this room know what it's like to drive without stopping for 11 hours. It's a long, long day. And they're allowed to do this for -- in 70 consecutive on-duty hours, they're allowed to be on duty 60 consecutive hours. Or in 80 consecutive hours, they're allowed to be on duty 70 consecutive hours. Then they have
to be off for 34 hours.

CHAIRPERSON CURTIN: Is that inter, intra again?

MR. BROAD: Pretty -- yeah.

CHAIRPERSON CURTIN: Okay.

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

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

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

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

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

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frequently drivers are basically getting three or four or five hours of sleep at the most, day after day after day, week after week after week, year after year after year. So they've done these studies --

CHAIRPERSON CURTIN: May I ask you a question?
MR. BROAD: Yes, sir.
CHAIRPERSON CURTIN: Between the 70 hours and 80-hour period, how much time is required to be off before --
MR. BROAD: 34 hours.
CHAIRPERSON CURTIN: For both?
MR. BROAD: Yes.
CHAIRPERSON CURTIN: Okay. Thanks.
MR. BROAD: The industry tried to move it to eight hours a couple of years ago, but failed. Even the Bush Administration couldn't -- couldn't do that one, but only after the federal courts intervened and told them they couldn't.

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

Now, the industry will come in there and say -- and this is the thing with all accident statistics involving trucks, planes, ships or anybody. They'll come in and they'll say per million miles traveled, the accidents have gone down. And the best way to dramatize why that is not a
good way of looking at the world is that, at the current
rate of airline crashes per million miles traveled and the
current increase in the number of miles traveled around the
world, that there will be one -- one jet falling out of the
sky a day every day at the same rate within about ten years
from now.

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

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

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

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

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

The incentives are all on the other side in the
commercial driver situation. So when you get down to the
real horrible part of the industry, say at the ports of
L.A. and Long Beach and Oakland where you have no employee drivers, everybody is called an independent contractor and they all drive a single truck, they all work for a motor carrier, they never work for shippers, they never set their own rates, they wouldn't know how to do that, it's just an underground economy use of the term independent contractor, its purpose is to make sure that nobody is responsible for drug and alcohol testing, nobody is responsible for safety of the drivers, nobody is responsible for the condition of the vehicle, nobody is responsible for nothing. That's the purpose of it.

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

So, I mean, we're open to a lot of ways of doing this. We'd like to go to a wage board. We'd like to make it clear that the single truck owner-operator who works for a motor carrier and is a replacement for employee driver --
you know, they're indistinguishable and sometimes they have
employees and sometimes they have independent contractors.
But these people who employ no one else, own their own
vehicle and rent themselves out for the day, that they
should be covered by an overtime rule.

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

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

Although, usually the way they describe the end of
the planet in their view is that interstate carriers have a
different rule than intrastate carriers, blah, blah, blah.
But the fact of the matter is, you regulate all work that's
performed in California whether it's performed by
interstate or intrastate motor carriers. And while someone
can try to service California from the other side of the
border in Nevada or Arizona or Oregon, it's a really big
state and that's really not much of a risk. And you would
have to be driving an awful long way at, you know, $3.50 a
gallon to, you know, drive from Arizona to Southern
California to drive around Southern California for the day
and then go back to Arizona.

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

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

CHAIRPERSON CURTIN: Any questions?
COMMISSIONER GUARDINO: Can you hear me?

How do the other states handle this? Are there --
MR. BROAD: They all have exemptions. You would be
plowing new ground.

COMMISSIONER GUARDINO: Okay. Thank you.
CHAIRPERSON CURTIN: Anyone else? Tim?
MR. BROAD: But I will add, you know, our state is

not -- this is not -- I mean, trucking works different ways
in different states.
California is really, in the trucking industry, kind
of cut off from the rest of the country in the sense that
it's such a big state and it's so coastal that you really
have to service it. If you're in Vermont, you know, you
can -- or New Jersey or New York or whatever, you can --
you know, the trucking companies could be located anywhere
in the northeast and service all of the northeast. So trucking is a lot more interstate in those places. And then in other places like Iowa or Nebraska, you know, there isn't that big of a population, so all there are are trucks going through Nebraska or whatever.

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

So a lot of that freight just moves around on trucks. It doesn't move around on trains, obviously. And it's always going to be moving around unless we depopulate, which is not very likely. And so in a way what other states do or don't do isn't as much of a concern.

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

California has, you know, this enormous population.

So it's just not much of a concern. If it was, we'd
be concerned about it obviously, and we don't want to take
away jobs from our folks based on a rule that would make
their lives a lot better.

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

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

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

COMMISSIONER WASHINGTON: Mr. Chairman.

CHAIRPERSON CURTIN: Go ahead, Willie.

COMMISSIONER WASHINGTON: Barry, I have a question.

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

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

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

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

MR. BROAD: Well, I think you can because you would
be -- because I'm suggesting doing something very narrow, which is the one-truck owner-operator who works for a motor carrier probably on a long-term basis, not -- we're not -- and has no employees of their own. They're probably in all likelihood -- in reality, Mr. Washington, they're probably employees anyway.

I mean, if you were to -- for precisely the reason that you mention, which is to say the employer of those drivers determines their status as independent contractors. It generally isn't a choice that the driver makes. It's kind of like this is how you work the job. It's not the classic situation where I decide tomorrow I'm going in the trucking business, I'm going to be the next trucking entrepreneur. These are circumstances very narrowly drawn where the company that hires them tells them what their status is.

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

The problem I have not covering them or we have is that it will simply accelerate the incentive -- if we were to do this for only employees, it would accelerate the incentive to call people independent contractors and then deny them everything and put them in a worse place. It's kind of a Hobson's choice. And that's why we want to explore this question of how to properly, you know, deal
It's not -- you know, I -- I just don't -- we already have a state law, interestingly enough, that got passed a few years ago that's also unique in the country, that defines -- that says one-truck owner-operators, notwithstanding their independent contractor status, that the -- that the trucking company they work for -- and it applies to trucking companies who hire these people -- have to maintain total control over their safety of operations and of the vehicle and so forth.

