“Time and a Half’s the American Way”

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

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From World War I Through World War II

The early distinction...drawn in the federal service between white-collar groups and crafts and labor groups was a counterpart of that found in industry prior to the Fair Labor Standards Act of 1938.¹

The period from the close of World War I to the onset of accelerated rearmament in 1940-41 is of interest not because the federal government implemented new policies for regulating the overtime work of its own white-collar employees, but rather for the creation of a detailed classification system that later served as the basis of an overtime compensation regime whose scope was and remains significantly more comprehensive than FLSA’s. In contrast, the struggles over overtime compensation for federal white-collar workers during World War II—who accounted for about 1.5 million of all 10.5 million white-collar employees in the country²—though reflections of skirmishes over highly specific, transient wartime conditions, nevertheless exerted an enduring impact on governmental overtime policy that far outlived its origins.

The Interwar Years

No permanent law uniformly identifies service as overtime when performed by a salaried employee...on a per annum basis. ... Prior to the national defense program salaried employees, with few exceptions, were not entitled to extra pay for overtime work.³

²Of the remaining nine million, two million were state, county, and municipal government employees. Frances Perkins, Letter to the Editor, NYT, Nov. 20, 1943 (12:5-6).
The National Federation of Federal Employees, which was founded in September 1917 under the auspices of the AFL with a broad jurisdiction covering all federal employees (except postal employees) who lacked the power to hire or fire, expanded its membership to about 60,000 during World War I. The union repeatedly complained about the shortcomings of wartime bonuses as a remedy for the inadequacies and inequities of the federal employee salary structure, which were exacerbated by the economic dislocations of World War I. The NFFE’s demands for a thoroughgoing reclassification of the federal government service finally resulted in the creation by Congress in March 1919 of the Congressional Joint Commission on Reclassification of Salaries.\[4\] The commission was charged with investigating rates of compensation of civilian employees of the executive departments and municipal government in the District of Columbia (with the exception of the navy yard and postal service), with the object of providing “uniform and equitable pay for the same character of employment.”\[5\] Against the background of the general knowledge that “chaotic conditions had been permitted to develop in the Federal service,” the report that the commission submitted a year later, based on a classification of 100,000 employees into 1,700 classes, found that the United States government, the world’s largest employer, lacking a “modern classification of positions” as a basis for just standardization of compensation, was also without an employment policy.\[6\]

The commission found that hours of work were more uniform than other conditions of employment: seven hours constituted a normal day’s work for clerical and professional employees and eight for manual employees; thus six-day weeks produced 42- and 48-hour weeks, respectively. At the time, according to its report, outside of government, office workers generally worked seven or 7.5 hours for five days and four or 4.5 hours on Saturday in the larger cities; in mercantile establishments and factories office workers usually worked 7.5 or eight hours with no Saturday half-holiday. In addition, federal government administrative heads had the authority to increase hours “as the needs of good administration may require.”\[7\]
Nevertheless: "A general provision of law prohibits the payment of additional compensation for overtime." Exceptions to this provision were, however, made in the case of per hour and per diem employees and at the Bureau of Engraving and Government Printing Office, which paid a 50 percent and 20 percent premium, respectively. Nowhere were federal employees on an annual basis compensated for overtime. Not only did such inconsistencies violate the aforementioned cardinal principle of "uniform and equitable pay for the same character of employment," but because it had become generally accepted, based on the experience of the world war, that extended periods of overtime decreased efficiency in the long run, the commission concluded that an effort should be made to "reduce overtime to a minimum." Experience in non-governmental industrial and business employment had indicated that "one of the most effective ways to do this is to require the payment of extra compensation at an increased rate to all employees in the manual group who are required to work longer than eight hours a day...." The commission saw no reason not to follow this practice in government employment, but: "Similar provision does not seem necessary for employees in the clerical and professional groups, whose normal working day is one hour less than that of employees in the manual group, and who are also less likely to be called on for overtime work." However, the general principle that in the long run overtime was "unfair and detrimental to the efficiency of the service" also applied to these white-collar groups.8

The commission then formally recommended that Congress prescribe rules for time-and-a-half overtime compensation for hourly employees and that clerical and professional employees paid on an annual basis be required to work at least seven hours a day six days a week. It also urged that under normal circumstances work should be organized—and, where the workforce was inadequate, be augmented—so as to make unnecessary more than seven and 42 hours of work for clerical and professional and eight and 48 hours for manual employees. Consequently, overtime work would be "necessitated only by real emergency situations."9 The commission's draft bill thus empowered department heads to extend the hours of per annum employees, "but no additional compensation shall be paid for such extension."10

I at 89.


9Report of the Congressional Joint Commission on Reclassification of Salaries, Part I at 91. Such minimum-hours laws were not unknown. For example, in 1879 Texas required the employees of the departments of the State of Texas to "labor nine hours each secular day." 1879 Tex. Gen. Laws ch. 137, § 1, at 151.

10Report of the Congressional Joint Commission on Reclassification of Salaries, Part
The compensation schedules of the landmark Classification Act of 1923—before which there had been no general legislation uniformly classifying federal government positions on the basis of their duties and responsibilities and evaluating their worth—encompassed, inter alia, a Professional and Scientific Service and a Clerical, Administrative, and Fiscal Service. The PS service included positions whose duties were to “perform routine, advisory, administrative, or research work which is based upon the established principles of a profession or science, and which requires professional, scientific, or technical training equivalent to that represented by graduation from a college of university of recognized standing.” The CAF service, in turn, which included positions whose duties were to “perform clerical, administrative, or accounting work, or any other work commonly associated with office, business, or fiscal administration,” encompassed 14 grades: the six lowest-paid were clerical, the next six were administrative, and two highest paid were executive. The six administrative grades involved either the performance of responsible office work along specialized and technical lines requiring specialized training and experience, and the exercise of independent judgment or supervision of operations or offices, while the executive grades involved still higher supervisory or administrative functions.

To assist in formulating a federal personnel program, at the end of the 1920s the Personnel Classification Board (which had been created by the Classification Act of 1923) conducted a large survey, covering 500,000 employees in 1,400 establishments, of private employers’ personnel policies, including overtime com-

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I at 133, 139.


12Classification Act of 1923, ch. 265, Pub. L. No. 516, § 13, 42 Stat. 1488, 1491 (Mar. 4, 1923). The act created another white-collar category—the subprofessional service—which involved duties to perform work “incident, subordinate, or preparatory” to PS work and which required training of any degree inferior to that required of PS service. Id at 1492.

13Classification Act of 1923, § 13, 42 Stat. at 1494-96. The NFFE was dissatisfied with the 1923 act because the Personnel Classification Board was dominated by agencies (the Bureau of Efficiency, Budget Bureau, and CSC) primarily interested in saving money and not in fixing fair wages, and inequalities had not been eliminated. Spero, “Employer and Employee in the Public Service” at 212-13. In connection with salary increases in 1928, Congress added one administrative and one executive grade. Act to Amend the Salary Rates Contained in the Compensation Schedules of the Act of March 4, 1923, ch. 814, Pub. L. No. 555, § 13, 45 Stat 776, 779-82 (May 28, 1928). See also Act of July 3, 1930, ch. 850, Pub. L. No. 523, 46 Stat 1003, 1004, which provided for the last salary increases before World War II; CAF grades 6-8 included the salary of $2,900, grade 9 began at $3,200, and grade 12 peaked at $5,400.
The PCB discovered that in offices of both large and small firms it seemed to be standard practice not to pay for overtime work other than supper money: 64 percent of firms surveyed employing 33 percent of the total number of office employees did not pay for overtime. Many larger offices did pay supper money (ranging from 75 cents to $2), but not unless an employee worked at least one or two hours of overtime. The other 36 percent of firms employing 67 percent of office employees paid for overtime, meaning that more larger offices paid than smaller ones. However, most of the larger offices paid at a fixed hourly rate: payment at a rate higher than the regular rate was infrequent and confined largely to railroads. The PCB survey disclosed that in private-sector offices:

An excessive amount of overtime has a bad effect both upon the health of the employees and upon their morale. Tests have shown that the total production of an employee frequently working overtime is not increased beyond the normal output. It is, therefore, the general policy in most offices to discourage overtime and to eliminate it as far as possible by increasing efficiency and production during the regular working hours.

