"Time and a Half's the American Way"

A HISTORY OF THE EXCLUSION OF WHITE-COLLAR WORKERS FROM OVERTIME REGULATION, 1868-2004

Marc Linder

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A Parallel Universe of White-Collar Overtime Pay: The Federal Government

Q. [Sen. James George, Dem. MS] The Government employs clerks at good salaries, who work short hours; but has that had the effect of reducing the hours of labor of clerks in private employments, or of increasing their salaries?¹

Mr. [Sen. John] Reagan [Dem. TX]. There are thousands of bills that get through on the same old plea, that everybody in office wants something more than he has got, more time to himself, less time for work.²

¹Report of the Committee of the Senate [on Education and Labor] upon the Relations Between Labor and Capital, and Testimony Taken by the Committee 1:299 (1885 [Aug. 16, 1883]).

²CR 18:2564 (Mar. 31, 1888) (former postmaster general of the Confederacy, temporarily blocking debate on an eight-hour bill for letter carriers).
Q. [Sen. Wilkinson Call, Dem. FL] You would make it penal upon any officer of the Government to exact more than eight hours’ work from a man. That we understand. But suppose the man were willing to work more than eight hours; would you prohibit that?—A. [P.J. McGuire, General Secretary Brotherhood of Carpenters and Joiners] I should. I am aware that human greed enters into the composition of the workingmen as much as it does into the composition of the capitalists; and I am aware that many of them will work as long as they are allowed; but when their officers, their foremen, and overseers, refuse to allow them to work any longer that ends the matter. ... I don’t know whether you understand the purpose which we have in view.

Q. You have in view...to limit a man to eight hours’ work, because you think to work longer than that would be an injury to him.

THE WITNESS. Very good.¹

At the same time that Congress has excluded tens of millions of private-sector and state and local government white-collar workers from whatever modicum of protection the FLSA offers against unilateral employer imposition of overtime work, it has also created a parallel system of protection for federal government employees. This chapter examines the pre-history of federal overtime regulation during the nineteenth century, while the next two chapters account for the origins of the present system during World War II and its development during the postwar period.

Congress has expressly regulated federal government white-collar employees’ hours and overtime pay since at least 1888, when it declared that “eight hours shall constitute a day’s work for letter-carriers’ in cities..., for which they shall receive the same pay as is now paid as for a day’s work of a greater number of hours. If any letter-carrier is employed a greater number of hours per day than eight he shall be paid extra for the same in proportion to the salary now fixed by law.”² In order to appreciate the context in which Congress took this step, it is necessary to

¹Report of the Committee of the Senate [on Education and Labor] upon the Relations Between Labor and Capital, and Testimony Taken by the Committee 1:328-29 (1885 [Aug. 17, 1883]).

²An Act to limit the hours that letter-carriers in cities shall be employed per day, ch. 308, 25 Stat 157 (May 24, 1888).
The Nineteenth Century

examine the origins of the eight-hour law for blue-collar federal workers that Congress enacted soon after the Civil War and the desuetude into which it promptly fell.

That contemporary officials in the postal service who opposed inclusion of carriers in the federal eight-hour law for government laborers, workmen, and mechanics opportunistically claimed that they were more like clerks than manual laborers is hardly surprising. That exactly half a century later the U.S. Bureau of the Census agreed that letter carriers were white-collar workers, is more difficult to understand. (In contrast, by the 1930s, the British Minister of Health had classified them as “employed by way of manual labour” for purposes of coverage under the national insurance acts.) Nevertheless, in 1938, Alba Edwards, the creator of the Census Bureau’s social-economic classification of gainful workers, grouped the 1,129 female and 120,204 male mail carriers enumerated at the 1930 census as among the “clerks and kindred workers...the so-called white-collar workers.”

Edwards contended that although it was “plainly impossible to draw a hard and fast line between those occupations characterized principally by the exercise of muscular force or manual dexterity and those characterized chiefly by the exercise of mental force or ingenuity—or between hand workers and head workers—such a line of demarcation probably may be made sufficiently exact for our purpose.” Despite the fact that as late as 1970 the DOL stated that applicants for letter-carrier jobs “must be able to stand for long periods, lift and handle sacks of mail weighing

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3In the mid-nineteenth century “clerical” work “included the keeping of accounts and their settlement by auditors and comptrollers. ‘Clerk’ was still the universal designation of government employees.... [M]ost government work was paper work, performed by persons designated as clerks.” Leonard White, The Jacksonians: A Study in Administrative History: 1829-1861, at 548-49 (1965 [1954]).


5Alba Edwards, A Social-Economic Grouping of the Gainful Workers of the United States tab. 1 at 4, 2 (Bureau of the Census, 1938). A study of blacks in Chicago, for example, found that letter carriers were the white-collar occupation in which black men were most heavily represented. St. Clair Drake and Horace Cayton, Black Metropolis: A Study of Negro Life in a Northern City 1:tab. 5 at 220 (rev. ed. 1962[1945]). Overall and nationally, black men and women were considerably underrepresented in the white-collar occupations: in 1930, only 2.1 percent were professional employees; 1.0 percent non-farmer and wholesale/retail proprietors, managers, and officials; and 1.5 percent clerical workers. Edwards, A Social-Economic Grouping of the Gainful Workers of the United States tab. 3 at 10.

as much as 80 pounds, and walk considerable distances,

Edwards nevertheless classified them in the white-collar group (as the only occupation doing hard physical labor). In a short article that he published at the same time in DOL’s *Monthly Labor Review*, Edwards displayed a somewhat greater degree of epistemological humility in conceding that:

while the phrase “white-collar workers” is now widely current, there seems to be no generally accepted concept of just what workers the white-collar group includes. It is difficult to formulate a satisfactory definition, for the group includes persons in many different occupations, pursued, sometimes, under considerably different conditions; and the salaries of these persons, as well as their duties, vary widely. But, notwithstanding differences in work and pay, the white-collar workers together do form a group that is in many respects homogeneous. ... Perhaps the white-collar worker may be roughly defined as those engaged in clerical and kindred work. This definition excludes, on the one hand, proprietors, managers, officials, and professional persons; and it excludes, on the other hand...manual workers. The white-collar workers...are the clerical assistants to our executives, our officials, and our business and professional men. They do the office work, type the letters, keep the records and accounts, and answer the telephones. They tend the stores and the shops, sell insurance and real estate, carry the mail, and transmit messages by telegraph, telephone, and radio.

What Edwards’s white-collar classification, then, boils down to is the performance of non-production work by non-supervisory and non-professional workers. Why Edwards did not classify letter carriers together with, for example, semi-skilled non-manufacturing workers such as truck drivers and bakery, store, and laundry deliverymen, is unclear—perhaps because he viewed them as part of the distribution network of the less tangible products of the (non-profit, government-owned) communications industry.

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7BLS, *Occupational Outlook Handbook* 821 (Bull. No. 1650, 1970-71 ed.). In the early 1990s, the DOL was still advising that carriers may carry heavy loads of mail and must lift heavy sacks. BLS, *Occupational Outlook Handbook* 258, 259 (Bull. No. 2400, 1992-93 ed.).


11Prior to Edwards’s classification, the Census Bureau grouped mail carriers within
The Nineteenth Century

The Eight-Hour Law of 1868

[T]he eight-hour rule...is un-American.... Frivolity will dominate over frugality. Billiard-rooms, base-ball clubs, and groceries will be furnished with new recruits. Lucifer will grin with delight at the prospect of fresh battalions of loungers entering his services. ...

It is sad to think how infinitely small are the benefits which can be conferred upon the laboring man by even the wisest and most philanthropic legislation. ...

How many railroads to the Pacific could we hope to build under an eight-hour rule?12

The conditions that have long made this [shorter hours] a commanding question in European countries, and which have resulted in the almost universal organization of the industrial classes of those countries into guilds and trade and labor unions, with the view of obtaining through the coercive force of such organizations that redress of grievances and amelioration of conditions which the citizens of this Republic should be taught to seek to obtain only by the force and sanction of public law, have but recently begun to develop in this country and to assume proportions demanding legislative action.13

Against the background of widespread labor agitation for the eight-hour day

the subgroup of express, post, radio, telephone, and telegraph under the rubric of transportation. Bureau of Foreign and Domestic Commerce, Statistical Abstract of the United States: 1938, tab. 51 at 63 (1939). The Division of Occupational Analysis of the U.S. Employment Service later classified mail carriers under “clerical and kindred occupations,” which are “concerned with the preparation, transcribing, transferring, systematizing, or preserving of written communications and records in offices, shops, and other places of work where such functions are performed. Other occupations such as...telegraph messengers...and mail carriers, although not strictly of this character, are included because of their close relationship to these activities.” Federal Security Agency, Dictionary of Occupational Titles, Vol. II: Occupational Classification and Industry Index 33 (2d ed. 1949 [1939]). Mail carriers were grouped directly after post office clerks. Id. at 46. The most recent edition of this work still classifies mail carriers as clerical, but under the subgroup “information and message distribution: hand delivery and distribution,” whereas mail clerks and sorters are classified under the subgroup “stenography, typing, filing, and related occupations.” U.S. Employment Service, Dictionary of Occupational Titles 1:205, 181 (4th ed. 1991).


The Nineteenth Century

in the years immediately following the war, the labor movement prevailed upon several members of Congress to introduce bills limiting the day's work of the federal government's own mechanics to eight hours.\textsuperscript{14} Thus as early as February 1866 such a bill declared: "That eight hours shall constitute a day's work, for all laborers, workmen, and mechanics...employed...by or on behalf of the government of the United States...."\textsuperscript{15} Similar bills were introduced in March 1867.\textsuperscript{16} The House did pass a bill without debate on March 28,\textsuperscript{17} but when the Senate took it up that same day, its initial skeletal debate revealed what would become the underlying theory of the shorter hours campaign. As Senator John Conness (Republican from California) explained: "A personal experience enables me to say that I could myself perform more labor in eight hours than in ten, taking any given week for the average, and then it gave me more hours of study." His Republican colleague from Massachusetts, Henry Wilson (who was to become Grant's vice president) spoke in favor of the bill, stressing that "I am ready...to try in the public works the experiment, and if it shall fail, we shall speedily discover it...." And George Edmunds, Republican of Vermont, underscored the empirical nature of the demand by pointing out that "it is quite a problem to know whether you can justly get ten hours' pay for eight hours' work...."\textsuperscript{18} After the bill died in committee, an identical bill was introduced in the next session,\textsuperscript{19} followed by much more thorough debate. First, however, the House debated the bill on January 6, 1868,\textsuperscript{20} from a fundamentally different perspective than had prevailed in the Senate the previous


\textsuperscript{17}CG, 40th Cong., 1st Sess. 425 (Mar. 28, 1867). Although the vote was unrecorded, its chief sponsor, Rep. Nathaniel Banks, later stated that it had passed nearly unanimously. CG, 40th Cong., 2d Sess. 334 (Jan. 6, 1868).

\textsuperscript{18}CG, 40th Cong., 1st Sess. 413 (Mar. 28, 1867).

\textsuperscript{19}H.R. 365 [In the Senate] (40th Cong., 2d Sess., Jan. 7, 1868) by Rep. Nathaniel Banks (Rep. Mass.). See also H. J. Res. 90 (40th Cong., 1st Sess., Nov. 25, 1867) (by William Niblack, D. Ind.), which resolved that "eight hours labor shall be taken and construed to be a day's work" in the case of any laborer, mechanic, or artisan employed by or on behalf of the U.S. government.

