

BY MR. DODELL:

Q Do you have any information other than your experienced judgment as to how many cities have drawn up their budgets in order to accommodate the amendments that are effective January 1, 1975?

MR. CHARLES RHYNE: Which budget and when? I think we may have a confused record. Some cities have budgets July 1; some January 1. So —

THE WITNESS: And some October 1; some April 1. [22] They are all in various stages of development.

BY MR. DODELL:

Q Let's take one at a time.

If there are cities — let's take cities that have a budget that began July 1, 1974, and ends on July 1 — or June 30, 1975. I think you said your experienced judgment would be that not more than 10 percent of those cities have drawn up budgets to accommodate the amendments that come into effect on January 1, 1975.

Do you have any facts other than your experienced judgment to back up that estimate?

MR. CHARLES RHYNE: Wait a minute. You have two questions in one. Your first question relates to cities that adopted a budget that went into effect on July 1, 1974.

Your second question, as I understood your question, relates to budgets that go into effect on June 30, 1975?

MR. DODELL: That's not correct, Mr. Rhyne.

Could you read back the question, please?

MR. CHARLES RHYNE: I am sorry.

MR. DODELL: Did you understand the question?

[23] THE WITNESS: I believe what you are trying to get at is what — do I have any data that supports the

statement of approximately 10 percent of the cities who adopted budgets on July 1 for the period July 1, 1974, to July 1, 1975, whether or not those cities have complied — have put into the budgets provisions to comply with the act, and particularly that part going into effect on January 1, 1975?

I would say I do not have specific data on 15,000 cities. That's my experienced judgment of watching and working with cities for 28 years, that on the basis of the amount of information available, when it was available, the lead time it takes to adopt a budget on July 1, because those budgets begin preparation back in April and May, and they go through public hearings, and after they have gone through public hearings, major changes cannot be made, that the lead time was such that it was impossible.

It was not a matter of intent. It was a matter of practical impossibility to anticipate and to include in the July 1 adopted budgets provisions to accommodate this act.

[24] BY MR. DODELL:

Q Then I think you said some cities have budgets that begin October 1, 1974, and end presumably September 30?

A Some in October, some in January.

Q As to the cities that have budgets beginning in October, do you have a percentage estimate as to your experienced judgment as to how many cities incorporated provisions in their budget to accommodate the amendments that would go into effect on January 1?

A I would say from my experience that the vast majority of them on the October budgets — and I would

say the same thing for the January budgets, have not provided for the impact of the January 1 change.

This is because all of the information that they have been supplied by the Department of Labor, by the regional offices, by other interest groups that have been trying to keep them informed, has had to advise them that all information is tentative, and that they ought to be very careful as to how they proceed until the regulations were final; and the regulations were not published in the register until December 20.

So budgets that are adopted even on January 1 – [25] effective January 1 in some jurisdictions had to be finalized in October or November because they had to – for example, in some states, in Ohio, the tax – the budgets that go into effect on January 1 are based upon a tax levy developed on a preliminary estimate that had to be made on October 15; and they cannot then adopt a budget which exceeds their tax levy.

So you are dealing with a practical time schedule which in terms of the pace at which these regulations were developed and made known made it practically impossible for jurisdictions to accommodate.

Now, for those jurisdictions who adopt budgets in April of next year, or July of next year, obviously there is time – advance notice which they could look at compliance.

But anything prior to January 1, I have very serious doubts that even a majority of them have been able to comply.

Q Well, Mr. Pritchard, is it your understanding that the statute that was adopted April 8th required action by the Labor Department before it imposed an obligation

upon states and local governments?

A [26] Obviously the statute is a statute. There is a legal interpretation. I am not going to try to discuss that. I am not a lawyer. I do know that the very — the range of interpretations of the application of that act, particularly in the field in question that applies January 1, was so broad — and it still leaves a lot of questions unanswered — that many jurisdictions did not think they would have to do anything.

Let me give you an example:

85 percent of the cities that employ full-time firemen operate with less than — operate under 60 hours right now; but well over a majority of them would still have a significant financial impact even though the law says you work less than 60 hours.

We have jurisdictions in New Jersey, for example, that are just now discovering that they have been working what they called a 42-hour week; and they have a financial impact, even though the law says 60.

Now — and, you know, I can go into the reasons for that; but the fact is that until these regulations were available and they began to understand the implications of the work cycle and the inability to deduct mealtime [27] and sleep time, they did not even understand that there was a financial impact, because their understanding and their employees' understanding was they were working less hours than the law required.

The fact is that it does have an impact and a substantial one.

Q Mr. Pritchard, is it your testimony that it wasn't until recently that jurisdictions understood that even if their employees averaged less than 60 hours, there still

could be an impact upon them as a result of the amendments?

A I would point out to you that the regulations that the cities are dealing with, there are 18,000 incorporated municipalities in this country. We work with 15,000 of those. We try to provide them with as much information as we can; but we can't provide it until you provide it in the first place.

We do not put out skeptical reports or – we don't put it out until we know it and we know it is right. That takes time to get it from you; it takes time to interpret it.

From the department's own standpoint, if we were [28] not providing even that much, from your standpoint, from the department's standpoint, the regulations by the department – the Wage and Hour Division's own statement in here, were provided to the governors and to 800 other people; and those included members of Congress, librarians, individuals, and other state and local government officials.

Now if only 800 out of 15,000, or 18,000, were provided the regulations, and the rest of the information had to be gathered from the newspaper for what – to what extent that's reported, how in the world can anybody expect within a matter of seven days for anyone to come in compliance?

I mean that's absurd on its face.

MR. DODELL: I would like to have this document marked Defendant's Exhibit No. 3 for identification.

(The document referred to was marked Defendant's Exhibit No. 3 for identification.)

MR. DODELL: For the record, this is a letter from Carol Kochelson – I am sorry, Kocheisen, counsel Office

of Federal Regulations, to William Hoffman, Wage and [29] Hours Division, Department of Labor, June 14, 1974, on a letterhead, National League of Cities, United States Conference of Mayors.

BY MR. DODELL:

Q Have you seen that before?

A Yes.

Q May I have that for a moment?

A Sure.

Q Now, Mr. Pritchard, doesn't this circular in June of 1974 from the National League of Cities — and it is under the heading Management Information Service — inform those who received it that they should be cautious in drawing up their work periods and tours of duty because of the provisions of the Fair Labor Standards Act Amendments of 1974?

A For those who received it, yes. It provides a certain amount of information. I would call your attention to the last paragraph in which it says, "As the Department of Labor regulations pertaining to overtime will not be issued until the summer of 1974, many answers cannot now be provided to questions of city administrators and fire chiefs may have."

[30] That is the kind of qualifications that everybody has to work under in the first place.

In the second place, I don't know what the distribution of this is. This report is only available to — this is not a report of general distribution. This report is available to those who subscribe to it for \$100 a year. We don't distribute this. This is distributed by the International City Management Association, and only to those who subscribe to it at \$100 a year.

I am sure they don't sell 15,000 subscriptions. It is probably in the neighborhood of 1000.

Q Your office received it, I take it?

A Yes, we received it. As a matter of fact, we helped put it together.

Q Your office was aware, then, that way back in June that scheduling could have an impact?

A Certainly.

Q Excuse me. Let me finish the question.

Scheduling could have an impact on the overtime liability of cities?

A Yes. You were asking me about what impact this — what effect this had on people who had July 1 [31] budgets; and I am saying to you that a report like this, even if there were no qualifications in it, put out in June, which was probably as early as anything could be provided, since the bill was only signed the first week in April, would not have reached people in time to be analyzed and fed into the preparation of the budgets adopted July 1.

Q Mr. Pritchard, I addressed this to your observation that even though 85 percent of the cities have an average work week of less than 60 hours, it was your testimony that they still could have a liability for overtime; and you said this is because the regulations weren't out, the final regulations, until December 20.

What I am pointing out to you — and I think you confirm it from your testimony — that in this circular in June, which was available to you in June, and which you helped to put together, it was understood that scheduling of work periods and tours of duty could have an impact on overtime liability; and that was six months before the

effective date of January 1, 1975. That's correct, is it not?

A I am also —

MR. CHARLES RHYNE: Wait just a moment.

[32] You are leaving out the major part of his testimony, which was you couldn't tell the impact from this release because no one knew.

MR. DODELL: Are you testifying, Mr. Rhyne?

MR. CHARLES RHYNE: No. But I don't want this witness subjected to unfair questions. I think he ought to understand what you are implying because you keep trying to interpret his testimony.

I just don't want any mistake. I want a clear record.

MR. DODELL: All right. Let's take it again, then, Mr. Pritchard.

BY MR. DODELL:

Q Did not this report indicate to your office as well as to those who read it as early as June of 1974 that scheduling of work periods and tours of duty could have an impact on liability under the amendments that would become effective January 1, 1975? And I think that can be answered yes or no, Mr. Pritchard.

A No, it can't be answered yes or no.

The traditional practice in local government has been to consider a number of hours worked in a week, a [33] work week, for firemen.

Now, if you read all of the literature, including the reports on fire administration produced by the International City Management Association, which is a big, thick training book, and all the other literature, and the testimony before state legislatures where legislatures have dealt with firemen's hours, the testimony has always

been in terms of 60 hours a week, 56 hours a week, 64 hours a week, whatever that is.

The traditional thinking in the local government level has been on the number of hours per week. Now this law comes along and establishes a cycle which in spite of the meetings that we have held and communications that have been provided is not understood because all of the accounting systems, the bookkeeping systems, the payroll systems, the hours scheduling systems have been keyed to a week, not to a cycle, as is provided in here.

The result of this is that it is imposing itself on a traditional system which the vast majority of local government officials simply do not understand, and do not comprehend. When they were told that firemen had to work less than 60 hours a week in order to avoid overtime, and [34] they looked at their traditional negotiations with their firefighters' associations, and – or whatever process they go through, and understood, as under state law, for example, in some states where they work a 10-14 schedule, that they were working less than 60 hours a week, their interpretation in their budgeting process is at that point – it was that they were in compliance.

Now I am saying to you that there is a period in the application of anything of this kind which so violates the tradition and the common practice that you have to – you can't assume that simply because the people are told that they are going to have to work less than 60 hours, and they understand they work less than 60 hours, that they are going to go into the kind of detail until they see the final regulations; and even under those circumstances many of those people were so firmly of the opinion,

having read the conference committee report the first time this legislation was passed, and having talked to their members on the Hill as late as March of this last year — of this year, that mealtime and sleep time would be deducted, that they were sure — the ones that did understand it, that the regulations would permit that deduction.

[35] Even those that understood the cycle felt that they would be in compliance.

They had a reason — they had every reason to believe on the basis of conversations they had on the Hill and the history of the legislation, and in spite of the discussions that have gone on since, that meal and sleeping time would be deducted; and given that deduction, and their position on the information, many, many jurisdictions felt they were within compliance. There was no reason for them to plan otherwise.

Q Was it your testimony that in the area of fire fighting the work week was the ordinary basis upon which people were paid?

A That's been the general practice.

Q [36] Well, how does that fit in with work cycles?

A Well, you are getting into a very technical subject which I profess I don't — if I had to describe it the way it is described in some of these publications in working out 2-day cycles to 365-day cycles, I would get lost in the jungle of it. I don't profess to be an expert on it.

All I know is that while there is — the fire chief may understand a cycle, the general practice on the people who make the policies, including members of state legislatures as well as local government officials, is that they work on so many hours a week.

Now if you notice in analyzing this, the changes that now are required can comply with the law and place a man on duty six to seven days running, whereas because of the cycle change. Under the old arrangements that very, very seldom ever happened. People worked a day on, a day off, or a day on, two days off.

Now under the scheduling, people can work as many as seven days in a row — six days in a row. For the average person who serves on a city council, and who sets up these schedules and who adopts the budget, he has understood that that fireman worked 60 hours in a week.

Q [37] Is it your testimony, Mr. Pritchard, that historically fire fighters worked a certain number of hours a week and not —

Excuse me. Can I finish the question, please?

— and that that is the way in which fire fighters' duties were prescribed?

A I am saying that has been the common understanding.

Now I understand the cycle situation, and I know that this ranges anywhere from a 2-day cycle to a 365-day cycle, but I am saying that the common understanding of members of state legislature, of members of city councils, of mayors, the common practice, the way it is approached, is one which is not a technical approach in that sense, and when they understand that their employees are working and their employees are satisfied with a 56-hour or 60-hour week, they do not go into the technicalities of the cycles.

Q Well, are your claims of irreparable injury in the complaint based upon the assumption that fire fighters usually work — their duties usually include being paid for

a certain number of hours per week, and this is the basis upon which fire fighters have been paid in the past?

A I am not sure I understand the question.

Q [38] You make claims in the complaint that the new amendments will have an irreparable injury — will inflict an irreparable injury upon municipalities. I am asking if one of the assumptions you are making in coming to that conclusion is that fire fighters worked generally or traditionally a certain period of hours per week, 56, or 60 hours per week, and this is the way their duties were set up?

A I am just not sure how to answer that question. I am — I don't see quite what you are trying to get at.

Q Let me take a different question, then.

I would like to have — this is a letter from Donald A. Slater, Director, Office of Federal Regulations, to Warren D. Landis, Administrator, Wage and Hour Division, July 5, 1974. It attaches the results of a survey of cities of over 10,000 population relative to tours of duty and fire department work cycles.

MR. DODELL: I would like to have this marked Defendant's Exhibit No. 4.

(The document referred to was marked Defendant's Exhibit No. 4 for identification.)

[39] BY MR. DODELL:

Q I would like to show you this.

A Is that the ICMA Report also?

Q I —

A Volume 6, No. 10?

Q I don't know.

Why don't you look at it.

A I am generally familiar with it. I would have to

make sure it is the same thing.

Q In any event, that report was transmitted from Mr. Slater who worked for your organization to the Department of Labor?

A Right.

Q Does not that indicate that traditionally fire fighters have work tours of duty and work cycles that vary from 2-day, 1-day, or 2 days to 360 days rather than a work week, and that that is the traditional practice of fire fighters?

A I don't deny that. I think I said that.

Q Thank you.

A I think I said that there is a difference between what the technician understands and what – and what the [40] general understanding is of the people who would have been alarmed at the implications of this – of the application of this Act.