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

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

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

So we actually have a state law that parallels this, and my thought would be to say that this would apply to
those drivers who meet that direction and control test
that's already there, and perhaps cross-reference that
there is a clear precedent in state law, and so it wouldn't
be very difficult for this Commission to look at that in
that -- in that way.

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

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

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

In other words, I'd want to see that you have the
certificate and have to see that your vehicle had been
inspected and meet those requirements. And since I don't
know, I'm assuming that most of these contractors are
having to at least make those kind of compliance just to
get hired by that employer, I would suspect.

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

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

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

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

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

So what happens is, they then are supposed to be
inspected at their terminal, which is their house in Los
Angeles, so they're never really there for an inspection. And when they are there, if they fail the inspection, it's not the motor carrier that fails the inspection, it's the driver.

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

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

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

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

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

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

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

MR. BROAD: Yeah. I will give you -- there's a National Transportation Safety Board study of driver fatigue that's kind of the seminal study in this area. It was done about 1990.

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

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

CHAIRPERSON CURTIN: Okay. So --

MR. BROAD: -- at that point.

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

MR. BROAD: Whether you're an interstate or not --
CHAIRPERSON CURTIN: -- you are under the --

MR. BROAD: Right.

CHAIRPERSON CURTIN: -- rules and regulations of California.

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

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

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

CHAIRPERSON CURTIN: Exactly.

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

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

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

My suggestion that you would start with -- if -- since -- you know, there -- there's exemption in every wage order, but most truck drivers are employed under Wage Order
9, which is the transportation industry wage order. And
that would probably cover 90 percent of what you're talking
about and probably where 99 percent of the abuses are.

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

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

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

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

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

CHAIRPERSON CURTIN: Barry, my impression -- and I
don't mean to interrupt -- okay. Go ahead, Willie.
COMMISSIONER WASHINGTON: Back to that point that was
in my last question. I think you've pretty much laid that
out for me, and that is Wage Order 9 seemed to be the
problem. But your petition would require there was a wage
board convened -- under your petition, you'd have to cover
them all because your request covers multiple wage orders.
And I was wondering if you had the same type of experience
and statistics that would apply to all of the others.

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

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

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

The answer is, I have not seen statistics that break

out the accidents among commercial drivers by the class of
employer that they have. Because basically the accident
statistics are derived from when there's an accident. And
at that point they -- they list who the trucking company is and, if it's a manufacturer that has a trucking operation, they'd list that. But I've never seen the statistics analyzed -- analyze it by industry or trucking subgroup, if you will.

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

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

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

You know, fortunately or unfortunately the process of

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...
Are there any other speakers on the issue?

You've got -- according to Barry, you've got 37 minutes. No, kidding.

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

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

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

We have in the Labor Code, Labor Code 2750.5 which lays out what an independent contractor can and cannot be. Again, you may not change the Labor Code. Bearden versus Borax, the recent decision, was very clear on the fact that you do not have the ability to provide future exemptions or more exemptions than what the Labor Code sets out.

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

California is a very large market. We are the largest import/export in the United States. We have two --
as Mr. Broad pointed out, two of the largest ports with that issue. In fact, there is a bill I'm sure that you may be aware of, Senate Bill 1213 on this issue dealing with independent contractor port drivers that is being considered by the Legislature today in its current session. And we have significant issues that are along the same lines.

Independent contractor status, again, is not regulatable via the Labor Code or versus the National Relations Act. And what they're trying to do with their port owner-operator drivers is to permit them to organize, which is what gets down to the root of this petition. It's something that's trying to convert one type of worker into another type of worker so they may be organized, and, again, we would oppose that on this basis. Ask you to deny the petition.

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

I don't think we should approach this issue from the organizing and not organizing point of view, obviously. Do you have any comment on that, if there really shows to be a significant eight-hour everything seems to be working just fine, and then they go eight to ten and it goes up, and then they go from ten to twelve and it goes off the charts?

MS. BROYLES: There are a couple of other bodies --
and certainly the Industrial Welfare Commission can take up issues. Whether or not they would be upheld in other legal forums is another question.

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

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

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

But more layers of laws or inapplicable -- passing of
inapplicable laws that are then -- have to be struck down
by court order we think is not the way that you really want
to proceed. Let's make it useful enforcement, useful use
of our time as employers and/or employees or independent
contractors, which is a legitimate status recognized by the
courts, recognized in various types of law, whether it's
the Unemployment Insurance Code or the Labor Code or the
Fair Labor Standards Act or the National Labor Relations
Act.

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

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

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

We see you have in the California Labor Code in Labor
Code 2750.5 is the layout of there is a rebuttable
presumption that the person is an employee. But if he's an
independent contractor and the contract struck between the
service provider and the service recipient meets those
levels of -- of requirements, then that independent
contractor status stays.
With the issue of overtime, again, I don't believe that there is anything in the Labor Code. And, again, Bearden v. Borax does -- did take a specific statement and action by the Industrial Welfare Commission and state that you had no ability to go beyond what the statute currently states and provide a -- a wider coverage or different coverage from what statute permits. And I think that's -- that's -- you know, it's there, it's a reality.

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

CHAIRPERSON CURTIN: Okay. Any other questions?

COMMISSIONER ROSE: Yes.

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

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

specifically at the issue of whether or not the Industrial Welfare Commission has the ability to regulate that type of employment status.
COMMISSIONER ROSE: Okay. Now, the people that they contract to, do they belong to the Chamber of Commerce?

MS. BROYLES: Not to my knowledge.

COMMISSIONER ROSE: Okay. Thank you.

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

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

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

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

That if I have control -- if I have contracted for a project and I have no other control over that as the service recipient, then I have a legitimate independent contractor relationship.

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

On average it's one classification runs about $25,000
in terms of just the penalties and back wages that might be applied that go back up to three years and four years in some circumstances. Then, of course, there is the IRS recalculation, there is the FTB recalculation and the penalties that come along with that.

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

Again, if this is what they're doing, then there are other ways to control the issue and there are ways to go about it rather than asking the Industrial Welfare Commission to take an action that they have no legal ability to do.
minimum standard established by the Fair Labor Standards Act.