Nevertheless, neither this fact nor the datum that in the British civil service lower clerks, typists, and stenographers normally working 42-hour weeks could be paid time and a quarter for the first 12 overtime hours, time and a half for the next six, and double time for all hours beyond 60 induced the U.S. government to adopt an overtime-pay regime for its clerical workers before World War II.

By the mid-1930s, the federal government employed, outside of the postal service and industrial undertakings, about 200,000 employees in clerical, technical, administrative, scientific, and professional services, who, because of their "traditional 'white collar' and professional antagonism" to labor unions and their wide variety of occupations, had been "the slowest of all sections of the federal service to organize." On October 24, 1938, the day the FLSA went into effect, Charles Stengle, the president of the American Federation of Government Employees, 19

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17 PCB, Report of Wage and Personnel Survey at 455-56. In addition, lower-grade executives and higher-grade clerical servants in the British civil service could be paid for authorized overtime at a rate not to exceed 5 shillings per hour if 200 hours or more were worked in four consecutive weeks; where the normal workweek was 42 (or 44) hours, the overtime rate kicked in after 184 (or 192) hours. Id. at 456.
18 Spero, "Employer and Employee in the Public Service" at 211.
19 On the background of the dispute with the NFFE that prompted the AFL to charter
issued a statement welcoming the new law as ""a milestone of the greatest importance in the march of American labor,'" but observing that ""large numbers of Government employees work considerably longer hours, which will not be reduced in any way by this law.'" A great many AFGE members worked much more than 44 hours, for whom ""no relief is in sight...at the moment."" For example, in prison service workweeks of 50-70 hours were by no means uncommon. Without fully reflecting the huge gaps in coverage for private-sector white-collar workers, Stengle summarized the situation: ""The overtime problem in the Government service is in one respect more serious than in many private employments, for with few exceptions employees working on a monthly or per annum basis get no pay for overtime.""20

Thus as the next world war drew inexorably closer, while federal blue-collar employees were generally entitled to time and a half for overtime work,21 their white-collar colleagues continued, as they had since the nineteenth century, to face a radically different statutory situation:

It shall be the duty of the heads of the several executive departments, in the interest of the public service, to require of all clerks and other employees, of whatever grade or class,...not less than seven hours of labor each day, except Sundays and...public holidays...: Provided, That the heads of the departments may, by special order, stating the reason, further extend the hours of any clerk or employee...; but in case of an extension, it shall be

the AFGE in 1932, see Sterling Spero, Government As Employer 168-203 (1948); Spero, ""Employer and Employee in the Public Service"" at 216-17.


21Act of Mar. 28, 1934, ch. 102, Pub. L. No. 522, § 23, 48 Stat 509, 522 (""Provided, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half"). This overtime provision applied to ""[t]he weekly compensation...for the several trades and occupations, which is set by wage boards or other wage-fixing authorities...."" Id. "$W$age board employees of the Government" were judicially defined as ""mechanical employees who perform the same kind of work for the Government that others of the same trade perform for private enterprise. Their wages are not set by statute in the Classification Acts, as are those of administrative, clerical, and armed forces employees, because the Government, being in direct competition with private employers for their services, must keep their wages more nearly on a level with those of private enterprise in the area where they work. Pertinent statutes, or executive orders..., grant to a board, or to a single administrator...the power to fix the wages of mechanical employees in his enterprise."" Poggas v. U.S., 118 Ct. Cl. 385, 403 (1951).
Against this disparate treatment of federal government employees unions were beginning to protest with increasing vigor. At its national convention in December 1938, for example, the left-wing Federation of Architects, Engineers, Chemists and Technicians, taking note of the Civil Service Commission's report that during a six-month period federal workers had worked more than 10 million overtime hours "amounting to more than 8 million dollars in unpaid compensation," and arguing that the "U.S. Government should set an example to employers at large," resolved that a Federal Workers Labor Standards Act should be passed providing a five-day, 35-hour week with overtime paid at time and a half the regular hourly rates and that working hours in the Navy Department and Yards should not be increased.23

World War II

[T]he white-collar worker...we can no longer call him the forgotten man. He has been disinherited, abandoned. ...

Since they are clerical, white-collar, and unorganized employees, they are unable to take advantage of the National War Labor Board. They are victims of prosperity, unable to compete as individuals for the better things of life or to voice their demands as a group. ...

This group is slowly being forced to write its living standard downwards, ...while their laboring brother climbs higher and higher, day by day, into the brackets of high incomes and proportionately higher living. ...

But theirs is a lonely divided cry for help, dimly heard against the united cry of agriculture and labor, industry and commerce, all those groups fortunately so constituted as to allow of organization. ... [I]t might be said that the white-collar worker and other unorganized groups are virtually subsidizing the workers of the organized groups.24

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As war-induced inflation made basic statutory changes in pay schedules "almost inescapable," the Roosevelt administration sought to persuade Congress to accept, at the very least, "[makeshift arrangements in the form of overtime pay...as temporary expedients on the grounds that an increased workweek"] would reduce the need to hire additional government workers.25 Similarly, from the existing workforce's perspective, overtime compensation was a way of adjusting its salaries to the increased cost of living so as to make them comparable to the increases that private sector industrial workers (and some federal employees) had obtained through the advent of the 48-hour week: "So long as revision in basic salary schedules seemed unattainable, overtime pay was eagerly sought."26 In other words, the principles underlying overtime for white-collar workers that were being articulated had been deflected and displaced from a different setting—a wage dispute. Ironically, however, in an unprecedented break with societal understandings of the purposes of overtime regulation, the instrumental use that both sides made of overtime compensation as a substitute for salary increases anticipated the postwar attitude that the labor movement developed toward the FLSA overtime provision as a means—in what by the twenty-first century, in the wake of the Bush administration's efforts to cut back white-collar coverage, became an unceasing Democratic refrain—of "making ends meet."27

The Navy Department Contra Chairman Carl Vinson

It is too easy to act on the assumption that all consumers have surplus purchasing power; and that the high earnings of some workers in munitions plants are enjoyed by every worker's family. This easy assumption overlooks the 4,000,000 wage workers still earning less than 40c per hour.... It further overlooks the millions of salaried, white-collar workers—the school teachers, the clergymen, the State, county, and city officials, the policemen, the firemen, the clerks—whose salaries have remained low, but whose living standards are being cruelly and inequitably slashed by higher food prices. ...

These unorganized millions must not become the forgotten men and women of our

25Gladys Kammerer, Impact of War on Federal Personnel Administration 1939-1945, at 215 (1951). See also Civil Service in Wartime 168 (Leonard White ed. 1945) (sponsors of overtime pay legislation had three objectives: uniformity; increased earnings to offset a rise in the cost of living; and, by authorizing longer hours, securing greater output from existing personnel and, if possible, reducing employment).

26Kammerer, Impact of War on Federal Personnel Administration 1939-1945, at 216.