MR. CHARLES RHYNE: Could we have a copy of that?

MR. DODELL: That was submitted by Mr. Slater to the Department.

MR. CHARLES RHYNE: I understand that. We don't have it here. I want to be sure we have a complete record.

MR. DODELL: We can copy it afterwards, if that is agreeable to you.

MR. CHARLES RHYNE: All right.

BY MR. DODELL:

Q Is what you are saying, Mr. Pritchard, that city officials were not aware that firemen have tours of duty and work cycles of varying –

A No, I didn't –

Q Excuse me. I wish – I have to hold back rather than

to interrupt your answers which is uncharacteristic of me. I wish you would try to wait until I am finished.

MR. CHARLES RHYNE: Your questions are so long, he never knows when you are going to stop.

MR. DODELL: In fact, the answers are quite long [41] and not always responsive.

MR. CHARLES RHYNE: We can argue that at the proper time. This is not it.

MR. DODELL: Yes.

BY MR. DODELL:

Q Mr. Pritchard, are you saying the city officials and budget makers were not aware that firemen traditionally work work cycles of varying lengths rather than a straight work week of 60 hours or 56 hours as the case may be?

A No, I am not saying that. Let me try to phrase it a different way.

I am saying that in the preparation of budgets we begin talking about this in terms of July 1 and October 1 budgets, because you asked me to what extent had these regulations been accommodated in budgets that are now in effect or would be in effect on January.

I am saying that there are many, many factors that are taken into consideration in preparing a local budget.

Here we have an Act which has been passed, which is very detailed. It is covered with a substantial volume of regulations and many interpretive letters, most of which are not yet available. The general impression that comes to [42] the — the general information that comes to the hands of people who are in that process is that if your employees in a particular category are working over 60 hours a week, this is going to have an impact and you better look at it.

Now the fact of the matter is that most of those people understood on the traditional basis that their employees were working less than 60 hours a week, and, therefore, it would not have any significant impact, if any impact at all.

Now the information is, it is true, sent out from ICMA in this kind of a report, but as I noted, this only goes to those people who pay a hundred dollars a year to subscribe to it. I don't know what the number of that is. I suspect it is less than a fifteenth or a twentieth of the total number of municipal jurisdictions.

Now we have also provided — tried to provide some information, but we do not engage in the business of alarming people, of stirring them up until we know what the facts are, as they applied to this particular situation.

Many of these people were in here last March and met with the members of their congressional delegation. I had breakfast one day with a group of those who met with the council for the Senate committee, and they were informed at [43] that meeting, as well as subsequently on the Hill, that they didn't have to worry, that sleeping and eating time would be deductible.

Now they had even those who at that point technically understood the cycle system had every reason to believe a prudent man under those discussions would have assumed that that would have been the interpretation, and they did not get excited about it because they felt they were probably in compliance. They went ahead and prepared their budgets on that basis.

The new regulations which now have come out do not permit that, and many of them are not going to be in compliance. They have not built that into their budgets.

Q Mr. Pritchard, your office sends out information to its members, I presume?

A Right.

Q Your office knew in June — at least as early as June — that scheduling of work periods and work cycles could have an impact on cities even though they employed firemen less than 60 hours a week; is that correct?

A In some categories, depending upon what happened to the eating and sleeping times.

Q [44] Isn't the answer yes?

A Depending upon what happened to eating and sleeping times. It could have an impact.

Q Did your office notify its members that scheduling of work periods and work cycles could have an impact on their liability for overtime? Even if they employed their firemen less than an average of 60 hours a week?

A I would assume we did.

Q Now I call your attention to Defendant's Exhibit No. 3, which was the ICMA Special Report of June 1974 which Mrs. Kocheisen sent to Mr. Hoffman. I call your attention to the second page.

Do you have a copy of this?

A Yes.

Q Does it not indicate about midway down the first — a little below midway down the first full paragraph, after referring to a Wage and Hour Division ruling — does it not state "Thus for firemen with tours of duty of 24 hours or less, no time may be deducted for meal or sleeping"?

A I am not sure I see exactly where you mean. You mean "This report is written . . ."?

Q It is about three sentences above that.

[45]MR. CHARLES RHYNE: Where do you find that

on that page?

THE WITNESS: I see it. Yes, I have it. Right after the parenthetical statement.

MR. DODELL: Oh, you have a missing page.

THE WITNESS: Here it is.

(Indicating.)

MR. CHARLES RHYNE: Okay. Fine.

BY MR. DODELL:

Q So this report at least alerted whoever read it, and your office, that it might be the case that no time would be deducted for meals and sleeping; is that correct?

A I don't quite interpret it that way, knowing the background of it. I think that the report was prepared with the intention of painting the worst situation. I don't think it anticipated or did not anticipate. It indicated that other rules might be issued.

Now we did not — I don't take responsibility for what this says because it is not our report. I don't think we would have advised our people quite that way.

Q But this report in any event alerted your office, because your office received it, and whoever else received [46] it to the possibility that sleeping or eating time would be counted for purposes of calculating overtime? That is correct, is it not?

A We saw this, yes. If that is what you mean.

Q And in advising people as to possible scheduling of 24-hour shifts or 10-14 shifts, this report told cities' options that would be available to them on the assumption that sleeping or eating time would be included; is that correct?

A For those — yes. I am sure that is right.

I would point out, however, that this is only one of

many reports prepared by different people that apply different interpretations to the same subject.

Q What is the international city's — what is it called, the International City Management Association?

A It is an organization of administrators, city managers and administrators of cities, counties, regional councils, other — it is a professional management group of — primary of city managers, but going beyond city managers.

Q Is it connected with your organization?

A Not directly, no.

Q Indirectly?

A [47] No. We associate with each other; we know each other, but it is an entirely different organization. There is no overlapping control over management at all.

Q And for the record, Mr. Pritchard, I would like to note that at the end of this report it says it was prepared by William F. Danielson, Director of Personnel for the City of Sacramento, California; and it says he has extensive experience in advising local governments and fire duty schedules and staffing and has authored an earlier MIS report on the topic.

A Yes.

Q You stated earlier, Mr. Pritchard, that your office participated in the preparation of this?

What was the extent of that participation?

A We participated in the development of the questionnaire. We did not participate in the writing of the report. This was done on their own from the questionnaire.

Q Just to avoid —

A You have a questionnaire in that form, I believe.

Q Just to avoid confusion, I think, Mr. Pritchard, perhaps you are referring to the — there are two exhibits that have been introduced, 3 and 4.

A [48] I am sorry.

No. I am sorry. We did not participate in this.

(Indicating.)

MR. CHARLES RHYNE: By that you mean Exhibit 3?

THE WITNESS: Yes. We did participate in helping develop the questionnaire for Exhibit 4. We did not participate in writing either report, or in the interpretation of the data.

BY MR. DODELL:

Q Now calling your attention to Exhibit 3, and in particular to what is the last page before the list of area directors, in my copy, the first full paragraph states Wage and Hour Division staff members of the national, area, and regional offices have been very helpful to city officials seeking information and assistance.

Now do you agree with that statement or disagree with it?

A I think that is a gratuitous statement. I think that my observation at meetings I have attended where, for example, at the national meeting of this group in Dallas, in October, representatives of the regional offices of the Wage and Hour Division were present, participated in a [49] session, and had to admit in most of the discussion that could not answer the questions.

I think they were — they tried to be cordial and tried to be helpful, but they didn't have the answers and they couldn't answer most of the questions that were put to them. That has been the report that we have had from

most of our people that they have not been turned away in terms of being willing to meet or communicate, but their answers have not been specific enough to be of much help.

Q And what meeting was that?

A That was the annual meeting of the International City Management Association in Dallas, in October.

Q Were you at that meeting?

A Yes, I was.

Q And what are examples of questions that could not be answered at that time?

A Oh, I don't know that I can recall. I know that the group left – the people left the meeting, the discussion, very frustrated by saying, you know, the general response was “Is this what we are going to have to go through every time we want to change a work schedule or set up a different personnel policy? We are going to have to get this kind of [50] runaround to get the kind of answers we want?”

Q Can you recall any specific questions?

A There were a whole series of questions dealing with – well, I think the record of that meeting was taped, and I think if it is imperative that you have that, I assume it could be provided. I would rather let that record stand for itself. I would be – it was about a 2, 2-1/2 hour session, and the questions ran all the way through it. I don't know if I am in a position to recall all those in detail.

Q In paragraph 47 of the complaint, it states Plaintiff Lompoc, California, will suffer vast, as yet inestimable increased costs if it were to comply with the Act with no increase in salary levels and no increase in services

provided.

Do you have any more specific information about paragraph 47?

A Well, the City of Lompoc has been in correspondence with this Department. It, like many other cities, operates with a compensatory time agreement with its employees. The work of local government is very cyclical. The general practice for many years has been for employees to work [51] substantial number of hours during a brief period of time and then take compensatory time at a time that suits their convenience. The elimination of that compensatory time in many jurisdictions is going to increase costs, is going to create hardships for the employees. This is the case in Lompoc. Lompoc itself has determined that it will not comply with the compensatory time provisions, and so advised the Department of Labor that it expects to continue to pay to handle compensatory time off.

MR. CHARLES RHYNE: We can give you the letter that he is referring to if you would like that.

MR. DODELL: If you have it.

Could I have this marked, please, as Defendant's Exhibit No. 5?

(The document referred to was marked Defendant's Exhibit No. 5 for identification.)

BY MR. DODELL:

Q Mr. Pritchard, is there anything in Defendant's Exhibit No. 5 that gives any indication as to the dollar amount of these costs that are referred to?

A No.

Q [52] And I take it you have no idea of what that dollar amount would be?

A Not without the city providing it to me, I would not.

Q And you have no idea, I take it, whether Lompoc is referring to costs for increased costs for firemen, for policemen, or for other employees, or for more than one of those categories?

A I think that — it is my understanding that this applies to the compensatory time under the provisions that went into effect May 1. I assume they would also carry over, however, to the January 1 regulations.

Q Mr. Pritchard, paragraph 48 of the complaint refers to Cape Girardeau, Missouri.

Now do you know whether the Department of Labor has filed a lawsuit that is referred to elsewhere in the complaint against Cape Girardeau?

A I would have to ask the counsel as to the status of that. My understanding is that something has been filed on that, but I am not sure what the exact status of that is at the moment.

MR. DODELL: Mr. Rhyne?

[53] MR. CHARLES RHYNE: Yes. I have the documentation, including a copy of the complaint. This is all being sent in by the city attorney of Cape Girardeau. I may not be pronouncing it right.

These four pieces of paper — I will give them to you — I would like to have them identified so they won't get lost in the paper work.

MR. DODELL: By the way, Mr. Rhyne, these papers you have been kind enough to give me, can we retain those?

MR. CHARLES RHYNE: Yes, you can.

MR. DODELL: I appreciate your courtesy in providing

me these papers.

MR. CHARLES RHYNE: I think we have copies of all the documentation.

Your question was what now?

MR. DODELL: Could you read back the last question, please?

(The reporter read the question as requested.)

MR. CHARLES RHYNE: Let the record show I furnished to Mr. Dodell the complaint and the correspondence that we have with respect to it that has been served on Cape Girardeau.

[54] MR. DODELL: All right.

Could we have marked for identification as Defendant's Exhibits 6, 7, 8, and 9, a letter from Thomas M. Utterback, City Attorney of Cape Girardeau —

THE WITNESS: That is No. 7?

MR. DODELL: This is Exhibit 6, isn't it?

THE WITNESS: 6 would be right.

MR. DODELL: 5 was the letters from Lompoc?

THE WITNESS: Right.

MR. DODELL: 6 is the letter from Thomas M. Utterback, City Attorney of Cape Girardeau, G-i-r-a-r-d-e-a-u, to Jack R. Younce, Y-o-u-n-c-e, Area Director of the Department of Labor; and the second is a letter from the Regional Solicitor of the Department of Labor to Mr. Utterback.

The first letter was October 15, 1974; the second November 20, 1974.

Next is a newspaper clipping from Cape Girardeau. I don't see the name of the publication. It appears — oh, the *Southeast Miss* — it looks like there is probably something else to the title.

Last is a memorandum from W. G. Lawley, City [55] Manager, to the City Attorney, dated December 11, 1974.

(The documents referred to were marked Defendant's Exhibit Nos. 6, 7, 8, and 9 for identification.)

BY MR. DODELL:

Q Recognizing, Mr. Pritchard, that this may not be within your area of knowledge, let me ask, do you know why Cape Girardeau can't merely defend the action that has been filed against it rather than participating in an action here in Washington?

MR. CHARLES RHYNE: Isn't that a legal matter?

THE WITNESS: If you are asking me the legal question as to why one and not the other or something, I can't answer that. It is a legal point.

BY MR. DODELL:

Q Do you know why Cape Girardeau made that judgment?

A Well, I know that Cape Girardeau, like many other cities, if this suit had not been filed by us in the form in which it has been filed, there would have been a very substantial number of independent suits like the Cape Girardeau suit. When Cape Girardeau found we were — when our board approved — acting in this way to do this on behalf [56] of the cities, a number of cities who had intended proceeding along the lines that Cape Girardeau had, either the same basis of facts or otherwise decided not to go to deal with the case themselves, and joined in with — and are looking toward this particular action to deal with their questions.

From a practical standpoint, I would assume that was a consideration in Cape Girardeau, although if there are

other legal implications, I don't understand those.

Q [57] Mr. Pritchard, I am referring to what has been marked Exhibit Nine. This is the memorandum from Mr. Lawley to the City Attorney, and looking at the attached memorandum, according to this memorandum, Mr. Lawley is writing to Mr. Utterback and stating that the starting salary of five men is less than the starting salary per month computed at \$1.80 per hour for a 72-hour week?

This indicates, does it not, that Cape Girardeau is unusual in that you indicated that for most localities or basically, there is no impact as a result of the May 1st provision, this would seem to indicate that as to Cape Girardeau there is an impact as to the May 1st provision?

A Yes, that is right. I indicated that generally there would not be an impact. I would not want to say that in every one of 15,000 cities, there was not an impact in some city in some way. There are exceptions, but as the Congressional record itself indicated, the general situation was that most cities were already in compliance in most cases.

Q So, in that regard, at least —

MR. CHARLES RHYNE: I want to make sure the record [58] is clear you are both talking about the minimum wage?