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

The other side of the coin from my anxiety of that, not covering independent contractors is that if there's overtime available for working in excess of a certain number of hours if you're an employee, that those drivers who are misclassified will have a huge incentive to pursue their rights. And I think they will pursue their rights, and it will probably result, as has been the case, in a reclassification of a large number of those drivers into a more realistic determination of their status. So in the end, it probably will work out okay.

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

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

Thank you.

CHAIRPERSON CURTIN: Barry, before you go.

MR. BROAD: Yes.

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

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

CHAIRPERSON CURTIN: Is it similar in other states?

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

And just to give you an example of how problematic it is, the Transportation Security Administration looked at the driver pool in New York and Newark I think about four or five months ago, and there's about 9,000 drivers. They found that 500 of them didn't have licenses at all. And about half, because of other standards, were -- had disqualifying criminal offenses, which, you know, don't --
don't allow you to actually operate a commercial motor vehicle.
So the problem is a situation where, particularly in some parts of trucking, the bottom has dropped off in the underground economy. And I think you understand what I'm saying. They're -- it's very hard for a legitimate employer to compete.
Now, it varies from place to place in different -- in different parts of the industry. There are huge pressures in the trucking industry because since it's been deregulated in 1979, 1980, there's huge pressures on drivers to compete, to -- to make -- to work longer hours. Because there's only -- there's only so many variables. There's speed of the truck -- that's a big cause of accidents -- there's hours on the road, and there's the equipment and how well it's maintained. Those are the things that you can mess around with.
CHAIRPERSON CURTIN: The size of the load.
MR. BROAD: Right, and the size of the load.
Exactly.
So -- you know, so you get problems of over weights, bald tires, exceeding hours of service and speeding, which are, you know -- and traditionally drugs was the other problem because, you know, speeding -- you need speed to speed. And, you know, that was -- there was a time when the trucking companies handed the stuff out just to keep -- you know, they don't do that any more because of drug and alcohol testing, but -- mandatory drug and alcohol testing.
But the fact of the matter is, there are huge
pressures in this industry. And, you know, we think there needs to be some break on those pressures that will benefit the drivers and benefit public safety.

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

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

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

Well, that's just proved to be a bad policy. It hasn't worked very well, and we have, you know, 80 years of history to tell us that.

So we would ask that you move forward with this.
If -- and I'm perfectly happy with dropping the independent contractor piece of it if that makes everybody more comfortable. Thank you.

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

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

And they just --

CHAIRPERSON CURTIN: Okay.

MR. BROAD: The bottom fell out.

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

COUNSEL FONG: Well, I --

MR. BROAD: Oh, I'm sorry.

COUNSEL FONG: Oh.

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

CHAIRPERSON CURTIN: Okay.

COUNSEL FONG: -- move forward and --

CHAIRPERSON CURTIN: Okay.

COUNSEL FONG: -- and consider.

CHAIRPERSON CURTIN: I think the question of safety
is extremely compelling here, not just for the driver but for the people who are driving next to the driver, which is often all of us, and is worthy of a look.

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

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

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

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

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

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

And moreover, while I respect Mr. Broad, I think his description of this as plowing new ground would instead reinforce California's growing tendency to deny economic realities.

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

Thank you.

CHAIRPERSON CURTIN: Thank you.

Okay. Before I go forward, any comments?
MR. SANDAHL: Good morning. Lee Sandahl from the International Longshore and Warehouse Union. And I've actually had the opportunity to work in almost all of the ports on the west coast here within the last year and at least visit them even back -- even up in Canada.

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

CHAIRPERSON CURTIN: Thank you.

Okay. Any further comments?

COMMISSIONER CREMINS: More a question.

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

CHAIRPERSON CURTIN: I believe once it's in the hands of the wage board, they can look at it any way they like. We give them a charge, which sort of outlines what they're supposed to do, which is what we're going to do in our public meeting for the minimum wage issue in general. But once they have it -- and Deanna can tell me if I'm wrong -- they can come back with any recommendation they so choose. And I assume that once it gets to this Commission, we have the ability to adopt, amend or otherwise -- am I correct?

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

CHAIRPERSON CURTIN: Right.

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

CHAIRPERSON CURTIN: Yes.

COMMISSIONER GUARDINO: -- could have an opportunity to look at the issue?

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

Correct?

COUNSEL FONG: That's correct.

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

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

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

CHAIRPERSON CURTIN: Yes.

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

CHAIRPERSON CURTIN: Right.

MR. BROAD: Well --

CHAIRPERSON CURTIN: Whoops.

MR. BROAD: Let me just state, interstate, this is where it gets a little bit confusing.
Some people -- it's the nature of the freight that can determine whether it's interstate or intrastate. So we -- so, for example, port drivers would be hauling interstate freight even though they may take it five miles.

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

COMMISSIONER GUARDINO: Okay.

MR. BROAD: Okay.

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

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

COMMISSIONER CREMINS: I move.

CHAIRPERSON CURTIN: Second?

COMMISSIONER ROSE: Second.

CHAIRPERSON CURTIN: Discussion?

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

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

Here we're talking about simply trying to put some
disincentive for people to maybe work longer hours who themselves have contracted to do that, who considered to do that, so to speak. And while I certainly have no reason to disbelieve what Mr. Broad has said relative to the folks being somewhat coerced or whatever to work the long hours, I think that that has several other means -- EDD, CHP and all the -- and Occupational Safety and Health are three of the entities that come to mind that are better suited to take care of the issues that have been raised here this morning.

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

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

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

Could we add that to the motion?

COMMISSIONER CREMINS: Please.

CHAIRPERSON CURTIN: Okay. I don't see Marguerite here so, Ralph, you're going to have to deliver the bad
MR. LIGHTSTONE: Mr. Chairman, glad to do it.

CHAIRPERSON CURTIN: Okay. Good.

Okay. Any further discussion?

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

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

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

Okay. Any further discussion? All in favor?

COMMISSIONER ROSE: Aye.

COMMISSIONER CREMINS: Aye.

CHAIRPERSON CURTIN: Do we have the names on that? Why don't we identify for the record. Do we want to have a roll call vote? Did we talk about that?

Okay. Harold Rose. Aye?

COMMISSIONER ROSE: Aye.

