

MR. DODELL: Off the record a moment.

(Discussion off the record.)

BY MR. DODELL:

Q With regard to paragraph 68 of the complaint, am I correct that Defendant's Deposition Exhibit 32 is [167] what is relied upon to support that paragraph?

A Yes. That's right.

Q Do you know how many hours per week policemen in Sunnyvale averaged in 1974?

A Sunnyvale happens to be a city that operates with a public safety team. They do not work with policemen and firemen. They work with a combined department. It is an entirely different kind of a setup that operates in most other cities.

Q Do you know how many average hours a week the public safety people worked in 1974?

A No, I don't. Because it is a very specialized situation and works in a very — Sunnyvale, Oakwood, Ohio, there are half a dozen cities that operate with these combined types of departments. They have a very peculiar type of shift arrangement. There is no way to bear all of those in mind in detail.

Again I would have to rely on the fact that this is a very progressive city that has led in many administrative changes; and they are quite aware of what's going on. They have made this analysis. I would assume that their information is correct.

Q [168] Do you have any additional information as to how they calculated these figures that are stated in this exhibit?

A No.

As I indicated before, I don't know that it has been

necessary for me to go behind every one of these calculations and justify them. You know, we do this all the time, whether it is testimony on the Hill on the water pollution control costs, or urban mass transit operating subsidy needs, or whatever it is.

We make surveys, we gather the data; we rely on the caliber of the input; and we have found historically that it's been sufficiently reliable to be counted upon.

That's what we base our reputation upon. It's been acceptable in the past. I see no reason why I shouldn't count on this.

Q You don't know how these figures were arrived at?

A No.

Q Thank you.

Now in the case of paragraph 69 of the complaint, Defendant's Exhibit 33, this indicates that the city of Corcoran, California, has an 84-hour duty week; [169] is that correct?

A That's right.

I would point out in the case of the city of Corcoran this type of situation is not atypical of cities with small-time fire departments. The practice is to have one person on duty. That person eats and sleeps and just mans the station.

All he does is sit and take care of any emergency calls that come in; and advises the rest of the volunteers as to where the fire is when they call in for it.

So typically around the country, with five men, whenever you see a five-man department, what you have is usually people working 12-hour shifts with one spelling. Or 24 hours and one spelling.

In small communities, this is a rather typical situation.

The position is generally looked at as a very favorable and desirable position. The guy usually acts as secretary of the volunteer fire department, and it is as much a social activity as it is a business activity.

So when you see an 84-hour situation in volunteer fire departments, the way you and I look at it in terms of a 40-hour work week, it seems completely out of step with our [170] times; but it is a very real situation in most small communities around the country.

Q And this department has five full-time – paid full-time personnel and 17 volunteer personnel?

A That's a typical arrangement.

Q Does this 84-hour duty week exclude sleeping and eating time?

A In this case, I am sure it would include eating and sleeping time. Those people usually come on and stay right through for 24 hours. Sometimes the man will be on duty even longer than that. They practically live there. In small towns it is unbelievable the variety that you find. You find some small towns where a person goes on duty and stays there all week. He just goes in and lives. These are the kind of arrangements they make; and when you try to fit them into the kind of mold we are talking about, it is completely foreign to their way of doing things.

Q Why is it that if the assumption is generally that sleeping and eating time is excluded, the city of Corcoran is including it?

A I say when you get down to these five-man departments, five-man paid departments, when they are [171] talking about an 84-hour week, I can tell by looking at that that they are talking about that man being

on duty probably 24 hours, two or three days a week, three days a week. And they switch off.

Q Isn't it common in the case of a number of departments that people are on 24 hours straight?

A But – all I can tell you is from working with these – I used to go around and meet with volunteer fire departments and help train them; and eat their raw hamburger sandwiches with onions and beer, and I just know from having worked with them for so long that that's the way they operate. That's what that would mean.

I can just interpret it for you. I know that's what that would mean.

Q Just looking at this, you know that the 84 hours includes sleeping and eating time –

A I am sure –

Q Excuse me. Let me finish the question.

Just looking at this, you know the 84 hours includes sleeping and eating time and looking at the others, you know the figures don't include sleeping and eating time?

A That is my interpretation of it, yes.

[172] MR. CHARLES RHYNE: Can we go off the record for a moment?

(Discussion off the record.)

BY MR. DODELL:

Q In the case of Columbia, South Carolina, is it correct that the information that you have relied upon in verifying paragraph 70 is Defendant's Exhibit 34?

A That's right.

Q And the allegations of paragraph 70 make no reference to any increase in 1975 in its fire protection salary budget. The only reference in the paragraph is to

paragraph – is to 1976. At least the only specific reference to any dollar amount.

Is there any indication as to how much, if anything additional, the amendments will cost Columbia, South Carolina, in 1975?

A No. I think they have indicated that there will be some overtime compensation, but it will not be a major item in this year. It is the next year that becomes critical for them.

Q Do you know what the work week is in Columbia, South Carolina, for firemen?

A [173] Not offhand.

Q Did you know it at the time you verified paragraph 70?

A No. I don't know that it was necessary for me to know it.

MR. CHARLES RHYNE: You were asking other than police, I take it, because they said they had a 42-1/2 hour work week for police in the fourth paragraph.

MR. DODELL: Yes, Mr. Rhyne. The allegation in the complaint deals specifically with the fire protection salary budget for 1976; and so my question related to the fire protection budget for 1975 and asked whether there was any specific dollar figure that could be associated with that.

Mr. Pritchard's answer was there was not.

MR. CHARLES RHYNE: Okay.

BY MR. DODELL:

Q Now with regard to paragraph number 71 of the complaint, am I correct that Exhibit 35 is the sole basis of the allegations of paragraph 71?

A That's correct.

Q Do you know what the average work week for [174] firemen was in 1974 for Richmond?

A No, I don't.

Q And do you know how Richmond arrived at the figure of \$161,000?

A I assume that they based that on the – on what the law would require and on the basis of what their situation now is. Again I see no reason that I would expect to go behind that to check their calculations.

You know, I think I should point out again that we could supply a whole stack of these. It would be ridiculous to supply 1000 or 1500 or 5000 or 15,000; and it would be even more ridiculous if you gathered the data to assume, when it was furnished, that we would go behind every one of those calculations. You don't do that in a survey.

The Department of Labor doesn't do that in surveys it does. It accepts the information that is sent in. You don't go out and verify it all.

Q Mr. Pritchard, your verification of paragraph 71 is solely due to the fact that Richmond has stated to you the conclusion that it will cost \$161,000 for the period January 1, 1974, to June 30, 1975; is that correct?

A [175] That's correct.

Q Now with regard to paragraph 72 of the complaint, am I correct that Defendant's Exhibit No. 36 is what you are relying upon to support paragraph 72?

A That's correct.

Q Now do you know what the average number of hours is that policemen in Reidsville, North Carolina, worked in 1974?

A No.

Q And do you know the average number of hours that firemen worked in Reidsville, North Carolina –

A No.

Q Excuse me. May I finish the question, please, Mr. Pritchard?

A Yes.

Q Do you know the average number of hours firemen worked in Reidsville, North Carolina, in 1974?

A No.

Q And do you know how Reidsville, North Carolina, calculated the estimated increase in costs other than what is stated in this letter?

A I assume they calculated on the basis of their [176] current employment situation and the best information they had from the rules and regulations that would apply for the next year. I have no reason to doubt but what that is correct.

Q You have no other information as to how they calculated their estimates other than what is in this letter?

A I assume that they would not lie to me and that what they have given me is accurate.

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

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

BY MR. DODELL:

Q Can you answer that, Mr. Pritchard?

A I thought I did.

Q I don't think you did.

A I said no, I had no other information. I had no reason to believe that what they gave me was incorrect or

that they would lie to me. I feel perfectly confident in relying on it.

Q Yes.

Now, Mr. Pritchard, in these estimates that have [177] been made of the increased – or alleged increased costs due to the Fair Labor Standards Act Amendments, do you know whether the localities took into account administrative and executive and professional employees who may be exempt under 13 (a) (1) of the Fair Labor Standards Act?

A It is my understanding that they did.

Q Do you know of your own knowledge whether they did or not?

A I think that – given the fact that that was defined in the May 1st legislation, that it applied effective May 1st, and what we have been talking about is primarily 1975 budget material, those units that have made their estimates for next year would have been expected to take that into consideration.

I would feel confident that they have.

Q Do you know that of your own knowledge, or is that an assumption that you are making?

A Well, I think they – I think it has to be – I think it has to be an acceptable assumption. On any of this data, you provide them with copies of the material. They analyze it and they make their reports based upon the information provided them; and I would see no reason [178] to assume that they would make it on any other assumption.

Q So then it is an assumption; you don't know it of your own knowledge?

A No. I think it is a reliable assumption, however.

Q But you do not know it of your own knowledge; is that correct?

A No.

Q Now with regard to the allegation of paragraph 44 – oh, excuse me, before I get to that –

MR. DODELL: Mr. Rhyne, you kindly referred to the fact – you were kind enough to refer to the fact that you had documentation for other paragraphs, or all the paragraphs, or other documentation.

If you will – want to turn that over to us, we would be happy to receive it. I won't propose to have it marked at this time; but –

MR. CHARLES RHYNE: All right. Why don't we, at the end of the deposition, give it to you then? I think we have documentation with respect to fact stuff that was included in there; like we say, the city of so-and-so estimates so-and-so. We always have that document that [179] makes that estimate.

MR. DODELL: I would prefer you could turn it over now so if anything strikes my eye so during the limitations, I could ask about it.

MR. CHARLES RHYNE: I think that actually haven't we given it all to him that relates to factual stuff?

MR. BACIGALUPO: Yes.

MR. DODELL: I have all the material that Mr. Rhyne referred to earlier; is that correct?

MR. BACIGALUPO: Yes.

MR. DODELL: Thank you very much.

BY MR. DODELL:

Q With regard to paragraph 44 of the complaint that talks about – on page 20, that talks about an ICMA study, it refers – it alleges that – and I am paraphrasing

– about 15 percent of the cities sampled an average number of hours per week greater than 60 hours presently required. That’s correct, is it not?

A Right.

Q Do you know whether that – do you know what percent of the fire fighters are included in that 15 percent [180] of the cities?

A Without looking it up, I don’t recall the number exactly.

All of that information is contained in Exhibit 4.

Q Do you know whether Exhibit 4 includes the number of employees that would be in those cities?

A I believe it does.

Q Well, I won’t take the time now. We can check Exhibit 4 to see whether it contains the number of employees in the 15 percent of the cities.

Let me ask you this, Mr. Pritchard: Why is it that 85 percent of the cities can get by with 60 hours for fire fighters and 15 percent cannot?

A Repeat that again.

Q Why is it that 85 percent of the cities can get by with 60 hours for fire fighters and not the other 15 percent?

A That’s just part of the unique character of this country. Everybody doesn’t do everything the same in every community.

A city with a – some of it is a part of local custom. Some of it is a part of state mandates. Some of it [181] is the character of the community.

A –communities like Sunnyvale, and Oakwood, which are largely residential communities with practically no industry, it is not uncommon for the fire department –

the fire truck not to be out of the station once a month, even on a false alarm.

And the kind of duty that the men work is quite different than in a major city where firemen may be called out 10 or 11 times a night; and the kind of pressure and the kind of experience that the people have indicates that they need different kinds of systems to meet different kinds of conditions.

Every city isn't the same. So the conditions vary.

Q Have you made any kind of analysis to determine what kinds of cities fall within the 15 percent?

A No, I haven't.

Q You are just speculating?

A No, I am not speculating. I am basing it upon 28 years of experience in working with local governments and local fire departments and looking at and analyzing local administrative systems and working with the fire [182] insurance rating system, which influences the kind of fire insurance rates that people pay and the kind of departments that they have.

Counseling with cities, providing them information – I can say to you that the variety around the country is based upon state laws, on local customs, on the kind of communities and the kind of fire conditions and the fire hazards that exist, and the frequency of the burdens that are imposed upon them.

Q Have you ever made any study of which fire departments have – which fire departments fall within the 15 percent that –

A No –

Q May I finish the question, Mr. Pritchard?

Have you ever made any study or inquiry into the

matter of which cities or which kinds of cities fall within the 15 percent that work their employees more than 60 hours?

A I have never seen that 15 percent figure until it came out in here. That figure is changing constantly. The departments move from volunteer to paid, paid to volunteer; they change from one hour level to another hour [183] level to another hour level, based upon local negotiations; and there would be no reason to make that kind of an analysis. It would have no use. That is as far as the cities are concerned.

I might add that some cities that are down near the bottom of the scale, for example, the city of Seattle at this point is approaching a 40-hour week in negotiation with its firemen, without regard – in fact, they didn't want the Fair Labor Standards Act to pass because it destroyed their ability to negotiate a 40-hour week. They are looking at a 40-hour week; and in doing that, they are creating a situation where the firemen – and this is an example of local diversity and local experimentation, that this destroys, they are creating a situation where the firemen are being trained also as building inspectors; and instead of having fire inspectors and plumbing inspectors and building inspectors all pouncing in on people that have to have their properties inspected, the firemen in their own duty, but off call time, are going to function by their own agreement as building inspectors. And this will reduce the costs of maintaining a building department, give the public a better service, give the [184] firemen something to do instead of sit around the station all the time.

It is a much more wholesome situation, much more

economical, much more efficient for the community; but given the provisions in here, in the 20 percent requirements, they will not be able to do that now.

Q Mr. Pritchard, I am not sure I understood your answer to the question.

Why is it that 85 percent of the cities can get by with less than – 60 hours or less, and 15 percent have to work their firemen more than 60 hours?

A Because – and I assume in those 15 percent of the cities that work more than that, that the conditions in the local community and the agreements with the firemen have been such that they agree that that's the best thing for the community.

Q Have you ever made a study to see whether there are cities similarly situated, some of which are – work their employees more than 60 hours, and some of which work their employees less than 60 hours? Have you ever undertaken that kind of study?