MR. DODELL: Right. The minimum wage as of May 1st.

BY MR. DODELL:

Q In that regard at least Cape Girardeau is not like the more common or general situation?

A In that specific piece, yes.

Q Now, secondly, this memorandum indicates, does it

not, that the fire department in Cape Girardeau utilizes a 72-hour duty week? This is correct, isn't it?

A Yes.

Q So the impact on Cape Girardeau from the amendments that become effective January 1st results from the fact that unlike 85 percent of the cities, Cape Girardeau chooses to use a 72-hour work week; is that correct?

A That is correct.

MR. CHARLES RHYNE: Could I ask one question about the record? I assume you are getting daily copy here. I want to be sure that I order a copy also.

MR. DODELL: Yes. We ordered daily, but realizing it could go to seven, I specified that the transcript for today could be ready by late tomorrow afternoon, and [59] the transcript for tomorrow could be ready by Thursday afternoon, realizing the holiday is Wednesday.

I hope this satisfied you.

MR. CHARLES RHYNE: I wanted to be sure the reporter understands we want a copy of the transcript, also.

MR. DODELL: Could you make sure Mr. Rhyne gets simultaneous delivery?

THE REPORTER: Yes.

MR. DODELL: Could we go off the record for a moment?

(Discussion off the record.)

MR. CHARLES RHYNE: On the record.

With reference to Mr. Dodell's request for the documentation that we have that relates to the paragraphs of the complaint, we are going to furnish to him with respect to those paragraphs of the complaint

that are factual and where we have documents that back up the facts, the exhibits that we have for those, and we will mark them with respect to each paragraph of the complaint so you can readily relate them up to it.

MR. DODELL: That is fine. Thank you, Mr. Rhyne.

[60] MR. CHARLES RHYNE: As we go off the record, we will give you a complete set of all the documentation. That might be easier.

MR. DODELL: Fine.

MR. CHARLES RHYNE: And we can mark those any way that you want to. You are up to Exhibit 9, so the ones that have not been marked, you can mark them. That is fine.

Off the record.

(Discussion off the record.)

(The reporter marked Defendant's Exhibits Numbers 10 thru 36, inclusive, for identification.)

MR. DODELL: While we were off the record, Plaintiff's counsel provided Defendant's counsel with documents relating to paragraphs four through 72 of the complaint; and they have been marked Defendant's Exhibits for identification, 10 through 36.

And I want to thank Plaintiff's counsel for providing those documents to us.

BY MR. DODELL:

Q [61] Paragraph 49 speaks of the payment of time and a half instead of compensatory time off for the more than 7,000 overtime hours accumulated annually merely to provide necessary snow removal services.

Exhibit 10 indicates they have been given the option to accept compensatory time off on the basis of one and a half hours off for each overtime hour worked or to

receive time and one-half overtime pay.

It goes on to say, “By far the vast majority of the workers have chosen to take compensatory time off during the summer months.”

I take it as far as you know the, that Salt Lake City did provide an option to the employees to receive time and one-half overtime pay for the work that they did in overtime?

A Yes, they did. I think you will find that is true in several of these other documents.

Q And is it not correct that — well, I think it says — we just read it, the time and one-half for each overtime hour worked — excuse me, that compensatory time for each over-time hour worked was also on the basis of one and one-half hours off for each overtime hour.

[62] Paragraph 49 also speaks of discontinuance of shift trading. Now, is it your understanding that the new amendments prohibit shift trading?

A My understanding is the new regulations that have come out now does permit a certain amount of shift trading within given periods.

MR. CHARLES RHYNE: It does relate to police and fire, only, right?

THE WITNESS: On the new regulations, yes, that is right. It would not affect these people.

I would point out that our understanding of the situation in Salt Lake City is that because of this — this tends to be true in many other jurisdictions — that because of the concentrated — concentration of requirements for snow removal in very brief periods of time, that the need for manpower is rather substantial. And that the employees in that area, many of them

would not work at all on these jobs if they were not permitted the compensatory time off.

The nature of their interest, the people who do this, is that they want that summertime available, and the pay for time and a half at that time would not be of interest to them.

[63] The mayor who happens also to be the new senator from Utah, has gone into this in great detail with me. He says that he expects a very substantial number of those employees would not continue their employment with the City under the circumstances.

Q Well, do you know of any surveys that have been taken to establish this, or is this just his opinion?

A I think it is just based upon what he would have to do as mayor of the city – to provide for that type of service in another year.

BY MR. DODELL:

Q You are reflecting what the Mayor of Salt Lake City told you?

A That is right.

Q Who is that?

A He is now Senator Garn.

Q You are reflecting Senator Garn's judgment –

A I am reporting his judgment.

Q May I finish the question?

You are reporting Senator Garn's judgment that employees would quit if they had to be paid time and a half for overtime?

A [64] That is right. Not all of them, but a good many of them would.

Q You don't know that he has taken any survey to establish that?

A Well, I assume as any good manager has a pretty good idea of what his employees think, and how they feel and what their reaction would be.

Q What is it —

A It is also dealt with in your other Exhibit 11, I believe.

Q What is the difference, Mr. Pritchard, between receiving compensatory time in the summer at the rate of one and a half hours for each hour overtime worked and receiving one and a half times the pay during the winter months and being laid off in the summer months?

A Well, I suppose if you are looking at exactly the dollars, you are paying the dollars out, but the fact is that you deal with the whole question of morale, of continuity of employment, of retention under pension systems.

Once you are laid off, you lose your hospitalization and health insurance, your contributions to your retirement programs.

[65] You are unemployed as far as your credit is concerned. It is a terrific morale problem for employees under that kind of a situation. As long as they are continued in compensatory time, they are still in the — still an employee of the city.

Q So, if I understand your testimony correctly, there is no net difference in cost — may I finish the question?

A Go ahead.

Q If I understand — if I understand your question — your answer to the question correctly, there is no dollar difference in cost to Salt Lake City between receiving compensatory time in the summer at the rate of one and a half hours for one hour worked and taking one and a

half times the pay in the winter and taking the summer off.

A Well, I suppose that would be true. I don't think that is the extent of the impact, however. I think if you are trying to make the point that because there is not a significant fiscal impact on that particular aspect of it, that there is not justification for being concerned about the impact of the legislation, then I would say that you only understand a fraction of the problem.

Q [66] But the complaint also that Salt Lake City will suffer the following irreparable injury as a result of the 1974 amendments: the payment of time and one-half instead of compensatory time off for the more than 7,000 overtime hours accumulated annually merely to provide necessary snow removal services; and it seems to me your testimony is that in terms of cost to Salt Lake City, the payment of time and a half instead of compensatory time off would result in no additional cost to the City of Salt Lake.

A Well, the damage — it seems to me the key to that phrase is not just dollars.

The irreparable injury goes much beyond just a dollar cost. There is a cost in employee morale, there is a cost in continuity of service, there is a cost in the ability of local officials to maintain an esprit de corps among the employees it maintains.

This is a structure of employment which has best fitted the particular geography and climate and weather conditions and employment interests of the personnel in that area.

And the political leadership has negotiated that [67] with its employees as the thing that works best for the

city and works best for the employees, and works best for the community.

And it creates a serious injury to the ability of the city to run its business the way the community wants it run.

Q Would leave without pay during the summer months cure any of these other problems or all of them?

A I am not sure that that is possible. There is – there would be a legal question there as to what authority the city had to grant leave without pay.

Q Do you know whether there would be a legal problem?

A No, I don't.

Q Do you happen to know what the pay period is in Salt Lake City, a week, a month, or biweekly?

A No, I don't.

Q Would it be true if the pay period is two weeks or a month, that within the pay period there would be some flexibility in terms of what you call compensatory time?

A State that again. I am not sure what you mean.

Q [68] Let me try to state it another way. If a pay period is a month, for example, and an employee worked 50 hours one week, might he work less hours or fewer hours the second, third, and fourth weeks and would it still comply with the – with his total pay – would it still comply with the provisions of the Fair Labor Standards Act Amendments and give the same results as if he were getting compensatory time?

A I am not sure that it would at all. I think it depends upon the type of employee you are dealing with and what he is working with.

This applies – in Salt Lake City, this happens to apply to the situation they cited here, that happens to apply to

those people who engage in snow removal.

Now, who knows when it is going to snow and how long it is going to snow? They may need them every day for a longer period of time.

That is something that we have to be available for.

In other jurisdictions, the problem may not be snow removal; it may be a period of tax collections when offices stay open extra hours. It may be a period for some [69] employees when the city is holding budget hearings, and certain employees work extra hours; and then after that period is up, why compensatory time off is what the employee and the city prefers.

Q In some of those situations as we have indicated earlier, where the person would not be completely laid off in the summertime, if he worked a shorter period of time in the summer, let's say 30 hours, 35 hours, or 25 hours, the net cost to Salt Lake City would be the same?

A Well, I don't know — you are creating a hypothetical situation which I am not sure of. You know, I don't know what time a person would have accumulated and whether it would work out that way.

Q Well, suppose a person is working during the busy season in taxes, tax offices, and he works, let's say, ten hours extra a week.

A Yes.

Q Under Salt Lake City's program, he receives — or under your example, he would receive one and one-half hours compensatory time?

A Right.

Q Under the amendments he would receive one and [70] one-half times the amount of pay?

A Right.

Q But if he received one and one-half times the pay during the busy season, and he worked less during the slack season, in an amount of one and one-half times the amount of time he worked overtime, would not the net cost to Salt Lake City be the same?

A Yes, I think I said dollar-wise it probably would be, but that is not the limit of the impact.

Q On the top of page 22, there is a reference to increased costs for the hiring of or elimination of student interns from the University of Utah.

Now, I haven't had a chance to read fully these two letters that you have provided to us, but is this referring to students who would be employed in regular employee capacities, for the city of Salt Lake City?

A I think the letter on page three, your Exhibit number 11, on page three, first paragraph cites the use of interns.

Q [71] Well, do you know whether the — what the reference to “interns” is, whether this is to a part of the student program where the person must do some internship for the — in terms of complying with his course requirements, or whether it's in terms of having an employee simply work like any other employee for the state or the city?

A I think it's probably both. Most cities — you will find other letters in here, in other exhibits — a similar situation where many cities use interns from universities as part of their ability to earn some income to stay in school to supplement their resources for academic work.

And, in fact, we have many of them come to us who offer to work for nothing, just to get the experience; and they do that with cities. Quite frequently the cities pay

them just a nominal amount to have some money in their pocket. It's not really considered by either the employee or the employer as a job in the sense that other positions are productive employment, although they do productive work.

A number of these exhibits cite the fact that they are terminating those programs.

Q Is the irreparable injury to Salt Lake City then that it believes that it should be free to use students in [72] a different way from that in which private industry could use interns?

A I think the view is that they should be able to work out their arrangements with their interns and give them an opportunity for training. And if the students want to use that, and compensate them in the way that the students and the city agree upon.

Q So that if a student worked for a private industry and wanted to agree with a private industry, you would think he should be under one system of regulations, but if the same student were doing the same kind of function for the same kind of purpose for the city government, he would be under a different system of regulations?

A I think you are dealing with two different animals in this situation. You are dealing with, for the most part, the students who have a commitment and a dedication to a public service, that want to be involved; and in many cases, they are willing to work for nothing, just for the opportunity to be in the business, to participate, and to have the experience.

You are dealing in a public center where there is a degree of public accountability and public responsibility [73] and no profit motive involved. There is no incentive

in that sense to underpay and compete as there is in the private sector, or to exploit.

The use of interns in these cases, in many cases, requires considerable additional investment on the part of the city in terms of supervision; and the cities are willing to do this and the political leadership and administrative leadership is willing to do it, because it's a contribution to the public interest.

I think you are dealing in quite a different business when you are talking about the public and the private sector and the use of interns.

Q Do you have any information as to specific functions that are performed by these interns from the University of Utah in Salt Lake City – for the Salt Lake City government?

A No, I don't in this particular case; but I know generally what they do in other cities. I assume the thing is similar.

Q So in the case of Salt Lake City then, you don't know the extent to which these interns may be performing the same functions that people are performing either who are [74] regular employees of the City of Salt Lake, or that may be similar to employees who are working for private business?

You don't have that information?

A I don't have that information.

Q Thank you.

I skipped one clause at the bottom of page 21 and carrying over to the top of page 22, which refers to increased costs for the hiring of or elimination of students to work in the public parks each summer.

Do you know how that relates to the recreational

exemption that is provided under the statute?

A I think there is a paragraph in the letter that also deals with that. On page 2 of Exhibit 11.

Q You referred to that paragraph of the letter?

A Yes. I was referring to the — to the paragraph on page 2 of Exhibit 11.

Q I see. Your answer to that question would be incorporated in that paragraph?

A That's right.

Q Looking at page 2, I see the last paragraph which says, "I mentioned previously our road maintenance and snow removal problems, and the serious impact this will have on [75] Salt Lake City.

"After a careful review of our budget problems and consideration of the impact of the Fair Labor Standards Act, we are cutting back 100 employees by attrition. Beginning October 1, 1974, we will not replace terminating employees unless the new hirees receive special approval by the personnel director, city auditor, and Board of City Commissioners."

Doesn't this conflict with what you previously said in terms of there being no budgetary impact on Salt Lake City if people are laid off or given leave without pay in the summer months, and work overtime in the winter months?

A Well, I suppose when you ask me the question is there no budgetary impact, to say that it comes out exactly even is to — you know, I am not constructing a balance sheet here. I am giving a judgment; and I think that within — when you are talking about 7000 hours or work, and you are talking in terms of a small number of employees, I think that there's apt to be — there's apt to

be some imbalance in the situation.

But I don't think that they are necessarily in conflict. I think — I am giving you a general answer to a question you are asking me now to construct a profit and loss [76] statement or a cost accounting statement. I don't pretend to be able to do that to that degree of accuracy.

Q Why would there be an imbalance?

A Well, I suppose because you are not going to be able to — you are not going to let everybody who accumulates time all go at the same time; some of them you are going to have to keep because you have other work, street maintenance that has to go on during the summer. The summer is when you do your street maintenance work. You remove snow in the winter.

You are going to have some of those people that you are probably going to end up having to pay time and a half and keep them on. And you are maybe going to have some of them that have to work overtime in the summer, too.