27See above chs. 2 and 16-17.
Unsurprisingly, congressional action on overtime work and pay for federal employees during the rearmament period in 1940-41 and then after U.S. entry into the war was driven by events shaping the employment of civilians by the military. The sharpest public conflicts yielding the deepest insights were ignited not by labor’s intervention, but by disputes between workaday bureaucrats, especially in the Navy Department, desperately and pragmatically trying to sustain ramped-up production schedules, and the anti-labor representative who ran the House Naval Affairs Committees—Carl Vinson of Georgia, who, during his half-century congressional tenure, chaired that committee from 1931 to 1946, and “ruled like a potentate.”

This dynamic was visibly on display at a hearing on May 14, 1940, which was convened by Vinson, against the backdrop of Nazi Germany’s overrunning western Europe, to determine how the naval shipbuilding program could be speeded up. Captain Charles Fisher, Construction Corps, Director of Shore Establishments, who handled personnel questions for all Navy bureaus, sought to boil down the “complicated question” of working conditions of civilian labor in the Navy Department and to persuade Vinson of the practical need for overtime pay by recommending that it would be ultimately advantageous, even in normal times, that all 105,000 naval civilian employees—including laborers, helpers, mechanics, and white-collar employees—have an eight-hour day and 40-hour week with time and a half for overtime. But whereas the blue-collar per diem employees (who made

28Veto of Bill Restricting Commodity Credit Corporation, in The Public Papers and Addressed of Franklin D. Roosevelt, 1943 Volume: The Tide Turns 278-90 at 284 (Samuel Rosenman ed. 1950 [July 2, 1943]).

29Marjorie Hunter, “Carl Vinson, 97, Ex-Congressman, Who Was in House 50 Years, Dies,” NYT, June 2, 1981 (B10:1-3). The obituary was referring specifically to his chairmanship of the successor Armed Services Committee until his retirement in 1965 except for the Republican-controlled Eightieth and Eighty-Third Congresses. Vinson, who had opposed the FLSA in 1938, was repeatedly (but unsuccessfully) targeted by labor unions for electoral defeat. Louis Stark, “Labor Group Lists Favored Nominees,” NYT, July 16, 1938 (2:8); “To Fight ‘Labor Enemies,’” NYT, June 17, 1942 (17:2).

30Hearing on H.R. 9822 to Expedite Naval Shipbuilding: Hearings Before the Committee on Naval Affairs of the House of Representatives 3181 (76th Cong., 3d Sess., May 14-21, 1940), published as Committee Print No. 369 in Hearings Before the Committee on Naval Affairs of the House of Representatives on Sundry Legislation Affecting the Naval Establishment 1942 (77th Cong., 2d Sess., 1942).

31Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3289.
up 90 percent of the workforce) were paid time and a half for hours beyond 40, which were permissible only in extraordinary unforeseeable emergencies involving loss of life or government property, “injustice results to...white-collar employees and the salaried employees of the Navy Department in Washington...because overtime cannot be granted to them, although we have the right to work them overtime and do work them overtime when necessary...and they do not get a cent.” Fisher tried to buttress his recommendation by pointing out that 90 percent of all union agreements in the United States included a provision for time and a half, which was also “in accordance with most all of the customs of the industries throughout the country.” If Fisher meant to derive a justification for his proposal from the latter point by suggesting to the committee that almost all private-sector white-collar employees received overtime, he knew better (as he demonstrated at later hearings) and misled them.

Unwilling to rely solely on such custom, Fisher came to his “main point” in offering another incentive for Vinson to accept generalized overtime pay: the Navy’s statutory recommendation included repeal of the actual eight-hour day legislation, which would confer on the department the “greater freedom” of requiring overtime outside of extraordinary emergencies. At first Vinson seemed to acquiesce in the proposal—provided that it be applied only to the limited emergency preparedness period. But when Vinson finally realized that Fisher intended to incorporate all of white-collardom, he again turned obdurate:

The CHAIRMAN. Does that mean down here in the Navy Department if stenographers and clerks work over 8 hours a day or 40 hours a week—does that mean designers and all that group will get time and a half for overtime?

Captain FISHER. That means that during the last 6 months or year, and increasingly so during the last few weeks, many designers, stenographers, and clerks, including our own, have stayed until 9 o’clock or 10 o’clock at night and have not earned an extra cent pay for it.

The CHAIRMAN. But that happens in the Government service all the time, and when you start to embark upon that I am afraid you are getting on thin ice. [I]f a...chief wants a

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32 Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3289-90.
33 Ignorance of the large-scale exclusions of white-collar workers from the FLSA was widespread. Even Senator Robert Wagner, the leading New Deal labor legislator, in discussing a drafting error in H.R. 9822 that would have caused some workers to lose their overtime entitlement, asserted: “This is the only case I know of in all our labor laws in which the worker is deprived of time and a half for overtime.” CR 86:8824 (June 21, 1940).
34 Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3290.
35 Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3291.
clerk to stay in any department and it is very important, that clerk stays right on and does the work.

Captain Fisher. We have been prohibited by law to give them time off to compensate for it.

The Chairman. Oh, yes; I know. But they can cut down the period in which they go to get ready to leave the office and that might save considerable time. Your objective is all right when they are turning out these ships, but when you apply it down here in the Navy Department to every stenographer and every clerk and every file clerk and janitor and everybody else, to say, "If you work over 8 hours today and over 40 hours during the week we are going to pay you time and a half over time." I am afraid we are going a little bit too far in establishing this principle. These are quasi-professional positions, particularly the position of designer. It is above that of a laborer. And you put that upon the same basis that you put a laborer, and [you] are taking it out of the professional class. Then it would naturally follow if a lawyer down here at the Department stays and works until 10 o'clock the same thing would apply. ... I think it would be going too far. I don't think it should apply to clerical positions or to professional positions. ... So far as...the clerical force in the shipbuilding plant, it is all right.36

Vinson continued to insist that a man with a permanent civil-service job entailing steady employment during slow times simply “should not be classified in the group of men who hasn’t that character of job.” In addition, Vinson worried that if Fisher’s proposal were adopted: “You will soon have the Navy Building lit up like a cathedral at night with all the typewriters going.” That Vinson in reality was worried not about such overtime work, but overtime pay for “the white-collar workers who are really what might be called in mass clerical production here in Washington,” was underscored by his failure to respond to Fisher’s remark that the building was already lit up (for unpaid workers). In any event, Fisher testified that he saw no difference between clerical and technical employees in the navy yard and those in the Navy Department. Moreover, it was his “firm conviction...that the labor movement in this country is such that this will be attained in a very short time anyway.” At this point Fisher allowed himself to be provoked by Vinson into the retrospective judgment that “we should have paid overtime” during World War I as well, which diminished much of the credibility he had been able to build up with Vinson: “This is the first suggestion that has ever been made to pay department heads or department clerks or janitors or anybody time and a half

36Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3292.
37Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3293.
38War Overtime Pay Act of 1942: Hearings Before a Subcommittee of the Committee on Civil Service United States Senate on S. 2666 and S. 2674, at 65 (77th Cong., 2d Sess., Sept. 22-23, 1942) (statement of Eleanor Nelson, secretary-treasurer, United Federal Workers of America (CIO)).
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overtime for working over 40 hours a week. I know of no person that has ever broken down by working 40 hours a week.”

Vinson’s antipathy to overtime compensation for white-collar workers was so intense, that, although he had opposed enactment of the FLSA in 1938, he confided to Fisher that the manual laborer’s entitlement to overtime pay was self-explanatory: “The fellow at Portsmouth or New York in his overalls sweating on a ship to turn these ships out, when you keep him overtime he is entitled to payment along the lines suggested by you. I do not follow you at all as to the Navy Department here in Washington. ... It should apply to all these industrial activities and that is the only place it should apply....” When Fisher replied that he regarded universal extension as “inevitable,” Vinson’s retort left not a sliver of doubt that he was not the political actor to hide his potent human agency under a bushel: “It is not inevitable as long as I am sitting here.”