A A survey of the cities that work more and some – [185] and the ones that work less?

Q Yes.

What I asked you is have you ever studied to determine whether there are cities that have similar characteristics, some of which work more than – work their fire fighters more than 60 hours, and some of which work their fire fighters less than 60 hours?

A I answered that once. I said no, I said I didn't think it would serve any useful purpose.

There are people that glory in uniformity. Local government doesn't fit that mold in this country. It is not uniform.

Q Is it possible, Mr. Pritchard, that cities can save

money by having more than a 60-hour work week as against other cities that have less than a 60-hour work week?

A That cannot be answered that easily because the length of the work week, a whole lot of other conditions that relate to it have an effect upon the fire insurance rating, which also has to be taken into consideration; and that is something that is very difficult to calculate and answer categorically. It is not just a question of [186] whether you work more or less hours. There is an offsetting factor in fire insurance rates that are determined under a rate system that relates to the quality of the department, including hours worked and a lot of other things. Those things all have to be put on the scale as to where those things come out.

Q How does that affect the amount of money that it costs the locality for fire protection?

A Well, there is a system known as the fire insurance rating system. Every fire department, every city is rated by the insurance underwriters – not the underwriters, it is ISO. I forget what that is. It was changed from the National – it is Insurance Service Organization, I think that's what it is. It used to be the Fire Insurance Rating Bureau.

They go in and look at every community. They are engineers. They check the equipment, the building codes, the water supply. They check the number of hours the firemen work; they check the training; they check the police support on the fire department.

All of those things are weighted; and for everything that you fall below a standard, you are given [187] deficiency points. The deficiency points determine where

you stand on the ratings scale; and if you get a rating 8 – the District of Columbia, I believe, has a rating 1, as a matter of fact. One of the few cities in the country that does.

But if you get a rating 2, you pay the insurance rates, the classification, the base upon which the rates apply is higher; and so you pay more for your insurance rates.

If you get 3, you pay more; if you get 4, you pay more. Some cities go as high as 7 or 8. The highest you can go is a 10.

When a city tries to determine how much it is going to invest in fire equipment, how many men it is going to put on a pumper, how many hours they are going to work, what kind of investment they make in training, all of those things have to be put on the scale and weighed against what kind of costs are going to be approved for the community as a whole in terms of insurance ratings.

Q Does the city pay the insurance?

A No, the private individuals pay them, but it is another kind of a tax, if the city doesn't maintain an [188] adequate fire department, then the citizens are taxed for their insurance rates.

Q [189] In terms of cost to the locality, it is possible, if a city works its firemen more than 60 hours it will cost the city less?

A Well, it might cost the city government less, but it doesn't cost the city less.

Q It might cost the city government less?

A That is right, but elected officials have to answer when the people's insurance rates go up because their fire protection is inadequate. That's not a very comfortable place to be in.

There are very few officials who are going to make a decision that results in the fire insurance rates going up and having to face that. It is as bad as having the tax rates go up.

Q If it costs the city more for – excuse me. If it costs the city less when it works the firemen more than 60 hours a week, might not the city need less tax revenue, or revenue from other sources to run its functions?

A Well, that is possible. They also might have to face the fact that the insurance rates go up, too.

Q And is it not possible also that they might then have lower taxes?

A [190] Well, it is possible.

Q So, it is possible that as a result of working firemen more than 60 hours a week, the city may have lower taxes?

A Well, I suppose that is true.

Q Now, do cities try to attract industry or residents or retirees on the basis of its – of their tax structure?

A I think that that is often talked about, but the fact of the matter is that the tax rate have very little to do with the attraction of industry. Most public officials recognize that.

Q Where is that documented?

A Oh, it is documented in hundreds of studies. Private industry will tell you that. Private industry would rather pay higher taxes and so would the general public and have good public services and good public schools and good streets and recreational facilities.

Q Could you give me one of the studies where that is documented?

A I don't have them with me, but there are many of

those where that has been done.

Q [191] Are there publications that list comparative tax structures of states, comparative tax rates so that people can make judgments, for example, about where to retire?

A There are on a state-by-state basis. I don't know of any that go into comparative studies down to the local level.

MR. CHARLES RHYNE: Did you hear that last part of the question? So people could consider that in connection with retirement?

THE WITNESS: I don't know that that is available for any purpose at that level.

BY MR. DODELL:

Q Do you know whether cities advertise as to what their tax levels might be in order to attract industry or attract people to those places?

A Oh, I think occasionally. I would hate to see that in 15,000 that somebody didn't.

Q Some may?

A Some may. I am saying it is not a critical factor decision making as far as industrial location is concerned.

Q That is an opinion of yourself?

A [192] No. I think it is documented. You have asked if we could supply anything. We have a whole library of stuff over there. We can load the room with it if you want it.

I mean any company that does plant locatio , any expert that you talk to will tell you that one of the fatal mistakes that local governments have made in the past on occasion is to try to get their tax rates down to try to get industry and let the public services deteriorate to the

point people don't want to live there.

That is why people leave.

Q So, local governments have thought they could lure industry by keeping down their tax rates?

A They say that has been an expression in the past. That has not been a prevailing opinion for many years.

Q When did it stop?

A I think since probably World War II.

Q Is that documented any place?

A Well, I can try to find you some documentation for it if you think that is important.

Q If you can come up with that, I would be very interested in seeing documentation on those two points.

Are there any cities that might be concerned about [193] the fact that they are paying their employees more and giving them more premiums for overtime than other cities?

A I think the big effort probably with the cities is trying to keep their salaries up with the private sector and with the Federal Government.

Q What I am asking you is are there any cities that are concerned about the fact that their brother cities may be paying less to employees or giving them less in terms of fringe benefits and overtime and the like?

A Do I understand you to mean that – are they trying to get – to hold their salaries and wages down and fringe benefits down to what a lower paying jurisdiction is paying? Is that what –

Q No. My question is: Might city "X" not resent the fact that city "Y" may pay lower salaries and afford lower benefits or less benefits than it does?

A I don't think that is the primary problem that most

of them deal with.

Q Is it a concern?

A I don't think it is – I would have to say it is a very insignificant concern. I suppose they look at that, [194] but the general experience is that cities are very hard pressed to recruit top quality personnel, and that they are so constantly competing with the private sector and the Federal Government in securing quality personnel that they are constantly having to push their salaries up and the people who drag behind are always trying to catch up.

It is not a case of the low ones pulling the top ones down. It is the top ones pulling the low ones up.

Q There is not much competition with the Federal Government or with private industry if you want to work as a policeman or fireman a 60-hour work week, is there?

A Well, I can say this though, that if you go into a city – and you pick the city – I don't care which one you pick. If you go into a city where the firemen work 64 hours and the policemen work 40 hours, you will have none on the waiting list to be a policeman and you will have a couple of years supply of people waiting to get on the fire department to work 64 hours.

I don't care which city you pick. You name it.

Q But are any of these competing with – well, the 64-hour firemen list, they are not competing with the Federal Government or private industry, are they?

A [195] In some areas they are, yes. It is a very desirable position, and I can say to you that the firemen – the reason I said earlier that the firemen do not want their hours – did not want this legislation is because

when they are working a 60, 64, even a 72-hour work week, so-called, they were able to hold enough outside employment to earn double what they earned in their employment. They do not want to lose that opportunity, and when you reduce their hours, what they are being forced down to is a straight shift basis, gradually, which is going to eliminate their potential for outside employment, and they don't like it.

Q What is that information?

A Oh, that is so – that is such a prevailing common view that it is just generally known.

You can get on the phone and almost any painter that you call in the phone book, in the yellow pages, will end up being an off-duty fireman.

Q Can you document that in any way?

A Yes. It is such common knowledge. Firemen – this is historical. Firemen have worked on off-duty time. They work their shifts so that they work three days in a row, even though they should have 24 on and 48 off. They [196] bunch their shifts so they work 72 hours in a row and take the rest of the week off and run a private business and collect Social Security.

That is why they never wanted in under the Social Security system. Firemen are still, except in a very few states, not under the Federal Social Security program, because they want to be under their own pension programs and then they run a private business on the side and come under Social Security.

And they are under two systems, earning twice the pay.

Q And that is common knowledge?

A Oh, that is common knowledge. Everybody knows

that.

Q And the International Association of Fire Fighters or whatever the national union is called, – is that the correct title?

A International Association of Fire Fighters; they know that. Certainly they do.

Q They supported this legislation?

A Certainly. That is why they lobby the legislation at the state level to insist that the hours – that [197] shifts for firemen have to be on 24-hour duty shifts, because they don't want this legislation. They have this at the federal level. They don't want the legislation to be – the hours to be pushed back in such a way that they have to work eight-hour shifts.

Q Mr. Pritchard, the International Association of Fire Fighters – is that the name of it?

A Right.

Q They lobbied for this legislation, is that correct?

A The national union did. Many of the local councils did not.

Q You don't know how many, though?

A Well, there was – there was testimony submitted to the Congressional committees. I suppose that could be looked up. I don't know how many filed statements. There were a number of –

Q So, it is your view, based on common knowledge, that the firemen don't want the statute, and then it follows it seems to me, does it not, that the International Association of Fire Fighters then doesn't know what its membership wants? That is your position, I take it?

A [198] I don't know that – what the purpose of that statement is in this record. I have some opinions as to

why this was done, but I think they are unrelated to this case.

Q Well, Mr. Pritchard, you volunteered not in response to any question that I asked that you know what the firemen want as a result of common knowledge.

I didn't ask you any question to induce that. You simply – excuse me, may I finish – you simply decided to say that.

And so, what I am saying, asking you is, is it your opinion that you know better what the firemen want than the International Association of Fire Fighters.

A You asked me why – what the national union was doing and why they represented that opinion. I have some opinions as to why they did it, but that is speculative. I don't see that assigning that to this record would contribute to this discussion.

Q Well, let me ask the question again. I think it can be answered. Is it your view that what you represent to be common knowledge about what firemen want is a more accurate reflection of what they want than what the International Association of Fire Fighters –

[199] MR. CHARLES RHYNE: You are arguing with the witness. I think you are way off any possible issue here.

MR. DODELL: I asked the same question three times.

MR. CHARLES RHYNE: And you argued three times.

MR. DODELL: Excuse me. Mr. Pritchard has been unwilling to answer it. Excuse me. The question that I am asking is asked because Mr. Pritchard volunteered some comments that have nothing to do with any question I asked.

MR. CHARLES RHYNE: He answered your question.

MR. DODELL: Excuse me. I followed it up with a question. If Mr. Pritchard doesn't want to answer the question, let the record stand if he answers it, it would save a lot of time.

MR. CHARLES RHYNE: You have been arguing all day with the witness. When you get – rather than asking questions.

When you get a response, you don't like, you keep on arguing. I think we ought to move on to something else.

MR. DODELL: Your view then, is that Mr. Pritchard has answered the question?

[200] MR. CHARLES RHYNE: Yes.

MR. DODELL: The record will reflect, my view is that he has not answered the question.

MR. CHARLES RHYNE: Well.

BY MR. DODELL:

Q Do cities view themselves in competition in seeking to attract industry or seeking to attract residents or seeking to attract retirees?

A I can't answer that categorically, because if you are aware, if you have been reading the newspapers, you know in this area, for example, a number of communities that are trying to adopt no-growth policies where they don't want more population and they don't want more growth.

The situation varies all around the country from city to city, and unit to unit. It makes the conditions different every place.

Q Do some cities deem themselves in competition with other cities in seeking to attract industry or residents or retirees?

A I assume they do in some cases. It is not something you can answer categorically, though.

Q Well, I don't understand what you mean when you [201] say you can't answer it "categorically," Mr. Pritchard.

MR. CHARLES RHYNE: Quit arguing with him now. Tell him – you keep arguing with him. All day long you have been arguing. Why don't you tell him what you mean by "competition"?

He answered your question. Then you go on and on asking the same question.

MR. DODELL: Mr. Rhyne, you can make objections; I will conduct my questioning. I will do it best I can.

MR. CHARLES RHYNE: Yes, but just stop arguing with him all the time.

MR. DODELL: I assume you will do the best you can. I think the record will show in many instances Mr. Pritchard has volunteered gratuitous remarks, that have not been responsive to the questions.

MR. CHARLES RHYNE: I don't agree with that at all.

MR. DODELL: I know that.

In this instance, I simply don't understand what Mr. Pritchard means.

MR. CHARLES RHYNE: You are way off in the wild blue yonder on something that has nothing to do with this [202] case anyway.

MR. DODELL: I wish you would let me finish. I am a very impatient person generally, and I tried to restrain myself from interrupting Mr. Pritchard when he is going on being unresponsive. I wish you could extend the same courtesy.

MR. CHARLES RHYNE: I think you are arguing with him. Why don't you ask questions?

[203] BY MR. DODELL:

Q Mr. Pritchard, I don't understand what you mean when you say that the question, do some cities deem themselves in competition with other cities in seeking to attract industries or residents or retirees, cannot be answered categorically.

What do you mean it can't be answered categorically?

A I just cited the fact that there are a number of cities around the country – Boulder, Colorado; Petaluma, California; Fairfax County out here – there are many of them around the country, a number of them in Florida, that are – that have been acting to initiate no-growth policies because their environmental conditions have reached the point where they can't and don't want to absorb more population or more industry or more business.

Now, I can't categorically say that cities are across the board in competition with each other. There are some cities that are growing; there are some cities that are stable; and there are some cities that are aging and declining.

Cities have a life cycle just like people do. When they are young and growing, they are expanding, they are trying to attract industry and residents and so forth.

[204] There is a growth cycle that they go through. There is a point at which they stabilize, they become surrounded; they can't grow any more. And then there is a point at which they start to decline and start to renew themselves. They are all in a different stage of development.

Some are trying to get new residents, some are trying to attract businesses; some are trying to hold businesses. They are in different stages of development, growth and

change all the time.

You can't categorically say that they are all trying to attract residents or business or industry.