CHAIRPERSON CURTIN: Tim Cremins.

COMMISSIONER CREMINS: Aye.


COMMISSIONER WASHINGTON: No.

CHAIRPERSON CURTIN: Leslee Coleman.
COMMISSIONER GUARDINO: Guardino.

CHAIRPERSON CURTIN: Guardino.

COMMISSIONER GUARDINO: Aye.

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

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

(Recess taken.)

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

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

Okay. We're holding this public hearing as part of the Industrial Welfare Commission's investigation to determine whether to call a wage board to study the adequacy of the present minimum wage. The present minimum wage is established at $6.75 an hour in the IWC's industrial and occupational wage orders and in Minimum Wage Order 2001. The purpose of the hearing is to receive public comment regarding whether the present minimum wage may be inadequate to supply the cost of proper living to employees.

Being the public, you're now welcome to comment.

Anybody wish to comment?

MS. WEI: Mr. Chair and Commissioners, Angie Wei on behalf of the California Labor Federation.
Good morning, Mr. Rose.

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

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

The charge of the wage board is to figure out the adequacy of the minimum wage. It's not to measure what the impact of a minimum wage increase -- what its impact on business will be. It's not to hear what the impact on our number of jobs will be or whether or not the issue -- raising the minimum wage is a, quote/unquote, job killer.

The whole purpose of the wage board is to pull together both employee and employer sides to review the adequacy of the minimum wage. And we're looking forward to that.

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

We are concerned -- we just want to flag for the Commission that the wage board considers only materials that are submitted at this public hearing, is our understanding, that goes forward to the wage board.
additional material can be submitted at that point to the 

wage board. So we're concerned at this point that the 

materials that we've submitted are not reflected in the 

complete binder.

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

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

CHAIRPERSON CURTIN: Slow down a second. I'm sorry.

Slow down a second, Angie. I missed that.

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

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

CHAIRPERSON CURTIN: Okay. Could you hold a second?

MS. WEI: Sure.

CHAIRPERSON CURTIN: Stephanie.

MS. LEACH: Good morning, Angie.

All of the Commissioners have received that and it 
will be in the wage board packets. Those binders were 
meant to be just for public comments, and we just put the 
first portion, the letter portion of your petition without 
the reference materials. But everything will be in the 
full packet.
MS. WEI: Very good. That's appreciated. We just wanted to make sure that our documentation is submitted to the wage board. When we get to the wage board, we're going to spend some time to review what the adequacy of the minimum wage is. Currently our minimum wage is 6.75 an hour. It is an annual salary of about $14,000. The federal poverty level itself for a family of three -- to be above the federal poverty level, it's $15,670, which translates into an hourly wage of $7.84. Even under today, our minimum wage is a dollar and eleven under the federal poverty level.

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

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

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

Even beyond the kind of federal poverty level numbers, if you take a look at the California Budget Project study, which everybody is aware of at this point,
they calculate that to meet a bare minimum standard of living in California for a family of three, you'd need a wage, an hourly wage of $12.44, far higher than where our minimum wage is today.

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

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

Washington and Oregon have minimum wages that are indexed, and their economies are doing well. They've been growing. If you look at the data in Oregon in the restaurant industry, restaurants have been growing. Jobs have been growing in the restaurant sector in Oregon. And the restaurant industry here is crying for Chicken Little that the sky will fall down if we index like Oregon and Washington did.
For these reasons, we look forward to the wage -- the creation of a wage board. We look forward to our petition being sent there and for a robust and empirical discussion to happen there.

Thank you for this opportunity.

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

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

CHAIRPERSON CURTIN: Okay. Thanks.

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

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

MR. AGEE: Mr. Chair and members of the Commission, my name is Jovan Agee representing United Domestic Workers of America. We represent 55,000 home care workers in the state, and we ask for your support on the Labor Federation's minimum wage increase with indexing.

MS. SANCHEZ: Mr. Chair, members, Liberty Sanchez on behalf of the Teamsters, Amalgamated Transit Union,
circumstances under which they have to live.

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

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

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

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

So we strongly urge you to undertake your responsibility and review the minimum wage and increase it
as is so desperately needed. Thank you.

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

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

I am a minimum-wage worker. I work in an employment agency. I have come to Sacramento -- I think I still have a job when I get back -- today to speak out against the fact that we need minimum wage support with indexing. The cost of living is enormous, continuously going up. Gas, food, rent, utilities, all these costs continue to rise. Especially in the Bay Area where I'm from, Richmond, California. Where I live, with indexing my wage will not keep up with the cost that's rising.

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

Also dealing with health costs. You know, what can we do? We making minimum wage. We either have to catch the bus or drive, which gas prices are going up. It's hard to pay our rent. Food costs are high. Not only that, but you have medical costs you have to pay. If you don't pay,
they end up billing you and then you have a collection
bill. So you have stress and anxiety.

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

If you had nobody to work at all dealing with minimum
wage, where would you be? Someone has to do it. So why
not take care of your people the best way. This is
California. We deserve the best. Thank you.

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

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

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

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

And that's -- that's why we're asking for your help.
to raise -- to keep up with the cost of living. Because
gas and food and everything is going up, and we can't -- we
can't afford it.

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

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

Thank you.

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

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

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

I have one student at Richmond High School. Her name
is Avillene. She's 17 years old and migrated with her mom
from Colima, Mexico. The single mother works two jobs. "She's barely home, and we might not have enough money for the next month's rent," Avillene one day confided in me. "I'm going to have to find a job."

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

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

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

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

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

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

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

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

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

Thank you.

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

My name is Richard Hopson, and I'm with ACORN. I'm from the Oceanview neighborhood in San Francisco.
As you've heard already from Billie Ann, many of our members struggle every day to make ends meet in California. This is why ACORN is supporting the struggle for the minimum wage with indexing.

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

Indexing is based on the Consumer Price Index, a measure of price increases in the market. Without a minimum wage index, workers become less able to afford the goods and services that are subject to inflation.

Economists agree that the eroded value of the minimum wage is a principal factor contributing to the rise of inequality in our country. With no indexing, any minimum wage statute will give way to wage inequality in every subsequent year.