Your degrees of flexibility, what you have eliminated are the degrees of flexibility in this so that you can't match up one for one; and you are going to have some extra costs involved.

I think you can sit down and construct that and it would come out to the point where you are not going to come out with 100 percent balance.

Q If everybody got all of the compensatory time to [77] which he was entitled, why would there be an imbalance?

A Well, I don't know that I can construct that exactly. I have to take the city's word for it. This was put together by the city, by the personnel director in

consultation with the city attorney. I assume they know what they are talking about.

I don't know that I can — that I should be — should be expected to be in a position to detail every dollar for 15,000 municipalities. It's our practice over 50 years of activity to report the information the same as anybody else would that is given to us by city officials, and it's not the habit of city officials to provide this kind of information and lie about it.

I assume they know what they are talking about.

Q As a matter of logic, wouldn't you agree that your prior testimony appears to be accurate and that this sentence appears to conflict with it?

A No. I don't think my prior testimony was attempting to — as I say — to construct a balance sheet. I was indicating that you — you asked me at that point if I thought that it — there would be any significant fiscal impact whether it would balance out.

[78] I said I thought it probably would. But that's a general statement. I don't know that it would balance out 100 percent. I think it's quite possible that there would be some variance in there.

What all causes those variances, I am not sure I can explain in terms of this particular letter, but I think if they have identified some areas in which it will not balance out, why, that's what they have indicated.

MR. CHARLES RHYNE: I think in fairness to the witness, your questions were mostly hypothetical rather than facts; and this letter deals with actual facts, Mr. Dodell.

MR. DODELL: Well, this letter has to deal with a hypothetical, too, Mr. Rhyne, because it has to compare

the costs of complying with the Act with the costs of going on the way they have been going on.

Neither of those have occurred yet. They are talking as to the future also.

MR. CHARLES RHYNE: They are talking about having to cut off 100 people, for example. That's a pretty hard fact.

MR. DODELL: I would rather not argue with you, Mr. Rhyne. The fact is before being called — before this sentence was called to Mr. Pritchard's attention, he said — [79] and the record will bear this out — that applying the Act in the way in which I had indicated in my hypothetical, would have no budgetary impact on Salt Lake City, but that there would be other impacts on employee morale, on continuity of employment; and the record will speak for itself.

I don't think this is the forum in which we should debate the point.

MR. CHARLES RHYNE: I would certainly agree. You were arguing with him. I thought I would point out you are dealing with hypothetical facts and this letter deals with actual facts.

MR. DODELL: The record will disclose whether that's a fair reflection of what we were talking about.

BY MR. DODELL:

Q Mr. Pritchard, is one way in which this imbalance could occur if Salt Lake City did not find it possible to give the employees all the compensatory time they had earned because it needed them for road improvement or road maintenance?

A I would assume in that case it would work the other way. The city would end up in effect the winner in that

case in having money left over, wouldn't it?

Q I don't understand your answer.

A [80] Well, if a man is entitled to time and a half off and you don't give it to him, and you work him and pay him at the regular time, you have got the work and you haven't paid him for his time and a half; so the city — that wouldn't end up costing the city money. That would end up with the city coming out ahead, it seems to me.

Q That's my point, Mr. Pritchard.

A I don't think that would justify this particular statement.

Q My point, Mr. Pritchard, is if the city were to come out ahead because in certain circumstances if all the employees couldn't use up their compensatory time, then there would be a budgetary impact on the city as a result of it's not — as a result if it's paying time and a half rather than using compensatory time.

A But what kind of a budgetary impact?

Q Well, we were trying to figure out why your earlier impression was not accurate; and I am offering —

A I am not agreeing it wasn't accurate. I am still saying I don't think there was a conflict between the two.

Q All right.

I think we should move on to another area.

A [81] All right.

Q Now, don't these letters, Mr. Pritchard, indicate that notwithstanding the problems that Salt Lake City has — or at least indicates that it will face as a result of the amendments, it has been trying to bring itself into compliance with the Act? That's correct, is it not?

A That's right. And that's what I indicated in my opening statement, I think; also, at a higher cost, at a

lower level of service, and with less satisfactory arrangements for themselves and their employees.

Q Well, when you set a higher cost, Mr. Pritchard, I think you indicated that as far as you could figure out there would be no budgetary impact; was that not correct?

MR. CHARLES RHYNE: That depends — let's don't get such a confused thing. You were asking him about compensatory time. Don't relate that up to the whole picture, Mr. Dodell.

I don't think that's a fair question. Tell him what you are talking about and then he can answer it correctly.

MR. DODELL: Well, Mr. Rhyne, Mr. Pritchard volunteered an answer that really wasn't responsive or went beyond the question that was asked.

[82] All I asked was that — do these letters reflect what — that Salt Lake City is attempting to bring itself into compliance with the Act; and the answer to that would have been yes, Mr. Pritchard — had he volunteered other observations.

MR. CHARLES RHYNE: No. He —

MR. DODELL: Let me finish. He went on and volunteered other gratuitous observations.

Now in part his observations said there would be increased costs to Salt Lake City as a result of coming into compliance; so I will repeat this question then.

BY MR. DODELL:

Q With regard to the claims that Salt Lake City made as to an increased cost resulting from its people involved in snow removal, do you adhere to your earlier testimony that as far as you can see, this would not have a budgetary impact on Salt Lake City?

A That isn't the question you asked me before.

Q That's the question I'm asking you now, Mr. Pritchard.

A I would say that I can't — from the information I have, there would still be an impact. Now, you are limiting your question — if you are trying to limit your question only [83] to compensatory time off, that's one thing. If you are trying to draw that question into the question of the impact of the Act, then I can't make that transition, because in terms of compensatory time off, I'm saying that generally you would have to assume that if everything worked out evenly, there wouldn't be any cost.

The city attorney or the city auditor in a specific statement is saying apparently it will not work out that way according to their calculations. I don't think those two are inconsistent.

I am also saying there are other costs that are involved; and to say that — for you to try to draw the inference that because the compensatory situation works off in a hypothetical argument to come out even, that there is no budgetary impact in the Act, then I have to deny that because there are other cases cited in here to indicate that there are other implications beyond that.

Q All right.

In terms of compensatory time, your testimony is that generally a city could manage its affairs in such a way that there would be no net cost to the city to comply with the amendments; is that correct?

A [84] In dollars paid out, if it all balanced out, I would assume that would be the case.

Q Now with regard to the impact on morale, Mr.

Pritchard, do you know what positions unions have taken with regard to the Fair Labor Standards Amendments of 1974?

A Which unions?

Q Is there a general union position?

A Well, I know what the national unions – I know a lot of the local labor councils have not agreed with the national labor unions. In fact, there were a whole host of local fire fighters' organizations who dramatically opposed their inclusion under the Fair Labor Standards Act.

Q The National Fire Fighters Organization supported the amendments?

A Yes, they did.

Q Did the –

A Many local councils did not.

Q How many?

A I don't know the total.

Q Do you know what position the American Federation of State, County and Municipal Employees took?

MR. CHARLES RHYNE: I don't see what relevance that [85] has. It's not relevant to any issue in this complaint.

MR. DODELL: The issue it's relevant to, Mr. Rhyne, Mr. Pritchard has testified that the amendments will cause enormous morale problems. So one must assume that these national unions are taking positions that are contrary to what would be good for the morale of the employees.

I want to know if that's Mr. Pritchard's testimony.

MR. CHARLES RHYNE: He was relating his to the

Act. You are relating yours to the union. I don't quite understand.

MR. DODELL: Mr. Pritchard's testimony is that the amendments will cause serious morale problems among employees. Now, unions generally purport at least to speak for the rights of their employees; so I take it that if Mr. Pritchard is to be consistent, he would — his testimony would be in this instance, the national unions are speaking contrary to the interests of their employees.

That's what I want to elicit from him. It seems to me to be perfectly relevant to test his testimony that these amendments which purport to benefit employees are causing morale problems among employees.

MR. CHARLES RHYNE: All right.

THE WITNESS: I think I can answer that question [86] in the sense that what I am reporting to you and what you have before you is a statement from the City of Salt Lake City which says that — which describes this. I am reporting to you the statement made to me by the Mayor of Salt Lake in arriving at that judgment.

I am not reporting to you my opinion. The labor unions may be reporting to you their opinion.

I would suggest that if you want a comparable answer, you ask the employees of Salt Lake City, not the national union, because this has been worked out with the local employees in that city, and in that particular city, that's the way those employees prefer to work.

What the national labor union generalizes is not necessarily the view of that local jurisdiction, any more than my generalization would apply. I am not generalizing. I am giving you a specific situation.

BY MR. DODELL:

Q When you say this is the way in which the employees in Salt Lake City prefer to work, you are referring to Senator Garn's opinion as reported to you; is that correct?

A Yes. That's an agreement they have worked out in negotiations. I think that's a fair conclusion.

Q [87] But you are basing your opinion on what Senator Garn told you; is that right?

A Yes. I am reporting a factual statement by a responsible local public official.

Q As Mayor, he represented management in the relationship between management and labor; that's correct, isn't it?

A Yes, that's true.

Q Thank you.

MR. CHARLES RHYNE: He also represents the whole public interest, not just part of it. He represents all the people, including labor, unions, everybody else.

MR. DODELL: Mr. Rhyne, you are not the witness.

MR. CHARLES RHYNE: I know, but I think you are trying to —

MR. DODELL: I think you will have an opportunity in cross, if we don't go until 7:00 o'clock, to elicit what you would like to elicit.

MR. CHARLES RHYNE: All right.

MR. DODELL: Off the record for one moment.

(Discussion off the record.)

[88] BY MR. DODELL:

Q With regard to paragraph 52 of the complaint relating to Los Angeles, Exhibit 52 is all that you relied on in the swearing to the truth of paragraph 52; is that correct?

A Let me read that again. Just a moment. Yes, that's right.

Q Do you know how many hours firemen in Los Angeles averaged in 1974?

A Not offhand; not without looking it up.

Q Well, you certainly — in swearing to paragraph 52, did you have in mind how many hours of overtime — excuse me, how many hours firemen in Los Angeles worked in 1974?

A No, I didn't think that was critical. We — the city advised us, given their knowledge of the situation and the knowledge of the act, what the difference would be; and I think that their calculation of the difference is all I need to know.

I don't know that I should be or would be expected to know the hours worked by firemen in 15,000 jurisdictions and remember them.

Q [89] Is there anything in Exhibit 52 that explains how Los Angeles calculated this increased cost?

A Well, I — it was calculated at the request of the mayor by Battalion Chief Mike Mitchell who spent the better part of two weeks back here at various times working with the department here and meeting with people and appearing before the hearings.

He understands the act, probably along with Bill Danielson, as well as anybody in the country. I would have no reason to doubt but what his calculations were made with a pretty full knowledge of the act.

Q But again, answering the question, you have no idea, do you, how he calculated that amount of money?

A He calculated it, I would assume, on the basis of their current work schedules and work plans and the

knowledge of the act, and how it would impact on the city.

I don't know what you mean there. Do you want a yellow pad with his calculations on it? What are you trying to get at?

Q You have never seen a yellow pad with his calculations?

A No, I don't think that would be expected. The [90] city reports — in fact, the city reports at the request of the mayor. I think those figures are safe to rely on. We do this all the time. In testimony with the Congress, the executive agencies, we have no reason to doubt but what they tell us the truth.

Q Do you know what the firemen's work week is in Los Angeles?

A Not offhand.

Q Well, I have here — and I can't make this an exhibit, although we could copy the particular page, because we borrowed this book — this is a book called *Annual Fire Department Salaries and Working Conditions Surveyed in the United States and Canada, as Reported by Locals January 1974*, compiled by Research Department International Association of Fire Fighters; part one is salaries, part two is working conditions; and it appears to indicate for Los Angeles work week, 56 hours. I will show this to you.

A If I would have had to make a guess, I would have said 56. That doesn't surprise me. Why is that relevant? What do you want me to do with that? It obviously deals with a cycle.

[91] You notice that goes back and says the same thing I have been saying. They are reporting a 56-hour

week. Do they discuss the cycles? That's the way everybody has reported for years. They just reported a 56-hour week. They don't say two-day cycles, or 365-day cycles. That goes back to the point I made earlier, why it is so hard to get cities to figure out what is happening to them. Even the Fire Fighters' union reports it that way.

Q Mr. Pritchard, I would ask you to limit yourself to responding to the questions because — in developing facts, we proceed on a question-and-answer basis rather than just what spontaneously may occur to you. I would appreciate it if you would limit yourself to responding to the questions.

MR. CHARLES RHYNE: I think he has up to now. You have asked him very general questions, Mr. Dodell.

MR. DODELL: Could you read back the last question, please, if there was one?

(Whereupon, the Reporter read from the record, as requested.)

MR. DODELL: There was no question pending, Mr. Rhyne.

[92] May I finish, Mr. Rhyne? Excuse me.

THE WITNESS: You asked me a question.

MR. DODELL: There was no question pending. I think Mr. Pritchard volunteered his statement without a question pending.

MR. CHARLES RHYNE: Are you through?

MR. DODELL: No, I am not through.

MR. CHARLES RHYNE: Go ahead and finish.

MR. DODELL: I think Mr. Pritchard volunteered his statement without a question pending. I think my remarks were quite on point that I have been rather patient, but Mr. Pritchard has been volunteering a lot of

information.

I hope his questions would be more directly responsive to the questions.

I would also like to offer that with respect to your comment, Mr. Rhyne, that the questions are not – are general, I think the record will show that every time I have asked a specific question, Mr. Pritchard has said – well, not every time, but many times when I asked specific questions, Mr. Pritchard said, “I don’t know the answer. This is just what the city has reported to me.” I think [93] that’s significant. I think the Court will draw its own conclusion from that fact.

Now I am through, Mr. Rhyne.

MR. CHARLES RHYNE: I think all of your comments are totally uncalled for. I have let you ask very general questions, most of which have no relevance to anything. You have reached out here and gotten a report that you don’t even show to us, and you have asked questions about the firemen and their hours and his comment related entirely to firemen and hours.

So it was in response to your question. You are making as many statements as you are asking questions. It creates a very confusing record because you go from the general to the specific, and then sometimes you don’t relate your specifics up to anything.

So we have got a – really a very fuzzy record here because of the way that you are asking your questions and what you are including in them.