MR. DODELL: For the record, and in light of Mr. Rhyne's prior observation, the record will reflect that the question was: do some cities deem themselves in competition with others in attracting industry, residents, and retirees.

The question was not: do all residents – do all cities deem themselves in competition.

Excuse me, Mr. Rhyne. I again think lawyers should maintain a degree of courtesy to each other.

MR. CHARLES RHYNE: I wish you had a little of it.

MR. DODELL: You interrupted me several times in a row. I would like to start my observation again because [205] I lost my train of thought, due to your interruption, Mr. Rhyne.

The question was: do some cities deem themselves in competition with others in attracting industry, and residents and retirees.

Mr. Pritchard gave a lengthy dissertation on whether you can say that all cities deem themselves in competition. That was not the question. That was typical of the nonresponsive answers we have been getting today.

MR. CHARLES RHYNE: And it's typical of the kind of questions you have been asking. You say some cities. You are talking about 15,000 cities. You might mean 2, 3, 4, 5, 10. That's the kind of questions you have been asking.

So how in the world can you expect a man who knows more about city government than anybody else to answer questions such as that? You have to be – if you ask a

general question, he says it can't be answered that way.

MR. DODELL: Mr. Rhyne, I think you are testifying if you are saying that Mr. Pritchard knows more about city government than anybody else. You are not a witness here. You are not sworn. That's just your observation.

MR. CHARLES RHYNE: Well, he knows more than you do.

[206] MR. DODELL: Well, that's why he's the witness and I am a counsel.

BY MR. DODELL:

Q Mr. Pritchard, I will take up Mr. Rhyne's suggestion.

What percentage of these 15,000 cities are in what you call the growth stage, and are seeking to attract industry and residents –

A That's an impossible question to answer.

Q Excuse me. For the record, that's the question Mr. Rhyne said I should be asking.

MR. CHARLES RHYNE: No. You are asking questions that really don't have anything to do with any issue here, of such a general character that they are impossible to answer.

When you look at 15,000 cities, I mean, you ask a broad question and don't like a broad answer.

BY MR. DODELL:

Q Mr. Pritchard, is there a substantial number of cities that are seeking to attract industry and residents and retirees?

A Again, when I look at 15,000, what is substantial? 10, 20, 50, 100, 1000, 50 percent? I am saying that, you know, you are asking a question that is a typical layman's [207] question of how cities function and how they develop and how they grow.

Cities do not sit in a situation where they are and set up a policy that we are going to attract old people, retirees, we are going to attract industry, this; and launch on a campaign and go out and look at what everybody else is doing and manipulate their tax rates and all their policies to deal with that.

That isn't the way cities function. That isn't the way they work.

It's just an unanswerable question; that isn't the way cities function. Cities are responsible to do – to provide a set of services and create an environment for people who live in them and to make an attractive place for people to work and live and recreate, and for where industry is looking for a place to go, to provide facilities and so forth for those industries; or people to build homes, whatever it happens to be.

Now, it does happen that a city – that an industry will begin looking around for a location, and they will look at a city, and a city will try to sell them on a particular location; and in some cases by state law, cities are permitted [208] to give certain kinds of taxes – certain kinds of incentives or write-offs or extended assessments, low assessment, or something for an industry, as in the case of Kansas City, for example, under Missouri law to build something like the Crown Center or the Quality Hill development projects.

But they don't set an across-the-board, low tax rate for the purpose of holding out a butterfly net to catch any industry that happens to be floating around.

It just doesn't work that way.

Q Mr. Pritchard, that was not even the question. The question was – there was no reference to tax rate in the

question.

The question was: is there a substantial number of cities that tries to lure new industry, new residents and retirees?

A You started your question, though – the series of questions by talking about keeping their tax rates down for the purpose of attracting industry. That's where the series started.

I'm trying to point out to you that, sure, there are cities that are growing, that need new industry. They want increased population. They have facilities to [209] accommodate them.

The city of Cleveland has a sewage treatment facility that is only operating at 70 percent of capacity. Obviously it would like to attract population and industry that would meet – would fill that capacity. That's true.

But the city of Cleveland doesn't sit there, on the other hand, shaving its tax rate, cutting it down to a bare minimum, underpaying people, all of this stuff to try to get an industry. It doesn't work that way. The system doesn't work that way.

Q Let me ask you this, Mr. Pritchard: let's say there is a city that is in the stage that you spoke about that wants to attract industry; and let's say that it has a work week for firemen of less than 60, and a work week for policemen of less than 60.

And let's say that it has a tax structure that goes along with that work week, those work weeks.

Suppose that another city has a work week for firemen of more than 60, and a work week for policemen of more than 60, and is also trying to attract industry.

Of what interest would it be to the first city to try to see to it that the second city could continue to employ [210] firemen and policemen more than 60 hours a week?

A That's too hypothetical a question, unless you could – I would – it's just too hypothetical a question to answer, because there is no way of knowing how that would relate to anything else in the community, the quality of fire service, the costs, the insurance rates.

There's no way you can answer that question on that kind of a set of facts.

I know what you are trying to get at. I appreciate what you are trying to get at. If I could answer the question so you could have a yes or no answer based upon what you are trying to do, I would be glad to do it.

But you are coming at it in a very naive way which just doesn't fit the real world. You are trying – what you are trying to do is get me to say that if cities worked their firemen 64 hours instead of 56 hours, they will be in a better position to compete for industry because it keeps their taxes low.

And I say to you, you cannot create that kind of a condition because that isn't the way a city functions, because there are too many other political ramifications; there are too many other costs that are related to it that [211] offset it on the other side. And decisions are not made that way.

Q But I am asking you this question, Mr. Pritchard: if there is another city that has a 56 week – let's assume you are right for the moment. Let's assume that the city won't maintain a 64 hour week for that purpose. Let's assume for the sake of argument that's correct.

If another city thinks it should only have a 56-hour work week, and if that – both cities are interested in attracting industry, why would the 56-hour city have an interest in defending the right of the 64-hour city to continue a 64-hour work week?

A I wouldn't –

Q What interest would it have –

A Probably the only thing I could – the only answer I can give you is that elected leadership of cities have consistently argued for the right of home rule. They have also argued that the conditions of – the conditions of work, the ways things are financed, the way programs are worked out is a matter which they, as locally elected officials responsible to the community as a whole, have to work them out.

[212] And they very much resent – and this has been historical – they very much resent the state legislature and the federal government coming in and telling them that they have to handle their business in a certain way.

They would generally say that if that city wants to operate its fire department in a certain way, if it wants to use 1956 fire trucks, and have its people work 60 hours a week, and wants to pay them twice as much for it, or whatever it happens to be, that's their business. That's their community. That fits the needs of that particular community and that's what the community wants; and they have to stand for election and defend it.

The Wage and Hour Division doesn't stand for election; I don't stand for election; you don't stand for election; but those local officials do. They are answerable to that community for the tax rate, for the quality of service, for the way they treat their personnel.

When we come in from here and try to put somebody in a regional office of the Wage and Hour Office out there, and tell them how to structure their fire department and not be responsible for the taxes, for the quality of service, or the insurance rates, that isn't what they understand and what [213] this country has understood to be the home rule concept, of a decentralized concept of federalism.

That's what the issue is. What we are talking about is power.

You are trying to talk about dollars. We are talking about power.

Q How have you ascertained that the cities that have lower than 60-hour work weeks and that would not have additional overtime obligations as a result of the Act agree with your view that the autonomy of other cities should be preserved?

How have you ascertained that?

A I have never, in 28 years, seen a city official whose employees work less and get paid more than an adjoining city or any other city in a jurisdiction. Go into a state legislature, for example, and try to support legislation, even though it was introduced by somebody else, to impose the same conditions on another municipality to make them even.

That is not the concept under which our system works.

Q [214] Mr. Pritchard, let me ask you again how do you know that – let me ask it more directly: How do you know that your membership supports the position you are taking in this litigation?

A Well, in the first place when this issue came up the – I took the matter and we gathered some of the facts on

it. I took the matter to our board of directors which is elected by our membership. The board of directors unanimously instructed us to proceed for the development of this case.

Secondly, we had a meeting here in Washington last March after this legislation was reported by the House committee. At that point we had done everything we could to represent a policy position adopted by our membership a year earlier to defeat the legislation in the Congress. We were arguing among other things on its unconstitutionality.

We assumed at that point that it was so far along that it could not be passed, and with some 1,500 local government officials here in town, we proceeded with a meeting on several other subjects, and the delegates were so upset they took the agenda away from the program that had been developed and made this issue the No. 1 issue. They spent all their time on the Hill trying to influence this [215] particular issue, because they were so opposed to it.

We just finished a meeting with some 4,000 local government officials, elected officials, mayors and councilmen in Houston, our annual Congress of Cities. These are people who come with credentials from their local mayor and council. He comes as a credential delegate from his elected governing body to that meeting, and they – we felt the legislation was passed, and we were in the courts, and we ought not to say anything more about it. Those delegates took it out of the hands again and passed a policy position – not a resolution, but a stated policy position – calling for repeal of the legislation because they said it is not necessary and it is

none of the Federal Government's business.

Q When was this?

A This was just the first to the 5th of December.

Q Of this year?

A This year.

Q There were 4,000 delegates?

A That is right.

Q Representing how many municipalities?

A [216] I don't have the whole tally yet.

Q Was there a vote?

A Oh, yes.

Q What was the vote?

A It was unanimous.

Q Unanimous vote of the 4,000?

A Unanimous.

Q Were your proceedings recorded?

A That is right.

Q And the 11,000 municipalities were not represented?

A Well, all of those municipalities are represented through a voting system. Some of the voting delegates are elected from all of the municipalities in the state, and they are representatives of all those municipalities, coming from the state. So every municipality doesn't have to be there. The municipalities collectively select a group of delegates just like the states select – people in the states select a group of delegates to go to a party convention. Everybody in a party doesn't go to the national party convention. They go as delegates representing the people in the state.

So they are all credentialed delegates representing the local governments in that state.

Q [217] Is it your view that the position taken in this litigation represents the view of every one of the 15,000 municipalities that are your members?

A I wouldn't want to say there is somebody that takes exception to it. As a matter of fact, I am sure there is. I am sure I could go out and find half a dozen people that would take a different view, for one reason or another. We have some members of city councils and some mayors who may very well be presidents or organizers of the local labor union who very much believe in this. I am saying out of the delegates that have come to these meetings over the years and have considered this legislation, the vast majority of them – and in any other system all you need is a majority. We can't even adopt a policy except by a two-thirds vote. We don't adopt things by a majority. Unless we have a two-thirds vote they aren't adopted. When you get something like that with two thirds, or unanimous in a group of that kind, I think that is a pretty representative opinion. You can't destroy that credibility with finding a half a dozen people around the country to disagree with it.

Q Your complaint refers to the fact that a number of the states have regulations of various kinds with regard to [218] the municipal governments.

By the same reasoning under which –

A My complaint?

Q The complaint in the case, this document that was filed.

A Oh, I see. All right. Okay.

Q The complaint –

A I thought you meant I was personally complaining.

Q No. I mean the complaint filed by the National

League of Cities.

A Yes.

Q That complaint refers to the fact that some of the states have regulation of municipalities, hours and working conditions.

Does the same reasoning indicate that the cities believe that the states should not be regulating their hours and working conditions as well?

A That is true. The city viewpoint is that the people that have the responsibility to administer the programs that are elected have the responsibility to administer the programs to raise the taxes, to allocate the resources, should not be imposed upon by the states enacting legislation [219] without providing the financial support to go with it.

Now where the states have come in and mandated hours of work, without providing resources, that is a position that the cities have traditionally opposed in the state legislatures.

Q So as a policy matter cities make similar argument against state regulation as they make against federal regulation here.

A That is correct, but there is a different basis for it. You have to understand there is a different basis for it, a much different basis.

Q Well, what do you mean there is a different basis for it?

A Well, the states have the right to do it, if they want to do it because the cities are instrumentalities of the states, but the states and their instrumentalities are in a different relationship with the Federal Government than are the cities in relationship to their states.

Q But with regard to the policy considerations that you referred to, the same policy considerations are applicable?

A That is right.

Q To state regulation?

A [220] That is right.

Q Do you think that the state regulations, hours, and working conditions of municipal employees were unnecessary?

A I don't know exactly how to answer that. I think that they were undesirable. I think that in most jurisdictions you will find that even the most – even the jurisdictions that generally have the most advanced working conditions are ones that are way ahead of the state legislation, and the state legislation tends to only deal with a small number of stragglers and it doesn't really involve an awful lot – the majority of either the units or the majority of the people that are affected.

Q So the states have felt it necessary to deal with stragglers?

A It has come largely as a political matter, not as a – it is seldom ever dealt with, and I have been through many of these struggles in the state legislatures. It is very seldom if ever dealt with from the standpoint of social concern; that is, are people working too many hours? It is simply a matter of political pressure that is put on the legislatures and they act because they feel they must.

Q [221] So your testimony is that the states are adopting these regulations with regard to the municipalities because of political considerations rather than because of need?

A I think that is generally the case at the state level.

Q I would like to come back to the complaint and I would like to ask you with regard to paragraph 44, page 20.

It says “Allowing for overlap between these groups and calculating the average increase from the data gathered, the minimum impact for the first year on fire personnel budget nationwide is estimated at a minimum of \$200 million.”

Do you know how that figure was arrived at?

A It was arrived at based upon the data compiled in here –

(Indicating.)

– from the reports that were put together in this report.

Q The report doesn’t contain the figure; is that correct?

A No.

As I indicated, the data – we helped with the survey instrument. ICMA collected – used the instrument [222] to produce this report.

We then sat down with Bill Danielson and with Mike Mitchell, Battalion Chief from Los Angeles, and Bill Danielson from Sacramento and a special task force composed of some representatives of local government and some other experts in this field and – which worked with us all the way through the public hearings on the regulations, and looked at all of this data and made the projections that are contained in here.

And they are, I think as reliable an estimate as anybody is able to make because they are based on a much broader array of data than anybody else in the country has available.

Q Is it possible for you to go through those calculations and the projections?