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

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

Whenever the politics of this comes up, it always
amazes me that the politicians will say, no, this person earning $6.75 an hour doesn't deserve 10 cents more or 15 cents more, yet they are willing to give themselves $20,000 raises.

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

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

CHAIRPERSON CURTIN: Excuse me one second.

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What was -- you said Florida and what was the other state?

MR. HOPSON: The other state was Nevada.

CHAIRPERSON CURTIN: They passed measures to --


CHAIRPERSON CURTIN: Yeah, for indexing the minimum wage?

MR. HOPSON: Yes.

CHAIRPERSON CURTIN: And when does it go into effect?

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

CHAIRPERSON CURTIN: Okay.

MR. HOPSON: Also, there are currently four additional states moving minimum wage increase proposals to the November 2006 ballot. These states include Ohio -- these are all with indexing -- Ohio, Colorado, Missouri and Arizona.
So what we are here today to do is to ask you to help the hard-working families of California by approving a measure for a minimum wage increase with indexing.

Thank you.

CHAIRPERSON CURTIN: Excuse me. One more question.

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

MR. HOPSON: Yes, yes. Yes, they are going through ballot --

CHAIRPERSON CURTIN: Okay.

MR. HOPSON: -- measures.

CHAIRPERSON CURTIN: Thanks.

We'll go to this microphone.

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

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

Comments were provided to the Commissioners and are submitted not only on behalf of the California Chamber of Commerce, but the California Cleaners Association, California Farm Bureau Federation, California Grocers Association, the California Lodging Industry Association, the California Manufacturers and Technology Association, the California Retailers Association, the California Nevada Automotive Wholesalers Association, the California Hotel and Lodging Association, the California Restaurant Association and the National Armored Car Association.

We have a number of points that we would like to have the Commission consider including into the charge when a
charge is given to a wage board to review the adequacy of the minimum wage.

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

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

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

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

Again, we think that removing other barriers to
productivity and wage growth is a better way to improve California's economy.

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

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

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

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

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

MS. BROYLES: Dreaded. I'm sorry. I thought I would
inject some note of levity into our discussion today, but I apologize if that is offensive to you, Mr. Chairman.

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

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

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

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

And the court held in part, and I quote:

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

And they are quoting Government Code 11342.1 in that
particular citation. The court does go into great detail in terms of the scope of your authority.

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

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

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

Again, we do think that there are other ways to make California's economy much more successful for the average California employee and the average California employer.
Small businesses almost always will be the ones bearing the brunt of this particular type of increase because they do employ most of the minimum-wage workers here in California and would ask you to also make sure that those issues are included in any charge to a wage board.

CHAIRPERSON CURTIN: Thank you.

Any questions? Any further testimony?

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

My parents are both immigrants, and they been working really, really hard. My grandpa worked until he was 70, which was a few years ago, and he was working for 6.75 an hour. Everybody in my household except my brother who -- still works in my house.

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

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

You know, like -- like we heard, there's a lot of
high school students who have to work. And the only ones
getting minimum wage are not young teenagers nor
part-timers. There's a lot of adults who are working full
time.

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

6.75 times 80, which is 80 hours, full-time job is
540. That's not counting tax -- after taxes. And right
now, getting a place is not $300. It goes -- a room, just
a single room, it goes from $400 to $700.

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

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

Yeah, I'm young, but I look at my parents and I don't
want my brother to go through that. I want my brother to
be able to see my parents. I want my cousins to enjoy their parents. I want my family and the rest of the citizens to be able to enjoy their families, to be able to work, to get a wage that they could support themselves.

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

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

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

Thank you.

CHAIRPERSON CURTIN: Thank you.

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

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

When I did come home and the wife was on my back...
about we still don't have enough money to make ends meet, you know, I would try to run. I would try to hide. I haven't seen my family, but now I'm trying to run away from them.

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

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

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

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

You know, I'm here today to say that with indexing you give people a little bit of hope. You know, if you
know you're going to get a raise, then maybe you could take
that day off maybe once in a while. Maybe you only have to
work one-and-a-half jobs instead of two-and-a-half jobs.
You know, you could give somebody a dollar raise but,
hey, as fast as you give it, the prices go up, it's not
there.

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

This country really, really strives every day on the
back of that minimum-wage, that low-wage earner because,
hey, we know the CEOs don't do anything.
I have to close the window now and I have to go, but
keep it in mind. Thank you.

CHAIRPERSON CURTIN: Thank you.

MS. DUNBAR: Lara Diaz Dunbar on behalf of the
California Restaurant Association.
First of all, I wanted to address the indexing
proposals before you.
It is the CRA's, the California Restaurant

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

We've submitted written comment, and included in our
written comment is a more detailed analysis of relevant
case law and also the relevant provisions in the Labor Code supporting our assertion. But in summary, basically using indexing as a calculator for determining increases in the minimum wage would usurp IWC's role and responsibility mandated by law.

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

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

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

Again, there is numerous case law that we've cited to in our legal analysis that you have before you. In addition to this, we believe that there are -- that there are very -- there are numerous bad -- I mean,
numerous policy reasons against indexing.

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

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

Further, it leads to a cost push inflationary spiral where higher wages feed off of or result in higher price increases, therefore pushing inflation higher, therefore pushing the wage higher, and it will just spiral out of control and unemployment would definitely rise.

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

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

If employers, especially small employers just cannot
absorb the higher costs of a minimum wage increase, it will result in shorter shifts for employees, job losses for employees, and higher prices which employees would have to pay as a result of that minimum wage increase. And so these factors have to be looked at.

Again, just in our industry especially we're frustrated, because when a minimum wage increase goes up, it's only the highest paid employees who get a raise. And this is because it's the tipped employees who make minimum wage in the restaurant industry, and typically they make between fifteen to thirty dollars in addition to the minimum-wage earnings. Whereas the back-of-the-house employees who make higher than minimum wage, but certainly still at the lower end of the pay scale, you know, will not receive an automatic benefit.

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

Thank you.

CHAIRPERSON CURTIN: Thank you.