Four days later, when Fisher reported back with other Navy officers to face further interrogation, Vinson could not resist returning to the subject, this time focusing on the design profession. Ironically, although Vinson’s rigidity seemed, in the context of the practical personnel motivation problems that preoccupied Fisher, counterproductive, he inadvertently identified the unprincipled character of labor’s fight for overtime pay divorced from a stance on overtime work itself:

I told them that the Government did not pay professional people for time-and-a-half overtime; that if they wanted an increase in pay, such as time and a half would bring about,...what they wanted was to obtain a different civil-service rating and get a higher classification than they have today.... You do not want to pay a draftsman on the basis of time and a half for overtime, as a matter of principle. If he is doing extra work, you can compensate him by putting him in a different classification.... [B]ut if you are going to put the professional personnel and the classified personnel upon time and a half for overtime,

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39 Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3293.
40 W. H. Lawrence, “Fight on 40-Hour Week Turns on the Political,” NYT, Mar. 29, 1942 (E8:1-2).
41 Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3294. In contrast, for example, Wilbur Mills, the “formidable” but “adaptive” chairman of the House Ways and Means Committee from the 85th through the 93rd Congress, when confronted with the Johnson’s landslide electoral victory in 1964, which “reallocated power,” had to choose between the role of “reluctant bystander” or “adroit manager of legislation which in another setting he would have preferred to block.” In fact, Mills had “always adjusted to legislative certainty and tried to take charge of the form which the inevitable takes.” In 1965 he was instrumental in shaping Medicare legislation that he had opposed for years and that administration supporters had never imagined feasible. Theodore Marmor, The Politics of Medicare 41, 105, 109 (1973 [1970]).
you are adopting an entirely new principle. ... There is nothing else to it; the objective is all the same—all they want is more money. And, instead of putting them on time and a half for overtime, you can give them different ratings in the civil service.42

Amusingly, Vinson then did an about-face, deferring to the judgment of Fisher’s superior, Rear Admiral Alexander H. Van Keuren,43 who testified that Vinson’s proposal would still not deal with the situation in which some draftsmen would work overtime and others would not. But when Vinson then instructed Van Keuren to “fix up an amendment,” and Van Keuren asked whether it was to apply to all the classified people in the civil service, Vinson repeated that: “We are not going to take in this clerical force in the City of Washington.”44 Vinson’s rationale for giving time and a half to draftsmen appears to have been rooted in their link to manual labor: “I know the draftsman has to go right along with the man who is driving rivets. There is no need to have a man doing riveting work, unless you have a man to draw off on a piece of paper to show him where they go, because the man who drives rivets has to have a blueprint to show him exactly what to do.”45

At this juncture, events moved swiftly, as the committee members asked Fisher to draft an amendment to cover not only draftsmen and designers, but also blueprinters and others, and Vinson himself read out a telegram from the Naval Design Alliance at the Philadelphia Navy Yard requesting inclusion, prompting Vinson to observe that “we will try to work that out.”46 Then after taking Sunday off, the committee resumed the hearings on May 20, at which Vinson announced that Fisher had provided a substitute for the “most important section in the whole bill...which refers to labor.” It provided for hours in excess of five eight-hour days in connection with work on naval vessels or aircraft during a presidentially declared national emergency (not to exceed 48 hours unless the president declared it in the interest of national defense) and time-and-a-half overtime (calculated on the fictitious basis that employees worked 360 days a year) for per diem, professional, and subprofessional employees, and to blueprinters, photostat, and rotaprint operators, inspectors, supervisory planners, estimators, progress men, and assistants to ship and plant superintendents of the CAF service.47 This language, according

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42Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3323-24.
43On Van Keuren’s career, see http://www.oac.cdlib.org/findaid/ark:/13030/tf5v19n7x5/bioghist/635702779.
44Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3325.
45Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3327.
46Hearing on H.R. 9822 to Expedite Naval Shipbuilding at 3327-28. The Alliance may have been associated with the FAECT.
47H.R. 9822, § 6 (76th Cong., 3d Sess., May 20, 1940); Hearing on H.R. 9822 to
to Vinson, "takes care of the professional people known as designers, draftsmen, engineers, and it takes care of everybody that works."  

The report that Vinson issued two days later to accompany H.R. 9822 reflected these changes (specifically mentioning draftsmen, engineers, and designers) and declared that overtime pay had not previously been allowed to any per annum government employees: "This section corrects that inequality by granting overtime pay to the draftsmen, engineers, and other subprofessional and professional employees and others upon whose rapid production of designs and working plans nearly all ship and aircraft work depends." Vinson had thus acquiesced in the categorical breach by granting overtime to some white-collar employees, but he succeeded in staving off, for the time being, Fisher’s "inevitable" extension to clerical workers. Availing itself of a trope that would be deployed again, the committee report also observed that, although shift work was the best way to expedite work, in some cases the nature of the job made it impossible: "For example, shifts cannot be worked on a design job in the drafting board any more than shifts can be worked in painting a portrait. This section of the act takes account of that fact by permitting work up to a maximum of 48 hours per week."  

Vinson, the floor manager for the House debate on H.R. 9822 on May 28, maintained that the bill’s labor section did nothing to affect adversely any benefits


48 *Hearing on H.R. 9822 to Expedite Naval Shipbuilding* at 3343.


52 On the House floor Vinson stated that it was the desire of the Navy Department and the committee to spread employment as much as possible and “reduce the appalling number of unemployed in this country.” *CR* 86:7022-23 (May 28, 1940).

to labor conferred by any labor laws enacted during the Roosevelt administration, including the FLSA and the Walsh-Healey Act. He added that the bill provided for overtime pay for work in excess of eight hours a day and 40 a week for all naval employees “except certain clerical and salaried employees whom [sic] the committee did not feel were entitled to overtime pay because of their salaried status and common acceptance of the fact that such employees are expected, being on a per annum salary basis, to work beyond regular working hours from time to time as the needs of the office or the business may require.”54

Denying what he referred to as “erroneous” press reports to the effect that sections of the bill were “mere subterfuges to destroy hard-won rights of labor,” Vinson asserted that H.R. 9822 preserved those rights.55 Vinson’s denial rested on his view that the bill’s only effect on the “rigid” actual eight-hour laws56 was to permit employees to work more than eight hours “by the simple expedient of paying them time and a half for overtime. In other words, [it] does away, temporarily, with the requirement that it takes an extraordinary emergency to justify work in excess of 8 hours a day.” Vinson further downplayed this categorical transformation of a real maximum-hours regime into a mere overtime regulation by suggesting that the former never had any bite to it since “[n]obody knows just what constitutes an ‘extraordinary emergency,’ anyway.” In contrast, for the FLSA, which he claimed H.R. 9822 was “patterned from,” Vinson had nothing but praise as “an intelligently drawn law in all respects, particularly the flexibility permitted in the question that concerns us—hours of labor.”57

An administrative enforcement apparatus was, as far as Vinson was concerned, superfluous because the “law of self-preservation, one of the first laws of Nature,” would intervene in the sense that “[e]very union will see that every man who works overtime gets his time and a half pay.”58 The only congressman who outflanked Vinson on the right during the debate was anti-labor Michigan Republican Clare

54CR 86:7022 (May 28, 1940). In the immediately following sentence Vinson said: “Of course, that does not apply to stenographers, messengers, and others of the clerical force down in the Navy Department.” Id. His use of the vague demonstrative “that” is confusing: although it seems to suggest that such employees were excluded from the exception, they were precisely the ones he meant to and did deprive of overtime pay.

55CR 86:7023.


57CR 86:7024. Vinson noted that H.R. 9822 would also have no impact on the Walsh-Healey Act because the Labor Secretary’s regulations permitted unlimited overtime so long as employers paid time and a half. Id.