A Here?

Q Well, here, if you can.

A I didn't go through the calculations myself.

Q Did you check them over?

A My staff went through the calculations.

Q Did you check them over?

A Well, within reason, yes. I know basically they [223] explained to me what they did.

Q Is there a document that exists that contains those calculations?

A I would have to look and see.

Q I will ask Mr. Rhyne –

MR. DODELL: Could you provide us with this?

MR. CHARLES RHYNE: If there is one, I will give it to you, yes.

MR. DODELL: You don't have anything here?

MR. CHARLES RHYNE: No, I don't. If I did, I would give it to you.

I think, as a matter of fact, since you mentioned it, I checked myself through here, and I find that our Exhibit 4-A which you already have – I want to be sure the things referred to in the complaint – and Exhibit 4-C, 6-A, 6-B, and 6-C are probably things we did not give to you but that were marked.

I am not sure.

MR. DODELL: The regulations, of course –

MR. CHARLES RHYNE: Those are the regulations themselves.

(Indicating.)

[224] These are these Commerce Department studies, you see.

This one is '73, see. They are more data on employment of public employees. That is about the size of it, and the regulations.

MR. DODELL: The regulations we obviously would be familiar with. This other data I am not familiar with at this time.

Are these spares?

MR. CHARLES RHYNE: Yes. You may have them.

MR. DODELL: Thank you very much.

MR. CHARLES RHYNE: They are data that was used in working on the complaint. I think the paragraphs are marked as in the other instances where they are referred to, you see.

MR. DODELL: I don't think we should mark them as exhibits here at this point. I haven't referred to them yet, and I don't know that I will.

I do appreciate your saying that you will undertake if there is some —

MR. CHARLES RHYNE: I will. We will ask the staff.

MR. DODELL: If there isn't a writing, then I [225] wonder if you would undertake to explain how this was arrived at?

MR. CHARLES RHYNE: We can ask the staff how they arrived at it, sure. I understood he was not to bring with him his experts, just bring himself. I so instructed him.

MR. DODELL: We did not ask for the experts.

MR. CHARLES RHYNE: I know you didn't. That is why they are not here.

BY MR. DODELL:

Q This goes back to Defendant's Deposition Exhibit

37. I would like to call your attention to the summary of findings that is on page 1.

MR. CHARLES RHYNE: You say Exhibit 37?

MR. DODELL: This is our Exhibit 37. We will have to get you a copy of this.

MR. CHARLES RHYNE: All right.

BY MR. DODELL:

Q I would like to call your attention to the passage – Why don't I read it into the record?

“The nationwide survey of state and local governments excluding education and hospital institutions indicates that wage levels for state and local government employees not [226] covered by the FLSA are on the average substantially higher than those of workers already covered. Hence, if coverage under the FLSA is extended to these workers, comparable minimum wage and overtime standards would not have as great an impact as did the earlier extension of FLSA coverage to employees of state and local governments, schools, hospitals, and residential care establishments.”

You can look at that, Mr. Pritchard. I wonder if you agree with that or disagree with that.

A I think I would agree in part. I think I would agree in the first part of it, in the sense that this is what the *Congressional Record* said and it is what we said, that there was no need for the legislation in terms of the minimum wage; that the wages at the local level generally are in line with community wage levels, and there are very few instances where there is any situation where public agencies fall below the minimum wage.

Now the part I would question – and I again can't document here, but I think this is a matter of just

sensible interpretation – one would have to question what this means when it says that it would not have as great an impact as did earlier extension of FLSA – FLSA wage covered [227] employees at state and government schools.

If it means in total – if it means they were underpaid and were brought up, I would suppose that that is true. If it means in terms of total fiscal impact and other related impacts, then I doubt that that is true.

You see, I would point out, for example, that one of the things that is not recognized is that in local government service the majority – well, I won't say the majority – the biggest block of employees in city government are in the police and fire service. There is historically a parity situation between police and fire.

Now if you have a situation in a city and this is – this is by far the general case, where the firemen – let's say – let's say they are working 60 hours, and the policemen are working 44 hours. Therefore, the policemen comply – let's say the firemen are working 64 hours. They are not complying with the law now. The policemen are working 44, so they are in compliance.

You, by law, reduce the hours of the firemen. You immediately destroy the parities that existed between the uniform services. You immediately then have to do something for the policemen. When you have then done something for the [228] policemen and the firemen, you have destroyed the ratio between the biggest single block of employees and all the rest of the employees in city government and you immediately have to restructure the whole wage system.

That is the way local salaries and wages are keyed.

They tend to be keyed to the police and fire services; so that when you are talking about this, the fact that the policeman and fireman may not be affected by the minimum wage, the fact that you affect the firemen's overtime or the hours that they work – that is what I mean, not the overtime, but the hours they work – and you end up having to reduce the hours, you have a significant ripple effect that changes the salary relationships and salary structure for all of the municipal employment. It just sets off a chain effect. It happens every time.

In the State of Ohio, for example, the firemen in the City of Cleveland, by a referendum initiated in Cleveland, and adopted by a public vote, says that the salaries for the firemen in the City of Cleveland have to exceed by a given percentage the salaries paid to the highest paid firemen in any other jurisdiction in the state; no discretion by the city at all – by the city governing body. Whenever [229] any community, whether it is Worthington, Oakwood, Cherry Hills, or some little community, or Cincinnati, raises their firemen's salaries, the City of Cleveland has to raise their salaries so it exceeds that limit by a certain percent. As soon as that happens, all the rest of the salaries in the city have to be adjusted.

So by that particular act, they not only fixed the firemen's salaries, but the salaries of everybody in the city.

So when you say it will not have a significant effect as it did in this other, I would challenge that as a statement depending upon what interpretation is put on that.

Q Do you have any documentation on that other than

the observations you just made?

A I would point out my basis for that observation, and that was if you look at my résumé you find from 1961 to 1962 I was staff director for the municipal commission which was a half million dollars Ford Foundation study of the staffing of city governments and municipal power. It is the most comprehensive study that has ever been made of how cities run their personnel systems in this country. It is based upon a very extensive analysis of some 600 field [230] interviews of that situation, and I think I speak with some knowledge of how the system works.

Q How does that bear on the question of whether the 1966 amendments or the 1974 amendments had a greater impact on –

A I –

Q Excuse me. May I finish?

– on state and local governments?

A I am saying this phrase can be interpreted two different ways. If it is saying that the impact of the '66 amendments was great because it raised low-paid school and hospital employees up to the minimum wage, I think it is probably correct. If it is saying that the total dollar impact of the new legislation will not be as great as that, I doubt that that is true. I am saying that this is not a case of just bringing people up to the minimum wage, which did not have the impact of setting off a whole set of chain reactions.

The new legislation will set off a whole set of chain reactions because that is the way the system works.

Q It is correct, is it not, that in terms of changing the number of hours worked, 15 percent of the cities have

[231] firemen working more than 60 hours and the other 85 percent do not have firemen working more than 60 hours?

A We are on the first stage; we are in the first stage. We are on our way, under this legislation, to go down to 42 or 40 hours, not 56 or 50.

Q [232] Then would you say it is true as to the first stage, that the statement that I have shown you is true as to the first stage?

A I don't know what the magnitude of the impact of the '66 amendment was. I haven't see the dollar numbers. I suppose it is in here. If I examined this, I suppose I could determine it. I don't know that we felt in looking at this and looking at the principle of it that comparing it to what happened in '66 was a significant concern.

Q So then, you are really not equipped to comment, if you don't know the –

A You asked me if this statement was correct. I said part of it I would agree with, the other part I think is questionable.

Q What I am asking you is if you don't have the figures as to the '66 amendment, then it is really difficult to make the comparison, is it not?

A That is why I raised – I said I raised the question. I have a question on the basis of my general knowledge as to whether that last part was accurate. I don't have the figures to prove it, one way or the other.

Q Now, I see in my notes, coming back to paragraph [233] 44, the last sentence, I have the same question that I had as to the 200 million figure. This sentence reads, "Increased costs for other essential state and city governmental functions are reasonably certain to amount to billions of dollars per year, due to the impact of these 1974 amendments to the Act."

I take it you are not prepared at this time to go through the calculations to indicate where that billions of dollars per year comes from?

A No.

Q Again, I would ask if there is any documentation that shows that calculation, I would ask that it be provided to me.

If there is no such documentation, whether a letter could be written or some kind of written explanation as to how that figure was arrived at.

(Discussion off the record.)

MR. DODELL: If you will indulge me a moment, I would like to consult with my co-counsel.

(Recess.)

MR. DODELL: I am delighted to say that we are going to give you back an hour and three-quarters. I think [234] we have asked everything that we had in mind.

MR. CHARLES RHYNE: The only thing I am going to do is have his biographical data marked.

CROSS-EXAMINATION

BY MR. CHARLES RHYNE:

Q Is that what you furnished as your background data?

A That is right. Yes.

MR. CHARLES RHYNE: I will have that marked as Plaintiff's Exhibit 1.

(The document referred to was marked Plaintiff's Exhibit No. 1 for identification.)

MR. DODELL: I think that is fine. Could we go off the record for a moment?

(Discussion off the record.)

(Whereupon, at 5:15 p.m., the taking of the deposition of Allen Pritchard was adjourned.)

[Certificate omitted in printing]

**Transcript of Deposition of Charles A. Byrley,
December 24, 1974**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL LEAGUE OF CITIES,)	
et al.,)	
)	
Plaintiffs,)	
)	Civil Action
vs.)	No. 74-1812
)	
HONORABLE PETER J. BRENNAN,)	
Secretary of Labor,)	
)	
Defendant.)	

DEPOSITION OF CHARLES A. BYRLEY

Washington, D. C.
Tuesday, 24 December 1974

Deposition of CHARLES A. BYRLEY, called for examination by agreement of counsel, at Room 4121, Labor Department, 14th and Constitution Avenue, N. W., Washington, D. C.; at 9:55 a.m. before Dennis A. Dinkel, a notary public in and for the District of Columbia, when were present on behalf of the respective parties:

CHARLES S. RHYNE, WILLIAM RHYNE, and
RICHARD BACIGALUPO, Esqs.; on behalf of
Plaintiffs.

NATHAN DODELL, Esq.; Assistant United States
Attorney; on behalf of Defendant.

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Joint Exhibits 4(a), (b), (c), 6(a), (b), (c).	95

PROCEEDINGS

[3] MR. CHARLES RHYNE: With respect to the part of the court order allowing the Plaintiff to take depositions of Defendant's witnesses, we have decided that if defendant will give us a statement of the basis of the \$27 million estimated increase in cost set forth in the preamble to the regulations as published on December 20, 1974, for police and fire, and will state in there the facts on which that \$27 million estimate or whatever it is based, and whether it is applicable to both states and cities or just cities, we will not take the deposition of Defendant's witness on that subject on the 26th.

By on that subject, I mean on the basis of cost.

Secondly, if Defendant will give us a letter stating why we cannot see the thousands of letters of protests that were described at a recent White House meeting and why we cannot take Mr. Faulk's deposition – Mr. Faulk being the one who presided at that meeting, with respect to these letters – and we understand that the basis is confidentiality or executive privilege – we will not take Mr. Faulk's deposition on the 27th.

That completes my statement about those [4] depositions, and I would like to have those letters served on us at the same time as your brief.

MR. DODELL: Mr. Rhyne, these are matters that we will obviously have to consider and I will have to discuss it with my clients as well as with my office. We will give you an answer as promptly as we can.

I would just say for the record that we have been trying to work out the question of what depositions you wanted to take, and we have been discussing these

matters since Thursday, and I appreciate your reducing what you need to these two items.

I think you will concede it is true that this is the first time you have made this proposal in these terms, and I can't give you an instantaneous reaction.

What I will endeavor to do is let you know as early in the day on Thursday what our reaction will be to these two questions. I would say today – but it is Christmas Eve and I don't know who we will be able to reach today.

I think you indicated yesterday that you were having trouble reaching people at your own office yesterday afternoon.

[5] If that is agreeable, then that would be fine.

I would like to say just for the record that I wasn't present at the White House meeting that you were fortunate enough to be present at. I wasn't in the case yet at that time.

I understand that your recollection is that there was a reference to thousands of letters. I spoke to somebody who was at the meeting who doesn't recall that there was a reference to thousands. I don't think we have to really get into a dispute about that. That is just for the record.

I thought I should make that point.

I very much appreciate the effort and accommodation that you have made and your courtesy in that regard.

Is it agreeable to you that we get an answer to you as early as possible on Thursday?

MR. CHARLES RHYNE: Yes.

MR. DODELL: The answer would be sure, we will supply this at the same time we file our brief, or if we can't, we will work out some other arrangement.

MR. CHARLES RHYNE: Fine.

With respect to this morning while Mr. Byrley [6] is out of the room, I should tell you – and I think it will expedite his examination, we would like to give to you now the letters that he has from governors, that relate to the impact of this Fair Labor Standards Amendments on states.

I believe he has nine – a set of nine letters, one from the Governor of Wyoming, one from the Governor of Maryland, one from the Executive Assistant to the Governor of Missouri, one from the Governor of Arkansas, one from the Governor of Florida, one from the Governor of Iowa, and one from the Governor of Vermont; one from the Governor of the State of Washington, and one from the Governor of the State of Utah.

These are letters, as I have said, that Mr. Byrley has with him with respect to impact of the Fair Labor Standards Act Amendments of 1974 on states.

In addition to that, we have already given you – you have marked as Exhibit 12, the letter that has reference to paragraph 50 of the complaint from the Assistant Attorney General of Arizona, that reporting the facts with respect to Arizona.

MR. DODELL: I want to thank you for these [7] letters, Mr. Rhyne, but merely for the record, these are matters that are not specifically referred to in the complaint. Is that correct?

MR. CHARLES RHYNE: That is true. I say we give them to you because – well, I will just have to let Mr. Byrley explain them. I will tell you, he gave them to me as representative of the states and the effect of the Act on them.