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

Let me begin by pointing out that CRLA, Inc. --
will come as no surprise to most people in this room -- believes that the analysis of the case law and statutory and constitutional authority for the IWC presented by the Chamber of Commerce and the Restaurant Association is wrong. The case law that they rely upon does not construe the unique and -- and, in fact, fundamental function of this board to set wages based upon the needs of the work force.

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

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

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

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

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

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

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

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

There is no evidence that's been support -- that's been indicate -- that's been submitted, at least that's on review, that shows that any of the states that have
implemented indexing have resulted in any significant impact in inflation or any significant impact in the incidences of failed businesses.

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

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

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

Finally, with respect to the impacts of -- of the financial decline in earning power -- in buying power that the minimum wage has suffered, that has impacted not only the individual workers but our social services in our counties. As I said, the number of poor people that my organization can serve under the federal poverty guidelines has increased. That number -- that increase has also had an impact on provision of medical services, on provision of general assistance, on provision of TANF benefits or...
As the minimum wage -- the value of the minimum wage decreases, somebody has to pick up that tab, and that is you and me and the other taxpayers. In fact, the minimum-wage worker taxpayers, some -- their taxpayer money goes to the -- to the State to pay for their health services, their children's health services and the health services of other minimum-wage workers who can't afford to pay their own bills.

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

Thank you.

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

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

I'm pretty well convinced because we have continued to have an interest in having greater flexibility in terms
of daily overtime and things of that nature and as an employer representative I've fairly concluded that anything that the Industrial Welfare Commission wish to do that was specifically not granted within the purview of the now Labor Code that now restricts them was not doable.

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

Now, I hold the Constitution to be higher than the Labor Code. So I would be interested to find out how then would the Industrial Welfare Commission under the auspices of the Constitution be able to get indexing?

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

And it is from that flow, it is from this fundamental constitutional acknowledgement of the need for California as a state to ensure the welfare of its workers that -- that your duties and obligations flow and your powers.
COMMISSIONER WASHINGTON: And I guess it gets back to my original question, then.

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

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

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

MS. RICE: I would differ with your characterization of the case law as indicating that -- that there is any limit on the -- general limit on the power of the IWC. What the case law says is that the Legislature is empowered to do a number of things. One of them is to establish the IWC, which it did. Another is to establish other standards.

Once it establishes another standard, then the IWC cannot conflict with that standard by establishing
something that does not further the legislative intent of
the statute that it passed.

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

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

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

COMMISSIONER WASHINGTON: Thank you.

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

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

First of all, there is often a discussion at these
hearings about the fact that the minimum wage won't support
a family of three or a family of four. And with all due
respect, the minimum wage was never intended to support a
family. Now, whether it should be or should not be is not
the issue.

The minimum wage is designed, intended, as set out in
the Labor Code, to determine whether or not it provides the
proper cost of living for individuals, for employees.

Whether someone chooses to be married or not married,
chooses to have an extended family, chooses to have more
than one person living in a household is up to that
individual. And for many of us who have families, two
jobs, two wage earner families are becoming the norm.

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

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

So we would ask that any charge to the wage board,
provide. And while it would be nice to be able to have one wage earner in a household supporting a whole family, that's not what the IWC's charge is as delegated by the Legislature.

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

I would point out, by the way, that during 2000 when we all acknowledge we had a recession building, and 2001 when we had continuing recession and 9/11, inflation when you compounded it for those two years was over 5 percent. So inflation kept going up -- which is neither a good thing nor a bad thing; it's just a fact of life -- when the bottom was falling out of the economy.

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

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month's time were out of work.

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

CHAIRPERSON CURTIN: Excuse me. That was after --

post 9/11?

MR. ABRAMS: Post 9/11.

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

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

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

And so I put that forward to you, but I think the real question is is indexing even something legally the Commission could do.

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

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

And in California, it is a very high cost of living, no question about it, but we are the highest cost of doing
business in the country. There is a correlation.

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

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

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

And it's not so much the unemployment, that the people who get the minimum wage are going to lose their job. And, again, I'll leave that for the academic debate...
that's been going on for 20 years. But there is no
question that there is a disemployment effect; that people
work fewer hours, new people are hired either not at all or
at lower numbers, and benefits and amenities that are given
are curtailed.

One of the most important is health insurance. At
some point people who provide health insurance are going to
have to say to themselves, I can no longer afford this or I
can no longer afford it all by myself. I have to either
cancel altogether or get my employees to pay more because
of all the costs that continue to go up.

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

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

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

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

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

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

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

Thank you.

CHAIRPERSON CURTIN: Thank you.

Questions?

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

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

COMMISSIONER CREMIN: Whatever you came up, yes.
MR. ABRAMS: Yes, sir. I'd be happy to. Certainly.

COMMISSIONER CREMINS: I'd appreciate that.

CHAIRPERSON CURTIN: Any other questions?

Okay. Next.

MS. YOUNG: Good afternoon. My name is Carrie Young. I represent the United Domestic Workers of California. I'm here to ask you because I am a minimum-wage worker. And it's not a point whether I'm trying to support a family. Some of us are just trying to support ourselves. And if any of you tried to manage with the income that we have, you would find it very difficult.

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

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

Thank you very much.

CHAIRPERSON CURTIN: Thank you.

MS. BROWN: Good morning. My name is Fannie Brown, and I'm here with ACORN. But I just came up to say is I would appreciate if you would increase the minimum wage with indexing.
And you might just say why or you're a low-wage worker. No, I was not a low-wage worker. I'm retired now, but I've had to take on an in-home health care job because my medical insurance a month is $446.40 a month. That's not including paying $20 for a doctor visit, thirty -- twenty -- $25 for a prescription.

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

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

And with that little increase, no, it's not enough. If we index it, if we give the increase, it's not enough. It will never be enough. But what we have to look at is whatever little bit we give to the minimum-wage worker is going to be some kind of help. And then maybe in the long run it will cause families to be able to stay together and do what they need to do for their families.

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

CHAIRPERSON CURTIN: Thank you.