\textsuperscript{20}CG, 40th Cong., 2d Sess. 334-36 (Jan. 6, 1868)
March and would prevail there the following June—namely, “more time for culture, for improvement, for reading, for attending the evening schools.”\textsuperscript{21} The bill’s sponsor, Nathaniel Banks, a Radical Republican from Massachusetts,\textsuperscript{23} actuated by the nationwide business depression,\textsuperscript{24} sought support on the basis of the great distress then affecting workers. The bill’s most vocal opponent was Frederick Pike, a moderate Republican from Maine and chairman of the Naval Affairs Committee, who the previous November had offered a resolution that it was the judgment of the House that it was unnecessary at that time to proceed further with building or equipping ships of war.\textsuperscript{25} A resolution was offered a month later to modify that earlier resolution by adding that it was not to be construed as an expression of the opinion of the House favoring discharge of mechanics or laboring men from the navy-yards during the coming winter months, but it was not adopted.\textsuperscript{26}

During the January 6 debate, Pike, referring to his resolution, asserted that half of the 10,000 workers in the navy yards at Portsmouth, Boston, New York, Philadelphia, Washington, and elsewhere—which in his view should not be eleemosynary institutions—were not needed and less than one third had been discharged.\textsuperscript{27} In response, Banks unabashedly designated work-sharing as the object of his bill, which was designed to deal with the fact that, by order of the House, work had been discontinued and a considerable number of workers had been discharged;\textsuperscript{28}

\textsuperscript{21} Montgomery, \textit{Beyond Equality} at 316, ignored this crucial aspect of the debate.
\textsuperscript{22} CG, 42 Cong., 2d Sess. 123 (Dec. 14, 1871) (Sen. Orris Ferry, Rep. CT, explaining what the eight-hour law’s advocates had advanced as its advantages for labor).
\textsuperscript{23} On Banks’s conversion to the eight-hour movement, see Montgomery, \textit{Beyond Equality} at 244-45.
\textsuperscript{24} Willard Thorp, \textit{Business Annals} 130 (1926).
\textsuperscript{25} \textit{Journal of the House of Representatives of the United States: Being the First Session of the Fortieth Congress} 266 (1867); CG, 40th Congress, 1st Sess. 792 (Nov. 25, 1867). Although the amending resolution of Dec. 20, 1867 and Pike and Banks during the House debate on January 6, 1868 stated that the resolution had been adopted, according to the \textit{Journal} and \textit{Congressional Globe} no vote was taken and it was merely referred to Pike’s Naval Affairs Committee.
\textsuperscript{26} CG, 40th Cong., 2d Sess. 260, 317, 333 (Dec. 18 and 20, 1867, Jan. 6, 1868). Samuel Randall, a conservative Democrat from Pennsylvania, offered the amendment on behalf of constituents in his district at the Philadelphia navy yard. \textit{Id.} at 334.
\textsuperscript{28} It is unclear how the House of Representatives alone could legally have had the power to issue such an order.
since the national business depression had prompted a decline in wages and by law
the Navy Department had to make wages correspond to those outside the navy
yards, the bill would have enabled the federal government to employ more men
without incurring an increase in costs. Such arguments 29 apparently persuaded a
majority of the House, which passed the bill.30

The Senate, in contrast, had to deal with the amendment offered by John Sher­
man, a centrist Republican from Ohio, who proposed attaching to the eight-hour
bill a proviso that “the rate of wages paid by the United States shall be the current
rate for the same labor for the same time at the place of employment.” Although
Sherman purported not to object to an eight-hour law, provided that wages were
reduced in tandem with hours, in fact he harbored strong economic and moral ob­
jections. Thus while he was convinced that such a law would not “control the
higher law of supply and demand,” he also maintained that: “A man to succeed in
anything he undertakes must generally work more than eight hours a day.” Ostensi­
bly his amendment was merely an effort to prevent conferring privileges “on a man
simply because he works for the Government” and to mimic the private labor mar­
ket, in which he had “no doubt private individuals would reduce the rate of wages
if their employés worked a less number of hours, unless there was great demand
for that particular work,”31 by reconciling the bill with a Civil War-era statute that
“the hours of labor and the rate of wages of the employees in the navy yards shall
conform, as nearly as is consistent with the public interest, with those of private
establishments in the immediate vicinity of the respective yards....”32

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29 Ten years later, during yet another House debate on creating an enforcement
mechanism for the law, Banks rewrote and doubly falsified history by asserting: “As I
presented this law originally I want to state the reason on which it was presented, and
which to some extent at least influenced the Congress by which it was approved and
passed. It was based upon the philosophical and scientific fact that upon the most careful
and thorough investigation of the amount of labor that can be endured by man or beast,
on the result of which investigation has been rated what is called ‘horse-power,’ it was
discovered that a sound and strong horse could not be required to perform labor for more
than eight hours without diminishing his power, and that the force developed in less than
that period of time would be less than his full power. It is on the basis of such experi­
ments, made by the ablest and most careful scientists and engineers, such men as James
Watts and other men of different countries, that the forces of all motive power...have been
and are still calculated. It is a complete vindication of the theory of the present en­
litened law of labor....” CR 7:3324 (May 9, 1878).
30 CG, 40th Cong., 2d Sess. 335-36.
31 CG, 40th Cong., 2d Sess. 3424 (June 24, 1868).
32 Act of July 16, 1862, ch. 184, 12 Stat. 587. This statute amended Act of Dec. 21,
1861, § 8, 12 Stat 329, 330: “the hours of labor in the navy yards of the United States shall

1005
Refuting the basis of Sherman’s amendment compelled the bill’s supporters to explain why paying the same total wages for eight hours as previously for ten would not in fact disadvantage the federal government vis-à-vis private employers. For example, the Radical Republican Conness insisted that “every man who labors knows very well, by experience, that he can perform as much labor in eight hours as he can in ten, taking the average of the season through. There can be no doubt of that. He comes to his labor each day with renewed vigor in consequence of the lesser number of hours that he has spent in delving at his employment.” After 40 to 50 years of advances in production by inventions and steam power, “by which the capital of the world has been aggregated and increased many fold, I think it is time that the bones and muscles of the country were promised a small percentage of cessation and rest from labor as a consequence of that great increase in the productive industries of the country.”

Numerous other senators returned to the same themes. Another Radical Republican, Oliver Morton of Indiana, agreed that “this bill...is a good way to try the experiment which is now being discussed throughout the United States, and has been for some time. In the first place, the fundamental proposition on which this proposal is based is, that in regular mechanical employments men will perform as much labor in eight hours per day as they will in ten hours. It is claimed that the rest, and the intellectual vigor and freshness imparted to operatives, will enable them to perform as much labor in eight hours as in ten. That is an experiment which can be very well tested in the Government workshops; for instance in the navy-yards and arsenals. ... If the Government gets as much labor performed in eight hours as in ten the Government can afford to pay just the same price.” If not, then the question was decided against eight hours unless laborers were able to afford to lose 20 percent of their wages and still support families and live comfortably.

Other Radical Republicans introduced non-efficiency grounds for the eight-hour regime. William Stewart of Nevada noted that in the course of his life, a man would accomplish more within eight than ten hours a day: “they will not wear out so soon, and if there is any object in prolonging human life and increasing the aggregate of human happiness the argument would be in favor of this bill.” Cornelius Cole of California added that “unless the people are provided by law

be the same as in the private ship yards at or nearest to the post where such navy yard is established, and the wages to be paid to all employés in such yards shall be, as near as may be, the average price paid to employés of the same grade in private ship yards or workshops in or nearest to the same vicinity....”

33CG, 40th Cong., 2d Sess. 3424 (June 24, 1868).
34CG, 40th Cong., 2d Sess. at 3425.
with some protection against the requirement which is now put upon them by the exorbitant demands of capitalists, they will not be so well prepared to perform the duties of American citizenship."\textsuperscript{35} And Wilson—who looked only to the interests of labor because “capital needs no champion; it will take care of itself”—though not convinced that toiling men could accomplish as much in eight as in ten hours, nevertheless recognized that if the reduction in hours was not in the permanent interest of the people “who have nothing but their labor to sell,” they would readily abandon an experiment that had failed.\textsuperscript{36}

Glorification of rugged individualists’ contracting in morally just markets furnished the underpinnings for opposition to the bill. Justin Morrill, a Vermont Republican, opposed the bill not only on empirical grounds—a worker working eight hours on a machine that could not be operated beyond a certain speed could not produce as much as in ten—but also because it was “a degradation of the working men of this country to deprive them of the privilege of making contracts to work for just whatever sum and for whatever time they please.”\textsuperscript{37} William Fessenden, a conservative Republican from Maine, believed not only that “the law of supply and demand regulates all those matters,” but also, that, contrary to Senator Cole’s contention, the question of intellectual improvement should also be left to competition, from which “you obtain far more than you do by attempting to legislate men into intellectuality.” And in the only nod to white-collar workers that the debate generated, Fessenden asked rhetorically: “How many hours do professional men work, and is their labor less exhausting than mechanical labor? Is the labor that we perform in our offices less exhaustive? And yet nobody thinks of providing hours by law for labor of that description.”\textsuperscript{38}

Ultimately Sherman’s amendment was rejected 16 to 21 and the bill passed 26 to 11,\textsuperscript{39} in the words of the hostile New-York Times, “[a]fter a great deal of claptrap and buncombe about the rights of labor and the necessity for the mental improvement of the laborer....”\textsuperscript{40} And thus it seemed to become the law that “eight hours shall constitute a day’s work for all laborers, workmen, and mechanics employed

\textsuperscript{35CG, 40th Cong., 2d Sess. at 3425.  
36CG, 40th Cong., 2d Sess. at 3425-26.  
37CG, 40th Cong., 2d Sess. at 3426.  
38CG, 40th Cong., 2d Sess. at 3427-28.  
39CG, 40th Cong., 2d Sess. at 3429. To Sherman’s suggestion that the “title of the bill ought to be changed...to read: A bill to give to Government employés twenty-five per cent. more wages than employés in private establishments,” Conness rejoined: “That is an eccentricity of the honorable Senator from Ohio. The bill has a very good title as it stands.” Id.  
40“Washington,” NYT, June 25, 1868 (1:1).
by or on behalf of the government of the United States."41 In the meantime the Times, which insisted that the law was merely a "political trick...not prompted by a sincere regard for the working classes,"42 railed that if senators failed to understand that eight hours' work did not suffice for more than hand to mouth living, "they descend to a clap-trap of which legislators should be ashamed," and that the doctrine that government should be a more lenient and liberal employer than "private capitalists would be...is...fallacious." But if the newspaper's fundamental message was that "[t]here is no legislative road to health of body and mind,"43 it need not have worried: Sherman's wage-reduction amendment may have lost in Congress, but the Executive Departments implemented it anyway.44

In protest against orders, especially by the Secretary of War, that wages be reduced together with hours, a committee of workers requested that President Johnson secure an opinion from his Attorney General interpreting the statute.45 Attorney General Evarts's opinion of November 1868 stated that the law did not absolutely require that government employees receive as high wages for eight hours as someone in similar private employment received for 10 or 12.46 Nothing in the language of the act indicated an intention to reduce compensation in tandem with hours; nor did that construction seem consistent with the aim and purpose of the law, which had in view "the promotion of the physical, intellectual, and moral welfare of those who are engaged in manual labor, and of the general interests of society. The theory appears to have been that the laboring man or mechanic, by means of the increased physical strength and vigor acquired through a reduction in his hours of toil, would be enabled to accomplish daily as much upon an average of eight hours' constant labor as he formerly did in ten or even a longer period, while at the same time he would enjoy a longer season for mental and moral improvement." The congressional debates showed that this theory was the main ground on which the act proceeded.47 If the theory turned out to be true and the

41 Act of June 25, 1868, ch. 72, 15 Stat. 77. According to a vigorous opponent of the law, Senator Justin Morrill: "National legislation upon this subject can only reach those employed in the Government Printing Office, the navy-yards, and armories, and arsenals." CG, 41st Cong., 2d Sess. 146 (Dec. 15, 1869). By the Act of Mar. 30, 1888, ch. 47, 25 Stat. 47, 57, Congress ordered the GPO to enforce the eight-hour law "rigidly."


43 "The Eight Hours' Question," NYT, June 25, 1868 (4:4) (editorial).

44 Montgomery, Beyond Equality at 318-19; Sterling Spero, Government As Employer 77-92 (1972 [1948]).

45 Commons et al., History of Labour in the United States 2:124.

46 OOAG 12:530-36 at 530 (1870 [Nov. 25, 1868]).

47 OOAG 12: at 532.
government got as much labor for eight hours, then the compensation should be as much as for 10 hours in private industry; if not then not. 48

Because, in disregard of the attorney-general's opinion, executive departments construed the law as they pleased, 49 on April 8, 1869, the House passed a joint resolution stating that the eight-hour law "shall not be construed as to authorize a corresponding reduction in wages." 50 Less than two weeks later, another opinion by Attorney General Ebenezer Hoar again stressed the empirical-experimental basis of the law. If, he hypothesized, private employers in the vicinity employed their workers only five hours a day, "there would, obviously, be no justice" in lowering navy yard wages for eight hours to the amount paid for five outside "and the law intended no such result. On the other hand, I find nothing in the statute which requires you to pay the same price for eight hours' labor which private establishments pay for ten or twelve, unless the amount of service rendered or the quality of the work make the fewer hours in the navy-yards equivalent in value to the longer time hired in private establishments...." 51 Further worker protests finally impelled President Grant to issue a proclamation on May 19, 1869, 52 directing that from that date forward no wage reductions be made by the government on account of reductions in hours under the Act of June 25, 1868. 53

In the Senate, Wilson had pressed for immediate action on the joint resolution the day after the House had passed it, 54 because the departments' construction had put Congress in a "false position," whereas Wilson "desired...to try this experiment fairly and honestly, and not stand before the country...as simply demagoging upon the question." The Senate had failed to vote on the measure in April 1869, but by December Grant's proclamation had "relieved Congress" and Wilson thought there

48 OOAG 12: at 534-36.
50 H. J. Res. 72; GC, 41st Cong., 1st Sess. 637 (Apr. 8, 1869); Journal of the House of Representatives of the United States 198 (1869).
51 OOAG 13:29-31 at 30 (1873 [Apr. 20, 1869]).
52 Commons et al., History of Labour in the United States 2:124-25; Montgomery, Beyond Equality at 319-20.
54 CG, 41st Cong., 1st Sess. 653, 679 (Apr. 9, 1869). On April 20, Wilson wrote a letter to Secretary of War John Rawlins declaring that government officers' construction of the eight-hour act was a palpable violation of its letter and spirit and (accurately) reciting at length the Senate debate, especially over Sherman's amendment. "The Eight-Hour Law—Letter from Senator Wilson," NYT, Apr. 26, 1869 (1:6-7).
was “now no special hurry to act”\textsuperscript{55} and the resolution never came to a vote in the Senate.\textsuperscript{56} Because department heads also failed to comply with Grant’s proclamation, he issued a second proclamation in 1872, noting that failure and again directing all executive department officers to make no wage reduction in pay by the day on account of a reduction in hours.\textsuperscript{57}