You can see they are all rather late dated, in the last few days, and we are just trying to give you all the information that we have with respect to impact.

MR. DODELL: Thank you. As I said I merely wanted to refer to the fact that these are not referred to in the complaint.

MR. CHARLES RHYNE: That is true.

MR. DODELL: Off the record.

(Discussion off the record.)

MR. DODELL: Can we go on the record for a moment?

Mr. Rhyne, yesterday at the deposition I think that your associate, Mr. Bill Rhyne, indicated you had all the exhibits except 37, nonsupervisory employees in state [8] and local governments submitted to the Congress in 1971. We have a copy. I am pleased to be able to give it to you.

MR. CHARLES RHYNE: Thank you very much.

(Discussion off the record.)

Whereupon,

CHARLES A. BYRLEY

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODELL:

Q Mr. Byrley, for the record, could you state your full name and address?

A Charles A. Byrley. My home address is 9205 Christopher Street in Fairfax. My office address is 1150 17th Street, N. W., Washington, D. C.

Q Mr. Byrley, Mr. Rhyne was kind enough to give us a biographical sketch. Why don't we have this marked

Defendant's Exhibit 38 for identification.

(The document referred to was marked Defendant's Exhibit No. 38 for identification.)

[9] MR. DODELL: Off the record for one moment.
(Discussion off the record.)

BY MR. DODELL:

Q Mr. Byrley, I take it that Defendant's Exhibit 38, your biographical sketch, reflects your professional experience and your education; is that correct?

A That is correct. It is done quite briefly, as I am sure you have observed. I assume that is adequate. Any questions you may have, I would be happy to respond to them.

Q I would ask you, Mr. Byrley, to refer to paragraph 50 of the complaint.

A Yes.

Q I would ask you also to refer to Defendant's Exhibit 12.

A All right.

Q Now, is the entire basis for paragraph 50 of the complaint found in Defendant's Exhibit 12?

A Yes.

Q Now, reading paragraph 50, the estimate of cost is for fiscal year 1975 to 1976?

A Yes, sir.

Q [10] Do you know whether that is a fiscal year that begins July 1, 1975?

A Yes, sir because Arizona is on a July to June fiscal year. Yes, sir.

Q That being the case, am I correct in saying that there is no specific dollar figure for the alleged cost that the Fair Labor Standards Act Amendments will have for

Arizona in the fiscal year ending June 30, 1975?

A No. As stated by the Plaintiff, I think they are speaking of the \$2.5 million, actually for the one year. The projection actually is not made, as I read this.

Q The projection is not made for the year ending June 30, 1974; is that correct?

A That is my understanding of the statement, yes.

Q Now, looking at paragraph 50, there is a reference to a \$1.5 million increase in the cost of providing state police services. When you examine Exhibit 12, do you find a reference to increase in the cost of providing state police services in Exhibit 12?

A Not on my cursory reading, no, sir.

Q Mr. Byrley, do you recall what the source is of the information regarding state police services?

A [11] I would assume that – first of all, if I am not mistaken – and I think I am correct in this, there perhaps have been more than one conversation. I know of at least one conversation I guess from the Assistant Attorney General or the Attorney General himself, in Arizona, to counsel.

I know there has been a call to my own office. I therefore make the assumption that the statement is made in the complaint itself. That it is taken from a prior conversation, perhaps with Mr. Rhyne himself.

Q Do you recall any conversation in which that –

A I have not personally talked with the Attorney General or the Assistant.

MR. CHARLES RHYNE: I don't want to interfere with your examination, but I think I should state again on the record that copies of this complaint were sent to every city or state named here, and they confirmed the

accuracy of the facts.

This was an oral counsel-to-counsel statement, and sometimes they suggested additional facts, orally.

Some of those conversations were with me and some were with my associates.

[12] MR. DODELL: I am reluctant to burden the record with this, but I feel I have an obligation to simply refer to the fact that the verification does state that it is on Mr. Byrley's knowledge.

I understand by inadvertence, this may not be something that is on his own knowledge, but I would point out the verification does so state.

MR. CHARLES RHYNE: Well, I would only add that I was talking to him constantly, others were, so I believe that these facts were brought to his attention by counsel, which is a usual way of bringing such facts to the attention of people under these circumstances.

I think he was justified in saying he knew these facts one way or the other, either from letters or from conversation.

Thank you.

THE WITNESS: I can supplement this by saying that I do know for a fact that my office, a specific individual has tracked this from the beginning, that he has talked with Arizona officials and can attest to this, the fact that he has verified the data, if that clarified the question.

[13] BY MR. DODELL:

A Mr. Byrley, do you know how many hours per week Arizona state police averaged in the fiscal year 1974-'75?

A No, sir. I suppose on any similar question in that regard, I would also give a negative response to. All I can attest to is I have every confidence in the people in

Arizona, public officials who put together this material.

There is no question whatsoever in my mind. I accepted it as being accurate.

I do not have the personal knowledge as to how many hours were given in given circumstances by police, or by fire, or any other specific question I suppose that you might put to me in that vein.

Q So, you don't know how specifically the state of Arizona and its Attorney General's office calculated this \$1.5 million increase?

A No, sir, I do not. I have no reason to question that this is a budgetary process they go through as would be the case with the other 49 states. It is a very elongated process.

It is not unlike that of the Federal Government. [14] In fact, that budget process, I suppose, begins on July 1st, just as you are counting up either your surplus or your deficit as the case may be, as the fiscal year ends.

It is a continuing process.

Q Do you know of your own knowledge whether Arizona in coming to this conclusion took into account the exemption under the Act for executive administrative and professional employees?

A No, sir. I do not. Not unless it is stated here. I just don't recall. I have, as you might imagine, just in preparation for this deposition have inundated myself in reading. I personally am not the expert in this area, as I would assume the person interrogated yesterday – would have been the case.

The Governors' Conference as you know is, in terms of actually entering the litigation as it were, was a late entry. My own position as previously indicated, is that of

executive director. I cover the whole range of issues that are of concern to governors. This is obviously a very important one, but I have not immersed myself in the kind of detail, I think, that might well be desired for a record.

Q [15] And, Mr. Byrley, looking at paragraph 50, there is a reference to a \$200,000 increase in the cost of providing health services. Is that found – look at Defendant's Exhibit 12, do you find a reference to that in the – in Defendant's Exhibit 12?

A Again, I would answer in the negative but I would probably, I think, provide the same response as I did previously with the total awareness of – I know of several telephone calls. How many precisely, obviously, I don't know – between my office and officials in Arizona. I am confident – even this letter states at least one telephone.

I am confident there must have been others by counsel with the officials of Arizona, with the answer to your specific question being no.

Q Do you have any idea how many hours per week were worked by people in the health services – state health services in Arizona?

A No, sir.

Q [16] Do you know how many hours per week are worked in highway construction on the average in Arizona?

A No, sir, but the – if I might – and I don't know – this is subject to your own wishes, I think I should point out that Mr. Rhyne – if Mr. Rhyne hasn't already, perhaps in my absence, just in the last 2, 3, 4 days I have received several communications, some at my own

solicitation or that of my office, and others which just came in naturally that tend to cover the kinds of data that you are now asking me about; but as you would look at those pieces of paper from the several states – and many more are coming – let me say – I could no more answer, you know, a specific question such as you have placed: how many hours for highway construction, or how many hours in social services, or what have you, for those states.

And I would be most happy to make those of record if that is proper, and if you want them.

I think some are perhaps more complete, some perhaps less complete than that which was provided by the single state plaintiff as of this point in time.

I could add, perhaps gratuitously, that although it is paragraph 50, and Arizona we are talking about at this [17] point in time, I have been reasonably assured by my own personal counsel inside the office that at least firm commitments have been passed along to the counsel for 4 additional states; and he expresses a confidence that this number will grow considerably in the very near future to become parties to the suit.

It is not viewed as being prudent, nor do I, to attempt to identify until the action obviously takes place.

My point is simply to say that you will find, I suspect, in the preliminary correspondence that is provided, as was the case with Arizona, the same kinds of very generalized data.

I personally can't support, except again to say that I have no reason, because I work with these people day in and day out and in a generalized sense. I am not the Arizona Highway Commissioner. At one time I could tell

you how many hours in Kentucky, because I was the Deputy Commissioner of Highways, as you may have observed. I don't hold that position now.

Q So I think it follows from what you have said that other than the – what is said in the letter, you don't know how Arizona calculated the \$2 million – \$2-1/2 million [18] figure that is specified in paragraph 50?

A No, sir.

Q Do you happen to know what the total payroll is of the State of Arizona?

A I think I have records here that would show it. I do not know it off the top of my head. If it's permissible, I will make a search in a few minutes to see – if it's important.

Q Would it be readily available? if not, we can look for it later.

A Well, I guess I don't know. I think probably it is found in – perhaps Bill or Rick might wish to start searching. I think it may be found in this here (indicating).

MR. CHARLES RHYNE: You are referring to public employment –

THE WITNESS: You are talking about the total personnel budget or the total budget?

BY MR. DODELL:

Q I was asking about the total personnel budget.

A Okay.

Q We can move on while they are looking.

A I think it is possibly in that.

[19] MR. CHARLES RHYNE: I think, Mr. Dodell – I don't have my copies because I gave them to you yesterday, those Department of Commerce –

THE WITNESS: This happens to be – there are two or three. This is public employment in '73, the last year for which data is available, at least in this form.

I have the Arizona budget, for example, in my office. I just don't carry those –

MR. CHARLES RHYNE: I gave this – Mr. Byrley, I gave that to Mr. Dodell yesterday. He has it.

BY MR. DODELL:

Q Now, with regard to paragraph 44 of the complaint, at page 20, down about 2/3 of the way in the paragraph there is a sentence that reads, "Allowing for overlap between these groups and calculating the average increase from the data gathered, the minimum impact for the first year on fire personnel budgets nationwide is estimated at a minimum of \$200 million."

Now do you know how that \$200 million figure was arrived at?

A I believe – back in the context – that this is the study done by the International City Management Association [20] and by the gentleman in California, Danielson.

I recall taking a very close look at that overall study at the time that it was first made available to me. I was quite impressed with it and with his work and his seeming knowledge of the whole field.

Again, to answer your very specific question, do I know how precisely he arrived at \$200 million? No, sir.

Q Well, is it your understanding that that \$200 million figure was in the study, in the ICMA study?

A Again the study I think is of record here. I don't know personally whether the figure is in there or not.

MR. DODELL: For the record, my recollection of the

testimony yesterday is that the figure is not in the study.

MR. CHARLES RHYNE: And we said we would get the way it was arrived at and give it to you. We will say the same thing with respect to Mr. Byrley here. We will get it for you.

MR. DODELL: All right. The same would be applicable, I take it, to the last sentence of that paragraph which refers to increased costs for other essential state and city governmental functions are reasonably certain to amount to billions of dollars per year due to the impact of these 1974 amendments [21] to the Act?

I take it the same is applicable, that you are not familiar with the way in which that was figured out?

THE WITNESS: I think perhaps this may be a difference or distinction without a difference. I think I am better prepared to address myself to that, because first of all, this is a more generalized figure, when one speaks of billions.

I am personally convinced, in reading the entirety of the brief that has been placed before you, and as I talk with state people generally, or as my shop does and they report to me, as I see the letters that I had reference to earlier, which I would be happy to make available to you if it is proper – and when I get that general view of figures that are being projected, and having only heard from perhaps maybe 10, 12 states, I am not quite certain what the number is, as a matter of fact – yes, I feel quite confident that that's an accurate statement, that it's going to be in the billions, as it were.

BY MR. DODELL:

Q Could you state how that figure specifically is arrived at?

A [22] As I have said previously, not unlike Arizona, I do not know how Florida arrived at whatever it did; I don't know how California – which is – I was told would be telecopied to me today. I am sure it will be a large figure.

The specific methodology, the specific means by which one could even for that matter determine is beyond comprehension; and that is so in my judgment because of things like that (indicating).

Q When you point –

A This specifically (indicating).

I don't know how anyone could project anything based on what it has today from the Department of Labor.

MR. CHARLES RHYNE: You are referring to the Code of Federal Regulations, part 29, parts 500 to 1899?

THE WITNESS: Yes, sir.

BY MR. DODELL:

Q Did you ever sit down with a pencil and paper and do calculations that led to a figure of billions of dollars?

A No, I have people that have. Well, I can answer that in the affirmative, as a matter of fact. That goes back to days when I held other positions, as you may have noticed in my résumé, which I think is not relevant to your question.

[23] I have not sat down personally with that, no. I have people in my shop who do it every day.

I carry Title 19, the infamous Medicare program, that was found to be such a great program, it would cost a fairly infinitesimal sum; it was very nominal, a great program.

The State of New York alone spent every dollar that was available in the first year of the program. The

program was designed for 50 states.

Q Did you ever review the figures by which this billions of dollars was arrived at?

A You speak of these billions here? (Indicating)

Q Yes. The specific – just so the record is clear –

A I think so. I don't know how better to answer the question.

Q Excuse me.

Just so the record is clear, I am referring specifically to the sentence, "Increased costs for other essential state and city governmental functions are reasonably certain to amount to billions of dollars per year due to the impact of these 1974 amendments to the Act."

The specific question I am asking you is: have you [24] ever seen a sheet of paper that indicated sources of increased cost that had dollar amounts for each increased cost and a total figure of a certain number of billions of dollars?

A May I ask you, sir, is that again in the context of the '74 amendments? Or is that in the general context?

Q I think it was a very specific question.

Could you read it back, please?

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

THE WITNESS: May I interpret the question in the total context, as you put it?

The answer to the question is no.

MR. CHARLES RHYNE: While we are on the subject of payrolls, we have located in what we had marked as Exhibit 6-A on public employment 1973, the total payroll of Arizona for 1973. That's the only information we have. This is one of the documents I gave you late

yesterday.

MR. DODELL: As I read this, I gather the figure then is for the state government of Arizona, \$23,241,000; is that correct? State government only?

THE WITNESS: That's my interpretation of the table.