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

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

We also support the Governor's position opposing annual indexing of future increases in the minimum wage to -- to the Consumer Price Index, especially the California Consumer Price Index for all urban consumers. If you're aware, in 2005 the Governor vetoed a bill by Sally Lieber, and his veto statement included:

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

As you know, the highest minimum wage in the nation -- and by the way, in answer to your question, it was 1998 when Washington voted their increase, and they've
had an increase of a dollar ninety-three since 1999. Also
Oregon increased -- voted theirs in in 2002, and they've
had an increase of 60 cents since 2003.

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

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

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

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

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

We sincerely ask that the wage petition by the Labor
Federation and State Treasurer Phil Angelides be carefully
reviewed and rejected as perpetuating unrestricted inflation.

Thank you.

CHAIRPERSON CURTIN: Thank you.

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

I came to this hearing just to sit and observe and listen, and some of the things I hear I just don't believe, some of the things that people say, like the minimum wage is -- is not that important.

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

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

And it -- it makes the employers aware of what people's needs are because sometime they forget. They talk about -- this guy was talking about most of the people don't -- are not on minimum wage. Everybody I know started on minimum wage. That was a base where we -- we based our
A minimum wage increase should be mandatory because the economy goes up, things get to be more expensive. It costs more to buy beans and rice, you know. And I think it should be -- they talk about this index. I'm not familiar with the index. All I know is that minimum wage is good, it's a good thing, and I believe that the majority of California -- the majority of the people in California base their income on minimum wage, base their futures on it.

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

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

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

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

Thank you.
CHAIRPERSON CURTIN: Thank you.

Any further testimony?

You know, there was a gentleman that asked me if he could testify -- I don't see him in the audience -- regarding the trucking issue we talked about earlier. I guess he left. Okay. Yeah, well, we'll make sure his position gets -- gets heard. That's the one thing we're going to make sure happens here, everybody gets heard.

Any further comments?

Okay. I guess at this point we move from the public hearing, which was your turn, to the public meeting, which is essentially our turn.

And the first thing, the first order of business for the Commission is the approval of the minutes from the meeting held June 2nd. You've all received copies.

And if I hear a motion to approve, we will (sotto voce conversation among some panel members) -- okay.

Harold.

COMMISSIONER ROSE: Yes, I move that we accept the minutes as -- or approve the minutes as accepted.

CHAIRPERSON CURTIN: Okay. Second?

COMMISSIONER GUARDINO: Second.

CHAIRPERSON CURTIN: Okay. All in favor? And I'm going to ask each of you to vote individually so they can record it.
COMMISSIONER CREMINS: Aye.


COMMISSIONER WASHINGTON: Aye.

CHAIRPERSON CURTIN: And Leslee Guardino.

COMMISSIONER GUARDINO: Aye.

CHAIRPERSON CURTIN: Okay. That's four to zero. The minutes are approved.

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

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

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

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

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

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

Anybody want to make that motion?

COMMISSIONER GUARDINO: So moved.

CHAIRPERSON CURTIN: Okay. Moved by Leslee Guardino.

Second?

COMMISSIONER WASHINGTON: I'll second the motion.


Okay. Any discussion?

Okay. Seeing no discussion, we'll move right to the vote whether it's inadequate.
The motion is that the minimum wage may be inadequate to supply the cost of proper living and all those who briefed that motion.

We'll start with Commissioner Rose.

COMMISSIONER ROSE: Yes.

CHAIRPERSON CURTIN: Okay. Commissioner Cremins.

COMMISSIONER CREMINS: Aye.

CHAIRPERSON CURTIN: Commissioner Washington.

COMMISSIONER WASHINGTON: Aye.

CHAIRPERSON CURTIN: Commissioner Guardino.

COMMISSIONER GUARDINO: Aye.

CHAIRPERSON CURTIN: Okay. We'll move on to the appointment of the members of a wage board established to review the adequacy of California's current minimum wage. We've actually reviewed this rather quite a bit individually. There has been applications submitted as outlined in the last meeting, the June 2nd meeting. I believe the deadline for people willing to and wishing to serve on the wage board was June 23rd.

We did receive a number of -- of recommendations. And there has been one slight change raised by Commissioner Rose that one of the members submitted by the -- nominated by Jim Abrams actually doesn't reside in California, works in California but does not reside in California, so we're going to ask the Commissioners to scratch that name, Doug Cornford.

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

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

The employer representative side would be:

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

Association; Heidi Dejong Barsuglia from the Retailers

Association; and as alternates, Thomas J. Martin from People Management Professionals and Gary Monahan as the owner of Skosh Monahan -- Skosh Monahan's, whatever that might be, city councilman from Costa Mesa.

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

And I don't know exactly the pronunciation here, it's Jovan or Jovan Agee from the Domestic Workers -- a representative from the Domestic Workers and a member of AFSCME; Barry Broad from the California Teamsters Public Affairs Council; Lee Sandahl as an alternate from the International Longshoreman and Warehouse Union; Angie Wei from the California Labor Federation; Allan Clark from the California School Employees Association as an alternate; Chris Jones from California ACORN; and Josefa Mercado from SEIU Local 1877.
And for the non-voting representative to chair the meeting and prepare the report for the Commission, I would like to propose Paul Cohen.

COMMISSIONER ROSE: Excuse me.

CHAIRPERSON CURTIN: Yes. I'm sorry.

COMMISSIONER ROSE: You failed to mention Mark --

CHAIRPERSON CURTIN: Oh, I missed Mark Schacht --

okay, thank you very much -- from the California Rural Legal Assistance Foundation. And thank you for that.

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

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

Second?

COMMISSIONER WASHINGTON: No, question.

Paul Cohen on --

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

COMMISSIONER WASHINGTON: Oh.

COMMISSIONER GUARDINO: I'll second the motion.

CHAIRPERSON CURTIN: Thank you.

Okay. Any discussion?

Okay. Seeing none, let's vote.

Counselor Rose.

COMMISSIONER ROSE: Aye.

CHAIRPERSON CURTIN: I mean Commissioner Rose.

Commissioner Cremins.

COMMISSIONER CREMINS: Aye.
CHAIRPERSON CURTIN: Okay. Four nothing. That will be the wage board.

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

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

COUNSEL STRICKLIN: If you wish, yes.

CHAIRPERSON CURTIN: I think it would be a good idea.

Okay. So I'm going to propose or put on the table as a motion this draft proposal for the findings and charge to the 2006 minimum wage board.