A week after Grant had issued this second proclamation, Congress passed an appropriations bill providing restitution to government workers for wage reductions that they had suffered between enactment of the eight-hour law and Grant’s first proclamation.\textsuperscript{58} But this measure also failed to correct the abuses. Some departments continued to flout the law and, together with employers and congressmen, openly urged its repeal.\textsuperscript{59} Common to their opposition was the claim that the law engendered “alienation” when covered and uncovered workers worked at the same time at the same worksite\textsuperscript{60} and threatened to create “an aristocracy of labor, composed solely of those employed by the Government.”\textsuperscript{61} Prominent manufacturers in Baltimore complained that “[t]he demoralizing effect on the labor which the Government has temporarily employed has unfitted mechanics and laborers for a regular day’s work.” Unsurprisingly, they preferred to “leave the question to settle itself by the laws of supply and demand.” They agreed, moreover, with the supervising architect of the Treasury Department that the eight-hour law, having undergone the test for which its supporters had called, had “‘shown that it is not only impossible for a man to perform as much labor in eight hours as in ten, but that he absolutely performs less work per hour under the eight-hour system.’”\textsuperscript{62}

In addition, after “a large class of cases” had been pending in the U.S. Court of Claims, which workers had filed who were petitioning for back wages under the eight-hour law,\textsuperscript{63} the U.S. Supreme Court in 1877 nullified the statute. In the landmark case of \textit{United States v. Martin}, the claimant Alfred Martin had been

\textsuperscript{55}CG, 41st Cong., 2d Sess. 152 (Dec. 15, 1869). By this time Senator Morrill also moved to amend the resolution by proposing to repeal the eight-hour act altogether. \textit{Id.} at 145.

\textsuperscript{56}CG, 41st Cong., 2d Sess. at 2895, 4305 (passed over).

\textsuperscript{57}Proclamation No. 10, 17 Stat. 955-56 (May 11, 1872).

\textsuperscript{58}Act of May 18, 1872, ch. 172, § 2, 17 Stat. 122, 134.

\textsuperscript{59}Eight-Hour Law (H. Rep. No. 11, 44th Cong., 2d Sess., Dec. 8, 1876).


\textsuperscript{63}Brief for Appellants at 1, United States v. Martin, 94 US 400 (1877).
The Nineteenth Century

employed as a fireman in steam boiler heating at the Naval Academy in Annapolis for $2.50 a day with the understanding that during the steaming season (October 1 to June 1) he would work 12 hours a day. After the Act went into effect, Martin and others spoke to the foreman, who put on an additional man in the gas works (where Martin was not employed) and reduced the hours to 8, but, interestingly: “Soon afterward, the men told him they would rather have half a dollar a day additional than to have the eight hours’ work.” The admiral who was the superintendent of the Academy told the foreman that he would not give additional pay and if any workers would not work the full hours, he would replace them. Martin heard this conversation and continued his work without saying anything further.64

In 1873 Martin filed a claim with the Treasury Department for payment for the “extra hours’ work” performed during the 12-hour days when he “was required...to do one and a half day’s work each calendar day...and received therefor wages but for one day’s work for each day and a half for which he [was] so employed” between the date the eight-hour law went into effect and the date of Grant’s first proclamation. The Treasury paid Martin for two of the hours beyond eight, but not for the other two; in addition, Martin petitioned for the wages for his 12-hour days from the time of Grant’s first proclamation until he stopped working in 1872.65

The United States, however, argued before the Court of Claims that the Treasury had given the law a strained construction by concluding not only that employees whose hours and wages had been reduced were entitled to settlement, but that also those laborers working 10 or 12 hours after June 25, 1868 were entitled to an additional 25 or 50 percent. Martin’s wages, the United States claimed, had remained the same; his real complaint was that his wages had not been increased, to which increase the law did not entitle him.66 The Court of Claims ruled that the Act did not apply to contracts made after its passage to work 12 hours a day at an agreed rate: the Act did not regulate wages or prevent laborers and mechanics from “waiving its intended beneficial provisions.” And whatever benefits the law might have conferred on Martin, he had neglected to avail himself of and waived.67

In its brief before the Supreme Court, the government argued that laborers could waive the eight-hour law: “for if the law was mandatory, all work additional to the eight hours per day was illegal, and would not support an action on the quantum meruit. If compulsorily extorted, it would be a tort.” In the government’s view, if Martin had desired the benefit of the act, “he should have stopped work”

64U.S. v. Martin, 94 US 400, 401 (1877).
66Martin v. United States, 10 Ct. Cl. 276, 278 (1874).
67Martin v. United States, 10 Ct. Cl. at 280, 282.
after eight hours. Having failed to do this, and no one in authority having asked him to labor longer, ... [t]he labor for the next four hours became that of a volunteer, or else was performed under an implication that he waived the benefit” of the statute and accepted his daily wage as adequate compensation for all his labor. 68

Martin, in contrast, sought to undermine the government’s position by arguing that if it was unlawful to reduce the rate of pay on account of a reduction in hours, “that result could not be secured by indirection. If the act was intended for the benefit of the laborer, the result is the same whether you reduce his pay in proportion to the number of hours taken off by the statute, or compel him to work more than the statute day for a day’s wages...by a threat of dismissal.” 69

Martin and his class fared ill in the Supreme Court, whose decision was far more radical than that of the Court of Claims. It held that the eight-hour law was merely “a direction by Congress to the officers and agents of the United States, establishing the principle to be observed in the labor of those engaged in its service. It prescribed the length of time which should amount to a day’s work, when no special agreement was made upon the subject.” But it did not regulate the price to be paid for a day’s work. 70 Substituting a consensual model for government imposition of a standard, the Court declared: “Principals, so far as the law can give the power, are entitled to employ as many workmen...they think fit, and, except in some special cases, as of children or orphans, the hours of labor and the price to be paid are left to the determination of the parties interested. The statute of the United States does not interfere with this principle. It does not specify any sum which shall be paid for the labor of eight hours, nor that the price shall be more when the hours are greater, or less when the hours are fewer.” Thus the statute did not provide that employer and laborer may not agree as to what time constitutes a day’s work. There were, the Court conceded, some branches of labor, connected with furnaces, foundries, and steam works, where labor and exposure of eight hours a day “would soon exhaust the strength of a laborer and render him permanently an invalid.” A government officer, the Court added in what must be viewed as an ironic aside, was not prohibited from knowing these facts or from agreeing that fewer hours than eight were to be a day’s work (in spite of the fact that Martin was required to perform precisely this kind of work for 12 hours a day for years); nor, conversely, did the statute intend that where outdoor labor on long summer days might be offered for 12 hours at a uniform price, the officer was not permitted to contract with a consenting laborer. Being chiefly a direction from principal to agent that eight hours was deemed the proper length of time for a day’s

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68 Brief for Appellants at 2-3, United States v. Martin.
69 Brief for Appellee at 3, 7 United States v. Martin.
70 U.S. v. Martin, 94 US 400, 402 (1877).
labor and that his contracts were to be based on that theory, the statute was exclu­
sively a matter between principal and agent, in which a third party like Martin had
no valid legal interest.71

Unsurprisingly, the Court’s evisceration of the eight-hour law gave executive
departments even less incentive to comply with the original congressional intent
than they had had before. The Secretary of Navy, for example, in responding to
a resolution of the House of Representatives on working hours at navy yards,
revealed an unmediated split formal-realist consciousness that apparently facilitated
disregard of the perverse outcome of the Court’s decision. On the one hand,
Secretary Thompson wrote that the act was “not supposed to be compulsory in any
other sense than forbidding that laborers shall be required to work more than eight
hours a day if they shall object to doing so. The interpretation put upon it by the
Department is, that if a laborer is willing to contract to labor more than eight hours
a day, such a contract may be properly and legitimately made with him. If he does
not so contract, he cannot be compelled to work beyond the time fixed by the law,
or allowed to work for less time; if it did the latter, it would deprive him of his
wages for eight hours’ work.”72 Since he did not explain on what legal basis, in the
wake of the Thirteenth Amendment to the Constitution, the Navy could require
civilian non-prisoner employees to work any number of hours at all, he failed to
give the eight-hour law any meaning whatsoever. On the other hand, he noted that,
in the wake of Martin, the Navy Department had left it “discretionary with the
laborers themselves to work either eight or ten hours a day as they pleased.” Their
wages, however, were fixed on the basis of 10 hours; if they chose to work eight
hours, their wages would be correspondingly reduced. With a massive nod to the
labor market during the long depression of 1873-78,73 and inadvertently
documenting why state intervention was necessary to prevent a race to the bottom,
Secretary Thompson declared, in his role of quasi-capitalist employer forced “to
secure economy,” that there had been “no difficulty in finding laborers ready and
willing to occupy all the positions in the navy-yards upon these conditions, and
scarcely a day passes but others express a desire to do so. There are so many of the
latter as to give assurance that, if those already engaged are dissatisfied and shall
deceive to give up their present employment, their places can be easily and im-
mediately filled.”74

72Hours of Labor at Navy-Yards: Letter from the Secretary of the Navy 1 (H. Ex. Doc.
No. 9, 45th Cong., 1st Sess., Oct. 31, 1877).
73Thorp, Business Annals at 131-32.
74H. Ex. Doc. No. 9: Hours of Labor at Navy-Yards: Letter from the Secretary of the
Navy at 2.
In contrast, some in Congress pointed to the depression as an important reason for enforcing the law and cutting off one-fifth of the hours of labor, thus "add[ing] to the employment of one-fifth more of the workingmen of this country. And there never was a time when Congress could better do a graceful and beneficent act to the workingman than right now...." At the same time, congressmen lamented the fact that the results of the eight-hour "experiment"—"which could not be tried by any manufacturer because his rivals working ten hours and forcing the labor would undersell him"—were unreported and perhaps unreportable because "owing to the great economy forced upon the Navy...the Secretary of the Navy has declared that all the navy-yards must work ten hours...."

Congress, and especially the House, continued to debate bills and even to pass joint resolutions to enforce the eight-hour law, but achieved little beyond keeping alive the memory that the government’s officers had treated it as a "dead-letter." In yet another in a long series of congressional reports on the issue, in 1880 the House recited that "many of the officers and agents of the government...dis-regarded its beneficent and vital requirements...." Even after Grant’s proclamation, provisions of the law "continued to be evaded or utterly disregarded" and the "law is practically now a dead letter, and many of the officers charged with its execution utterly disregard its provisions...." Exactly how dead the law was can be gauged by the audacious official opinion issued by Attorney General William Miller in 1890 that the act "simply prescribes a unit of measure for a day’s work in the absence of any specific contract. It is no more and no less, in legal effect, than if Congress should provide that in all contracts for the purchase of coal by officers of the United States Government 2,000 pounds should constitute a ton. Surely no lawyer would claim that such a statute, either directly or by implication, would forbid an officer to pay more for 2,240 than 2,000 pounds of coal."}

Although some executive departments succeeded in largely nullifying the

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75CR 7:3323 (May 9, 1878) (Rep. Samuel Cox, Dem NY).
76CR 7:3323 (Rep. Benjamin Butler, Rep. MA). Butler, another convert to radical Republicanism, had supported the earlier ten-hour movement of the 1850s for careerist reasons. Norman Ware, The Industrial Worker 1840-1860: The Reaction of American Industrial Society to the Advance of the Industrial Revolution 102, 154 (1974 [1924]). Bizarrely, the very next speaker, Butler’s fellow Massachusetts Radical Republican, Nathaniel Banks, asserted that the average workday in the navy yards was eight and a half hours and had never been longer. CR 7:3323.
79OOAG 19:685-87 at 686 (1891 [Nov. 12, 1890]).
The Nineteenth Century

legislated eight-hour day for their employees, the bureaucratic processing of claims continued and generated what may have been the first administrative decisions distinguishing covered blue-collar workers from excluded white-collar employees. For example, in 1872, when three civilian clerks at the Benicia Arsenal in California petitioned for “difference of wages” under the law, the chief clerk of the Treasury Department referred their petition to the Second Comptroller, who, in a reflexively literalist interpretation, informed the Treasury Secretary that his decision was “founded on the presumption that when Congress said ‘laborers, workmen, and mechanics,’ they meant what they said” and he failed to “see how the accounting officers, or anybody else, can add to the list, without usurping the functions of legislation.” For J. M. Brodhead, the chasm between manual laborers and those working in offices was so categorical that the latter group was capacious enough to survive its extreme heterogeneity: “A clerk is no more a ‘laborer, workman or mechanic,’ than the Secretary of the Treasury is....”80 When asked the following year “what classes of laborers, workmen, and mechanics in the Quartermaster’s Department is it the intendment of the law...shall be benefited,” Brodhead was epistemologically modest enough to concede that it was, “of course impossible to lay down a set of rules in advance that shall apply to every case that will be presented in the execution of the law,” but nevertheless maintained that based on “the general principles” applied to earlier claims “the classes entitled under the law “ were “pretty clearly defined.” Specifically, master-carpenters, master-mechanics, foremen of bricklayers and laborers, the superintendent of a shoeing shop, and store-keepers were “prima facie not entitled. The law was intended to apply to muscular rather than brain labor.” The aforementioned classes had “generally merely a supervisory duty, and at an increased compensation, taking them out of the reason and intent of law.” If, however, they were “hand laborers” in addition to being supervisors, they might be entitled. Finally, engineers were also not included within the protected groups.81