[25] MR. DODELL: Thank you very much, Mr. Rhyne, for providing us that.

MR. CHARLES RHYNE: Would you want to mark that so you know what we are talking about?

MR. DODELL: I think you have identified it. If you want to make that an exhibit – I don't see the need for it at this point. Either of us can refer to it in briefs.

MR. CHARLES RHYNE: Yes, we can ask that judicial notice be taken of it.

MR. DODELL: Mr. Rhyne, before we came – we started questioning Mr. Byrley, you asked us for the basis of the \$27 million figure that appeared in the regulations?

MR. CHARLES RHYNE: That's right.

MR. DODELL: What I would call the interpretive bulletin.

The facts on which it is based, whether it applies to states and cities or just cities – and I said I would see whether we can furnish that and let you know on Thursday morning whether we could supply it, and if we can't supply it we will file it at the same time as your brief.

Yesterday and today we asked questions about the \$200 million figure and the billions of dollars figure that [26] appear in paragraph 44. I would ask if you can provide the same type of information that you have asked us for with regard to the \$200 million figure and

the billions of dollars figure, namely the facts on which they are based.

MR. CHARLES RHYNE: I stated yesterday I would furnish you the information with respect to the \$200 million figure; and I assume we can furnish what facts we have with respect to this generalized statement at the end of the paragraph 44. But as I say, we are operating under the same problem you are mentioning earlier.

Everybody seems to be gone over the Christmas holidays. We will get it to you as quickly as we can.

MR. DODELL: Thank you very much, Mr. Rhyne. My recollection is that yesterday I made the request with regard to both figures.

MR. CHARLES RHYNE: We will do the best we can.

THE WITNESS: I wonder if I might make an observation in that regard?

MR. CHARLES RHYNE: Usually you wait for questions, but I am sure if you want to make one, go ahead.

MR. DODELL: Within reason and if it relates to what we have been talking about.

[27] THE WITNESS: It's a redundancy in part, I guess, on my part; and that is the certainty of understanding the state budgetary process, which in my judgment is far superior, and I think most people would agree, to that to which our federal friends are accustomed.

Again, it's a continuous process. These things just don't happen. Arizona's didn't just pick out of the air somewhere figures and say they happen to be – whatever they happen to be. Nor did they do it or are they doing it in California, or New York, or any state in the nation.

It just so happens that I believe this to be true: I think the 49 governors – I think every governor except the Governor of Kentucky, will appear fairly shortly now, in the next – within a month, before his legislature and will present a total state budget either for a full fiscal period beginning next July 1, or for a biennium, whichever may be the case.

I have worked, as I have indicated, shown, extensively for quite a period of time in state government. I feel I know it fairly well. We are not talking about people who don't know their business. We are talking about very sophisticated budget people, very sophisticated analysts that [28] work with whatever they have to work with, albeit sometimes not so good, as a matter of fact.

If they haven't presented or prepared to present either to their governor or their governor-elect by now some fairly sophisticated figures of the impact of the '74 amendments, I somehow have for pity for them. I think that's important.

BY MR. DODELL:

Q The fact remains that with regard to Arizona, you don't know how they –

A I personally do not know. I indicated that previously.

Q [29] Mr. Byrley, Mr. Rhyne was kind enough to provide us with the letters that you have referred to from nine states.

Can we have these marked, please, with the next numbers?

I will keep them in the same order you had them in. Wyoming will be 39; Maryland, 40; Missouri, 41; Arkansas, 42; Florida, 43; Iowa, 44; Vermont, 45;

Washington, 46; and Utah, 47.

(The documents referred to were marked Defendant's Exhibits 39 thru 47 for identification.)

MR. DODELL: I take it, Mr. Rhyne, that we can stipulate these letters which you have given me today relate to matters not specifically addressed in the complaint; is that correct?

MR. CHARLES RHYNE: Yes. I would say except the overall impact.

BY MR. DODELL:

Q Addressing ourselves first to Defendant's Exhibit 39, as I read this, the state of Wyoming, through [30] its governor, has written to you by letter of December 20, 1974, that the unanticipated cost of extended – expanded overtime pay coverage will equal \$2,415,103 for the period May 1st, 1974, through the fiscal biennium, 1975 through '77.

This letter was dated December 20. Were the facts in this letter known to you at the time you verified the complaint, Mr. Byrley?

A No, sir. That would be true, I am quite confident –

Q I am sorry. I didn't hear the end of the answer.

A Well, the answer is no. This letter was not.

Q The facts in the letter were not known to you?

A No, sir.

Q And I take it from your prior answers that you don't know how Wyoming calculated the figure of \$2,415,103?

A No, sir.

Again an observation: When I see, 2,415,103, it shows again a high sophistication and not just a figure out of the air.

Q [31] You mean the fact that it isn't a round number shows that it is – shows sophistication in preparing the figure?

A I think so, yes, sir.

Q Turning to Defendant's Exhibit 40, which is a letter from Marvin Mandel, the governor of Maryland, to you, and this states in part, "I have been informed by the Maryland Department of Personnel that overtime regulations governing Maryland's state employees substantially conform with the provisions of the Fair Labor Standards Act relating to overtime compensation."

So far as you know, this is accurate, I take it?

A By the same token, any other statement in this letter or the others I have answered in the affirmative, yes.

Q And again I take it that you don't know how Maryland calculated the last sentence of that paragraph which says it is our judgment that full compliance with the overtime provisions of the Fair Labor Standards Act will require – will result in an additional annual expenditure of approximately \$2.25 million?

A No. I do not know how that was calculated.

Q Again this letter dated December 20, 1974, were [32] the facts in that letter known to you at the time you verified the complaint?

A No.

Q Now turning to your letter – excuse me, turning to the letter of Perry A. Roberts, executive assistant of the state of Missouri, which is Defendant's Exhibit 41, October 28, 1974, this states in the first sentence that it is a reply to a special letter regarding the proposed Department of Labor rule concerning salary levels to be

used for minimum wage exemptions. Was that a general letter sent to all governors, the letter that's referred to?

A I am inclined to think so. If I remember correctly – and I cannot attest to this – if I remember correctly, there was a letter to all governors out of my office, either under my signature or not, that talked about the salary means test, or whatever that was.

Q Was there any kind of a general letter that went out of your office to all the governors that asked them to report back the impact that the Fair Labor Standards Amendments would have?

A Not to my knowledge. I think, as I have previously indicated, the – most of these letters, I assume, [33] that carry dates of December 20 or thereabouts – this one does not, it does refer to a specific letter that presumably, and I believe came from my office.

But to my knowledge, and to my recollection, there was not a blanket inquiry or request made of my office to all governors to at this point in time measure impact, no, sir.

Q Mr. Rhyne, would it be possible for us to get a copy of that special letter that this letter is a reply to?

MR. CHARLES RHYNE: I am certain it will. I will undertake to get it and give it to you.

MR. DODELL: Thank you very much.

THE WITNESS: If it exists. I have not said it does. I make an assumption.

MR. CHARLES RHYNE: We will look.

BY MR. DODELL:

Q Do you know whether these letters that seem to cluster around December 20 resulted from a specific effort to get information from the states around that

time?

A Well, very definitely. This is a very concerted effort. I can't suggest any particular rationale for a selection of states. My guess is maybe as many as 20 states, [34] 25 states may have been contacted. I am confident it was by telephone; and I am equally confident that probably it was for one person, which accounts for the way it clusters, to use your term, around certain issues.

Q You think perhaps as many as 20 or 25 states were contacted?

A That would be my idea. It is a sure guess.

Q Do you know whether any states declined to furnish any of such information in response –

A I have no knowledge of any declinations. It has never been mentioned to me.

Q Do you know whether any states indicated that there was a negative – no impact?

A I have no such information and no one ever suggested that, no, sir.

Q But in any event, if 20 or 25 were contacted, it appears that only some nine have responded at least to date; is that correct?

A I haven't seen today's mail. We speak of holiday seasons and other things. I am confident that a very high percentage of those contacted will on a fairly timely basis get us some data.

[35] When I speak of timely basis, I keep in mind that tomorrow is Christmas Day, and a week later is New Year's Day. It will take longer, given that time of year, than otherwise would be the case.

Q I think you may have alluded to this. Do you know how the 20 or 25 states that you referred to were

selected?

A I think it was just random – as random in all probability as one could imagine. I am confident as can be there was no rationale whatsoever. It is who you know or who answered the phone the fastest or who you think would respond the fastest.

I think that perhaps was the way it was done.

Q Mr. Byrley, this act was adopted on April 8th, 1974. How do you account for the fact that a concerted effort to obtain this kind of information didn't occur until, as I understand it, late December 1974?

A How come there was not a concerted effort on my part? Or at least the part of the organization?

Quite frankly, I must confess – and I do this quite reluctantly – I don't think the National Governors Conference – and I accept full responsibility for it – [36] really tracked the legislation as well as it should have. I think that answers clearly as far as the organization is concerned. We don't like to admit to those things. Occasionally we err.

Q You were aware of the act's passage, I presume?

A I am aware of the act. I am aware of amendments almost every year, it seems. I am sure that's not true. I would point out, totally parenthetically – and my counsel may stop me, I don't know – but my being in this town as executive director of the National Governors Conference is due in large part, in my opinion, because of failure for someone to have tracked the amendments of 1966.

It looms very large in my mind, because I can hear all kinds of governors just raising all kinds of Cain, if you will, both for the substance, I suppose, of the

amendments, as a point in time, but perhaps equally important – I just don't really know – equally important, possibly of not knowing. That's a problem we live with even now.

Q Mr. Bryley, in the case of the 1966 amendments, are you aware that 27 states participated in litigation [37] to try to set aside? Are you aware of that? In a court case?

MR. CHARLES RHYNE: Mr. Byrley is not a lawyer.

MR. DODELL: He still may be aware of the fact.

THE WITNESS: I guess I would ask the question – answer the question by answering one; is that Maryland versus Wirtz?

MR. DODELL: Yes.

THE WITNESS: I guess that makes me a lawyer now. I have heard of it. I don't know its findings.

BY MR. DODELL:

Q Do you know a lot of states participated in that litigation?

A I was not aware of that. I really was not.

Q Turning to Defendant's – I am sorry. Excuse me. We are on Defendant's Exhibit 41. I went off to another area.

I am really not sure I understand what is being said here by Mr. Roberts in this letter. Is it your reading he is attributing this 1.5 million --

MR. CHARLES RHYNE: 3.1 million.

MR. DODELL: I will come to that.

[38] BY MR. DODELL:

Q The 1.5 million, that deals with executive, administrative and professional categories who he finds not to be within the exemption? Is that your

understanding of this?

I am not sure I understand what is being said here.

A I make that assumption, but I can't state it to be a fact. I, too, am slightly confused. I think it would probably require going back again to the letter that exists or doesn't. That might give a clue to that.

Q And referring to the 1.5 million and the 3.1 million, which Mr. Rhyne alluded to, again you don't know the detail of how these figures were arrived at?

A No. You would have to know the first figure to know definitely the second one, it seems to me.

Q And this letter was dated October 28. Was this a letter known to you at the time that you verified your complaint?

A No, sir.

Q Now, turning to Defendant's Exhibit No. 42, which is from the state of Arkansas – and this is addressed [39] to you – as I read this letter – and am I correct? – it appears to deal exclusively with executive, administrative and professional employees; is that correct?

MR. CHARLES RHYNE: You are referring to the first paragraph where he says, "United States Department of Labor proposed wage rate changes for executive, administrative, and professional employees would impose a tremendous financial burden on the state of Arkansas. . ." and then he goes ahead and says, "many employees now exempt would be subject to overtime."

MR. DODELL: The next sentence talks about these employees – we can both pause to read the letter. My quick reading is it appears to relate only to executive, administrative, and professional employees.

MR. CHARLES RHYNE: Well, I don't quite read it

that way. I guess it speaks for itself.

THE WITNESS: I guess I can't either gain that particular interpretation.

BY MR. DODELL:

Q I am sorry?

A I said I guess I can't gain that interpretation either, at least not to the same degree that you apparently [40] can.

Q Well, as Mr. —

A Again an observation, if I may, the — one, the — I am sure this is probably true in many, many offices, the fact that I am shown as the addressee doesn't necessarily mean that I would have been the actual recipient of the letter. That certainly was the case in this instance.

So I guess the answer to one of your next questions is no, I was unaware of this letter at the time the complaint was verified.

What I wanted — the observation, though, was that it seems to me — and I could be totally in error — it seems to me that the secretary wrote to selected individuals, all governors, maybe a larger audience somewhere in this time. Something tells me — and again I would have to verify this, and perhaps I can't, but something tells me this responds to a communication from the Department of Labor in some way, not addressed to them, but telling me what they told the Department of Labor.

I can't relate — I guess what I am trying to get at, I can't relate to this in the context of myself or [41] even my shop, for that matter, having sought this kind of data at that point in time.

Q Unless it relates, I would presume, to the other special letter?

A The subject matter doesn't seem to mesh. We will see.

Q All right. I guess we will have to look for that other letter.

MR. CHARLES RHYNE: I think the regulations that came out on the 20th of December refer to the fact that the Secretary of Labor did write to the governors about those regulations.

THE WITNESS: There may be a linkage there.

BY MR. DODELL:

Q What I was referring to was an earlier letter that said this is in response to your special letter. That one dealt with these professional, administrative employees.

MR. CHARLES RHYNE: We will see.

BY MR. DODELL:

Q This Arkansas letter, am I not correct, makes no specific reference to any dollar amount?

A [42] That's correct.

Q Now turning to Defendant's Deposition Exhibit No. 43, the first sentence of the third paragraph puzzles me because it speaks of money for hospitals and mental institutions, the first – why don't we say that whole paragraph?

I am sorry. Let me withdraw that observation.

MR. DODELL: Would you indulge me a moment?

(Discussion off the record.)

MR. DODELL: This may be backing and filling. I do want to ask a question about the third paragraph.

BY MR. DODELL:

Q It is correct, is it not, that the 1966 amendments related to hospitals and expanded coverage of the Fair Labor Standards Act to state hospitals?