58CR 86:7041.
Hoffman, who offered an amendment that would have made the NLRA inapplicable to any activity undertaken under H.R. 9822 on the grounds that: "[W]hatsoever may be said about Hitler one fact remains, that he is efficient. ... Most of us know he prepared for this war. He did not have any Walsh-Healey Act; he did not have any Wage and Hour Act; he did not have any N.L.R.A., and some way he got along without an N.L.R.B. ... If a war comes to our shores, it is not going to be a 40-hour-a-week war, nor will any man fighting that war get time and a half overtime pay." Although Vinson ordinarily agreed with "a great deal" that Hoffman had to say, he assured the House that if the amendment would have speeded up shipbuilding, it would already have been included in his "very technical" bill. After Hoffman’s amendment was rejected, the House passed the bill 401 to 1.

Several days later discussion of H.R. 9822 was taken up by the Senate Naval Affairs Committee, whose pro-labor and isolationist chairman, Massachusetts Democratic David Walsh, believed that it was “possible to live in some degree

60CR 86:7043.
61CR 86:7043-44.
62CR 86:7045. Left-winger Vito Marcantonio of the American Labor Party cast the sole no vote—which was apparently not directed at the labor provisions—as he did with regard to a number of military appropriations bills between the signing of the Hitler-Stalin pact and the Nazi invasion of the Soviet Union because he opposed a system under which the United States “‘would have been involved in a Munich men’s war, essentially imperialistic.” “Vito Marcantonio Falls Dead in Street,” NYT, Aug. 10, 1954 (1: 8, 14:1-4 at 3-4).
63“Ex-Senator Walsh Dies at Age of 74,” NYT, June 12, 1947 (25:1). In spite of his pro-labor reputation, Walsh failed to grasp the real-world enforcement even of the statute named for him. Thus after he stated that “I am sure in my community...if somebody worked overtime, if they did not comply with the law, they would not do it more than 5 minutes before there would be a protest made and they would be brought into the courts,” Wage and Hour Administrator Walling had to remind him that “many Government contracts...are awarded to companies which do not have any labor organizations and where there is no opportunity for labor organizations to know what the conditions are within that factory.” To Expedite Naval Shipbuilding at 113-14. Representative Albert Engel (Rep. MI) held a related unrealistic view of the FLSA’s overtime regulation. He believed that “[t]he only result” of suspending it “would be to take from the comparatively small group of lowest paid unorganized workers the benefits of the law,” but that suspension “would undoubtedly drive them into the ranks of organized labor,” because if one factory had time and a half after 40 hours and another worked 48 hours at straight time, it “would not be long before the second factory would be organized....” CR 88:3682 (Apr. 23, 1942).
of peace, even with a tyrant.... We have done so for 150 years. There have been Hitlers before.”

The lead witness, the ubiquitous Captain Fisher, assured the committee that the bill’s purpose was not to change wage-and-hour provisions or to affect any of the country’s economic or sociological conditions, but solely to expedite shipbuilding. On hearing Fisher explain that the House bill entitled certain civil service workers to overtime pay, but excluded the white-collar clerical workers, Walsh asked how they could be kept out once the doors had been opened. In response Fisher repeated his statement to the House committee that they neither could nor should be excluded: “I think it is inevitable that any civilian employee of the Government, when called upon to work overtime, will eventually get overtime.”

However, Fisher’s testimony prompted only the former Progressive California Governor Hiram Johnson to remark that “[i]t would be an infinitely more just thing if we included” the clerical workers “in the classes...that receive for overtime additional pay....”

The Solicitor of Labor, Gerard Reilly, testified that the House bill conflicted with the policy announced by President Roosevelt during his fireside chat on U.S. military preparedness just five days earlier that there was “nothing in our present emergency to justify making the workers of our nation toil for longer hours than those now limited by statute.” Although Reilly focused on a drafting error in the House bill that would have prevented laborers and mechanics from receiving overtime pay, he also emphasized that while “many low-paid common laborers and mechanics as well as clerical and custodial workers...are denied overtime compensation, the bill would require overtime compensation to already highly paid professional workers (whose salaries in the Government service range as high as $9,000 per year), who would seem to fall in the class least entitled to be favored. Such a capricious and costly policy would seem conformable neither to the President’s policy nor to the announced objective of the House Naval Affairs Committee.”

64CR 86:8783 (June 21, 1940). See also “Walsh Navy Bill Passed Senate,” NYT, June 22, 1940 (6:4).
65To Expedite Naval Shipbuilding at 5-6.
66To Expedite Naval Shipbuilding at 55.
67To Expedite Naval Shipbuilding at 59.
68To Expedite Naval Shipbuilding at 95.
69Franklin D. Roosevelt, Fireside Chat (May 26, 1940), in FDR’s Fireside Chats 152-62 at 159-60 (Russell Buhite and David Levy eds. 1993); “Text of President Roosevelt’s Radio Talk on the State of Our Defenses,” NYT, May 27, 1940 (12:1-6).
70To Expedite Naval Shipbuilding at 98.
71To Expedite Naval Shipbuilding at 99.
question as to whether $7,000-a-year Navy Department lawyers would get overtime pay. Palpably outraged by this news, Walsh promptly opined that Congress would not “stand for wholesale overtime in every Department of the Government.”72 (Walsh had not reacted at all when earlier Fisher had said that the highest salary of the group of draftsmen and designers was $5,600.)73 In order to conform the bill to the Vinson committee’s announced intention and Roosevelt’s policy, Reilly presented an amendment that would have expressly excluded professional and clerical employees, but it was not enacted.74

 Unlike Vinson’s committee, the Senate Naval Affairs Committee did hear testimony from union witnesses. In addition to a brief statement of support by the AFL for overtime pay for white-collar employees,75 Charles Stengle of the AFGE pointed out that under the House bill “on that side of the table a high official will be working overtime with time and a half for it, and his stenographer, or his confidential clerk on this side will work the same hours but will only get the present salary without any regard to overtime.” On behalf of this “sort of lost battalion” of about 6,000 white-collar clerical workers in the Navy Department and navy yards Stengle was able to elicit a confirmation of the injustice, again, only from Senator Hiram Johnson.76 In case the other committee members had not grasped the disparity, H. J. Coley, an AFGE member from the Norfolk Navy Yard, disclosed that H.R. 9822 would pay overtime to 315 per annum employees there whose salaries averaged $2,393 and deny it to 605 with an average salary of $1,493. This low-paid group included $600 messengers and stenographers paid

72To Expedite Naval Shipbuilding at 100. Although the text of the bill was ambiguous, Vinson’s committee report, as quoted above, expressly limited overtime pay to “draftsmen, engineers, and other subprofessional and professional employees and others upon whose rapid production of designs and working plans nearly all ship and aircraft work depends.” Lawyers would not have been encompassed by that definition.

73To Expedite Naval Shipbuilding at 55.

74To Expedite Naval Shipbuilding at 100-101. Ironically, it would probably have excluded the very draftsmen and engineers whom Vinson had been persuaded to include.

75To Expedite Naval Shipbuilding at 108, 143 (Paul Scharrenberg, AFL national legislative representative). The International Association of Machinists, National Federation of Government Employees, United Federal Workers, and national Federation of Federal Employees also testified briefly in favor of inclusion of all white-collar workers in the Navy Department. Id. at 140-41, 143, 146-48, 151.

76To Expedite Naval Shipbuilding at 130-31 (quote at 130). Stengle had himself served one term in Congress. Another AFGE representative, John Ross, added that demoralization would also be generated by failure to pay overtime to clerks who worked together with laborers who did receive overtime. Id. at 137
$1,260 or $1,440. Getting down to particulars, Coley explained that under the bill:

the shop superintendents making, say, $20 to $25 a day, if they come in and work Saturday they will receive $30 or $35 a day. The stenographer who takes the dictation...and makes only $5 a day will not receive a penny extra for Saturday work.