As late as 1888, during the course of House debate on a bill that would, inter alia, have done away with the statute of limitations on back pay claims under the eight-hour law, Timothy Tarsney, the Michigan Democrat in charge of the bill, when asked whether it would apply to clerks and employees in various departments held over 10 or 12 hours, replied that a proper answer depended on whether they would be construed as coming under the statutory terms “laborer,” “workman,” or “mechanic.” Remarkably he added that “I am not clear in my own mind as to

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whether they would or would not,” although he promptly admitted in further colloquy both that he opposed amending the bill to include “other employés” and that the act of 1868 did not go beyond those three groups.\footnote{82}{CR 19:2276 (Mar. 20, 1888) (H.R. 1539). At the close of the inconclusive debate an amendment was proposed to add “or clerk or other employé” to the bill. \it Id. at 2282.}

The reason for the lack of congressional concern about the working hours of federal clerical employees may have been that, as the carpetbagging Senator George Spencer, Republican of Alabama, observed in 1870, six hours of labor performed by a departmental clerk “has been from time immemorial the limit of their daily work....” In a rare congressional reference to a dichotomized understanding of a blue- and white-collar occupational hierarchy, Spencer taunted Senator Morrill: if he argued that the eight-hour day for government laborers offended private workers working 10 hours, why not vis-à-vis private clerks as well? “The honorable Senator will certainly not attempt to create this distinction between gentlemanly labor and manual labor; between educated employment and its reverse; between the better-clothed and better-paid labor of the head and pen, and the hard-earned wages of the ‘horny handed sons of toil.’”\footnote{83}{CG, 41st Cong, 2d Sess. 1421 (Feb. 19, 1870). A New Yorker, Spencer went to Alabama with the army and made a fortune through speculation. Eric Foner, \it Reconstruction: America’s Unfinished Revolution, 1863-1877, at 295 (1989 [1988]).} The accuracy of Spencer’s estimate of the federal clerical workday appears to be corroborated by periodic congressional enactments making it the duty of heads of executive departments to require of all clerks and other employees not less than seven hours of labor each day except Sundays and public holidays: “Provided: That the heads of the Department may by special order...further extend or limit the hours of service of any clerk or employee...; but in case of an extension it shall be without additional compensation....”\footnote{84}{Act of Mar. 3, 1883, ch. 128, § 4, 22 Stat 531, 563. Identical language appeared in Act of Mar. 3, 1893, ch. 211, § 5, 27 Stat 675, 715.}

\textbf{City Letter Carriers}

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Capital has advantages over labor, which labor will always deem unfair and unjust. ... Capital certainly gets the most. The capitalists of the world get richer;—they live more sumptuously;—they absorb, more and more, the culture, the grandeur, the enjoyments and the power of the world;—while the laborers—the active partners in the whole concern,—do not share in these advantages in a corresponding degree. These are strong points, and, in the main, they are true. ...

But we doubt the possibility of making any very great changes in the relations between
When a man has worked eight hours and earned a day's pay we want him to quit for his own physical and mental good; and also to make room for some other worker to earn his living. ...

Among all the ways of violating the spirit of the eight-hour law there is none we detest so much as the "permitting" of favored Government employés to grab all the work and all the pay. ... If any man wants to work ten, twelve, or fourteen hours so badly that he seeks and obtains "permission," let him do it for a regular day's pay. When there is no extra pay (except in cases of extraordinary emergency" named in the bill) for overtime there will be no "permission' violators of the eight-hour law.86

Against the background of overall statutory nullification, it may seem odd that Congress could have imagined that it was bestowing any kind of benefit at all on any group of government workers by—as the chairman of the Senate Education and Labor Committee titled his bill—"extend[ing] to letter-carriers the advantages secured to other employees of the United States"87 who had been cruelly disillusioned by the mortally wounded eight-hour law, but city letter carriers in the latter half of the 1880s clamored for and ultimately secured congressional sanction for their inclusion in the federal eight-hour hoax.88

The post office was at that time far from being a sideshow of the federal government’s activities. From the early nineteenth century until U.S. entry into World War I in 1917, the post office accounted for more than half of all of the government's paid civil employees. In 1881, 56,421 or 56.4 percent of 100,020 such employees worked for the post office; by 1891, it was 95,449 or 60.6 percent of 157,442.89 The total number of letter carriers in the free-delivery service had risen uninterruptedly from 685 in its inaugural year of 1863, reaching 8,257 in fiscal year 1888-89 and 34,593 in fiscal 1917-18.90

86CR 21:10473 (Sept. 26, 1890) (Federation of Labor to United States Senate, Sept. 15, 1890).
88Congressional action did not extend to postal clerks, who for many years beyond the 1880s “continued to work under conditions of near peonage” “seven days a week, fifty-two weeks a year, for long and uncertain hours.” Gerald Cullinan, The United States Postal Service 101, 97 (1973).
90Report of the Postmaster-General of the United States 213 (H. Ex. Doc. 1, Part 4,
The Nineteenth Century

After the long depression of the 1870s was finally overcome and as the campaign for the eight-hour day was reinvigorated in the 1880s,91 letter carriers took an interest. Samuel Cox, a Representative from New York City whom the carriers would later hail as the key congressional figure in achieving the eight-hour law for them,92 building on his success in having secured passage of a law granting carriers 15 days' paid leave,93 appears to have initiated action in the House by submitting a resolution in late 1884 requesting that the attorney general report to that body whether letter carriers were covered by the eight-hour law.94 The House adopted the resolution,95 but when the attorney general replied that his authority for giving official opinions was limited to calls made by the president and the heads of the executive departments, the House amended the resolution to direct the request to the postmaster general, who could then seek an opinion from the attorney general.96

Having tried in vain through their accustomed channels to have the eight-hour law of 1868 amended to apply to them, the carriers turned to the Knights of Labor, whose legislative committee drafted a bill extending the law to carriers and succeeded in securing its introduction in Congress. The Post Office Department opposed the bill with all its resources, and local postal authorities, especially Henry G. Pearson, the New York City postmaster, tried to disrupt the Knights of Labor local assemblies that the carriers had formed in 1886.97 One possible reason for the difficulties experienced by the carriers in achieving a legal eight-hour day was that prior to the civil service reform of 1883, "when postal employees had been hired and fired at will according to the turns of the political wheel, Congress had been somewhat solicitous of their welfare...." But following the reform, Congress "lost


92"The Carriers’ Parade,” NYT, July 5, 1888 (8:4).

93Act of June 26, 1884, ch. 126, 23 Stat. 60.

94CR 16:82 (Dec. 8, 1884).

95CR 16:253 (Dec. 15, 1884). Rep. McAdoo submitted a similar resolution. Id. at 633 (Jan. 12, 1885).

96CR 16:811 (Jan. 17, 1885).

97Sterling Spero, The Labor Movement in a Government Industry: A Study of Employee Organization in the Postal Service 63-73 (1924); Sterling Spero, Government as Employer 107-108 (1972 [1948]). Unfortunately, Spero failed to document many of these historical events. On the role of Terence Powderly, the Grand Master Workman of the Knights of Labor, in the letter carriers' congressional eight hours campaign, see "Calling for Shorter Hours,” NYT, June 25, 1886 (5:5).
almost all interest in postal employees. If the employees could not help Congress, Congress saw no reason to help them."98

The congressional bills that began to be introduced in early 1886 were virtually identical with the statute that was enacted two years later. Thus, for example, Representative William McAdoo’s bill of February 1, read: “That hereafter eight hours shall constitute a day’s work for letter-carriers in cities..., for which they shall receive the same pay now as is now paid for a day’s work of a greater number of hours. If any letter-carrier is employed a greater number of hours per day than eight, he shall be paid extra for the same in proportion to the salary now fixed by law.”99

The need for quick legislative action was underscored a few days later by the response that the House received to its inquiry from Postmaster General William Vilas. In addition to observing that he was unaware of any departmental regulations prescribing the number of hours that letter carriers were required to work, he informed the House that the 1868 eight-hour law was not deemed applicable to letter carriers because they were not laborers, workmen or mechanics within the meaning of the law inasmuch as they were not paid by the day, were paid an annual salary, and were classified under civil service law. Without dating or identifying it, Vilas indicated that the opinion that the eight-hour law did not apply to letter carriers had been issued before his incumbency. Finally, availing himself of the same kind of contractarian rhetoric that the Supreme Court had used to trump the statute in United States v. Martin, Vilas claimed that it had been thought that carriers who had accepted employment with knowledge of the requirements should be regarded to some extent as having contracted for the part of the work so regulated for the compensation so provided.100

Interestingly, rather than arguing that carriers were not “laborers, workmen or mechanics” because they were in fact clerical employees of some kind, Vilas had in effect adopted an attorney general opinion from 1872, which had declared in response to a question from the Secretary of War concerning the applicability of the 1872 act on back pay under the eight-hour law that he was “strongly inclined to the opinion” that it was to “have a broad and liberal construction.” Citing a recent Supreme Court decision as “decisive against limiting its provisions to those who would fall in strict language within the terms ‘laborers, workmen, and me-

99 HR 5009 (49th Cong., 1st Sess., Feb. 1, 1886).
The Nineteenth Century

chanics," the acting attorney general stated that it was "the intention of Congress
to include within the provisions of this act, and of the previous act of 1868, all
persons who are employed and paid by the day. It clearly does not extend to
persons who are paid regular salaries, but is limited to employees who are paid a
day's wage for a day's work.... If there is in the employment of the Government
any class of persons so employed and paid, I think they are entitled to the benefit
of this act, although in common parlance they might not come within the strict
definition of laborers, workmen, and mechanics."101

In other words, the attorney general and the postmaster general took the posi­
tion that an annual salary in its own right was a sufficient marker of non-manual
labor—dubtless a socio-economically accurate observation for the time. And in
fact, carriers were paid on an annual basis: for example, after two years, those in
cities with a population in excess of 75,000 received an annual salary of $1,000.102
The conclusion that letter carriers, legally construed, were not laborers flowed from
the recently enacted civil service reform statute and Vilas's own contemporaneously
issued regulations.

The so-called Pendleton Act of 1883, which required competitive examinations
for federal employees in the classified service103 and expressly required the post­
master general to classify "the several clerks and persons employed" in post offices
employing 50 or more such persons,104 declared that no "person merely employed
as a laborer or workman" shall be required to be classified."105 The newly estab­
lished Civil Service Commission, observing that "[i]t hardly need be said that ex­
aminations are not applicable to any...laborer," added that examinations applied in
the postal service to all places above the grade of laborer.106 The Post Office De­

101OOAG 14:128, 129-30 (1875). The opinion letter did not disclose the nature of the
jobs in question. Since the Supreme Court decision, Twenty Per Cent. Cases, 13 Wall (80)
568 (1871), had nothing to do with the eight-hour law, laborers, non-salaried employees,
or an express broad and liberal rule of statutory construction, the attorney general opinion
was remarkable for its reach.

Report of the Joint Commission on Postal Salaries 1:51-64 (S. Doc. No. 422, 66th Cong.,
3d Sess., 1921).

103Act of Jan. 16, 1883, ch. 27, § 2, Second, 22 Stat. 403. See Ari Hoogenboom,

104Act of Jan. 16, 1883, § 6 at 406. Nevertheless, most postal employees remained
outside the civil service system for years. Stephen Skowronek, Building a New American
State: The Expansion of National Administrative Capacities, 1877-1920, at 68-84 (1984
[1982]).


106Second Annual Report of the United States Civil Service Commission: January 16,
partment itself specified that no person employed merely as a laborer or workman (excluding anyone designated as a skilled laborer or workman) was to be considered as within the classification system.107

The postal regulations provided that to be eligible for appointment: “Carriers must be intelligent, able to read and write,...and temperate.” Moreover, like clerks, they were required to pass a competitive Civil Service examination.108 The content of the exams itself sheds important light on the carriers’ location along the blue-collar/white-collar spectrum. Prior to the reform of the civil service in 1883, carriers’ exams, which were virtually identical to those for clerks, tested for knowledge that appeared to be not only inappropriate for manual laborers, but in large part irrelevant to the carriers’ job duties.109 In this connection, the Pendleton Act itself expressly required that the competitive examinations be “practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of service into which they seek to be appointed.”110 The Civil Service Commission’s rules then laid out the general framework for the examinations encompassing five subjects: 1. Orthography, penmanship, and copying; 2. Arithmetic; 3.