MR. DODELL: Are you through?

MR. CHARLES RHYNE: I am through.

BY MR. DODELL:

Q Mr. Pritchard –

[94] MR. DODELL: By the way, Mr. Rhyne, you said I haven't shown you this. Let me show it to you. Take your time and look at it. I am showing you the document that I previously referred to.

MR. CHARLES RHYNE: The page you have given us relates to Los Angeles County, not Los Angeles City.

MR. DODELL: That may be correct.

MR. CHARLES RHYNE: I am looking at pages 131 and 132.

MR. DODELL: Then it is my error, if that is so.

MR. CHARLES RHYNE: The prior pages don't have Los Angeles City at all. I just have to give it back to you, because page 131 and 132 only refer to Los Angeles County, and have nothing to do with the city.

MR. DODELL: You are correct, Mr. Rhyne, that the reference here is to Los Angeles County.

Let me ask —

BY MR. DODELL:

Q Do you know what relationship there is between Los Angeles County and Los Angeles City?

A No, I don't follow the county situation.

Q But you do not know the work week in Los Angeles [95] City? I think you have answered that.

A Not specifically, no.

Q Do you know it generally?

A I would assume, because of the general situation on the West Coast, that it is probably 56 hours; but I wouldn't want to swear to that without checking it out.

Q And if Firemen all worked a 56-hour work week in Los Angeles City, then the — and if the work period and work cycle were adjusted to comply with the act's provisions, then there would be no impact by the

amendments; is that correct?

A If the adjustment is made is what creates the fiscal impact. That was the point I made earlier. That's why I made the point earlier that many cities who looked at a report like this and said okay, we are in compliance because we are working less than 60 hours, this doesn't affect us; and they didn't adjust their budgets because they didn't think it applied.

Now they get in and start looking at the work cycles, they find they do have an impact. The one document that you submitted — I think that fact is pointed out, back here in Exhibit 3, I believe it is.

[96] There's a — either three or four, there is a reference to the fact that — on page 3, it says, "Any fire duty cycle less than seven days or more than 28 days in length will cost the city unnecessary overtime. For example, some cities presently have a fire duty cycle three days in length. This cycle calls for 24 hours duty, on duty, and 48 hours off duty. Even though this cycle is equivalent to an average of 56 hours per week, a city that maintains this particular cycle beginning January 1 may be liable to pay unnecessary overtime."

So in order to bring that in adjustment, and to avoid the overtime, they still end up with a cost because they have to put on more people in order to comply.

Q But, Mr. Pritchard —

A That's what produces the cost in here.

Q Mr. Pritchard, since June, your office has had information — I think we went over this earlier — which would have permitted any city that had a 56-hour work week to come into compliance with the act; is that not true?

A No. Because the regulations were not issued until last week. The law doesn't apply until January.

Q But, Mr. Pritchard, I would ask you to examine [97] Exhibit 3 and does not Exhibit 3 tell cities a way in which they can come into compliance with the act if they have a 56-hour work cycle, assuming the most expansive view of the regulations; and that — let me complete the question. May I complete the question?

A Yes.

Q And does not this bulletin indicate that it was, even under the most extreme view of the regulations, it was possible way back in June for a city to arrange a 56-hour work period so that it would have no liability under the amendments? Is that not true?

MR. CHARLES RHYNE: Just a minute. Just a minute.

There are about six questions in one, all based on a lot of assumptions based on regulations that hadn't even been put out in tentative form in June; and it is impossible for this witness to give a meaningful answer based on all of the assumptions that you have given him.

There were no regulations in June when this came out, not even proposed regulations. No one could even speculate as to what they might be with any degree of accuracy. So to try to get him to speculate and give answers is really requiring an answer that's so much in the [98] speculative as to be worthless and the kind of thing we are going through.

MR. DODELL: Are you directing the witness not to answer, Mr. Rhyne?

MR. CHARLES RHYNE: I am not going to do that.

MR. DODELL: Can you answer, Mr. Pritchard?

THE WITNESS: I have a hard time answering because,

as counsel said, there are about five questions posed in there with a lot of conditions.

I think in the earlier part of the questioning I indicated that some cities had this report based upon their subscription to it; and so to that extent they had some notice. There were a number of “ifs” that were still involved, including eating and sleeping time which affected their budgetary planning. That was one — so, yes, some had notice; but to prepare a budget and to budget on the basis of this would have been difficult.

I think the second part of it is that the question we are dealing with is how did Los Angeles calculate these figures; and these are calculated without regard to whether the money is in the budget and when they had notice for it really doesn't make that much difference.

[99] The question is whether they have it in the budget or not in the budget, whether it will cost them that much money.

BY MR. DODELL:

Q Mr. Pritchard, does not this state, on page 2 — by this, I am referring to Defendant's Exhibit 3, “For cities that use a 24-hour fire duty period, a 10-14 fire duty period, or a 9-15 fire duty period, there are only two possible fire duty schedules between 7 and 28 days that are equivalent to an average of exactly 60 hours per week”? And does this not then give the examples of those schedules.

A Yes.

Q So doesn't this lay out pretty plainly to the cities how they could comply with the act and not pay overtime, and still have a 60-hour schedule?

A I would assume there are more options if you work

50 – if you did on a 56. If you have been on something other than this schedule.

Q There were more options?

A I suppose.

Q Thank you.

[100] So if one had a liability – if a city had a liability and used the 56-hour work week, the liability would result from its not choosing any of the options that were available to it?

A The question I – the question I understand we are dealing with is how did Los Angeles calculate these numbers? Are we back to where we were? Are we going to reargue this again? I thought we were trying to answer the question how did Los Angeles. That's what you were trying to get at.

Q Mr. Pritchard –

A I don't know where you are.

Q I think you should just try to answer the question that is asked. If counsel has an objection –

MR. CHARLES RHYNE: Well –

MR. DODELL: May I finish?

MR. CHARLES RHYNE: No. I want to point out your question is unanswerable because they are so confusing.

MR. DODELL: I think you should extend me the courtesy of letting me finish.

MR. CHARLES RHYNE: I have been very courteous to you. Maybe too long.

[101] MR. DODELL: You can make your own judgment in that regard, Mr. Rhyne. I think you should wait until I finish, and I will wait until you finish. I have been waiting until the witness finishes, although I thought his answers went beyond the questions. I have

been very patient.

MR. CHARLES RHYNE: I disagree with that, but go ahead.

MR. DODELL: You are entitled to your disagreement.

The last question that I asked is: If a city with a 56-hour work week would risk liability as a result of the Fair Labor Standards Amendments, would this result from its not taking one of the options that is – has been available to it?

MR. CHARLES RHYNE: That's a legal question. How can you expect this witness to answer that? You are asking him about liability.

MR. DODELL: Well, Mr. Rhyne, there is a pending question. Your objection is noted; either direct the witness not to answer or permit him to answer.

MR. CHARLES RHYNE: I am not going to direct him [102] not to answer. I will let him do the best he can. I think it is difficult for a non-lawyer to answer a legal question. You asked about liability.

MR. DODELL: Mr. Rhyne, as you know, objections of that nature aren't waived, it seemed to me, by not being made. I think the flow will – if you are not going to direct him not to answer –

MR. CHARLES RHYNE: I am not going to direct him not to answer. You want the question reread?

THE WITNESS: Yes.

(Whereupon, the Reporter read the question, as requested.)

THE WITNESS: The question doesn't make sense to me the way it is stated.

MR. CHARLES RHYNE: Okay. That's it.

BY MR. DODELL:

Q It's been your testimony, has it not, Mr. Pritchard, that under the 1974 amendments, a city with a 56-hour work week could be liable for time and a half overtime for fire fighters, is that correct?

A It could be.

Q It could be.

[103] Now you have also indicated that a city — in response to questions, that a city with a 56-hour work week had more options available to it than a city with a 60-hour work week; is that correct?

A I said I would assume. I am not technically competent to go through all those different calculations; but it would just seem logical to me that it would.

Q Now what I am asking you is if a city with a 56-hour work week becomes liable for overtime payments under the '74 amendments for fire fighters, would that result from its not taking an option that is available to it?

A Well, I suppose it could be. If it had notice.

MR. CHARLES RHYNE: I think we ought to recess for lunch pretty soon.

MR. DODELL: I am hungry. We can recess now.

MR. CHARLES RHYNE: How about recessing until 25 to 2:00?

MR. DODELL: Would 2:00 be better?

MR. CHARLES RHYNE: Fine.

(Whereupon, at 12:35 p.m., the deposition was recessed, to reconvene at 2:00 p.m., this same day.)

#### [104] AFTERNOON SESSION

(1:50 p.m.)

Whereupon,

ALLEN PRITCHARD, JR.

resumed the stand as a witness and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. DODELL:

Q Now in paragraph 53, this is a reference to Sacramento, California. The first question I have is that there's a reference there to the budget for the current fiscal year, 1974-75, as having already incurred an extra \$350,000 cost due to mainly non-police and fire services.

Do you know whether that refers to a budgeted item or an actually spent item?

A Will you identify where you are?

Q I am sorry. Paragraph 53 of the complaint.

A I see. All Right.

Well, this is explained in Exhibit 14 in a communication from Mr. William Danielson, the director of personnel on page 2. The complaint cites the data.

Q [105] And at page 2 also it says, "This has" – "the sudden cutoff of the compensatory time usage for employees other than police officers and fire fighters is estimated to have resulted in additional costs in the current 1974-75 budget approximating at least \$350,000."

Do you know whether this is actual cost or budgeted costs?

A Well, since the year isn't up, they obviously couldn't have incurred all of it. It is obviously what they estimate will be spent during this budget year. They are only part way through the budget year. It couldn't have been actual.

Q And again —

A It would be projected.

Q Here the references are to the sudden cutoff of compensatory time usage. Would the same observation that you made with regard to Salt Lake City be applicable here insofar as you are saying that a matter of logic at least other things — let me start again.

As a matter of logic, at least, it would seem that compensatory time could result in the same cost to the city as payment of additional overtime if the figures [106] balanced?

A Let me reacquaint myself with his facts here.

Well, theoretically I think the statement I made before is probably adequate in general theory. Obviously I know of no one in the country that knows more about the application of this legislation than Bill Danielson does. He wrote that report earlier; and — that you cited, Exhibit 4.

Based upon that knowledge, he has concluded that for the city there is an additional cost. Exactly where that comes from, I don't know that I can explain; but this, I think, supports the statement I made earlier that they aren't going to balance out exactly. It is good theory, but it just doesn't work out that way all the time.

Q But you don't know why it doesn't work out?

A No, I don't.

Q Do you know what the total payroll is of the Sacramento — city of Sacramento? I don't know whether it is in here or not. I simply have not had a chance to read this entire document.

A No, I don't. Not without doing a little research on it.

Q [107] Now —

A Obviously I just can't carry all those numbers around in my head for that many cities.

Q Now with regard to Sacramento, there is a reference to the cost — in paragraph 53, there is a reference to the cost for the year beginning January 1, 1977. At least that's what it appears to say. By January 1, 1977, in order to meet the act's requirements on fire protection services, the city must diminish services or hire 16 to 17 additional fire fighters at a cost of \$310,000 in 1974 firemen wages.

Do you know whether — let me start again. Does that imply that in 1975 there will be no additional costs for fire fighters in Sacramento?

A One thing about Bill Danielson is that he knows so much detail it takes a little while to get through it.

MR. CHARLES RHYNE: Look on page 4. I think if you look on page 4 in the second paragraph where he says, "Looking ahead to January 1, 1975 . . ."

I think you will see what he's asking about.

THE WITNESS: That deals with an administrative problem.

[108] MR CHARLES RHYNE: Oh, I see.

THE WITNESS: The 310,000 is . . .

I would assume that from the way he states this that there is a '75 cost, but he has not cited the exact amount.

BY MR. DODELL:

Q Well, given the — I am sorry. I didn't mean to interrupt your answer.

A It doesn't appear to be as significant to him as does the later cost, because he indicates here that their duty hours at present are 58, six gross and 56 net; and on a net schedule of hours of 54 hours a week.

See, that's for '77, isn't it?

Where did I — I am sorry. I am reading the wrong paragraph here.

Yes. Agreed to pay overtime over 54 hours. That's on page 3.

MR. CHARLES RHYNE: I am sorry. I guess I misled you then.

THE WITNESS: I can't give you a specific cost for '75.

[109] BY MR. DODELL:

Q Thank you.

A I am not going to guess at it.

Q Now in the case of paragraph 54, the only information with regard to Pasadena that's been alleged deals with 1978; that is correct, is it not?

A That's correct.

In fact, they indicate that there would be no increase in cost for '75.

Q And in the case of San Buenaventura, there the only reference is to overtime costs for fire personnel; that's correct, is it not?

A That's all they have referred to.

Q And there the average work week is indicated in Exhibit 16 as in paragraph 4, an average of 62.3 hours.

A Based on a seven-day work period. I don't know what that translates to in the cycle business, but apparently they calculated that because they show the '75 cost and the statistical compilation below at \$72,700.

Q But it is correct, is it not, that the statute does permit a seven-hour work period — seven-day work period?

A That's right.

Q [110] Period?

A Cycle.

Q Period is what is referred to. 7-K refers to a work period?

A Right.

Q So here we are talking about an impact on San Buenaventura in 1975 that would result from the fact that San Buenaventura exceeds by 2.3 the 60-hour figure which I think your own – your survey and the complaint indicates is compiled with by 95 percent of the cities; that's correct, is it not?

A That's right.

There is one thing that is not clear in the calculations that show up in some of these tables. That is whether these hours include, again, eating and sleeping time or mealtime deductions or whether they don't. You cited that report this morning; and we did not have the chance to check that before, you know, accepting those numbers as valid.

I would like to know whether those – those 56 hours, for example, that were cited, and whether – and again whether this 62 hours is inclusive or exclusive of [111] that.

Q You don't know whether it is or is not?

A On that table, I am not at all sure.

Q Actually the table – the figure we referred to in the table was Los Angeles County, Mr. Rhyne corrected me.

A Yes. I am just pointing that out in throwing these hours around that we ought – that the impact has to be considered in terms of whether those are in or out.

Q Do you know in the case of San Buenaventura whether the 62.3 includes or does not include sleeping or eating time?