Given that fact, can you – do you understand what the significance of that paragraph is to the 1974 amendments?

A I am not at all certain that I can. In fact, just before leaving the office this morning to come here, I raised essentially the same question with a person in our shop who has not been our key professional to work [43] the issue that is dealt with in there.

I personally again am not that familiar even with what happened in '66. I do know that it made the distinction as between educational institutions and what we regard as general, other employees. I don't know whether there are any classes or categories within that. I am not that familiar with the '66 amendments.

I would admit to personally having been slightly confused, because I don't really understand what is being said. I had problems with the figures as a result of that.

Q And –

A May I add to that comment – and this, to me, again is what is so incomprehensible as I look at everything that I can see, at least, in context:

That is that a sovereign state, the state of Florida, a state that has made some tremendous strides, in my judgment, in recent years, I think, in upgrading its whole administrative capacity and what-have-you can – I guess any way you read this, if it be a mistake – how it could make such a mistake.

Again I guess I have to refer back to a communication, information systems. How do people know if a [44] state legislature – this is what is being said here – appropriated 500,000, irrespective, I think, of our interpretation here, they had to – this had to be done, it seems to me, in

what I would call gross error; and that usually stems, invariably stems just from bad information. I don't understand.

I guess we go back to working from the book that is built for industry or somebody.

MR. CHARLES RHYNE: You are talking about Exhibit 6(a) again?

THE WITNESS: Yes, sir.

MR. CHARLES RHYNE: Part 29.

THE WITNESS: It is a very confusing – very confusing to state officialdom. I am sure it must be the case of local officialdom; and it extends obviously beyond the Fair Labor Standards Act of 1974.

It is my view that the department – at least in this instance here, it would appear to be quite apparent, is not doing a sufficiently effective job to cause them to understand if in fact they have made an error. I don't know that they have.

With no intent on my part to filibuster, I think [45] maybe the next paragraph is more important than any other part of the letter.

Again not being able to personally account for how they estimated the cost of \$800,000 annually, if record keeping costs do amount to those kinds of figures, and they have means for having determined that, I think we are in for one big, big problem.

BY MR. DODELL:

Q Well, is it your understanding that the record keeping is – that it results with regard to states, is more onerous than with regard to other businesses that have been covered by the act since 1937?

A I would have no idea. I could not possibly respond

to the question.

Q And other businesses, including small businesses, have been required to comply with record keeping provisions since 1937; that's correct, isn't it?

MR. CHARLES RHYNE: He wouldn't know that; he's not a lawyer.

MR. DODELL: He might know.

THE WITNESS: Well, I don't know it, unfortunately.

[46] BY MR. DODELL:

Q Do you know whether states are required to keep records with regard to the 1966 amendments that extended coverage to hospitals and educational institutions?

A I do not know. The answer is no, I do not know.

Q Well, let me –

A May I comment further on the question?

Perhaps I do know and don't realize it. I am again reminded of 1967 when I opened the office for the governors conference which was referenced earlier in discussion among the governors at that point in time, venting considerable frustration on their part.

I recall – I guess two basic complaints. One was a dollar impact, and secondly, and seemingly to me, as I recall it, almost equally important, was what they called something like a double standard of dealing with employees and of record keeping.

If I heard correctly, then I guess they are responsible for that administration, that record keeping. I recall very distinctly a discussion of double standards in dealing with the general employee situation.

Q What do you mean by double standard?

A [47] The act dealt – of course, again I don't know

the specifics of it, but partly based on – I guess most of what you said, and partly what was in one of these letters, I don't recall which exhibit – that it dealt with hospital employees, either all – I just don't know, but hospital employees, and with, I guess, educational institutions. These are state employees. I think that's true invariably in every state.

The only question I have here at all is in certain educational institutions, particularly in what I call the big ten – I am not quite certain about the state university relationship – but that exception aside, if in fact it is one, does present a problem, it seems to me, if you are having to function somehow for one kind of employee differently than you do another kind of employee.

This was the – and again this is a recollection going back to 1967. Keep that in mind. It was programmed such as that in the whole raft of what then was known as the Great Society programs, one a day, as they were saying, and venting that kind of frustration again was what prompted their saying, well, A means – I don't know what B means, but A means keeping abreast of some of the Washington [48] developments, having a resource of our own.

Thus again the establishment of the governors conference.

Q I am not sure I understood one aspect of what you said. You mean the governors were concerned that some employees were covered by the Fair Labor Standards Act, and some were not?

A They were going through the same process as we appear to be now. There was total confusion is what I am trying to indicate. I don't know even the resolution of it,

much less the – they were trying to understand – and I will use some of their language – you can imagine some of it, there was total frustration.

We were talking about the whole raft of legislation, not the Department of Labor, although I suspect it had its share of it, I don't know.

Again to use the parlance of some of the governors, a program a day. There was absolutely no information, no means of even knowing what it is that now has been adopted by the federal government, much less intelligent guidelines or approaches to implementation; and what I am saying, it was the interpretation of some that there were [49] double standards.

There were difficulties in knowing even what to do, much less how to do it. The ultimate result, I don't know.

Q Are you saying there was similar confusion in 1966 that you are saying exists now?

A Yes, I am saying that. To a much lesser degree, in my opinion.

Q To a much lesser degree?

MR. CHARLES RHYNE: Now or then?

THE WITNESS: A much lesser degree then than now.

BY MR. DODELL:

Q You did say you thought there was great confusion then?

A Yes.

Q And the governors were all referring to it at the governors conference?

A No. Several governors.

Q Several governors were referring to it?

A Talking about that and – pick a figure, 10,000

others, if you will.

I mean what I am trying to describe for you is [50] total frustration on their parts; and I don't know whether it is 50, or 40, or what.

In fact, there was even a special meeting in December of 1966 to talk about the Fair Labor Standards Amendments of 1966; that's where two governors are talking. I am talking about the whole raft, again, if you will, of legislation that had occurred in a period of two, three, four years, a vast barrage of it.

I think perhaps we can both agree to it, that there was – which has nothing to do with the merits or the value of that legislation or those programs.

Q In 1966, several governors were complaining about the confusion that was caused by the Fair Labor Standards Act Amendments of 1966; is that correct? You were aware of that?

A Yes, that is true.

Q And yet in the case of the 1974 amendments, you said that it wasn't until relatively recently that you started to get this information about impact?

A I said we have done a poorer job. We tracked it. This is professional competence. As I have indicated previously, I feel that we didn't do as good a job as I [51] would like to have done.

Q Did you receive expressions of concern from governors between April and October or November of this year about the Fair Labor Standards Act Amendments of 1974?

MR. CHARLES RHYNE: Could we take a brief break?
(Recess.)

[52] THE WITNESS: To answer your question, I

simply can't imagine that I haven't, and yet I must confess that I can't recall a conversation with the governors.

BY MR. DODELL:

Q Okay.

A I can't conceive of it, again because of the magnitude in which we deal. There are just a few things that occur that at least a governor, if not several don't raise with me, what does it mean, what would I do about it.

Q In the nature of your position, Mr. Byrley, if there had been substantial expressions of concern by the governors about these amendments after April 8th, I assume because of the responsibility of your position, they would have made some impact upon you, is that a fair statement?

A Well, I don't know. Let me — one thing you have not asked me, and I think wasn't necessary at all, one thing among many I am sure — is the Governors' Conference itself and its structure and what have you. I don't know whether it is important, or relevant.

One point is, I think, in the context of your question: That is that the Governors' Conference [53] reorganized following a full year's study which was culminated by adopting revised articles of organization last March, last March 7th, as a matter of fact, at which time my own position changed.

That is when I was selected to become actually the first executive director of the organization. In that period of reorganization — and in fact it is continuing — which accounts in some part, in some measure for what I might suggest is something less than I would desire in tracking

and monitoring and reporting on several activities including the Fair Labor Standards Amendments of 1974.

I now have in place – I am very pleased to note – a director of state-federal relations; he has a unit that works specifically with the Hill on the one hand, he has a number of special assistants that work directly with him on problematic issues.

I think that possibly can give you a better feel for why I can't answer quite as directly as you might imagine certain questions that you have placed, because my concern is an overall concern.

I worry about state services. I have run a school, if you will accept the term, for the newly elected [54] governors, a two and a half day seminar for them, not to acquaint them with the Governors' Conference, but to acquaint them as best I can, and my staff, and others – well, I say others, and experts from around the country, including former governors, including academia, what have you, to advise them as to what – say, so now you are governors, so now what are you going to do?

That is a considerable digression, except to point out the dimensions of my total responsibility. The key point is in a period which happens to run somewhat parallel to the period of time we are talking about here, we have undergone considerable changes as an organization.

BY MR. DODELL:

Q My concern is this: that according to your testimony in 1966, the governors were very concerned about the impact that the Fair Labor Standards Act Amendments of 1966 had?

A Yes. They were concerned about the lack of

knowledge and still were, even as of that point in time. That is the point that I was trying to establish. I stated it differently than I would want to state it, as I just now stated it.

[55] It wasn't an ultimatum. Even today I don't know what the result was. I am saying they were concerned about programs a good bit of which is hearsay. I don't mean the bill itself. You can read that and interpret it any way you wish to. I am talking about, specifically about the Department of Labor in this instance.

Certain governors not feeling that they really had a full complete understanding of what those amendments did, what they were, how they might be implemented, et cetera.

That's what I think I have reference to.

Q Did you say that your recollection of 1966 was that there were governors who were concerned about record keeping and about double standards in the specific Fair Labor Standards Act area?

A Right.

Q And I think you said several governors expressed concern in 1966 or 1967?

A I think several governors – I don't know what is "several," first of all. If I make a statement in this room or a larger one, a larger setting, where I express some venom, if you will, almost in a much larger context [56] now of a whole raft of federal programs that I can't even learn about, and I use the Fair Labor Standards Amendment of that year as an example, and perhaps there were many others.

My point was, it just came to my mind – and it sort of stuck as it were, and the point is quite singular. It was to

illustrate confusion on their part. Confusion which I insist continues today.

We are now in 1974. The point in my mind is quite minor.

Q In 1966 governors were concerned about the Fair Labor Standards Amendments sufficiently, so that eight years later you remember the expressions of concern that they expressed?

That is true, is it not?

A Yes. And I am confident that if I were seated with Casper Weinberger and either — having a deposition taken, or just in conversation, I am confident I could come up with several programs that might pertain to him or his predecessors as it were.

Q Then along comes a Fair Labor Standards Amendments of 1974 which had some — are you aware it had some [57] fairly substantial legislative history? I think there was an enactment, a veto, and a subsequent legislation?

Are you familiar with that history?

A The last recollection that I have, vis-à-vis the amendments of '74 at about the point in time of the conference reorganization that I referenced earlier, were statements, quite general in my own shop, of people expressing complete confidence that those amendments would be vetoed by the President.

I think I distinctly recall — and I may be in error about this — but I distinctly recall either from staff or reading the newspapers or what have you, recommendations to that effect of both — well, the Secretary of Labor — I lose track of time here, as to — maybe that is a factor or it isn't.

I am not saying it is. I am simply recalling that to be a fact.

Q But then –

A My point is my positions changed. That is not to say that I shouldn't have kept that in mind. Again, that is – if I should have, that is my problem.

My point is that the conference reorganized. My [58] job, if you will, changed only in the sense that it is an overall responsibility with a much broader mandate than it ever had before, and I have personally devoted – and I think quite properly, almost an inordinate amount of time to a mission that I think has been under attended for too long perhaps.

That is doing such things as I mentioned earlier, and the only reason for having mentioned it, and that is the seminar for governors elect. I think that is important.

I take a lot of my time to visit with governors individually, to learn – and here I learn, you know, of all kinds of problems. My own focus has been – because the answer more often than not is – it obviously goes back to the question.

My concern is state capacity. It reflects my own background I suppose, in part.

Q Mr. Byrley, my focus isn't on you and what you did. My focus is on the governors' reorganization on April 8th. I assume that governors or their staffs pay some attention to matters that may have some significant impact upon their states.

Now, in your verified complaint, the allegations [59] are made that increased costs for state and city governments are going to increase billions of dollars as a result of the 1974 amendments; and my question to you

is: Would it not seem reasonable to expect that if this were to be the impact, that governors would have immediately contacted your organization or made their views known to you shortly after April 8, 19 —

A And I have not suggested that they have not done so.

Q Excuse me.

A I answered, if I recall correctly, that I couldn't imagine that not having occurred, words to that effect. I think it is quite important again that one understands a switching of hats or what have you.

Now, what I mean by that is there may be two, three — I don't know — people in my shop whose state must not be — not quite different, but yes, I recall governors — whom every — yes, we talked about this when I was out in "X" state.

All I can answer is what I know, and I am saying my own attention has not been in that regard. I first became very much back in force, if you will, in a total state-federal [60] spectrum, if you will, and particularly here when the executive committee of the Governors' Conference took the action that it did vis-à-vis this lawsuit.

Q When was that?

A It was November 16th, if that is a Thursday. I don't have a calendar.

MR. CHARLES RHYNE: I should tell you the letter that was delivered to me is another one of the letters. This is from Governor Reagan of California.

I will give you a copy of that, Mr. Dodell.

MR. DODELL: Thank you.

MR. CHARLES RHYNE: It is a letter dated December 23rd.

MR. DODELL: May we mark this —

MR. CHARLES RHYNE: He says it will cost him \$16 million.

MR. DODELL: This is Exhibit 48.

(The document referred to was marked Defendant's Exhibit No. 48 for identification.)

THE WITNESS: That meeting was November 14th.

BY MR. DODELL:

Q [61] As Executive Director of the National Governors' Conference since March 1974, would other members of the staff bring major matters that might pertain to the National Governors' Conference to your attention? Would that be the customary practice?

A I would hope so. Again, I have to give an answer that I hope you will view as adequate. It is true.

What happened in March of 1974 with the reorganization was, as I indicated, a tremendously, in my view, new and increasing mandate.