In other words...the boss will receive more pay for work on Saturday than the stenographer...or the typist gets for the whole week. We do not believe that is good for the morale of the service.

Finally, John L. Lewis and Philip Murray, the president and vice president of the CIO, submitted almost identical letters observing that “strangely” and “[i]ronically,” whereas clerical workers were excluded, the bill granted overtime pay to “professional and supervisory employees, who have not in normal times received such protection.”

One union that did not testify at the hearings but that was holding its national convention in New York City exactly at the same time was the left-wing Federation of Architects, Engineers, Chemists and Technicians. Noting that the Navy and other government departments had indicated that they might demand overtime work from per diem and annual technical employees and that the navy yards at Philadelphia and Washington had already made the demands, the FAECT, more interested in work spreading than premium pay, adopted a resolution “that government departments hire enough of today’s unemployed technicians to perform without overtime schedule of work” and “that overtime demands be restricted to short periods of demonstrated necessity....” To be sure, the union added that any work that was performed beyond eight hours a day or 40 hours a week be paid at time and a half “the actual annual wage (which for annual employees is defined to be the annual wage divided by 52x40 hours)....”

Perhaps the most tantalizing information to emerge at the Senate hearing was a suggested substitute provision that Walsh received (without identifying its source) that would have tapered overtime pay for per annum Navy employees so that those with an annual salary of $3,200 or less would have been entitled to time and a half, employees with a salary between $3,200 and $4,100 would have

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77 To Expedite Naval Shipbuilding at 135-36.
78 To Expedite Naval Shipbuilding at 136.
79 To Expedite Naval Shipbuilding at 150-51.
received straight time, and those whose salaries exceeded $4,100 would have received no additional compensation. With different dollar amounts, such a phase-out scheme was in fact the principle that Congress eventually adopted.

The bill that the Senate committee reported out on June 20 was more comprehensive than the House bill in that it extended uniform treatment of overtime compensation to all Navy Department employees. The committee felt that it was "wrong in principle to exclude the 4 percent of the total employees since this small group comprises, for the most part, the lower paid employees in the per-annum and per-month classes." As a matter of "justice" and to "insure the highest morale," the bill placed them on an equal basis with the 90 percent of employees already receiving overtime and the six percent added by the House bill. The committee's universalist reorientation was presumably a result of the Navy Department's repeated urging that "all of its per-annum employees should be allowed time and a half for overtime." To be sure, the Senate bill also made overtime hours beyond eight and 40 subject to the condition that "additional employees cannot be obtained to meet the exigencies of the situation."

If for some unexplained reason Walsh and his colleagues suddenly decided to...
pay overtime to $7,000-a-year lawyers after all, Vinson was having none of it. The conference committee voted to modify the Senate provisions "by refusing to allow time and one-half overtime to per annum employees except those specifically stated, namely professional and subprofessional employees and a few employees of the CAF group, such as blueprinters, rota print operators, inspectors, supervisory planners, and estimators. It denies overtime compensation to the clerks, stenographers, typists, etc." 86

And thus on June 28, the Act to Expedite National Defense, applying to the Navy Department and the Coast Guard and their field services, was passed, which authorized work beyond eight hours per day and forty hours per week and granted nominal time and a half compensation—artificially depressed by calculating a worker’s regular day’s pay as 1/360 of his annual salary—for weekly hours beyond 40 to the aforementioned white-collar workers. 87

Two days before Congress acted to extend government workers' hours, in the Soviet Union the All-Union Central Council of Trades Unions had announced that with the capitalist world once again "shaken by a world war," the "thumbscrew of capitalist exploitation has been tightened to the limit. ... If in capitalist countries the worker is compelled to work ten or twelve hours for the bourgeoisie, our Soviet worker can and should work more than now, work at least eight hours...." Consequently, office workers’ daily hours there were increased from six to eight. 88

A statute similar to H.R. 9822 covering the War Department was enacted in October. 89 Since no uniformity had been achieved in the regulation of federal employees' overtime compensation—for example, even where white-collar employees received such pay, it was depressed by the fictitious 1/360 formula, where-

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88 Text of Soviet Order Increasing the Work Week, NYT, June 27, 1940 (14:3-6). See also G. Gedye, “Russia Abolishes 5-Day Work Week,” NYT, June 27, 1940 (1:3).
89 Act Establishing Overtime Rates for Compensation of Employees in the Field Services of the War Department, ch. 903, Pub. L. No. 873, 54 Stat 1205 (Oct. 21, 1940). See also Act Authorizing Overtime Rates of Compensation for Certain Per Annum Employees of the Field Services of the War Department, the Panama Canal, the Navy Department, and the Coast Guard, ch. 168, Pub. L. No. 100, 55 Stat 241 (June 3, 1941) (time and a half for hours beyond 40 for per annum employees whose "overtime services are essential to and directly connected with expeditious prosecution of overtime work" on which employees enumerated in § 5(a) of Act of June, 28 1940 and § 1 of Act of Oct. 21, 1940, are engaged).
as blue-collar workers were largely paid real time and a half—thus exacerbating morale problems, both the Navy and War Department statutes were set to expire on June 30, 1942, and the labor movement was pressing for a reduction in overtime among federal employees in order to hire the unemployed and/or for overtime pay for hours beyond 40, some members of Congress continued to propose legislation to attain universal overtime compensation for the civil service. At the same time, however, others in Congress sought to undo all existing overtime legislation, including the FLSA, or, at the very least, to restrict overtime pay to weekly hours beyond 48.

The predicament confronting opponents of overtime compensation was well illustrated at another Vinson committee hearing at the beginning of 1942. At issue was a bill authorizing time and a half pay for employees in the field service of the National Advisory Committee for Aeronautics (a federal agency created in 1915 to promote aviation research) “whose overtime services are essential to the national defense program” in a manner comparable to the work performed by the aforementioned employees of the Navy and War Departments. John Victory, the NACA secretary, testified that if the bill became law, the agency could secure the equivalent of 25 percent of its additional needs “merely by extending the work hours that much, and...we will get that additional 25 percent of productive effort at not one-and-a-half times the cost for the additional hours beyond 40 per week,

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90E.g., Act of July 2, 1940, ch. 508, Pub. L. No. 703, § 4(b), 54 Stat 712, 714 (War Dept. laborers and mechanics engaged in manufacture or production of military equipment are entitled to time and a half after 8/40 hours); Act to Expedite National Defense by Suspending, During the National Emergency, Provisions of Law that Prohibit More than Eight Hours’ Labor in Any One Day of Persons Engaged upon Work Covered by Contracts of the United States Maritime Commission, ch. 838, Pub. L. No. 831, 54 Stat 1092 (Oct. 10, 1940) (every laborer and mechanic employed by any contractor or subcontractor entitled to time and a half after 8/40 hours); Act to Make Emergency Provision for Certain Activities of the United States Maritime Commission, ch. 84, Pub. L. No. 46, 55 Stat. 148 (May 2, 1941) (similar to Act of Oct. 10, 1940).

91Kammerer, Impact of War on Federal Personnel Administration at 217.