A Generally the hours calculated exclude sleeping and eating time. That's generally the way it is stated.

Q Well –

A It is the net.

Q All right.

When you – I assume that the National League of Cities or its counsel obtained this information from the cities that supplied it; is that correct?

A Yes. If they don't state it, if they don't state it, the normal assumption would be that it excluded [112] eating and sleeping time.

Q How would –

A That's normally –

Q How would you demonstrate that's the normal assumption?

A Well, it's just normally the way it is done.

Q Normally –

A Because – that's been the general practice. In calculating firemen's hours.

Q I thought you said you didn't have a great familiarity with the way firemen's hours were calculated earlier?

A I didn't say that. I said I didn't want to try to get into going through all those Xs and Os on schedules. I think that gets into a lot of mathematical stuff that I am not ready to get into here. I think the general practice is – the general practice is to calculate hours on net hours.

Q So it is your testimony then that this 62.3 hour figure is a net figure that excludes sleeping and eating?

A Yes. I think if you look at Danielson's figures, [113] I think maybe his – no, I guess his didn't. There was another communication that cited that more

specifically, as I recall; but if the eating and sleeping time is included as it is under the regulations now, the cost here would have to be assumed to be higher; but how much higher, I don't know.

Q All right.

A I would say this, as a result, is a low figure, not a high figure.

Q You don't know that of your own knowledge. That's an assumption you are making; is that correct?

A That's an assumption based upon general practice.

Q And you know the general practice to be the case?

A That's right.

Q Do you know if there was testimony at the hearings with regard to what assumption is made — do you know whether at the hearings any assumption was made with regard to the sleeping and eating time, and whether it is included or not?

A No, I didn't attend all the hearings. I wouldn't want to vouch for that.

Q [114] So according to your assumption, then, your assumption would be that San Buenaventura firemen are on duty a substantially longer time than 62.3 on the average?

A Well, it depends on what the definition of "on duty" is. I am saying that the definition as normally used did not include eating and sleeping time for this kind of calculation. Under the new regulations, you would be right.

Q You can't point to any place in writing where it is indicated that that assumption is made by the people —

A No.

Q Let me finish.

– either by the people responding or in terms of your inquiry to which they were responding?

A No.

Q Was there a letter that asked these cities for information?

A Not that asked for it in that way, that we – the request – the only indication was that any cities that had any examples of how they were going to comply or what the impact was going to be, they were asked to supply that; and these were supplied based upon their own [115] interpretations of the impact of the act, not according to any specific form.

Q Was this request for information by way of a circular or by phone calls?

A We didn't – some of it was direct by phone calls; some by communication; some by personal conversations.

Q There was no general letter sent your membership?

A No. Not to go through this with everybody. It – we didn't feel because of the nature of this case that it was necessary to compile a record on every municipality. Our view was the Constitution was violated if there was any impact, whether it was a dollar or \$500 million.

MR. DODELL: Mr. Rhyne, if you would indulge me, I wonder if you would be kind enough to inquire of Mr. McHolme was that his assumption was 6200 was included or excluded?

MR. CHARLES RHYNE: Let me say to you everything that is in here, we sent to the city attorney and told him to check the accuracy. We didn't ask about anything like that. So there is no city here that hasn't been, [116] in effect, double-checked as to the accuracy

of what has been said here in writing and by their city attorney. We didn't ask that question.

Of course, I should also — you can take this off the record or on the record — we didn't use all of the cities that replied. We just used examples. We would give you a stack that would be rather enormous.

THE WITNESS: It would be longer than 68 pages.

MR. DODELL: Responding to that, we can only deal with what is before us.

MR. CHARLES RHYNE: I understand that. I want you to understand we selected some of them and not all of them.

MR. DODELL: I appreciate your mentioning that.

As I say, we can only deal with what is before us.

I do appreciate your undertaking to find out what assumption was made in that regard.

MR. CHARLES RHYNE: We will. We will find out with respect to Buenaventura. That's the one you are asking about?

MR. DODELL: That's the one I asked about.

MR. CHARLES RHYNE: I don't want to call them all.

[117] MR. DODELL: I think it would be a big burden to call them all between now and next Monday, which is the date of the hearing.

BY MR. DODELL:

Q In paragraph 56, Exhibit 17 was provided with regard to paragraph 56; and I note that according to the city manager of the city of Newark, California, at page 3, it is indicated that for regular personnel in the fire department, during the years 1975 and '76, the current manning level in schedule of the fire department personnel is adequate to meet the mandated hours.

That is correct, is it not?

A Yes, that's what he states in here on page 3.

Q I recognize that he deals with other impacts, but in terms of regular personnel of the fire department –

A Right

Q – he indicates there is no problem in '75 and '76?

A Right.

MR. CHARLES RHYNE: But I read Fair Labor Standards Act of 1974 would have an increased financial impact of \$76,632.30 on the police department.

THE WITNESS: You are asking about the fire, [118] were you not?

MR. DODELL: Yes. I asked about the fire.

MR. CHARLES RHYNE: Excuse me.

MR. DODELL: I said regular personnel of the fire department. I said I recognized there were other indications in here.

MR. CHARLES RHYNE: Okay.

[119] BY MR. DODELL:

Q Again, though Mr. Rhyne, since you did bring that up, again here at page two, there is a reference to elimination of compensatory time, which accounts for a part of that amount, and I realize that is a \$3,000 figure, but that again is something that we have dealt with before in regard to Salt Lake City and San Francisco, where we talked about the impact on the budget of the using – paying overtime instead of compensatory time.

I simply say that in regard to your observation.

Now – Mr. Pritchard, according to the figures here on page two with regard to reserves, and with regard to voluntary hours, it is true, is it not, that under the Fair Labor Standards Act, whether a person is a volunteer or

an employee is a question of fact to be determined in each case, and that volunteers are not required to be paid — genuine volunteers are not required to be paid in accordance with the Act; whereas if the employment relationship is determined to exist, then they are so required, is that right?

A My understanding is that there is a nominal compensation figure below which it is assumed that it is — [120] there is no compensation. That figure is pegged at \$2.50 for a given period. In the case of — I believe that is only in the case of police and fire, or only volunteer fire department personnel.

I think this situation on volunteers is far from clear at this point, and what we have been told up to this point is that — and the only thing we can advise the city is that these are going to have to be dealt with one a one-to-one basis and the decision will be made by someone in the wage and hour division and not by local officials.

So, there is no way to know in advance.

Q And is it your understanding, Mr. Pritchard, that with regard to the Fair Labor Standards Act in general, every issue is determined in advance or ascertained in advance and that there are no issues that may require —

A Well —

Q Excuse me, may I finish?

— that there are no issues that require interpretation and ultimately may have to be resolved by the courts?

My understanding is that there are so many issues unresolved and unclear that the cities in trying to [121] comply with this are going to be in a mass of confusion for the next year, year and a half, and they are going to be subjected to — and abused by all kinds of legal attacks

and charges to pay penalties out of public funds, and personally without any intent to violate the law, but simply because it is impossible to interpret the regulations as they apply to local governments.

85 percent of that does not apply to local government officials, but they have to read every bit of it to know whether or not it applies.

(Indicating.)

MR. CHARLES RHYNE: By that, what do you mean?

THE WITNESS: Title 29, parts 500 to 1899. I would like to challenge anybody to go out and hand this to a city council or mayor of a city of 500 or a couple of thousand and tell them to sit down and read that thing when he works one evening a week or one evening every other week as a councilman, and sit down and digest that and tell what he has to do with his personnel to bring them in compliance with the law and avoid being subjected to severe penalties under the Act.

[122] BY MR. DODELL:

Q Mr. Pritchard, is it your opinion that a statute has to be clear in every application in advance of interpretation, in advance of court decision?

A I think that is a legal interpretation that I am not going to try to interpret. I have a personal opinion, but I don't think that is a legal opinion.

Q You volunteered some other comments. Are you unwilling to answer that question?

A I can interpret the practical problem of a city administration having to read through that and cipher out what does not apply and what does apply, and when we have been told by the wage and hour division that probably 85 percent of it does not apply, and when we

have asked questions about the fuzzy parts, every part — every question that has been raised we have been told that it will have to be interpreted on a case-by-case basis.

Now, where does that leave a — where does that leave local government officials in trying to determine where they stand under the Act? I am saying that the regulations are so voluminous, they have been imposed in such a short period of time, with so little opportunity to [123] understand — there is no publication of this kind for state and local government as it applies to state and local government officials.

The wage and hour division told us when we talked to them about this back in May, they said we don't have any problem. Everything in Title 29 is all there has to be, and you will be covered by it, and that will meet your needs.

There is no publication put out that can be handed to them and say this is what applies to local governments. They have got to go through that and cipher it out and try to figure out what applies. What is fuzzy they have to try to get specific rules on.

I am saying for the next year and a half to two years, there is going to be a mass of confusion which is going to completely disrupt 200 years of stylized operations, which has been a tradition at the local government level.

Q Mr. Pritchard, the prior amendments of the Act in 1966 brought under the Act — if my recollection serves me, three and a half billion — no, that can't be.

Well, let me put it this way: in 1966, there were amendments to the act that brought under the Act employees of hospitals that were run by states and local [124] governments, and employees of schools that were run by state and local governments.

Did those people manage to comply with the Act?

A I wasn't involved in the discussion at that time. And I don't know that I can cite the exact history, I do know that the number of units that were involved were very nominal, because most of the hospitals, only about 20 percent of the hospitals in this country are public hospitals, and most of those are operated while they are called municipal or public, are operated by special districts and not by municipal organization, and they are very specialized types of operations.

Q Do you by any chance know the number of employees who were brought under the Act, the 1966 — ?

A I don't recall offhand.

Q May I finish the question? The number of employees brought under the Act by the 1966 Amendments and the number who were brought under the Act as a result of the '74 amendments?

A I don't — no, I don't know under the 1966 amendments what that figure was.

Q Well, I would like to have marked as the next [125] exhibit, number 37, a pamphlet called "Nonsupervisory Employees in State and Local Governments."

(The document referred to was marked Defendant's Exhibit No. 37 for identification.)

BY MR. DODELL:

Q I would like to show you this, Mr. Pritchard.

MR. CHARLES RHYNE: That is 1971?

MR. DODELL: That is correct.

THE WITNESS: This is quite a volume. What did you want?

BY MR. DODELL:

Q I will ask you a question. I just wanted to show it to you.

A Okay.

Q [126] May I have it back? I want to ask a question about it.

On page 40, I would like to call your attention to a passage that reads, "State and local educational institutions and hospitals which are presently covered by the Fair Labor Standards Act, counted for 3/5 of the employment in both state governments and local governments."

Now, do you have any basis upon which to question that figure?

A Where is that?

Q I will show that to you. (Indicating.)

A Well, yes, I would have to question it as it applies to local governments because what this does is to lump into one pot all of the state institutional and state hospital personnel, which is a rather substantial number, I assume, with local government personnel, which is done quite frequently with state and local funds.

They have to be distinguishable to be meaningful from our standpoint. I can tell you that from our standpoint, from the standpoint of local governments, the control that the Fair Labor Standards Act extends to local government represents a federal control of between 80 and 85 percent of the local [127] budget, because most of the local budget is made up of personnel costs. And in effect, the Fair Labor Standards Act takes out of the control of the local governments and puts into the control of the wage and hour division between 80 and 85 percent of the local budget.

Now, what that amounts to in numbers of people, it does amount to a lot in terms of ability to perform to meet political responsibilities; to carry out programs.

Q I would like to repeat the question: do you have any basis upon which to question the statement there that —

A Yes.

Q Excuse me, may I ask the question?

MR. CHARLES RHYNE: He answered, yes. He told you why.

BY MR. DODELL:

Q Is it then your answer that you do have information that questions — that calls into question that state and local educational institutions and hospitals which are presently covered by the Fair Labor Standards Act accounted for the 3/5 of the employment in both state and local governments?

A Yes, because — I am saying yes, I have reason to [128] question it. It doesn't mean anything to me.

Q But you have no basis upon which to question that factual —

A Certainly —

Q May I finish, Mr. Pritchard?

Do you have a basis to question that factual statement?

A Yes. I could pull the figures out of the census data, if I had time to do it. All I'm telling you at this point is that federal figures have a constant tendency to lump state and local stuff together; and when you lump the state educational institutions and the state correctional institutions and hospitals into one pot with local government personnel or local government budgets,

either way you distort the picture by the way it's weighted; and it is not an accurate picture in representing the case that we are trying to represent.

Q And you have factual information that —

A I can provide factual information.

Q Let me finish.

You have factual information that would contradict this?

A [129] I could provide it. I couldn't cite it out of my head. I could provide that.

Q When could you provide that?

A I know it can be provided. It would take just a relatively short period of time to dig that out.

Q Could you provide that to us, please?

A Certainly.

Q Fine; thank you.

MR. CHARLES RHYNE: Mr. Dodell, we do have these exhibits of the United States Department of Commerce. I don't want to stop you and start plowing through them — that really give a figure of 11 million for all state and local employees; and then they break it down in here, and then Harrison Williams says there are 7 million new workers covered in under these new amendments.

There are so many numbers that are bandied about, that I would really think, though, that these later figures on employment put together by the census people would give a different picture from that.

I don't want to stop him or you to go through them. We will give you these exhibits for what they are worth if you want them.

[130] MR. DODELL: Mr. Pritchard said that he could provide the information that would show this is not the

case. I would be very interested in seeing those figures.

MR. CHARLES RHYNE: I would like to get that from you so he will know what he is working against.

MR. DODELL: Yes.

BY MR. DODELL:

Q Do you have a figure as to what percentage of the employment in local governments was covered by the Fair Labor Standards Act prior to the the 1974 amendments?

A I don't have a specific figure. It was a very, very low figure, because it — in terms of hospitals, as I indicated, most of the hospitals are not municipal hospitals. They are — while they are public, they are special districts; and they are not under the control of city governments and they are not part of the city government employment figure as a result.

So it would be — I would guess it would be a fraction of a percent.

Q A fraction of one percent?

A A fraction of a percent, maybe 2, 3 percent; something like that. I would have to look that figure up, to [131] be sure. My estimate would be very small.

Q Just so I understand your testimony then, it is your testimony that only 2 or 3 percent of — excuse me, of local government employees were covered by the Fair Labor Standards Act prior to the 1974 amendments?