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

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

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

(A) May 18, 2006 petition from Governor Arnold Schwarzenegger requesting the IWC to conduct a review to
raise the minimum wage by one dollar implemented in two phases of 50 cents over a nine-month period;

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

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

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

In addition to that part of the investigation conducted at the public hearing, the IWC received and reviewed research materials obtained by staff as well as materials submitted by the public. This information included but was not limited to documents submitted by the California Labor Federation, the California Chamber of Commerce and the California Budget Project as well as other documents provided to the IWC by the public at the July 5th, 2006 hearing.

The IWC also reviewed data on the minimum wage paid.
in other states as well as the bill on minimum wage currently under consideration by the California Legislature.

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

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

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

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

(3) If you determine that the minimum wage should be increased, you should make recommendations as to the adequacy of the amount which may be credited against the minimum wage.
minimum wage for meals and lodging in Section 10 of IWC
Wage Orders 1 through 15 and Section 9 of IWC Wage Order
16.

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

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

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

Discussion?

COMMISSIONER WASHINGTON: Mr. Chairman, yes.

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

We're talking about an action here that we know that
is clearly within our purview that could be tainted by an
item that we have some discussion and some major concern as
to whether or not we have any power to do that or not. And
I believe that unless there's some process there, it could
preclude a positive action if the board was to decide to
move forward with a minimum wage increase by being engaged in lawsuits and having to go through the process of trying to determine whether or not the Industrial Welfare Commission has the power if it comes back with a recommendation that the minimum wage should be indexed or not.

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

CHAIRPERSON CURTIN: Appreciate that, Commissioner.

We did discuss this with legal counsel, and we were given the impression -- and I'll let her speak for herself at some point -- that this would require some considerable legal review. And I didn't want to wait for the charge with the -- with the legal review before the charge.

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

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

If they don't determine it needs to be raised, there's no legal issue. If they determine it needs to be raised without indexing, then there's no legal issue. If they do determine that indexing is necessary and it comes to us, then at that point I believe the legal determination would be .
would be critical in moving forward.

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

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

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

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

CHAIRPERSON CURTIN: You want to ask for that?

COMMISSIONER WASHINGTON: Well, you know, I wanted to move forward on the petition as it was originally construed, and I think that this adds to the original petition that was presented. So we've -- you know, in adding this in there, we've added something that was not in the original petition as -- as I read it.
CHAIRPERSON CURTIN: Well, actually we have two petitions in front of us --

COMMISSIONER WASHINGTON: Right.

CHAIRPERSON CURTIN: -- which we merged into one wage board.

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

COMMISSIONER WASHINGTON: Did I already vote for that?

CHAIRPERSON CURTIN: I think you did.

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

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

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

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

As it stands now, we're asking them to review the indexing. And if they come back with a recommendation that
indexing is called for, then I think at that point it's actually very, very important or imperative that we get a legal -- a legal opinion.

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

CHAIRPERSON CURTIN: I think that's an accurate -- COMMISSIONER WASHINGTON: I'd ask the counsel to comment on that, the --

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

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

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

CHAIRPERSON CURTIN: The Commission itself --

COUNSEL STRICKLIN: Yes, it could.

CHAIRPERSON CURTIN: Is your comfort level going up?

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

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

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

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

CHAIRPERSON CURTIN: So we'd have considerable

flexibility.

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

And again, if we don't decide to have an increase,
Industrial Welfare Commission.

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

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

COMMISSIONER WASHINGTON: Precisely my point.

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

COUNSEL STRICKLIN: Obligated to put it out for comment, yes, and to accept -- unless within that additional public comment period there becomes evident (sic) to the Commission that there's no substantial evidence to support indexing, which may or may not come from any opinion you request or anything else you received from the public.

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

CHAIRPERSON CURTIN: Okay. Further conversation?

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

So with that in mind, I'll let you call for the vote.
CHAIRPERSON CURTIN: No more public comment. Sorry.

MS. BROYLES: Just a question.

CHAIRPERSON CURTIN: Okay. I think we've -- we'll take that into consideration, and we have a motion on the floor.

Commissioner Rose.

COMMISSIONER ROSE: Aye.

CHAIRPERSON CURTIN: Commissioner Cremins.

COMMISSIONER CREMINS: Aye.

CHAIRPERSON CURTIN: Commissioner Washington.

COMMISSIONER WASHINGTON: No.

CHAIRPERSON CURTIN: Commissioner Guardino.

COMMISSIONER GUARDINO: Aye.

CHAIRPERSON CURTIN: Okay. The motion has passed. The charge has been reviewed and approved.

I want to say a couple of little things here. Where are we? Yeah.

Okay. The wage board meeting, this is pretty critical, August 4th. It's going to be August 4th, Department of Health Services auditorium, 1500 Capitol Avenue in Sacramento.

I want to make this clear that there will be no public testimony at this event, this meeting. This is not designed really for a public hearing. This is for -- the public is allowed to attend the meeting, but not to speak at the meeting. And this is really designed for the wage board members to hash this issue out over an extended period of time amongst themselves with a non-voting chair to keep the conversation civil and moving along.

So I don't -- I mean, if there's people who feel a
need to show up, please go ahead. But there's no, you
know, political content to anybody showing up if that means
anything.

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

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

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

Thank you very much.

(Closed session.)

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

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

COUNSEL STRICKLIN: (Inaudible from the tape.)

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

COUNSEL STRICKLIN: And I also would --

CHAIRPERSON CURTIN: Don't hesitate to come up here.
COUNSEL STRICKLIN: I also would advise, if you could just give a general -- or I can give a general --

CHAIRPERSON CURTIN: I would prefer you give the general --

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COUNSEL STRICKLIN: (Inaudible from the tape) --

Small versus Brinderson, which is currently in the Court of Appeal in the Fourth Appellate District Division.

CHAIRPERSON CURTIN: Jot it down.

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

COMMISSIONER GUARDINO: Second.

CHAIRPERSON CURTIN: Second. All in favor?

(A unanimous affirmative vote was cast.)

CHAIRPERSON CURTIN: Okay. That's unanimous. Thank you.

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

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )
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