92Act to Expedite National Defense, § 12, 54 Stat. at 681; Act Establishing Overtime Rates for Employees in the Field Services of the War Department, § 2, 54 Stat. at 1205


but at a fraction of the cost, the fraction being 89.4 percent...because our em-
ployees are per annum employees,” whose overtime pay was reduced by the 1/360
formula. The ranking Republican on the House Naval Affairs Committee, Melvin
Maas of Minnesota, who was “violently opposed to paying overtime to anybody
in time of war,” asked Dr. George Lewis, the director of aeronautical research:
“Most of your people are research people and, if they can get somewhere near com-
parable pay, they will stay with you because they love to do research work; is that
not correct?”95 After eliciting a positive response that also confirmed his implicit
presumption that professional scientists (even in peacetime) were not fully ra-
tional economic actors seeking to extract every dollar that their labor market
position would have enabled them to secure, Maas was surprised but frustrated by
the reply to his next question:

Mr. MAAS. Even repealing time and a half throughout the whole system would not
help you; it would still not put you on a competitive basis?
Mr. VICTORY. If they repeal time and a half for everybody?
Mr. MAAS. For everybody.
Mr. VICTORY. Oh, yes; we would be all right then.
Mr. MAAS. I do not suppose we can repeal it; but it just seems utterly ridiculous to me,
in time of war, to be paying time and a half overtime beyond 40 hours a week.
Mr. VICTORY. I might say the N. A. C. A. is opposed to the principle of paying time
and a half for overtime in the Government, but we are confronted with conditions that
make it necessary.
Mr. MAAS. The time-and-a-half was originally for the purpose spreading employment;
it was not to pay an extra wage, but was a penalty upon employers for working people
more than 40 hours instead of hiring more people to do the work; but, in your case, there
is an actual shortage of the people you have to get?
Dr. LEWIS. That is right.96

Joining this collective lamentation, Vinson, who seemed finally both to discern
the limits of his obstructionist power in labor law matters that transcended his
committee’s jurisdiction and to appreciate the truth of Captain Fisher’s inevitabilist
vision, told Victory and Lewis: “I thoroughly agree with Mr. Maas...but
unfortunately, it is around our necks and we have to put you in the same

95Hearing on H.R. 6133, in Hearings Before the Committee on Naval Affairs of the
House of Representatives on Sundry Legislation Affecting the Naval Establishment 1942,
at 2248.
96Hearing on H.R. 6133, in Hearings Before the Committee on Naval Affairs of the
House of Representatives on Sundry Legislation Affecting the Naval Establishment 1942,
at 2248-49.
position."97 In fact, however, Vinson had not quite abandoned resistance. Just two months later he was chairing a hearing on a bill to "permit the performance of essential labor on naval contracts without regard to laws and contracts limiting hours of employment...."98 The bill's author was Howard Smith of Virginia, who had during the preceding several years been leading the attack on the NLRB.99 Smith, who refused to let himself be pinned down as to whether, after abrogating the 40-hour week, he would put in its stead 48 or 54 hours, preferred to "leave that open": "I am from a farming district. The people in my section work from what we down south call 'kin' to 'can't.' This is from the time they can see in the morning until they cannot see at night, and most of those people do not have anything the matter with their health or with their efficiency either. ... Let us forget about normal times, and remember that we are in war...and this bunk about social gains we have to forget about for a little while...."100

97 Hearing on H.R. 6133, in Hearings Before the Committee on Naval Affairs of the House of Representatives on Sundry Legislation Affecting the Naval Establishment 1942, at 2249

98 Hearings on H. R. 6790, To Permit the Performance of Essential Labor on Naval Contracts Without Regard to Laws and Contracts Limiting Hours of Employment, to Limit the Profits on Naval Contracts, and for Other Purposes (Mar. 19, 1942), in Hearings Before the Committee on Naval Affairs of the House of Representatives on Sundry Legislation Affecting the Naval Establishment 1942, at 2429 (77th Cong., 2d Sess., 1942) (Comm. Print No. 205). In fact, toward the end of the hearings Vinson himself offered a substitute for the bill that amended the FLSA so that for the duration of the national emergency overtime pay kicked in only after 48 hours. Hearings on H. R. 6790, To Permit the Performance of Essential Labor on Naval Contracts Without Regard to Laws and Contracts Limiting Hours of Employment, to Limit the Profits on Naval Contracts, and for Other Purposes, Part 3 (Apr. 29, 1942), in Hearings Before the Committee on Naval Affairs of the House of Representatives on Sundry Legislation Affecting the Naval Establishment 1942, at 3085 (77th Cong., 2d Sess., 1942) (Comm. Print No. 207).


100 Hearings on H.R. 6790 at 2464. Smith's opposition was an example of what former Wage and Hour Administrator Fleming meant when he wrote that "the agitation for relaxing the overtime provisions of the law seems to come with greatest zeal from those who opposed the Fair Labor Standards Act at its inception and have continued to work for its emasculation or repeal ever since." Philip Fleming, "The Great 40-Hour Lie Nailed," reprinted in Hearings on H.R. 6790 at 2449-51 at 2451. The then Wage and Hour Administrator rhetorically agreed with Smith, but did not believe that a problem existed empirically: "If 1 minute is to be lost in the race to equip the United Nations to smash the Axis because of the overtime provision of the law, we ought to strike it from the statute books—not a week or a month from now, but at once. ... Winning the war is paramount.
Smith's bill, which was part of a larger campaign by some (but by no means all) employers to do away with or at least dilute penalty overtime, would have amended the Act of June 28, 1940, by suspending for the duration of the national emergency (which Roosevelt had proclaimed on May 27, 1941) any laws requiring payment of premium overtime compensation to employees of naval contractors or of the Navy Department. The pragmatic tenor of the testimony of the witnesses whose appearances Vinson had requested was captured by Under Secretary of War Robert Patterson, who stressed that time and a half had become "a standard practice in many industries, irrespective of these laws, and has been embodied in a large proportion of existing collective bargaining agreements. A violent change...might result in a deterioration of, rather than an improvement in labor relations...." Patterson found justification for the overtime law, even if there was no need for work spreading, because in certain industries the basic rate was fixed taking into account that there would be some time and a half: "if we wipe out the time and a half we may take him down to what is too low a wage. I do not think we can be dogmatic about it."

Assistant Navy Secretary Ralph Bard, denied permission by Vinson to go off the record to respond to Representative Maas's question as to whether it was "necessary to pay overtime in order to induce these workers to work more than 40 hours to get this production out and save this Nation and themselves," personally opined that the point at which overtime pay kicked in could well be changed to 48 hours, but he was "convinced that there would be very strong opposition to that, with a serious effect upon production, which we just cannot afford at this particular time." Moreover, the lack of a ceiling on hours in Smith's bill would "open the door to sweatshop conditions and the possibility of employers working clerks, stenographers, white-collar workers and unorganized employees, without limit." Curiously, Bard's admonition moved even Vinson, who two years earlier had

to every other issue ***the 40-hour week, social gains, or anything else." Radio Address by L. Metcalfe Walling, Mar. 18, 1942, Blue Network, 7:45-8:00 P. M, in id. at 2466.

Marc Linder, *The Autocratically Flexible Workplace: A History of Overtime Regulation in the United States* 292-301 (2002). For example, Thomas Wallner, president of the Southern States Industrial Council, which declared that wage and hour legislation "should not invade the proper and legitimate field of management," conceded that time and a half might reasonably begin after 48 hours, but urged Congress to pass Smith's bill and "[s]weep away the last vestige of peacetime special privilege." *Hearings on H.R. 6790* at 2668 (quote), 2669, 2670 (quote).

*Hearings on H.R. 6790* at 2431.

*Hearings on H.R. 6790* at 2476.

*Hearings on H.R. 6790* at 2484.
insisted on the continued exclusion of government white-collar workers from premium overtime pay, to interject: “That is right. That is a just criticism.”