1884 to January 16, 1885, at 9 (2d ed. 1885).

107Sixth Report of the United States Civil Service Commission: July 1, 1888 to June 30, 1889, at 58 (1889).

108The Postal Laws and Regulations of the United States of America § 634.2 and .4 at 263, § 497 at 216 (H. Misc. Doc. No. 63, 50th Cong., 1st Sess. 1887). According to postal regulation: “Carriers shall be employed in the delivery and collection of mail matter, and during the intervals between their trips may be employed in the post-office in such manner as they postmaster may direct, but not as clerks.” Id., § 647 at 268. Although this rule prohibited carriers from performing the specific work of clerks in post offices, it was not inconsistent with their performing other work of a clerical nature.

109In his statement on February 4, 1882, before the Senate Committee on Civil Service and Retrenchment, the postmaster for New York City, Harry Pearson, furnished copies of examinations from 1881 and 1882 for clerks and carriers. Carriers were asked, inter alia, the cause of the U.S.-Mexican War, the names of the two rivers that unite to form the Ohio River and where the latter empties, the name of the vice president in the Polk administration, and the names of three U.S. presidents who had served as generals in the U.S.-Mexican War. Carriers were also asked to divide a 7-digit number by a 3-digit number, and the meaning of a “pronoun” and “parsing” a sentence. To Regulate and Improve Civil Service of United States 38-76 at 65-75 (S. Rep. No. 576, 47th Cong., 1st Sess., May 15, 1882). On examinations for federal government clerks from 1853 to 1883, see Leonard White, The Jacksonians: A Study in Administrative History, 1829-1861, at 365-75 (1965 [1954]).

Interest, discount, bookkeeping; 4. English language, letter writing, and proper sentence construction; and 5. Geography, history, and government of the United States. Would-be civil servants had to score at least a 65 on the first three subjects in order to be certified for appointment, but for positions for which a lower degree of education sufficed, the Commission was authorized to limit the examination to fewer than five subjects. Interestingly, two white-collar groups that in the twentieth century massively appeared as excluded in the United States and elsewhere from various hours statutes were excepted from civil-service examination: confidential clerks or secretaries of any department of office head and persons whose employment was exclusively professional.

On a more specific level, the Commission’s regulations then mandated subjects 1, 2, 4, and 5 for inclusion on postal clerks’ examinations, while 1, 2, and the geographical segment of 5 were required on carriers’ examinations. A considerable number of these questions suggested that the postal service regarded examinees as brain rather than predominantly hand workers. Carriers were asked, for example, to “name five of the leading agricultural products of the State in which you live” and “which one of the five great lakes is wholly within the United States.” A spelling quiz required them to spell numerous non-proper nouns—such as conceited, diffidence, felicitate, perseverance, and consciously—that were unlikely candidates for inclusion in any addresses they would ever have to deal with. But tucked away in the arithmetic test was presumably the most important question on the whole examination, the mere posing of which put would-be examinees on notice as to the character of labor-management relations at the

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111 Amended Civil Service Rules, § VII.1, in Second Annual Report of the United States Civil Service Commission at 63.
112 Amended Civil Service Rules, § VII.3-.4, in Second Annual Report of the United States Civil Service Commission at 64.
114 Despite the more demanding examinations, the clerks’ working conditions were “much worse” than the carriers’. Not only was their pay lower, but they were given no days off, a national survey in 1889 revealing that 90 percent of them worked 365 days with an average workday of 14 hours. In addition, their workrooms were filthy and dusty, and tuberculosis was called the “clerks’ sickness.” Cullinan, United States Postal Service at 109.
post office (except for its suppression of the fact that carriers were also required to work Sundays):

In an office employing 35 carriers, each carrier loses 20 minutes a day in idle talk. Suppose the average salary of each to be $2.50 for ten hours’ work, what is the cost to the Government of the lost time each day, and what will it amount to in a year of 313 working days?\footnote{Sixth Report of the United States Civil Service Commission at 268. The question was reproduced without ironic commentary in the more than thousand-page celebratory work by Marshall Cushing, The Story of Our Post Office: The Greatest Government Department in All Its Phases 231 (1893).}

Any inferences about the white-collar character of carriers’ work that can be drawn from these questions must be qualified by the fact that, inconsistently with the aforementioned rule against examinations for laborers, the same Civil Service Commission regulation that defined the subject matter of the clerks’ and carriers examination, also provided that the examination for porters, pilers, stamp boys, or junior clerks, or messengers, or other “employees whose work is chiefly manual,” might be limited to subjects 1 and 2, including only the four elementary rules of arithmetic.\footnote{Regulation 22, in Second Annual Report of the United States Civil Service Commission at 73.} Remarkably, the messengers, who were used for special delivery, had to be boys, who could be as young as 13 years old. Yet even these “messenger boys”\footnote{The Postal Laws and Regulations of the United States, § 672 at 275. Neither the messengers nor any of these other occupational groups are mentioned in the very detailed index to this 600-page book.} had to be able to add sums in the hundreds of billions of dollars.\footnote{Seventh Report of the United States Civil Service Commission: July 1, 1889 to June 30, 1890, at 249.} The porters’ examination, too, tested the ability to add, subtract, multiply, and divide numbers larger than they presumably would ever have to deal with at work.\footnote{Second Annual Report of the United States Civil Service Commission at 121.} In contrast, watchmen were expressly deemed as not strictly speaking workmen or laborers and thus not outside the classified service; because the position was of “some responsibility,” it was to be filled by persons of such character and intelligence as guaranteed by the examination for messengers.\footnote{Seventh Report of the United States Civil Service Commission at 105.}

Several other bills that were introduced in 1886 literally amended the codified version of the eight-hour law to add letter carriers to the three covered general cate-
The Nineteenth Century

gories of workers. The one passed by the Senate in June also declared that “there shall be no reduction in compensation paid for services rendered by reason of the limitation of the hours of labor prescribed by this act.” In the interim before debate began in the House, The New York Times published a vitriolic attack on the measure, purportedly based on the paper’s own investigation. The newspaper was amused that “professional agitators” had begun several months earlier “a movement intended to foment discord among the letter carriers of this city,” who were “styled ‘slaves’ and...generally described as much overworked and as decidedly underpaid.” After this movement had progressed to the point that the aforementioned bills, “designed to do away with the existing order of things,” were introduced in Congress, the Times could no longer suppress its sarcasm: “The proceeding as a whole is somewhat remarkable as being, perhaps, the first on record since the establishment of the Government in which office holders have appeared as an overworked and underpaid class.” As ascertained by the paper, “the facts” were that letter carriers, whose duties required no special skill, and only ordinary intelligence, a common school education, and good physical condition, received $600 the first year, $800 the second, and $1,000 thereafter. To be sure, weekdays “their hours of attendance” were long—in New York City 12 and a half hours—but the intervals between their delivery trips brought their hours of actual work in most cases to between six and nine. Experience had shown “conclusively” that it was “not possible to confine the delivery and collection of letters in a large city to the ordinary hours of a ‘working day,’ whether of 10 or of 8 hours”: if on-duty hours were cut to eight, then there would have to be a large increase in carriers or the public would have to be satisfied with a smaller number of deliveries and collections.

During the brief and inconclusive House debate on July 15, 1886, the Senate bill’s chief spokesman, Texas Democrat William Crain, asserted without documentation that the bill was needed because letter carriers had been supposed to be included among the laborers, workmen, and mechanics of the eight-hour law, but that the postal authorities had held that they were not. What Crain, however, was
able to document was that Postmaster General Vilas held mutually inconsistent positions: he had, namely, asserted in a letter to the Speaker of the House both that “although letter-carriers are in a certain sense on duty more than eight hours in many places, yet the actual labor which they perform frequently does not reach to eight hours,” and that introduction of the eight-hour regime would require hiring 2,208 additional carriers. Crain noted and dissolved this contradiction by pointing out that whereas the postmasters who had furnished Vilas with information had stated that although they kept the carriers from 6:30 in the morning until 7:00 in the evening, they worked on average only eight hours delivering and collecting on the streets, in fact they worked 12 to 15 hours, doing sorting and routing in the post office the other hours.\textsuperscript{128}

Although the postal bureaucracy made no attempt to convince the House that carriers were not laborers within the meaning of the eight-hour law, it did undertake such an effort with regard to the more than 4,500 railway mail clerks, in case Congress contemplated their inclusion. (Not that the postal bureaucracy apparently felt that it needed any justification for violating the eight-hour law: it nonchalantly informed Congress, for example, that 20 “laborers” were employed in the department’s building in Washington “to do all the heavy work of the Department such as moving and lifting furniture and carrying books, files, heavy bags, and packages” more than ten hours a day.)\textsuperscript{129} The General Superintendent of Railway Mail Service claimed that:

\begin{quote}
The railway mail service demands fully as much mental as physical labor. A clerk is required to commit to memory his schemes of distribution, to make himself thoroughly familiar with railroad schedules and connections, to make out daily, monthly, and a number of special reports, to appear for examination at stated periods, keep a careful and accurate record of all registered matter handles, and thoroughly understand the postal laws and regulations. He can not, therefore, be properly classed as a laborer. While his duties could not exactly be classed as professional, still the intellectual strain he is required to undergo is akin to that required in the learned professions.\textsuperscript{130}
\end{quote}

The superintendent was so preoccupied with detailing the railway mail clerks’ intellectual stresses that he neglected to mention their more prosaic “extremely hazardous” working conditions, which were a function of their physical workplaces—“antique wooden mail cars...usually placed immediately behind the coal tender. In even minor wrecks, the flimsy cars were inclined to buckle and splinter

\textsuperscript{128}CR 17:7004, 7005.  
\textsuperscript{129}Letter from Perry Smith, Disbursing Clerk and Superintendent (May 7, 1886), in CR 17:7007.  
\textsuperscript{130}Letter from Jno. Jameson to William Vilas (May 28, 1886), in CR 17:7007.
The Nineteenth Century

into bits.” As a result of 1,118 wrecks between 1889 and 1892, for example, 11 percent of the railway mail clerks were injured, permanently disabled, or killed.\textsuperscript{131} After the House failed to vote on the bill in 1886, a New York City representative, Darwin James, submitted a resolution of the New York State legislature in early 1887 requesting, since the attorney general had decided that carriers were neither mechanics nor laborers and thus unprotected by the eight-hour law, that the state’s congressional delegation support the Senate bill for their relief.\textsuperscript{132} By the end of 1887 and beginning of 1888 the new Fiftieth Congress witnessed the renewed introduction of a large number of bills on behalf of carriers,\textsuperscript{133} including one by Crain that would have amended section 3738 to include “all other persons who are now or who may hereafter be employed in manual or clerical labor in the civil service by or on behalf of the Government of the United States, whether they be paid per diem or by salary”; the bill provided that such workers “shall not receive less compensation for a legal day’s work, as...herein defined, than the rate of wages paid for an ordinary day's labor of similar character by private employers in the respective localities in which the Government employees may be at work.”\textsuperscript{134}

The Senate report on the main bill presumed that a letter carrier was a hybrid white-collar/blue-collar worker who “must possess the qualifications of an excellent clerk in order to be competent to discharge the duties of his position. His physical exertion is certainly as exhaustive as that of any laborer or mechanic, and there is little room to doubt that eight hours of his labor subtracts as much from his physical and mental powers as in the case of any other class of persons engaged in the public service.” In the case of carriers, however, a day’s work ranged from nine to 16 hours.\textsuperscript{135} The one point on which the Senate, whose Education and Labor Committee noted that Congress had received many memorials and petitions,

\textsuperscript{131}Cullinan, \textit{The United States Postal Service} at 109-10.
\textsuperscript{132}CR 18:2395 (Feb. 28, 1887).
\textsuperscript{133}S. 117 (50th Cong., 1st Sess., Dec. 12, 1887) (James Cameron, Rep. PA, providing for no reduction in compensation by reason of hours limitation); S. 376 (50th Cong., 1st Sess., Dec. 12, 1887) (Blair); H.R. 1645 (50th Cong., 1st Sess., Jan 4, 1888) (McAdoo, providing for eight consecutive hours); H.R. 1666 (50th Cong., 1st Sess., Jan 4, 1888) (Timothy Campbell, Dem. NY); H.R. 1673 (50th Cong., 1st Sess., Jan. 4, 1888) (Truman Merriman, Dem. NY).
\textsuperscript{134}H.R. 1880 (50th Cong., 1st Sess., Jan. 4, 1888). The bill also provided for a fine of up to $1,000 for any contractor or government agent who knowingly violated the act.
\textsuperscript{135}S. Rep. No. 509 at 1 (50th Cong., 1st Sess., Mar. 8, 1888) (S. 117). The report’s further assertion that their compensation ($1,000 after two years) was little more than that of a common laborer was an understatement since the average annual earnings of nonfarm employees in the latter half of the 1880s was $446 to $471. Stanley Lebergott, \textit{Manpower in Economic Growth: The American Record Since 1800}, tab. A-19 at 528 (1964).
including one from the New York City Board of Aldermen on behalf of relief for the carriers, failed to accommodate the carriers was their demand for an end to the split shift. Their wish for an eight-hour day within nine or ten consecutive hours, was driven, as the Letter-Carriers’ National Association, pointed out, by “fear that postmasters will work them three or four hours, then lay them over for that length of time, and then finish their day’s work by allowing this interval of one or two hours....” Whereas under the then regime carriers’ workday ranged from nine to 14 hours, under their proposal, the carriers would “know positively when their day’s work is done....”