A I'm talking about municipal employees.

Now, if you call special district employees local government employees, then a larger percentage of them would be in that category, because all hospitals — special district personnel are included under that. That brings that percentage high.

I'm talking about — we are talking about cities and the people that this complaint represent. (Indicating.)

This represents cities. Most of those hospital employees are not city employees.

Q All right. So you're excluding from what you are talking about state employees and you are excluding special district employees?

A That's correct.

Q Are you excluding county employees?

A From this — our complaint does not deal with counties. They will be similarly affected.

Q [132] From your 2 to 3 percent figure, are you excluding county employees?

A I can't speak for the county figure. We don't deal with the county in that respect. I would have to make a calculation on that. I don't know.

Q What is the 2 or 3 percent? You use the 2 to 3 percent figure.

A There are a few municipal hospitals. I said when you take the number of people employed by those municipal hospitals that were covered, they would be a relatively small fraction of municipal employees.

That's why they would be small. I think the mathematics are rather obvious on that.

Q The 2 to 3 percent — you are saying — I still don't understand your answer. Does the 2 to 3 percent include county employees or not?

A No.

MR. CHARLES RHYNE: He said he couldn't answer.

THE WITNESS: I don't know what the ratio in terms of counties would be.

BY MR. DODELL:

Q I just don't understand your testimony, Mr. [133] Pritchard.

A I will try to restate it.

Municipalities operate very few hospitals. In most cases hospitals are operated by special districts as was indicated at the time the '66 amendments were passed. About 80 percent of the hospitals are private hospitals. 20 percent are public.

Of those 20 percent, very few are municipal. Consequently, when you take the very few that are municipal and relate the number of employees they have that were covered under the Act and relate them to the total number of municipal employees, the percentage is very small.

Q You are aware that employees in educational institutions were also covered by the Act?

A But educational institutions are generally not municipal employees either.

Q So then it's your testimony that this 2 or 3 percent figure you are talking about relates only to municipalities and not to counties or special districts or states?

A That's right.

Q And do you have a numerical figure for how many employees there were?

A [134] I said I would be glad to try to dig that out for you. I don't carry it in my head.

Q Do you know whether the states and the special districts and the counties and the cities to the extent of the 2 to 3 percent of employees, were able to comply with the Act after the 1966 amendments?

A I assume they have.

Q Even though there are a whole lot of regulations

that apply to them?

A I assume they have. I am not sure what the time constraints were in that application, however. They may not be comparable.

Q You think it's more difficult for a municipality to comply than for a small businessman to comply?

A I think probably it is. There are a whole host of reasons for that. I think it is.

Q It's more difficult for Los Angeles to comply than an employer of 5 or 6 or 7 employees?

A Yes.

Q And that's why the Act will visit irreparable injury – that's one of the reasons that the Act will visit irreparable injury upon the municipalities?

A [135] I think that's one of the reasons.

Q Now, for the city of Montebello, which is referred to in paragraph 57 of the complaint and is represented by – excuse me, you provide information that's included in Defendant's Exhibit No. 19; your verification with regard to paragraph 57 rests entirely upon Exhibit 19; is that correct?

A That's right.

Q Do you know how the average number of hours which the firemen in Montebello, California, worked in 1974?

A Well, he cited in here they were scheduled on a 56-hour week.

Q And we have earlier indicated – or you have agreed, have you not, if employees were scheduled on a 56-hour week, and they chose the proportion, then they would not incur any – any additional overtime expense under the Fair Labor Standards Act Amendments?

A No, I didn't.

Q I thought that you did indicate that?

A No, I didn't.

Q Could you explain that?

A I think I testified that the — that it depended on the work period that their hours were scheduled. They [136] could be working a 56-hour — what they call a 56-hour week, now, which was on a cycle or a work period arrangement that did not fit the regulations; and in order to come into compliance with the regulations, they still might end up keeping a 56-hour week, but it would cost them more money.

Q Didn't we discuss Exhibit 3 and it told if you had a 6-hour work week, you could adopt a work period and a tour of duty that would result in no overtime cost?

A That isn't the way I think it's understood.

Q Well, I would like to look at Exhibit — I think we keep coming back to this. That's how I understood the testimony earlier.

MR. CHARLES RHYNE: That wasn't my understanding.

THE WITNESS: If they are working a 60-hour week under a certain cycle situation they can change over to one of those options and not have it cost them any more.

If, however, they are working a 60-hour week on a cycle other than those that are cited in Exhibit No. 3, and have to change to come in with those two options, then it can cost them more money.

The report states that very specifically.

BY MR. DODELL:

Q [137] What was there to stop any municipality from converting to a work cycle that would result in no additional overtime cost?

A For example, the State of Texas mandates by state law that the cycle be 365 days. The cities in Texas are complying with State law. In order to change to the 7-26 day cycle, they have to change to a different system.

Q Is the city of Montebello –

A The state of Indiana has a mandatory cycle.

Q Is the city of Montebello subject to any restraint that would prevent – is the city of Montebello subject to any restraint that would prevent it from adopting a cycle that would result in no additional overtime cost?

A I don't know what that cycle is right now. If they are working on a 2-day cycle and have to move to a 7-day cycle, or if they are working on a 6-week cycle instead of a 26-day cycle, and have to move back to a 27 to 28 day cycle, then it could cost them – it could result in increased costs.

Q How could it result in increased costs?

A Well, I think that is explained in Exhibits 3 and 4.

Q I think – well –

A [138] I cited that to you.

Q Could you show me?

If we could find – here it is.

If you could look at Exhibit 3, I wish you would show me how that is explained in Exhibit 3.

A Look on page 3, under the heading, “Avoiding Unnecessary Fire Overtime.”

“Even though this cycle is equivalent to an average of 56 hours a week, a city that maintains this particular cycle beginning January 1, may be liable to pay unnecessary overtime every 3rd week.”

Now, that – so that cities that were in that – in those cycles had apportioned their manpower in such a way as

to have a 58 or 60-hour week and come out with a 58 to 60-hour week.

When they try to switch back to comply with these cycles, they end up having to add manpower to do it.

Now, that's a very technical thing to work out. I am not a personnel director. I am not a technician to do it; but I know that that is the fact. That is why these numbers are showing up in all of these, because everybody is experiencing that.

Q [139] Well, I asked you to explain that, Mr. Pritchard, because it seems — on the face of Exhibit 3, the passage that you read said that if a city has a cycle that is equivalent to an average of 56 hours per week, it may be liable to pay overtime; and then the example is given in the text.

However, the text on the preceding page gives ways in which a 60-hour average can be accomplished without any overtime liability.

Now, I wish you would explain to me how it can be that a municipality could have a 60-hour average and not increase its manpower and have a 56-hour average and increase its manpower?

MR. CHARLES RHYNE: Do you understand that question?

THE WITNESS: It's a very complex subject, and that's why you end up with charts like this to try to sit down (indicating) — you have to take a calendar and sit down and do it in x's and o's in order to figure it out.

As I have said, I am not a personnel director. It's not my job to sit down and work these out this way. All I can tell you is that when you put this in the hands of a [140] city manager who has to administer it, and he applies it

to his current schedule and comes up with a number and says, “This is what it’s going to cost me,” you have no reason to doubt but what he’s telling me the truth.

You and I can argue about that in theory, but the practical matter is that city manager has to apply it and he is interpreting the statute and the rules and the possibilities as he understands them; and that’s what his city is going to make its budgets on, and that is what he is going to levy his taxes on.

Q How do you explain the passage on the top of the second column on page 3, that says this kind of unnecessary overtime can be avoided by adopting a fire duty cycle at least 7 days in length, and not exceeding 28 days in length; specific examples of duty schedules that can be adopted are listed in Table 1.

How do you explain that?

A Well, they are saying here if you are within 60 hours, they have given an example of a 24-hour-on and 48-hour-off cycle of a 56-hour week. And if you are within the kind of cycle that they have illustrated, and make the change that they say, you can avoid overtime.

[141] I am saying that if you are on a different kind of a cycle, if you were on, like a Texas city with a 365-day cycle, or a 2-day cycle, and have to move into a 7 to 28 day cycle, you can end up having to have additional manpower to man those shifts.

That’s where the extra costs comes in.

To move from – to illustrate that would take – would have to take a hypothetical situation and work it through in a hypothetical way, and produce an answer which would require going through a whole series of calculations like this to do it.

The communications that we have here indicate from cities who have worked through this, that they have tested it and according to their calculations, based upon what they know of the Act and the regulations, that's what it is going to cost them.

I have no reason to challenge them.

Q Can you give me an example —

A You are trying to challenge me on their data. I am saying their data, I think, is valid and acceptable.

Q Can you give me an example of any of the information that you have provided that indicates that if a city follows [142] what this bulletin speaks of to avoid unnecessary overtime, it will have to add additional manpower? Is there any example here that you can cite us to that would show that?

MR. CHARLES RHYNE: Well, Mr. Dodell, this pamphlet you are referring to is something written by the International City Management Association and put out last June 1974. An awful lot has happened since then; and he doesn't vouch for the accuracy of this report and all of these charts and everything in it.

I think you are asking a very unfair question to try to go from the generalized statement here to something specific.

He's said that he's given you the information from the people who have it about the estimated increases. I don't see how you can expect him to do more.

THE WITNESS: I will give him his answer.

MR. DODELL: Can I reply to Mr. Rhyne, please?

Mr. Rhyne, this report was prepared by William F. Danielson, Director of Personnel for the city of Sacramento, whom Mr. Pritchard did say, in Mr.

Pritchard's judgment, knows as much about the Act and its interpretation as anybody.

MR. CHARLES RHYNE: It speaks of June 1974, a [143] long time ago.

MR. DODELL: I hate to debate things that can be debated in other forums, but what this pamphlet did was it made — the assumptions made in this pamphlet were that the Department of Labor would take the most rigorous view as to the strict application of the provisions; and even making those assumptions, the report said that you could take this 24-hours-on and 48-hours-off, and you could reschedule it so there would be no additional overtime cost.

What I would like to know, is where does it say here, or where does it say anywhere, that yes, but if you did that, you would have to put on extra people?

I simply don't know that that's the case. Logically it does not seem to me to be the case.

THE WITNESS: Look on page 6, at the bottom of page 6.

There is no way to have a 58-hour cycle in a 7-28 day work period. It requires you to reduce that to 56 to make it work.

BY MR. DODELL:

Q Where are you reading from, Mr. Pritchard?

A Bottom of page 6, 1976 requirements for fire [144] overtime.

Within the 24-hour fire duty period, the 10-14 period, or the 9-15 period, there are no fire duty schedules possible that are equivalent to 58 hours, using a cycle of 7 days through 28 days.

The next lowest fire duty schedule possible

arithmetically between 7 days and 28 days is a 56-hour average schedule.

The practical effect of the law enacted by the Congress is to require a 56-hour schedule starting in 1976 rather than 58.

So that even now in order to maintain that schedule, in order to — if you are under 60, in order to work the shift schedules that are required, you have to — a city like Montebello is going to have to change its work schedules and is going to have added costs.

Q All right.

Mr. Pritchard, what this refers to is the 1976 requirement and it references the 58-hour work week?

A Right.

Q [145] If the work week is 60 hours is it still your position that if the schedules are revised in accordance with the suggestion in this pamphlet that while you may reduce additional overtime, you have to add additional manpower?

A Say that again?

MR. DODELL: Why don't you read the question back?

(The pending question was read as requested.)

THE WITNESS: Yes. It depends on what you are moving from and what you are moving to.

BY MR. DODELL:

Q Can you give any example or any documentation to show that that is the case?

A I would be glad to have — work it out and give it to you on another sheet of paper. I don't think I can sit down and work it out for you here now.

Q Would you undertake to do that?

A Sure.

Q Fine. Thank you.

MR. CHARLES RHYNE: Will you make a note of that so we will furnish it?

MR. DODELL: Mr. Rhyne, let me ask you a question, [146] not as a witness but because we have an ambiguity in the record.

Here we talk about a 58-hour per week work schedule in Exhibit 19 on the second page, and again according to Mr. Pritchard's testimony, this would exclude – or his assumption would be that this would exclude sleeping and eating time, and we have an ambiguity here.

I wonder whether it would be too much for you to try to resolve that?

MR. CHARLES RHYNE: Well, we will call and ask them, but I think you will see that – no, Rick, make a note and call Montebello, the City Attorney, we always deal with the lawyer rather than the city administrator.

We will ask him whether it includes sleeping time or not.

MR. DODELL: Fine. Thank you.

BY MR. DODELL:

Q Now, with regard to Exhibit 21 and 22, relating to Menlo Park, California, am I correct that the basis of your verifying paragraph 58 is limited to these two letters?

MR. CHARLES RHYNE: The things that are written down on the complaint here are 19 and 20.

[147] MR. BACIGALUPO: Those are the old ones.

MR. CHARLES RHYNE: Oh, okay. I am sorry.

THE WITNESS: I am sorry. This is paragraph 58 you are referring to, right?

MR. DODELL: Yes.

BY MR. DODELL:

Q Now, there is a pending question, Mr. Pritchard.

MR. CHARLES RHYNE: You asked him whether or not his information was based upon these letters?

THE WITNESS: I answered that question.

BY MR. DODELL:

Q And then I take it that you can't explain this \$120,000 figure with any more precision than the statements in these letters?

A No. I think that is quite adequate.

Q Just for the record, with regard to paragraph 61, and the allegation in the complaint dealing with the additional overtime costs in its fire department, this relates — this results from the statement or is documented by the statement in page two of Exhibit 25, that speaks of a 63-hour work week for firemen?

A Yes, right.

[147-A] MR. DODELL: May we go off the record for one moment?

(Discussion off the record.)

BY MR. DODELL:

Q Let me ask a general question, Mr. Pritchard: In a number of these, for example I am looking at Sumter right now, Exhibit 26, relating to paragraph 62 of the complaint, again there is a reference to compensatory time, and without repeating the discussions that we had previously and what you said and what I said with regard to compensatory time, it would be applicable to all of those instances in which compensatory time is referred to, would they not?

A Yes. I have been giving that some thought. If I

could explore that a little more, I think I have figured out why this works out the way it does.