That same action — they increased their dues level by exactly 90 percent, which is something we never heard of in days like this, which I think again shows their new commitment to getting a job done, which is neither here nor there.

My problem, however, is that that dues increase was not voted to become effective until July 1st of next year, 1975.

Now, sir, I think you begin to see my problem, that I am still trying to cover the world, as it were, the whole new mandate. I have spent quite a bit of time in trying to do that, with in effect and in fact fewer [62] staff than I had on entry to this reorganization.

MR. CHARLES RHYNE: Could we have a short recess?

MR. DODELL: Sure.

(Recess.)

BY MR. DODELL:

Q We were last on Exhibit 43, and at the bottom of the letter, in handwriting – and I guess it is signed by you, it says Mr. Anderson called as promised. Figure is \$5,560,773.03. And I presume that you don't know specifically how this figure was reached?

A No, sir, and the call was not made to me. It was made to an assistant.

Q And if you will forgive my being facetious, in light of a previous answer, is it your view that the fact that it says three cents lends sophistication to the figure that is given here?

A Well –

Q You don't have to answer that if you don't want to.

MR. CHARLES RHYNE: I will so stipulate.

BY MR. DODELL:

Q [63] Turning to Exhibit 44, which is from Iowa, here again the letter refers to additional state expenditures of from \$3 million to \$3.5 million annually; and you don't know specifically how these figures were arrived at, I presume; is that correct?

A No. I think that whole paragraph is important.

I am sorry.

A It reads, "Our budget analyst in the Office of the State Controller advised me that –" blah, blah, blah; my point being the budgetary process, which is why it is only now that these figures are coming into play.

Q You don't know what effect if any the budget

analyst gave to the exemptions for professional, executive, and administrative employees?

A No, sir.

Q Looking at – is this the Governor, Mr. Salmon?

A Yes, sir.

Q Looking at Governor Salmon's letter, one thing that strikes me is that this letter is somewhat more detailed than some of the others and at the same time the total figure is \$825,000, which appears smaller than some of the others.

MR. CHARLES RHYNE: The small state of Vermont.

[64] BY MR. DODELL:

Q I suppose Vermont is a small state, but then again perhaps some of the others were also small states.

Do you draw any inference from the fact that Vermont is more detailed and perhaps comes up with a small figure?

A He is a member of the Executive Committee that made the decision to enter the lawsuit. He is better informed personally, in my judgment. He is well informed, let me say.

Q Having read these letters, would you make a judgment that these figures seem smaller comparatively or relatively than some of the other figures that we have seen?

A I just don't recall the other figures. I suppose we will see some larger and smaller.

Q Now, for example, this letter seems to state administrative cost is \$35,000, whereas Florida, I believe, stated them as \$800,000. You said that Governor Salmon is well informed and a member of the Executive Committee. Do you think his are more realistic than the

Florida figures?

A No. I would not make that assertion.

Q Now one of the points that is talked about here, is compensatory time as resulting in increased costs.

Here I would like to ask you a general question, [65] Mr. Byrley: is it your opinion that the Act would irreparably injure states because of the effect on what you call compensatory time?

MR. CHARLES RHYNE: If you look at page 2, in the first full paragraph, it talks about compensatory time. I assume that's what you have reference to, Mr. Dodell?

MR. DODELL: I did mean to refer to that. I did try to ask a more general question as to the general allegations in the complaint regarding compensatory time.

THE WITNESS: Well, compensatory time alone, is that your question?

BY MR. DODELL:

Q In paragraph 27— and what I am trying to do is ask the more general question based on the fact that this particular letter from Vermont refers to compensatory time. Paragraph 27 talks about compensatory time.

MR. CHARLES RHYNE: And he is referring to paragraph 27 of the complaint on page 13.

THE WITNESS: I would want to hear the question again.

BY MR. DODELL:

Q Isn't it one of the claims of the governors' [66] conference that the fact that the Act eliminates what you call compensatory time, inflicts irreparable financial injury on the states?

A Yes, it is one.

Q It is one of your contentions?

A Yes, sir.

Q Now, I will say in passing that we explored this at some length yesterday; and I have an example that I think will indicate the question that I have.

I think it's easiest to treat the issue in terms of a hypothetical case, if I may.

Let's say there is an employee whose normal work week is 40 hours and he makes \$2 an hour; and under the Act in a normal week he would earn \$80. If he works 48 hours in a week, he would receive the \$80 plus \$16 for the 8 hours overtime plus \$8 for the time and a half, which would mean he would receive \$104.

I have this written down. I will let you look at it afterwards.

Now, under the Act's provisions, as I understand them – and you can correct me if any of the premises of my question is wrong – at a later week, let's say 6 months later, [67] 4 months later, 2 months later, the employer could cause the employee to work 28 hours and not work 14 hours and pay the employee 56 hours.

The result would be that the employee would earn \$104 for the overtime period and \$56 for the short week which would result in a total cost of \$160, or 2 weeks at the regular rate.

Now, if that is correct, then I would like you to explain, if you would, how the elimination of compensatory time results in an additional cost to the states, assuming that the employees were to receive compensatory time at the rate of 1-1/2 hours for each hour worked?

A We are going to be here longer than I thought we were.

MR. CHARLES RHYNE: Do you understand what he is saying at all?

THE WITNESS: I really don't.

MR. CHARLES RHYNE: If you don't understand it, don't try to answer the question. We went through a lot of hypothetical things yesterday and I don't think we got very far with them.

I would strongly recommend you not answer [68] hypothetical questions that you don't understand. Just stick right with the facts.

MR. DODELL: For the record, if you have no objection, I would mark my sheet of paper the next exhibit number.

MR. CHARLES RHYNE: You go ahead and mark it.

(The document referred to was marked Defendant's Deposition Exhibit No. 49, for identification.)

BY MR. DODELL:

Q Can you explain then why the elimination of compensatory time results in increased expense to the states?

A I thought perhaps incorrectly that someone in these letters did a fair job of doing that.

MR. CHARLES RHYNE: He was asking you about Exhibit 45 on Vermont. There is a discussion of compensatory time. I don't know whether that's the one you have reference to.

Is that it?

THE WITNESS: I suppose one might wonder why – about the hypotheses, and just look at that. Is the governor in error?

BY MR. DODELL:

Q [69] Well, what we are trying to understand is why

permitting an employee to work or requiring an employee to work a shorter week at a later time cannot legally accomplish the same result as giving compensatory time while at the same time comply with the Act and not cost the state any additional expense.

A Well, I think one is a subterfuge; and I think, two, employees have rights here just as they do under the basics of the Fair Labor Standards Act. It makes no sense to me.

Q The question I am asking, Mr. Byrley, is why would the method I have suggested result in any additional cost to the state?

A I don't think the question is appropriate or relevant. I think what is important is what Vermont thinks and what it wants to do.

Q Well, can you explain why the method I have suggested would not eliminate any increased costs to Vermont that is referred to on page 2 of the letter?

MR. CHARLES RHYNE: I think he has testified that he couldn't understand the method that you were suggesting; and that all he could talk about were these facts that the [70] governor of Vermont gave him. That was my understanding of his answer.

THE WITNESS: That is my answer.

BY MR. DODELL:

Q And you simply do not understand the question that I asked?

A No, I really don't. Moreover, as I have already said – at the expense of being chided by counsel for saying too much – I think that's for Vermont to decide; and it isn't just a question of dollars.

Q No, but all I am talking about at the moment, Mr.

Byrley, is the question of dollars; and what I am trying to ask you is why it costs the state a greater number of dollars to pay time and a half for overtime and require the employee to work a shorter work week later on than it does to give the employee compensatory time off and pay him the same salary in the two weeks?

A I don't accept your caveat. Again, this goes back to your example which I don't understand.

Q When you say –

A I stand on what the governor of Vermont said.

Q When you said you don't accept my caveat, what do [71] you mean by that?

A Your illustration.

Q Well, when you say you don't accept my illustration, do you mean that it's impossible –

A I don't understand it, quite frankly, and I have said so. I think certain assumptions perhaps are being made that we don't – I don't know what – that what you have suggested in fact can be done, much more whether one would wish that it be done.

Q Mr. Byrley having been related to state government matters for at least – well, I can't total it up, but it's well over 16 years, it may be 25 years –

A That's my total life.

Q Your whole work life?

A Right.

Q Is it impossible for you to conceive that a state could have somebody work 48 hours in one week, and then 28 hours in a subsequent week; is that an impossible situation to conceive of?

A I view it with extreme adversity. I think it would be viewed with extreme adversity by a lot of employers and

employees.

Q [72] Isn't that what compensatory time results in?

A No. Not in my opinion.

Q Doesn't compensatory time result in the man working 48 hours one week and 28 or 32 or whatever the number of hours in a subsequent week?

A It could on a given occasion.

Q Isn't that what it involves?

A No, sir; not at all.

Q What else could it involve?

A You are assuming a given class of employees, I think, at a given level which I think is not necessarily valid.

Q I don't understand what you mean. What assumptions are necessary – well, let's strike that.

MR. CHARLES RHYNE: It just seems to me, Mr. Dodell, that what he is saying is he can understand what the governor of Vermont has said, and he thinks the governor of Vermont has correctly reported the facts; and so I think that the various assumptions and hypothetical questions that you have put have probably been at least to me and to him a little more confusing than clarifying.

He does certify that he thinks these facts that [73] the governor has reported are accurate. Isn't that what we are looking for here rather than a hypothetical situation? We are looking at actual facts that the governor reports as compared to hypothetical facts which are difficult to understand.

MR. DODELL: I would rather not debate with you, Mr. Rhyne. I would rather try to pursue it a moment.

MR. CHARLES RHYNE: All right.

BY MR. DODELL:

Q I asked you, isn't the situation where an employee is given compensatory time that he works, for example, 48 hours in one week and then 28 or 32 hours or whatever figure in a subsequent week?

MR. CHARLES RHYNE: He answered that question under certain circumstances. He answered that. So you don't need to ask the same one again. The record will show he answered it.

MR. DODELL: All right. If I may have forgotten the answer, is that your answer, yes, under certain circumstances?

THE WITNESS: Yes.

BY MR. DODELL:

Q [74] All right.

Now, do you acknowledge that in some instances compensatory time is provided at the rate of 1-1/2 hours for each hour overtime worked?

A I am sorry. Do I acknowledge that state governments presently – is that –

Q Do you acknowledge that in some circumstances, state governments provide compensatory time at the rate of 1-1/2 hours compensatory time for each hour of overtime worked?

A I guess I am dated in my experience here. I think they do, but I can't testify to that as a fact.

Q But you think they do sometimes, at least, or some states, at least in some circumstances, provide 1-1/2 hours compensatory time?

A That's my supposition.

Q For one hour overtime?

A That's my supposition, yes, sir.

Q If that's the case, would it not be true that if a man made a salary of \$2 an hour, and he worked 48 hours one week, then at a later week he could take – would work 28 hours or he might work 28 hours and receive \$80 for the first week, and \$80 for the other week, for a total payment of \$160?

A [75] Counsel, you didn't tell me to bring my computer.

MR. CHARLES RHYNE: Well, I certainly can't compute it. I am trying to urge that he stick with the facts rather than all this supposition business.

Maybe we could move on.

MR. DODELL: All right.

BY MR. DODELL:

Q [76] Mr. Byrley, could you explain the statement in paragraph 27 of the complaint which deals with compensatory time? That says – and this is about – it starts nine lines down.

“It avoids the meaning and wasteful make-work projects during slow periods. It allows the employer to most efficiently deal with many areas of government which involve peak employment problems.”

Could you explain that?

A I think I can at least in part. There are, I guess, so-called down periods of time. If it suits the employee to take compensatory time rather than to engage in meaningful work, then that would seem to make sense.

I think that's what is being said here if I interpret it correctly.

Q All right.

Why can't the same results that are spoken about in those two sentences be achieved by paying overtime at

peak periods and giving time off without pay at subsequent periods?

A I think these kinds of things are always negotiable with the employee, so I will give you the [77] same answer as was said earlier. Under certain circumstances, I think that would be entirely feasible; under others, it probably would not be.

Q Now referring back again to Exhibit 45, do you know what the average hours of the Department of Highway employees of Vermont has been since May 1, 1974?

A No, sir, I do not.

Q Now do you know any of the details about the lawsuit that is referred to at the second full paragraph on page 2?

A That's the suits against the state?

Q The suit against the state.

A No, sir, I do not.

Q Do you know whether the state is making any contentions in that suit that are similar to the claims in this action?

A I have no knowledge whatsoever of that except as this letter from the governor points out.

Q Now turning to the letter that is Defendant's Exhibit 46 – and this is a letter from Governor Evans of Washington – and it is dated November 15, 1974. Did you know about this letter when you verified the complaint?

A [78] No, sir. And this is in the category again with some others we talked about. It must be responding to a communication from the Labor Department.

Q This is a letter to the Labor Department, as a matter

of fact?

A Yes.

Q And this letter, as I read it, refers solely to volunteer firemen; is that correct?

A I believe that's correct.

Q And – I have nothing further on Exhibit 46.

I take that back. As I read Exhibit 46, there is no dollar figure in Exhibit 46; is that correct, as to an estimated cost?

A That's correct.

Q Now with regard to Exhibit 47, which is the letter from Utah, other than what's stated in the itemization that is in the attachment to the letter, you have no specific information as to how those figures were arrived at; is that correct?

A That's correct.

Q And I take it you don't know what the average work week of the Highway Patrol is?

A [79] No, sir.

Q Now this letter from Governor Reagan dated December 23, am I correct that there is no details stated in the letter to support the figure of \$16 million that is stated in the letter?

A I guess I don't have that.

MR. CHARLES RHYNE: This is the one that just arrived.

THE WITNESS: Yes.

MR. CHARLES RHYNE: One-day mail service. It probably came on a telecopy machine.

THE WITNESS: No, there is no supportive figure.

BY MR. DODELL:

Q Thank you.

Now, Mr. Byrley, there are states that have statutory