On May 24, 1888, the act was approved, creating in effect an overtime law, with hours beyond eight paid without a penalty to the post office or premium to the worker. Specifically, it provided that “hereafter eight hours shall constitute a day’s work for letter-carriers in cities..., for which they shall receive the same pay now as for a day’s work of a greater number of hours. If any letter-carrier is employed a greater number of hours per day than eight he shall be paid extra for the same in proportion to the salary now fixed by law.” On July Fourth, thousands of letter carriers, some delegations coming from as far away as Washington and Baltimore, celebrated its passage with a parade in New York City before enthusiastic crowds.

The cheers turned out to be premature. Almost immediately letter carriers began complaining about the post office’s new rules fixing irregular hours under the eight-hour law. On August 2, Col. J. T. Bates, superintendent of the free-delivery system, replied that it had not been Congress’s intention to make the carriers’ hours consecutive, as shown by the fact that that clause had been deleted from the bill as wholly impracticable and had been admitted to be so by the committee of carriers that had appeared before the congressional committee that removed it. More pointedly, Bates allowed as five percent of the carriers were fault finders who should be removed from service: they were getting $1,000 a year for eight hours, which was more than skilled mechanics generally received for 10 hours and far more than post office clerks, who were necessarily on duty 10-15 hours. Henry


139“The Carriers’ Parade,” NYT, July 5, 1888 (8:4). Although the article mentioned 22,000 letter carriers, this figure cannot be correct since it was triple the total number of carriers, and must have included other post office workers.

140“Not Consecutive Hours,” NYT, Aug. 3, 1888 (8:4). The text is based on an untitled
Pearson, the New York City postmaster and an extreme enemy of labor, added that it was absurd to suppose that deliveries and collections could be efficiently and satisfactorily performed if carriers' work were limited to eight consecutive hours. Because the public's needs required service from 4:45 a.m. until midnight, it was manifestly impossible to assign all carriers to duty during the same hours. Instead, the hours had to be divided so that while some were at work, others were unemployed, who would resume duty when their services were again required.

These comments were mild-mannered compared to the statement that Pearson issued the following day, suggesting that spite, revenge, and Schadenfreude were the administrators' driving motives. Opining that the carriers had made a grave mistake in getting the law enacted, he declared: "They saw fit to take the matter into their own hands, ignoring the responsible head of the service with whom all proposals for postal legislation properly originate...." In arranging schedules to meet the new law's requirements and giving carriers "all possible consideration," it was impossible to avoid leaving carriers with varying and irregular intervals between their hours of actual service, "and the inevitable consequence is that many of them are worse off than before. Realizing this, they unreasonably seek to quarrel with the Postmaster, whereas the responsibility rests with the cast-iron and crude requirements of the law whose passage they secured themselves without due consideration of its probable results. It is, in fact, the old story of a meddling with a buzz-saw, and I am sincerely sorry that in this case the usual result has ensued."

A fixed eight-hour law and ever-shifting conditions in the volume of mail and the time and manner of its treatment could not be harmonized. The carriers' idea of eight-hour consecutive service was, therefore, "simply preposterous": it would have required a very large increase in the number of carriers and then no more than three or four hours of work daily could have been found for any carrier. The carriers had not sought Pearson's advice when they sought the bill's passage; but if they asked it now, he would recommend that they devote themselves with equal industry to repeal.

Although the postmaster general quickly claimed that the postal service had been reorganized to comply with the eight-hour act for carriers, he warned that carriers' claims for overtime pay would be numerous every year so long as the law remained in force with the then current construction. In particular, he complained that because the law did not provide for an average of eight hours, any time beyond eight entitled the carrier to overtime pay even though, as was often the case, he

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142"Not Consecutive Hours."
143"Carriers Made a Mistake," NYT, Aug. 4, 1888 (8:7).
The Nineteenth Century

worked less than eight hours on other days (and still received full pay). The postal bureaucracy, however, promptly engaged in self-help by formulating its own interpretations that nullified the 1888 law, with the result that "many carriers were forced to stay on the job as long as eighteen hours, on a stop-and-go basis, to fulfill their daily obligation." At this point carriers began to see need for national organization and in 1889-90 the National Association of Letter Carriers was formed.

The locus and focus of carriers’ struggle for the eight-hour day shifted in 1892 from Congress to the courts as they filed claims in the United States Court of Claims for back pay for work they had performed beyond eight hours a day. The postal bureaucracy’s adamant refusal to accept the legislature’s unambiguous intent to codify the carriers’ demand for a workday limited to eight hours is reflected in the frivolousness of its legal and socio-economic construction of the statute. The government asserted before the Court of Claims that the 1888 law had to be construed as meaning that the prohibited daily worktime beyond eight hours be devoted to the performance of letter-carrier service; in contrast, non-clerk work in the post office between deliveries did not count. Recognizing that the cases before them affected the compensation of probably all the letter carriers in the United States, the judges agreed that the statute was “singularly brief and clear, and expressed in unmistakable terms the legislative intent,” but nevertheless maintained that “the services of letter-carriers are so peculiar and ill-defined, that the application of the law to the facts is no easy task.”

The claimants—all of whom worked in Salt Lake City except one who worked in New York, where carriers, as they were “probably in all the great cities,” were “occupied incessantly from morning to night without an intermission for rest or food”—were “absent from home thirteen hours,” of which five hours were spent in making two deliveries and collections on the streets, two hours to preparing mail for the route and making reports, four hours to distributing mail within the office, and two hours to meals. The Post Office Department’s claim that the eight-hour law applied only to carrier work in the narrow sense was based on its juxtaposing

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145 Cullinan, United States Postal Service at 109.
147 Post v. United States, 27 Ct. Cl. 244 (Mar. 7, 1892).
148 Post v. United States, 27 Ct. Cl. at 251.
149 Post v. United States, 27 Ct. Cl. at 251.
150 Post v. United States, 27 Ct. Cl. at 253.
one of its own regulations and an unrelated 1842 statute generally applicable to government employment. According to the postal regulation: "Carriers shall be employed in the delivery and collection of mail matter, and during the intervals between their trips may be employed in the post-office in such manner as they postmaster may direct, but not as clerks." The statute provided: "No...compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no...compensation shall be made for any extra services whatever which any officer or clerk may be required to perform unless expressly authorized by law." The government’s defense rested on the claim that the eight-hour law granted additional pay only where the carrier performed legally authorized services—namely, in this case, a carrier’s and not a clerk’s.

Seeking to make sense of this governmental overreaching, the Court of Claims concluded that the work that the regulation permitted carriers to do between deliveries was "wholly undefined. No regulation, order, or instruction of the Post-Office Department can be found which would inform postmasters or enlighten the court as to what those services are." The court was similarly unable to decipher the scope of the forbidden clerkly activities: "The term clerical service strictly means a service that involves writing," but the court could not determine with certainty whether the regulation was designed to prohibit carriers from selling stamps, registering letters, issuing money orders, or writing reports, whereas the "manual labor" of sorting letters and tossing them into the right boxes was permissible. But since it was certain that the regulation did contemplate carriers’ performing some other work between delivery trips, the judges, hoisting the postal authorities by their own vague regulation, were not prepared to say that its interpretation by the Salt Lake City postmaster, who under stressful circumstances had construed it to “mean that he might exact from the carriers additional work in the distribution of mail...within the office,...was wholly and clearly wrong.” After indulging in all of these subtleties, the court abandoned them, declaring itself “unqualifiedly of the opinion that whatever work they may be required to do, relating to the mail matter which they distribute and collect, must be regarded as carrier service in construing and applying the eight-hour law.” Moreover, “the equities” were so strongly in the carriers’ favor that the court deemed it “only just to resolve doubts” in their favor.

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152 Revised Statutes of the United States, § 1764 at 314 (2d ed. 1878).
153 Post v. United States, 27 Ct. Cl. at 252.
154 Post v. United States, 27 Ct. Cl. at 254, 255. In the New York case, the court additionally rejected the government’s claim that the eight-hour law permitted hours-
Undeterred by this sharp judicial rebuff, the Post Office Department decided to try its luck with the Supreme Court. (In fact, in the companion case of the New York carrier, the solicitor general even admitted in his brief that the Court of Claims was right, but stated that he was prevented from dismissing the appeal only by the fact that another government department declined to follow that view until the Supreme Court decided the matter; in any even he offered no argument.) The justices, however, had little patience with the government’s pseudo-arguments. For them it sufficed that the eight-hour statute did not specify the kind of employment to which the extra hours of work had to be devoted; it was necessary only that the letter carrier be a letter carrier and lawfully employed in work not inconsistent with his general business as carrier. Issuing an even more powerful rebuke than the Claims Court’s, the Supreme Court held that: “The statute was manifestly one for the benefit of the carriers, and it does not lie in the mouth of the government to contend that the employment in question was not extra service, and to be paid for as such, when it appears that the United States...actually employed the letter-carriers the extra number of hours per day.... The postmaster was the agent of the United States to direct the employment, and if the letter-carriers had not obeyed the orders of the postmaster, they could have been dismissed. They did not lose their legal rights under the statute by obeying such orders.”

Even this double defeat failed to deter the postal bureaucracy from continuing to try to subvert the carriers’ right to an eight-hour day. In a self-servingly mendacious reference to its blatantly unlawful policies practices until, at the very least, the Supreme Court’s ruling in 1893, the Post Office Department asserted in its annual report for 1898 that “[a]fter ten years of earnest effort” to enforce the eight-hour law, it was “forced to the conclusion that the law in its present form can not be practically applied to the conditions and circumstances peculiar to the free-delivery service without causing much loss to the Department and many hardships to the employees for whose benefit its enactment was intended.” Given daily variations in loads, it was impossible to provide eight hours’ work consecutively or at intervals. To prevent (having to pay for) overtime, the Post Office was compelled to base schedules on heavy days, meaning the loss of 30-40 minutes of work on light days. The only way to change these unsatisfactory conditions, including “constant conflict between the carriers and their superiors”—as if such struggles averaging so that the Post Office Department was “at liberty to keep a carrier employed eight hours every day, but not to give him a deficit of work one day and an excess another.” *Id.* at 260.

The Nineteenth Century

had not been going on for years—was to modify the law so that carriers would work 48 hours over six days in addition to as many as eight on Sunday. If Congress accommodated the department’s request for hours-averaging (which the Court had denied it), then postal officials “might...abrogate certain rules of discipline which now appear obnoxious to the letter carrier,” limit the daily spread of carriers’ hours to 12, and require Sunday work only twice and possibly only once a month.158

After having once again asked for the 48-hour, six-day week plus Sunday in its annual report for 1899,159 the Post Office Department finally achieved its goal in 1900 when Congress added a proviso to the Post Office appropriations act: “That letter carriers may be required to work as nearly as practicable only eight hours on each working day, but not in any event exceeding forty-eight hours during the six working days of each week; and such number of hours on Sunday, not exceeding eight, as may be required by the needs of the service....”160 The proviso had originated with “antilabor”161 Representative Eugene Loud, a California Republican and chairman of the House Post Office Committee, who had offered a somewhat different version as a floor amendment: “That letter carriers may be required to work not exceeding forty-eight hours during the six days of each week; and such number of hours on Sunday, not exceeding eight, as may be required by the needs of the service ... If any letter carrier is employed for a greater number of hours than forty-eight during the working days in any week, he shall be paid extra for the same in proportion to the salary fixed by law.” Although the House agreed to the amendment after Loud assured the members that his “understanding is that the letter carriers themselves have agreed that this will be an improvement in the method of managing the business of the carrier service,”162 the following day, two Democratic Representatives who were close to the NALC, Amos Cummings of New York and John Fitzgerald of Massachusetts,163 accused Loud of having proposed it “under false pretenses” because he had said that it was satisfactory to the letter carriers, whereas in fact their union was “absolutely and totally opposed” to it. Loud, whose stance on the question can be gauged by his claim that the more than three million dollars that the government ultimately had to pay as a result of

159 Annual Reports of the Post-Office Department for the Fiscal Year Ended June 30, 1899, at 151 (H. Doc. No. 4, 56th Cong., 1st Sess., 1899).
160 Act of June 2, 1900, ch. 613, 31 Stat 252, 257.
161 Cullinan, United States Postal Service at 118.
162 CR 33:4632 (Apr. 24, 1900).
163 The grandfather of President John F. Kennedy.