When you have to pay a person time and a half within a given pay period, you lay out the cash at a time and a half rate. When the person takes time off, he takes time off at a slack period when he does not have to be replaced and he is paid at a steady rate, and I think that the difference comes in that — in having to pay and also pay [148] him full time during — you know, during the regular time.

You are really doubling it up. That must be where it is — where the extra cost is coming in.

Q But the point, Mr. Pritchard, is that you can pay the person for a short week. There is nothing to stop paying the person for a shorter week during a slack period of time.

A If it is — well, I don't know whether that works out or not.

Q To take a hypothetical, suppose you pay the man time and a half for 15 hours. Then you would simply have the man work — and I am just throwing out this number, let's say — 22 and a half hours less during the summer months, to use the Salt Lake City example.

You are paying the man only for the 18 and a half hours during the summer months.

A Under the regulations you can't carry it over.

Q You are not carrying it over. You pay the man the time and a half in the winter months. Let's say the man worked 50 hours, you pay him — let's say he made \$2.00 an hour. You pay him for the 40 hours.

That would be \$80. Then you pay him for 10 more hours; that would be \$100, and then you pay him \$5

more [149] that would be \$105.

He would have earned — he would have worked 10 extra hours.

Well, if during the summer months you then work him let's say for the — just as an example, 30 hours, and you pay him for 30 hours, you would be paying him \$60 in the week in the summer months.

The total for the two weeks would be \$156, and he would still be paid time and a half for the week he worked.

Now, obviously, here he would be getting \$5 more than he would have gotten, but you could easily adjust the hours so instead of 30 hours, he would work 28 hours or whatever the adjustment would be, and the total cost to the municipality would be exactly the same. It is just that it would be laying out the money immediately and then paying less later.

Isn't that correct?

A I would have to draw that out.

MR. CHARLES RHYNE: I would be rather hesitant to make out that man's income tax return.

MR. DODELL: We could go through it again. It just seems to me this is what you were saying earlier.

[150] THE WITNESS: We probably ought to try to clarify why that comes out the way it does. Obviously, everybody that has figured it says compensatory time off — the lack of compensatory time off is going to cost them more money.

We can theorize that it will balance out. Everybody that has looked at it has come up with that conclusion. There is a reason why it is coming up that way.

BY MR. DODELL:

Q But the reason doesn't occur to either of us in any event. Isn't that true?

MR. CHARLES RHYNE: You are not making out these income tax returns either.

THE WITNESS: That is why I am saying — you know, the thing that we don't recognize, or fail to recognize is that there are 15,000 individual units of government out there who operate the way the people in those communities feel they operate best, and they have developed a whole series of arrangements to carry out their functions.

When you try to slap a uniform procedure on all of them, everybody that has ever tried to write a model national code has written one of them and has never written [151] another. They always end up saying you can't write model codes.

You can't put everybody into these stereotypes. You can make recommendations, but when you start putting them all in that same straitjacket, you are going to find they all have so many different arrangements that it is very difficult to generalize and to conclude that there will not be an impact you can't anticipate.

There are too many varieties out there.

Q But at the same time, Mr. Pritchard, it seems to me in your thinking about it and my thinking about it, we haven't come up with a reason that the government would wind up spending less under either method.

A I don't see that it is necessary for us to come up with a reason. These people that are administering it have calculated it based upon their knowledge of their local situation and their knowledge of the Act and have said that is what they come up with, and I don't know why —

whether you and I rationalize a justification for it, whether that makes any difference.

We can say they come out even. The fact is they don't come out even. There must be a good reason for it [152] according to their local situation why they don't come out even.

Q There may be a reason for it but you can't think of it?

A I don't know it is necessary for me to think of it.

Q The answer is you cannot think of it?

A I don't know offhand in each one of these situations.

Q In any of the situations?

A There may be a different reason in each one.

Q You can't think of a reason in any of the situations? Can you?

A I don't know. I probably could sit down and figure out some reasons for it, but I don't know that it adds anything.

Q Well, but I mean —

A It is not factual, it is a guess if I do.

Q You verified the complaint. It seems to me that it is pretty clear that the complaint says it would cost a lot of extra money if compensatory time were used. And we have been here now since 10:00 this morning, and you must [153] have thought about this before now. You can't come up with a reason that would explain why it doesn't come out even; is not that right?

A I verified in the complaint a set of facts. I don't know that it is necessary that I go behind every one of those facts.

Q You are assuming that what the city said is right?

A That is right.

Q But you can't explain why it is right?

A No. Not in all cases.

Q Not in any case dealing with compensatory time, isn't that right?

MR. CHARLES RHYNE: That is not true. He hasn't gone through each one of these with respect to compensatory time. We have done it with respect to Salt Lake City. That is about the only one.

MR. DODELL: I think we did it in the case of one or two more besides Salt Lake City. Then I was trying to ask the general question so I wouldn't have to go through it in the case of each one.

BY MR. DODELL:

Q [154] Is there any instance where we are talking about compensatory time where you can explain the reason why it doesn't come out even?

A Not from specific knowledge of a specific situation, no.

Q Now, in the case of Randolph, New Jersey, which is Exhibit 29, is it correct that the information relied upon to support paragraph 65 is what is contained in this exhibit?

A Yes.

Q Now, as I read this letter, there is nothing in it — in the exhibit that itemizes the number of employees who are referred to and the specific instances in which this impact on staff of volunteer boards or commissions will occur; is that correct?

A No. There are not. I think the intent of this is to demonstrate a different kind of impact than that which is cited in many of these others, which are all in dollar

terms.

This indicates that the imposition of this particular legislation disrupts a traditional way of conducting the business of the local government through the [155] utilization of lay members of boards and commission. It will force many of these to change that way of doing business, in effect, either abolishing the boards or commissions or increasing the costs in order to carry the personnel.

Q Well, the reference here is to full-time employees serving as secretary or staff for volunteer boards or commissions; is it not?

A Yes, there is a reference to that in paragraph one, I believe.

Q Paragraph four, isn't it?

This is Exhibit 29 that we are talking about.

A Yes, this is the one that refers to staff for boards and commissions, isn't it? That is right. This is on staff to boards and commissions, not boards and commissions themselves.

MR. CHARLES RHYNE: Dual employment.

BY MR. DODELL:

Q What I am asking is there is nothing here specifically that states the situations that have arisen?

A No.

Q With regard to Exhibit 30, and paragraph 66, am I correct that what you are relying upon to support paragraph [156] 66 is this letter that is Defendant's Exhibit 30?

A Right.

Q And this letter, does it not, merely states in summary form the conclusion that because of the

elimination — and I am paraphrasing — because of the elimination of compensatory time there will be an estimated annual expenditure of \$100,000; is that correct?

A That is correct.

Q [157] This letter says, does it not, the fiscal impact outside of the public safety area for the City of Phoenix is relatively minimal inasmuch as the city has adopted a number of premium pay practices similar to private industry for a number of years?

A Yes, that is right.

I think it should also be noted in there, something that hasn't been referred to in the other communications, that although they have been referred to in the documents, is that there is going to be a substantial administrative cost also imposed. One of these cities indicated that it was going to have to not have computer capacity available; it was going to increase its record keeping. This one indicates it is going to have to review its job classification of individual positions for coverage under the Act. There are impositions of that kind that go all the way through this. These are burdens. Many of these will not be able — because of that time constraint, and because of the complications at the local level of bringing those changes about through public hearings and in some cases amendments to civil service statutes, perhaps even state legislation to bring them into line is something that local units are not going [158] to be able to come into compliance with immediately. That is why I said this public sector is very much different than the private sector. The board of directors of a private corporation can meet and say, “We have to comply and instruct the

staff to comply.” When you have to do it through a public decision-making process with citizen participation and complying with state statutes and go through all those hearings and amendments of ordinances that require notice and so many days between readings and so forth, local units are going to have a much more difficult time coming into compliance. They are going to be subject to penalties in the meantime.

Q And was this different for state governments and special districts and counties and municipalities to the extent that they were covered by the Fair Labor Standards Act of 1966?

A I would assume that in some respects they were the same. They may have been different in some. As I indicated earlier, I don’t know what the time frame was that we are working with. We are working here under about a six-day notice. As far as I know, there is no plan to provide copies of these regulations to 50 states and 15,000 [159] municipalities and 3,000 counties in the next seven days. To expect them to come into compliance in that period of time is absolutely unreasonable if not impossible.

Q Mr. Pritchard, the Act itself was adopted on April 8, was it not?

MR. CHARLES RHYNE: Signed.

THE WITNESS: It was signed.

BY MR. DODELL:

Q It was approved on April 8, was it not?

A Right.

Q Is it your understanding that it took the regulations in order to require the states and local bodies to come into compliance?

A I cited at one point I used to work on Capitol Hill. I remember Senator Muskie saying one time, before a hearing, that he would work his fanny off all through a piece of legislation, send it from the Hill down to be signed and into a federal agency; and when the regulations came back up, it was 180 degrees different from what it was when he sent it down. The local government people have lived through this so long in so many frustrating experiences, to move to implement legislation only to find that the regulations are [160] so much different than they ever expected them to be. You cannot get local government people to move effectively to comply with the details of the law until they have seen the administrative regulations. If I was in that position, I wouldn't and neither would you.

Now there is an awareness that this is going on, but no sane political leader at the local level would go to his people and propose changing work schedules. Every time you try to open up a civil service law at the local level, you are charged with political power grabbing. Every time you start trying to change salaries, you are charged with trying to increase the budget to play favors.

No sane political leader is going to face all of those retributions that go along with that until he knows exactly what he is going to have to deal with and he will have to defend it. As long as these regulations have been as fuzzy, as unavailable, and interpretation as confusing as they are, and nothing firm on the line until the 20th of December for regulations that have to be administered on the 1st of January, it is absolutely unreasonable to expect those people to move to that degree of compliance where, within seven days, they can bring this thing into

line. There is no [161] way it can be done.

Q Mr. Pritchard, you stated earlier, did you not, that the states and local bodies try to come into compliance with the provisions that came into effect on May 1, 1974?

A They tried. They are citizens. They are elected representatives. The success of their jurisdictions is to demonstrate compliance with the law. Obviously although they will differ with the law and will test its constitutionality, the general practice is to try to comply as reasonably as possible, but you can't comply when you don't have the instructions under which you are going to function. Those instructions will not be available to them.

Q They have tried to comply with the provisions that were effective May 1; is that correct?

A I think there is every evidence that in good faith they have tried to proceed. Many of them we are very much afraid are going to be challenged on the lack of action simply because there was no way for them to be aware of all of the implications of this legislation as it applied to them.

Q Well, and yet we have discussed Exhibit 3 which indicates that the National League of Cities was aware of [162] problems that you have talked about with regard to scheduling of work week —

A I am sorry —

Q Excuse me.

They were aware of problems that existed with regard to scheduling of work weeks since June of 1974?

A As was just cited here, if you proceed on the assumption that under the regulations that go into effect

on January 1 that sleeping and eating time is not going to be included in work hours, you can assume that you are in compliance with the law and you are not going to have to make any change, and the case has been argued here up through hearings in November of this year, still anticipating that there was a possibility that the regulations would exclude sleeping and eating time. There were discussions going on at the White House as to whether the Executive Office would intervene in that interpretation, and why would anybody in their right mind move out to start recruiting people and changing their budgets and levying new taxes and cutting out other programs and reshuffling priorities as long as that issue was that much alive? That would be absurd on its face.

Q Well, Mr. Pritchard, I think that the Exhibit 3 [163] indicates that — correct me if I am wrong — or let me put it this way.

We can go back again to Exhibit 3, and Exhibit 3 indicated that if a locality had a 60-hour work week, there was a way to schedule it so that the municipality would be liable for additional overtime and there was a way to schedule it so the municipality would not be liable for additional overtime, and these options were known to the National League of Cities, your organization, in June of 1974?

A And I am pointing out —

Q Is that correct, first, Mr. Pritchard?

A There was no way to advise anybody at that point nor has there been any way to advise anybody up until the 20th of this month how they could count hours for work.

Now I would not in my right mind tell a city to

proceed with its budget and to tell a city to start recruiting personnel. What you fail to understand is that on January 1 you are supposed to change from what you have had to something new with fully manned fire stations, full complements of personnel, and you don't go and recruit people overnight, nor do you go out and start staffing at \$25,000 a man on the assumption that something is going to happen. When you are [164] dealing with tight local budgets and you are starting to lay off 7,000 people, like the City of New York is, you don't go out and start adding your force on the assumption that regulations may do this. You don't do it until you have got it in hand and you know what you have to deal with.

That just is not a rational way to proceed.

Q Can you answer the question, though: That as of June 1974 a city with a 60-hour work week could have known and that the National League of Cities did know that if it used a 60-hour work week one way it would be subject to additional overtime, and if it used it another way it would not be subject to additional overtime?

MR. CHARLES RHYNE: Don't answer that. He has asked that question many, many times. He knows the regulations interpreting this were not out in June 1974. He knows that no one could even dream what those regulations would be then because there had never been any such regulations on a federal level ever. So under all of those circumstances, as he said over and over again, there is no way that city officials could have, in June of 1974, known what these regulations that were issued on December 20, 1974, were going to contain.

[165] MR. DODELL: Are you finished?

MR. CHARLES RHYNE: No.

You just have talked about this June 1974 bulletin that went to a very few people ad infinitum, but it is a very speculative conjectural thing. There were no regulations at all. There was nothing on which to base the speculation.

MR. DODELL: Well, Mr. Rhyne, if you want to make your argument here, that is fine. I will reserve mine for the court.

MR. CHARLES RHYNE: You have been making yours all day. I thought I would just point out how wrong you are. You are asking all your questions based on something that is not relevant at all because there were no regulations in existence.

[166] BY MR. DODELL:

Q With regard to paragraph 67 of the complaint, and this is Defendant's Exhibit 31, the allegation of the complaint is that the Tulsa, Oklahoma, estimates additional costs in its fire department at \$126,700 for 1976, and \$380,600 additional costs for 1977. Do you have any information that there will be additional cost in 1975?

A No.

Q Let me ask you this, Mr. Pritchard: In paragraph 4 it states the city of Tulsa fire department now works a 240 hour work month. Do you have knowledge whether this includes or does not include sleep time?

A Not specifically. Again I would rely on the same assumption that I made earlier.

Q You assumed that it excludes sleeping and eating time?

A Yes.