1032
the aforementioned litigation was for "the time that letter carriers lay around the office and were not working," evaded the charges by lamely replying: "It is not so much what one letter carrier wants or what they all want as it is a question whether it is a good business proposition...."\(^{164}\) When Cummings and Fitzgerald did finally get their separate vote on the amendment, the House agreed to it 74 to 53,\(^{165}\) although in conference the House receded to the Senate version.\(^{166}\)

Even as the Post Office Department was boasting that the new 48-hour law was being strictly enforced,\(^{167}\) it asked the attorney general's office for an opinion as to whether the proviso in the annual appropriations bill was temporary and would end with the fiscal year, and on April 6, 1901, the opinion was issued ruling it was temporary. The eight-hour regime was thus reinstated and lasted for nine years until the postmaster general devised a test case before the Court of Claims to decide whether the 48-hour law was still in effect.\(^{168}\) In a weakly supported opinion, the court held that the proviso was "evidently intended as permanent remedial amendment" of the eight-hour law, especially when read in light of the mischief sought to be remedied as explained in the postmaster general's reports.\(^{169}\) The 48-hour law was reinstated as of July 1, 1910, prompting complaints by carriers that each postmaster was interpreting the law individually. Moreover, since, as one of their congressional supporters observed, there was no penalty for violating the 48-hour law and, under the Supreme Court's ruling in *Martin*, carriers were not en-


\(^{165}\) *CR* 33:4730 (Apr. 26, 1900). Twelve years later, Rep. William Calder, a Republican from Brooklyn, erroneously asserted that there had been no separate vote, "and it has always been a sore spot in the minds of the letter carriers...when they think of the way in which their eight-hour law was taken away from them. 48 *CR*:4653 (Apr. 12, 1912). Similarly incorrect was his assertion that "the post-office clerks of this country have never enjoyed the benefits of an eight-hour law or, in fact, any law that places a limit on the hours of labor they can be employed in any one day." *Id.*

\(^{166}\) *CR* 33:6240 (May, 29, 1900).

\(^{167}\) *Annual Reports of the Post-Office Department for the Fiscal Year Ended June 30, 1900*, at 113 (H. Doc. No. 4, 56th Cong., 2d Sess., 1900).


\(^{169}\) *Van Doren v. United States* 45 Ct. Cl. 476, 483 (quote), 484 (May 31, 1910).
titled to overtime pay for hours beyond 48, they "might just as well not be working under any law at all."\textsuperscript{170}

Almost immediately efforts began in Congress to repeal the 48-hour law,\textsuperscript{171} which, when they finally came to fruition two years later, also conferred the eight-hour day on postal clerks. The 62nd Congress, controlled by Democrats and insurgent Republican Progressives and encompassing the years 1911-12 when "[b]ig capital and growing labor were in critical conflict..., both demanding that the government act in ways that would permit their own steady development at the expense of the other,"\textsuperscript{172} attached to the postal appropriations bill for 1912 a provision that as of March 4, 1913, "letter carriers in the City Delivery Service and clerks in first and second class post offices shall be required to work not more than eight hours a day: \textit{Provided}, That the eight hours of service shall not extend over a longer period than ten consecutive hours and the schedules of duty of the employees shall be regulated accordingly." To be sure, it added that "in cases of emergency, or if the needs of the service require," they "can be required to work in excess of eight hours a day, and for such additional services they shall be paid extra in proportion to their salaries as fixed by law."\textsuperscript{173}

The testimony at the hearings and the debates on the bill furnished much of the only congressional insight on hours regulation for white-collar workers for the period prior to the 1930s. At the post office appropriations bill hearings in January 1912, Oscar Nelson, the president of the National Federation of Post Office Clerks (NFPOC), which represented about 4,400 of 30,000 clerks,\textsuperscript{174} informed the House Post Office Committee that postal clerks had been left outside the eight-hour law

\textsuperscript{170}CR 48:4653 (Calder).
\textsuperscript{173}Act of Aug. 24, 1912, ch. 389, § 5, 37 Stat 539, 554. In addition, the law provided that if Sunday work was necessary, carriers and clerks had to be given compensatory time off the following week. \textit{Id.} at 554-55. See also 39 USC § 117 (1925), in \textit{Code of the Laws of the United States of America}, 44 Stat. Pt. 1 at 1243-4. Daily compensation was computed by dividing annual compensation by 306 (≈365 days minus Sundays and legal holidays) and hourly compensation by dividing by 8.
\textsuperscript{174}Post Office Appropriations Bill, 1913: Hearings Before the Committee on Post Offices and Post Roads, United States Senate 52, 18 (62d Cong., 2d Sess., June 1 and May 31, 1912). For an engaging history of the union, see Karl Baarslag, \textit{History of the National Federation of Post Office Clerks} (1945).
because they had been ruled as being neither laborers nor mechanics, but rather “officials of the Government.” But the clerks protested that “classification of us as ‘officials’ does not compensate us for the long hours worked; neither does it restore our shattered health nor restore those whose lives have been shortened because of the long hours of duty imposed upon them...”175 (To be sure, even congressional interest in that restoration was limited: when the Socialist Representative Victor Berger offered an amendment during the eight-hour debates in 1912 requiring the postal authorities to permit clerks to sit at least two hours a day while working, many of his colleagues went on record objecting, the amendment quickly being rejected 55 to 35.)176 Initially, by emphasizing the mental or intellectual dimensions of their work in his narrative of their work and working conditions, Nelson appeared to confirm the logic of the clerks’ exclusion. He related that most clerks in large offices did distributing work, which was their “real work” and “the brain work of the postal service.” An outgoing mail clerk had to study and memorize the name of every post office in every state to which he was assigned in addition to the name of every railroad going into each town and which post offices were served through other towns; the clerk also was required to know the train schedules of every rail line that served the state or states to which he was assigned. The outgoing mail clerk’s study of all this information and any changes in it as well as of postal rules and regulations had to be “done at home and on his own time,” which the post office department never took into account in estimating the number of hours clerks worked177 (a claim that the postmaster general conceded with no justification other than “the efficiency of the service”).178 Similarly, the city mail clerk had to memorize the names of all the streets, buildings, business, and firms, and was expected to know the names of individuals receiving any mail. On average, a clerk had to memorize 6,000 facts, and “it is admitted by those who


176CR 48:5511 (Apr. 27, 1912). One of the NFPOC’s legislative objectives formulated at its 1919 convention was five-minute rest periods every hour for all work that required close mental application and rest stools for distributors. Baarslag, History of the National Federation of Post Office Clerks at 125. When the Post Office Department in 1923 finally introduced rest bars—“ingeniously designed so that one could not sit on them”—for clerks, many experts in the department criticized them as being conducive to laziness. Id. at 142.


have experienced both that the average clerk does more studying and of a more
difficult and disinteresting nature than does the average professional man in mas­
tering and keeping up knowledge of his profession, whether it be medicine, law,
or dentistry.” The result, said Nelson, was that “[m]any clerks have become un­
balanced of mind and committed to asylums because of the constant study re­
quired.”179

After this “recital of the knowledge” that a clerk was required to acquire and
of its detrimental psychological consequences,180 Nelson then did an about-face and
declared that a clerk is “a most skilled mechanic doing laborious work.”181 (In
1924, a chronicler of postal unionism observed: “Though misleadingly designated
‘clerks,’ only a small proportion of them do work which might properly be called
clerical. Their tasks vary from hard manual labor, in which at least thirty-five per
cent of the force is engaged, to that of highly trained distributors of mail,
accountants and postal specialists....”182 Nevertheless, when the AFL chartered the
NFPOC in 1906, Gompers’s misgiving were, according to the union’s historian,
understandable, since many postal clerks were “still laboring under the white collar
‘government official’ complex of social superiority handed down from previous
generations.”) 183 Although the “sum and substance of the situation is that the de­
partment would rather that they have the authority to work us an unlimited amount
of hours than employ the force necessary to efficient service or pay us overtime,”
Nelson emphasized that the clerks did not want to work overtime; he sought to
show their good faith by declaring that they were not asking for time and a half or
double time: “We would rather have a law that would prohibit over eight hours’
work a day, if such a law were constitutional or did not interfere with the interests
of the service.”184

179 Post Office Appropriations Bill, 1913: Hearings Before Subcommittee No. 1 of the
Committee on the Post Office and Post Roads, House of Representatives, Part II at 451.
180 Post Office Appropriations Bill, 1913: Hearings Before Subcommittee No. 1 of the
Committee on the Post Office and Post Roads, House of Representatives, Part II at 450.
181 Post Office Appropriations Bill, 1913: Hearings Before Subcommittee No. 1 of the
Committee on the Post Office and Post Roads, House of Representatives, Part II at 451.
182 Spero, The Labor Movement in a Government Industry at 79-80. In a recycled
version of the book, Spero wrote a quarter-century later: “Although called ‘clerks,’ but a
small proportion of them is engaged in work which is really clerical in nature. Their
function is the distribution of mail in the post offices and this involves all sorts of tasks
from hard manual labor, in which perhaps a third of the force is engaged, to work requiring
a high degree of skill and special knowledge.” Spero, Government as Employer at 110.
183 Baarslag, History of the National Federation of Post Office Clerks at 47.
184 Post Office Appropriations Bill, 1913: Hearings Before Subcommittee No. 1 of the
Committee on the Post Office and Post Roads, House of Representatives, Part II at 453.
Like the Progressives—and indeed like all those since 1867 who had regarded the eight-hour day as an empirical experiment—who regarded shorter hours as no concession to capital since it would either pay for itself or even “bring in profits greater than its cost.”185 Nelson also went to great efforts to persuade the committee that the Post Office Department was simply wrong in believing that long hours were economical: clerks could not work more or more accurately than in eight hours. Because postal officials had never been compelled to plan eight-hour schedules, they had also never tried, for example, to arrange with heavy mailers not to dump tons of circulars at one time without notice, but instead to send them as they became ready for mailing.186

Finally, Nelson revealed that the “Postmaster General, evidently in an effort to forestall the enactment of legislation to regulate our hours of labor, has established in some post offices a rebate system for the rebating of all time worked in excess of eight hours a day averaged for the year.” The hours-averaging account was biennial, permitting time off during the following year Although the clerks “appreciate[d] receiving such a rebate rather than none at all,” Nelson correctly called attention to “the fact that working us 10 hours a night for two or three months straight and thereby shattering and undermining our health cannot be compensated for by allowing us time off the following year;” especially since the rebate system reinforced the regime of “continuous overtime” by compelling yet more overtime when some clerks were off on rebate time.187 Indeed, the clerks’ advocacy of the eight-hour day was so determined that they preferred it to working nine hours with overtime pay some days and an equal number of seven-hour days if they did not know in advance that they were working seven hours and therefore “could not make use of the time.”188 AFL president Gompers reinforced this point a few months later at the counterpart Senate hearings when he observed that daily hours should be limited as well as weekly hours because otherwise employers—and here he denied any distinction between the government and private firms—had the inclination that “at some time they might work their employees unlimited hours any day provided that they did not violate the weekly limit.189

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185William Walling, Progressivism—And After 77 (1914).
188Post Office Appropriations Bill, 1913: Hearings Before Subcommittee No. 1 of the Committee on the Post Office and Post Roads, House of Representatives, Part II at 469.
189Post Office Appropriations Bill, 1913: Hearings Before the Committee on Post Offices and Post Roads, United States Senate at 118 (June 7, 1912).
To be sure, by the time he testified at those Senate hearings, Nelson had experienced enough of the legislative process to realize that compromise might be necessary lest the clerks, the only government employees not protected by the eight-hour day, jeopardize its enactment. Therefore—and also "to completely prove that we do not want to make extra compensation by overtime"—he proposed an amendment to eliminate overtime pay for extra hours on Mondays (with the heaviest workloads) provided that the immediately following Tuesdays be shortened by a corresponding number of hours. Indeed, Nelson even went so far as to express the clerks' willingness to "work overtime when it is necessary," although they requested monetary compensation for it both because "we feel that we are entitled to it" and as a penalty to "compel the supervisory force" to schedule an eight-hour day.

At the Senate hearings in May, Edward Cantwell—who appeared pursuant to a subpoena because, since 1902, when President Theodore Roosevelt had issued a "gag order," federal employees had been forbidden to seek legislation on their behalf directly or through organizations, except through their departmental employees—the secretary of NALC, which represented 28,200 of the little more than 29,000 letter carriers, testified that even during the years following the Supreme Court's decision in United States v. Post when the eight-hour law was enforced in a generally satisfactory way, the principal exception had been the drawing out of schedules over a long period each day. Ignoring any mental or intellectual strains, Cantwell emphasized that the purpose of the eight-hour law was to protect "the laboring man from the injurious consequences of prolonged physical effort, giving him more time for his personal affairs and more time and energy to attend to the cultivation of his moral and mental powers."

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190 Post Office Appropriations Bill, 1913: Hearings Before the Committee on Post Offices and Post Roads, United States Senate 64 (62d Cong., 2d Sess., June 1, 1912).
191 Post Office Appropriations Bill, 1913: Hearings Before the Committee on Post Offices and Post Roads, United States Senate at 61.
192 Spero, Government as Employer at 122; this practice, which the Post Office Department had instituted in 1895, was not prohibited until 1912. Id. at 117-43; Spero, Labor Movement in a Government Industry at 96-137.
193 Post Office Appropriations Bill, 1913: Hearings Before the Committee on Post Offices and Post Roads, United States Senate at 79, 89 (June 7, 1912).
194 Post Office Appropriations Bill, 1913: Hearings Before the Committee on Post Offices and Post Roads, United States Senate at 80.
195 Post Office Appropriations Bill, 1913: Hearings Before the Committee on Post Offices and Post Roads, United States Senate at 81.
In many large cities clerks and carriers both have their schedules so arranged that it takes 14 or more hours to put in 8 hours’ work. They report at 6 a.m., work a couple of hours, then are compelled to take a two or three hour swing and report again at noon, work two hours and then take another two or three hour swing, and report again at 4 or 5 o’clock and work until 8 or 9 p.m. Often the employees live a distance away from the center of the city and it would take them 2 hours’ round trip on the street cars to go home and return; therefore many of them idle around the office on their 2 or 3 hour swing and virtually are on duty the entire 14 hours. Such schedules are absolutely unnecessary, and they exist...because the supervisory force have never been under necessity to figure out other schedules.196

Nelson’s testimony was a useful corrective to the testimony on the first day of the Senate hearings by Charles Grandfield, the First Assistant Postmaster General, who had insisted not only that it was a physical impossibility to complete all deliveries within eight hours, but that there was also no way, as far as he could see, to arrange a strict eight-hour within 10 hours in all cases. To be sure, Grandfield, in explaining the split shift, adduced as his only illustration a six- or seven-hour swing between 9 a.m. and 3 or 4 p.m.197 (As Thomas Reilly, the House floor manager of the bill’s labor provisions had already pointed out in April, clerks were often “compelled to report for duty three or more times a day,” the result being that the off-duty time is so fragmented that it “can not be put to any practical use....”)198 After the committee chairman, Jonathan Bourne, who was also the president of the National Progressive Republican League,199 had remarked that it was “rather a hardship” to be on call so many hours,200 Republican Senator Joseph Bristow of Kansas, who was also a recent recruit to Progressivism,201 misleadingly chimed in that such a worker “can go to sleep; he is absolutely at liberty,” and then added, falsely as the immediate future proved, that the split shift itself “is one of the conditions of the service that can not be avoided.”202 To be sure, as Fourth Assis-
tant Postmaster General with jurisdiction over the city delivery service from 1903 to 1905, "'Czar Bristow IV'" had been "the real head of the postal establishment and...ruled it with an iron hand. He refused to recognize the workers' right to organize or petition. It was his belief that the government could not bargain with its servants.... He refused to deal with the representatives of the carrier bodies,..., telling them that he 'did not need, did not want and would not have their cooperation.' When the [NALC] officers persisted in their efforts to carry on their activities, he made determined efforts to crush their organizations."203 Bristow then proceeded to stand history on its head as well, alleging that under the 1888 overtime law, letter carriers' overtime claims resulted from "loaf[ing]...." This claim then prompted Grandfield to project the allegation onto the future: "The law would engender habits of idleness on the part of the clerks, because there would be nothing for them to do at certain times of the day and at certain periods of the year. The temptation to make overtime would be ever present."204

Notably, Bristow was the senator who led the forces opposed to providing for overtime work or pay. His initial and principal objection was the carriers' aforementioned "abuses" and the "very great expense" it would entail for the government.205 But as his colleagues began to resist his reasoning, Bristow shifted to work-sharing:

Then, the whole trend of modern industrial affairs is against allowing overtime, because more employment is afforded by doing away with it.

We passed an eight-hour law. What was the purpose of that law if not to limit the term of employment to eight hours a day? [N]ow we are undertaking to pass a bill authorizing the violation of the eight-hour law. ... It is an utter inconsistency....206

But when Alabama Senator Joseph Johnston, a former iron and steel company president, tried to puncture the economy argument by correctly pointing out that hiring substitutes to work instead of permitting overtime would not save any money (since the overtime rate would not have been at a premium), Bristow failed to use his strongest argument—namely, that such work spreading was precisely the intended outcome.207 He was able, however, to call upon his postal expertise in
undercutting the argument of the chair of the Senate Post Offices Committee that overtime would be statutorily permissible “only in case of emergency”208: “There will be no emergencies in the future that have not occurred in the past....”209

When the issue reappeared two weeks later, two southern senators insisted on viewing the affected employees as white-collar workers. Nathan Bryan, a Florida Democrat who later became a federal appellate judge, agreed with Bristow that preventing employees from working more than eight hours could be only “very poorly accomplished” by offering additional pay for overtime work: “Clerical work is different from manual labor. No business man would submit for one moment that his stenographer, who works less than eight hours on one day because business happened to be slack, should be paid the day’s salary and if there was a little more business than usual the next day and that man had to stay half an hour or an hour longer that he should then be paid in proportion to his day’s salary for the extra hour’s work.”210 In order to mimic private clerical practices (and to test the workers’ claim that their object was not to receive extra compensation but the eight-hour day), Bryan offered an hours-averaging amendment that would have permitted overtime work on weekdays, but would have allowed compensatory time off on one of the following six days—as the bill already (and the act ultimately) provided for regarding Sunday work. (Although the amendment was not enacted, during the Great Depression, Congress reduced the workweek of both postal employees and all federal civilian employees to 44 hours by creating a four-hour Saturday with compensatory time off if this limit was exceeded,211 and the same day that it enacted the Social Security Act, Congress created an average 40-hour week for postal employees by requiring that they be given compensatory time off the following for any hours worked on a Saturday.)212

Hoke Smith, a Democrat from Georgia, elaborated the logic of Bryan’s white-collar post-office operations:

[A]ll men engaged in commercial affairs know that frequently their clerical force for a day or two work over hours, and then the effort soon thereafter is made to compensate them by giving them some leisure to take the place of it. If we are going to build up the Post

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209 CR 48:9944.
The postal bureaucracy remained unreconciled to the eight-hour law. In its first annual report, the Wilson administration's Post Office Department, while conveying the "frequent complaints from the business interests" about delivery times and recalling the suggestion that many of the difficulties created by the eight-hour law could be eliminated by amending it to allow eight hours of service within 12 consecutive hours, declared that it should give itself the benefit of one year's experience before recommending such an amendment. As good as his word, in his next annual report (for 1914), Wilson's Postmaster General, Albert Burleson—whose accentuation of the department's traditional labor policy earned the postal service "what the workers called a 'sweatshop reputation'"—was still complaining that it was "not possible to employ throughout the day to advantage a permanent force of employees for eight hours continuously or even for 8 hours within a period of 10 hours."

Burleson recommended legislation to Congress in effect resurrecting the Loud amendment of 1900 under which clerks and carriers "shall be required to work eight hours daily as nearly as practicable, and may be required to work more than eight hours daily without extra compensation: Provided, however, That in case such employees are employed more than forty-eight hours a week...they shall be paid extra for such additional services in proportion to their salaries...." The only limitation Burleson was willing to impose on the postal authorities was a daily

214 Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1913: Report of the...Postmaster General 121-22 (1913). Although the Comptroller of the Treasury had ruled that the law did not apply to supervisory officers, the department nevertheless directed postmasters to arrange their schedules as nearly as possible on the same schedule as clerks and carriers'. Id. at 121.
ceiling of 12 consecutive hours.\textsuperscript{217}

Just in case it failed to secure a statutory lengthening of the workday, the Post Office Department began at this time to introduce Tayloristic stop-watch methods to extract more labor in a given workday from clerks and carriers.\textsuperscript{218} Burleson apparently did not wait for Congress to repeal and amend the eight-hour law: at the AFL convention in 1917, delegates of the NALC and the National Federation of Postal Employees\textsuperscript{219} offered a resolution declaring that although the eight-hour law regulating postal clerks and letter carriers' hours provided that overtime could be imposed only in emergencies and it was to be compensated at the regular rate of pay, in the absence of a penalty for work in excess of eight hours, the practice had developed of imposing excessively long hours on experienced men instead of keeping the work force recruited to the proper standard; consequently, the excessive overtime was breaking down the workers' health and morale. The convention, abandoning the actual for the basic eight-hour day, then adopted the resolution that the AFL support efforts to insure stricter observation of the law by securing legislation establishing time and a half for overtime hours in excess of eight daily.\textsuperscript{220} A large-scale survey conducted by the congressional Joint Commission on

\textsuperscript{217}Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1914: Report of the . . . Postmaster General at 64. The Post Office Department's overreaching was underscored by its recommendation that the statute requiring carriers and clerks to be given compensatory time off for Sunday work within the next six days be amended "to permit the department to grant such compensatory time whenever the employees can be most conveniently excused from duty." \textit{Id.} at 143. On the department's abuse of the statutory trigger for Sunday work ("the needs of the service") "to make overtime a regular occurrence so as to keep down the size of the force," see Spero, \textit{The Labor Movement in a Government Industry} at 192-93.


\textsuperscript{219}The National Federation of Postal Employees was an industrial union, formed by the merger in 1917 of the NFPOC and Brotherhood of Railway Clerks, claiming jurisdiction over all postal workers below supervisory grades. The 1917 AFL convention ordered affiliation with it of NALC, which the latter's membership later approved. But the National Federation of Postal Employees then surrendered its jurisdiction over carriers and railway mail clerks and, readopting its old name, once again became a clerks' union. Spero, \textit{Government as Employer} at 147. See also Spero, \textit{The Labor Movement in a Government Industry} at 230-35.

\textsuperscript{220}Report of Proceedings of the Thirty-Seventh Annual Convention of the American
Postal Salaries revealed that in the year ending June 30, 1919, clerks in first and second class post offices were still working 134.58 overtime hours and 88.95 hours on Sundays and holidays.\(^{221}\)

Two months before enacting the eight-hour law for postal carriers and clerks, the same Congress had enacted an eight-hour law on behalf of the employees of federal contractors,\(^{222}\) thus expanding an 1892 law establishing the eight-hour day for laborers and mechanics employed by the United States or any contractor or subcontractor on federal government public works.\(^{223}\) Together the two laws finally succeeded in giving effect to the long-dormant 1868 act,\(^{224}\) although they, too, revealed themselves vulnerable to restrictive interpretation.\(^{225}\) The House report in 1892 identified the basis of the agitation in movements seeking shorter daily hours for workers engaged in “fatiguing physical labor” as: physical recuperation; the opportunity for enjoyment of their families and social and intellectual improvement; and, “in an overcrowded or congested labor market by expanding the opportunities for obtaining employment, giving a more general and more equitable diffusion to the wage product of the labor of such market.” The House report observed that the work-sharing basis was the commanding proposition in Europe, whereas the other two bases had, “until recently,” been “most urged” in the United States,\(^{226}\) but the salient point in the present context was the committee’s focus on

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\(^{223}\)Act of Aug. 1, 1892, ch. 353, 27 Stat. 340. See also OOA 20:459-63 (Aug. 27, 1892) (1892 eight-hour law applies generally to government employees and also to those working for contractors on public works).

\(^{224}\)By 1892, all government work for construction of public buildings and 75 per cent of all other government work was done by contract. Hours of Labor for Mechanics and Laborers 6 (H. Rep. No. 1267, 52d Cong., 1st Sess., May 3, 1892).

\(^{225}\)For example, the attorney general issued an opinion that under the 1892 eight-hour law, a worker who removed office furniture and cleaned was not a “laborer” within meaning of statute, but more like domestic servant. OOA 26:623-24 (June 7, 1908). See generally, Marion Cahill, Shorter Hours: A Study of the Movement Since the Civil War 72-79 (1968 [1932]).

“fatiguing physical labor” as an explanatory description of the scope of coverage of “laborers and mechanics.” In interpreting the law’s scope for executive departments and agencies, the attorney general over the years repeatedly ruled that it did not extend to office workers. For example, in 1905, while noting that the law “is but one incident in the world-wide movement for shorter hours of labor,” he nevertheless expressed his opinion that it did not apply to the office force of the Isthmian Canal Commission or to any government employees who were not within the ordinary meaning of laborers and mechanics.227 And as late as 1922, the attorney general was still opining that the 1892 8-hour law “does not constitute an eight-hour day for Government clerks....”228

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for similar reasons, state hours laws for public works covered the same groups. E.g., 1853 NY Laws ch. 641, § 1, at 1223 (mechanics and workingmen); 1870 NY Laws ch. 385, § 2, at 919 (mechanics, workingmen, and laborers); 1893 Colo. Sess. Laws ch. 113, § 1, at 305 (mechanics, workingmen, and laborers); 1905 Cal. Stat. ch. DV, § 1, at 666 (laborers, workmen, and mechanics); 1912 Ariz. Sess. Laws ch. 78, § 1, at 415 (laborers, workmen, and mechanics); 1913 Tex. Gen. Laws ch. 67, § 1, at 127 (laborers, workmen, and mechanics). Similarly, the prevailing wage provisions of the Davis-Bacon Act applied to laborers and mechanics on federal construction projects. Act of Mar. 3, 1931, ch. 411, Pub. L. No. 798, 46 Stat. 1494.

227 OOAG 25:441-48 at 447, 448 (1906 [May 10, 1905]).
228 OOAG 33:355-61 at 359 (1924 [Oct. 20, 1922]).