Navy Secretary Frank Knox himself, while agreeing that the 10-percent wage reduction that would result from paying overtime only after 48 hours would “precipitat[e] very serious labor difficulties,” also took a longer view that encompassed a postwar resurgence of unemployment: “Having adjusted conditions on the basis of time and a half for time worked over forty hours, is it wise to change that law now when you will probably have to go back to it again when the war is over and unemployment may become widespread again—when it will be necessary to spread employment as much as possible?”

The Navy bureaucrats’ reasoning coincided with labor’s. For example, AFL President Green, who rather extravagantly asserted that the “40-hour week has been accepted as a standard workweek, just like the dollar is accepted as a standard of value,” told the same committee that lowering or destroying overtime standards “would throw the Nation’s entire wage structure into chaos. It would create a widespread demand for wage increases to make up for lost earnings.”

The earlier attempt by CIO President Philip Murray to present the same position—namely, that eliminating overtime payments would “necessarily disturb the whole structure of collective bargaining”—triggered an unchoreographed blow-up with Republican Melvin Maas, who asked him whether he was in favor of overtime work to get additional compensation. After Murray had replied that he was “in favor of the maintenance of the standard for the 40 hour week,” Maas asked why labor had given up double-time pay for Sundays and holidays. Murray’s response that President Roosevelt had thought that its elimination would help the war effort prompted this exchange:

Mr. MAAS. Wasn’t that cutting your wages?

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105 Hearings on H.R. 6790 at 2541.
107 Hearings on H.R. 6790 at 3002.
108 Hearings on H.R. 6790 at 2801.
109 Hearings on H.R. 6790 at 2803.
110 Hearings on H.R. 6790 at 2770.
111 Hearings on H.R. 6790 at 2773-74.
From World War I Through World War II

Mr. MURRAY. Unquestionably so. Now, do you want it all? Do you want it all? We are giving you that. Do you want the rest?

Mr. [James] HEFFERNAN [Dem. NY]. Yes, we do.

Mr. MURRAY. You do want it? That is the idea?

Mr. MAAS. That is not at all necessary. ... I...want to know what the distinction is between time and a half and double time on Sundays and holidays.

Mr. MURRAY. I should say this to you, Congressman, have you...engaged in collective bargaining with employees...?

Mr. MAAS. What has that got to do with the relationship between double time and time and a half?

Mr. MURRAY. It has everything under God’s sun to do with the economic phases of American workingmen’s lives, Mr. Congressman, everything. Now, forgive me. I lost my temper and I didn’t intend to. I ask your forgiveness.112

The Civil Service

It seems that there was no very clear and general policy with respect to the payment of overtime until the exigencies of the war called for compensation of Government employes as a class on a basis similar to that adopted in private industry. When the time came to make such general provision, the more or less haphazard dealing with the subject theretofore seems not to have been clearly in mind.113

The problem of white-collar overtime work and pay, which was by no means confined to the military departments, beset the civil service as a whole and required centralized treatment. Perhaps the most thorough and accurate assessment of the relationship between the FLSA’s regulation of white-collar overtime and that of federal employees was developed by the hearings held by the House Civil Service Committee in June 1942. Chaired by Robert Ramspeck, a Georgia Democrat who had supported the FLSA in 1937-38,114 the committee was convened to consider Ramspeck’s bill, H.R. 7144, which, for the duration of the war and six months

112Hearings on H.R. 6790 at 2774.


114Nevertheless, in 1940 when addressing the annual meeting in Atlanta of the anti-labor and racist Southern States Industrial Council, Ramspeck expressed the hope that the anti-lynching bill would not pass, whose sponsors totally ignored that thousands of murders were committed each year and auto accidents caused more than 35,000 deaths. Robert Ramspeck, “Federal Legislation: Address,” Seventh Annual Meeting Southern States Industrial Council, Atlanta, Georgia, at 5 (Jan. 23, 1940).
thereafter, would have authorized department and agency heads to establish workweeks longer than 40 hours, and provided nominal time and a half compensation (computed by the 1/360 conversion factor) for executive branch civilian employees who worked more than 40 hours per week, provided that the additional pay did not cause their aggregate compensation to exceed $3,800.115

William McReynolds, Roosevelt’s administrative assistant, explained how the CSC and the Budget Bureau had determined $3,800 as the maximum: “The philosophy of the wage-hour law, requiring time and a half for overtime work in industry, is that the overtime will not be paid for the executive and administrative employees. That is the level at which there is a pretty definite split in the Classification Act for Government employees above which the routine employee does not go. ... It would be necessary to go down as low as $3,000 a year to get the full benefit of overtime payments. The theory is that executive and administrative employees shall not be given the benefit of overtime payments.”116 Although Civil Service Commissioner Arthur Flemming pointed out that it was necessary to correct the inequalities in treatment within the federal government—Congress had already authorized overtime compensation for 623,000 per annum employees and 461,000 hourly and daily employees of a total of 2,000,000 workers—it was equally important to eliminate the inequalities between government and private industry.117 The CSC recognized that the government had been violating the FLSA once Congress enacted piecemeal legislation for some per annum employees (in 1940). Since the CSC understood that “the Wages and Hours Act does exempt from overtime compensation benefits persons who are in administrative and executive positions,” it felt “that if we put in the ceiling of $3,800 we will come as close to being consistent with the Wages and Hours Act as we can.” To be sure, Flemming failed to explain why the commission believed that it was achieving equality between the federal and private sectors when FLSA’s ceiling for administrative and professional employees was $2,400 and for executive employees only $1,560, above which they were entitled to no overtime pay. In contrast, under H.R. 7144, a worker with an annual salary of $3,100 would have been entitled to the highest amount of overtime pay—an additional $671.67 for eight weekly overtime hours 52 weeks a year, bringing his annual compensation to $3,771.67 or slightly under the maximum of

117Temporary Additional Compensation for Civilian Employees for the Duration of the War at 10-11 (1942).
Edgar Young, the principal administrative (personnel) analyst for the Bureau of the Budget, shed considerable light on the administration’s attitude toward overtime pay for federal workers when, for the first time, it gave consideration to “this problem “from the standpoint of the Government as a single employer—...the largest single employer in the Nation.” The problem began—prior to June 28, 1940, when the vast majority of annual salaried employees were not entitled to overtime pay, the bureaucracy had apparently developed no consciousness of a problem—with the onset of the defense program, when hourly production workers in navy yards and arsenals were required to work 48-hour weeks with actual time and a half, but foremen, supervisors, draftsmen, engineers, and others, who were also scheduled for the longer works were not entitled to additional compensation.\(^{119}\)

The proposed overtime regulation, which Young characterized as “absolutely a war measure,” which there would be no reason to carry on after the war,\(^{120}\) would bring about “slightly increased earnings for the vast groups of lower paid Federal employees who have had no adjustment in their compensation in recognition of the increase in the cost of living since the war began.”\(^{121}\) (Indeed, 900,000 federal employees’ salaries had not been changed since 1930.)\(^{122}\) By the same token, some higher-paid employees, especially in the Navy and War Departments, whose annual salary rates exceeded $3,100 and who had been receiving overtime since 1940 without an aggregate salary ceiling, would suffer a reduction in total compen-

118The amount is calculated by using the bill’s fictitious $3,100/2,880=$1.0763888 x 1.5 x 8 x 52=$671.67. The Bureau of the Budget presented a table at the hearing showing that the peak overtime earnings ($630.24) came at an annual salary rate of $2,900. Temporary Additional Compensation for Civilian Employees for the Duration of the War at 27 (1942). However, this example resulted from using only the entry level salaries for each classification grade; $3,100 was an actual intermediate annual salary rate for CAF-7 and 8 (assistant and associate administrative). Act of July 3, 1930, ch. 850, Pub. L. No. 523, 46 Stat 1003, 1004. In tabular form the salaries were presented in U.S. Congress, House Committee on the Civil Service, Special Report Concerning Pay Structure of the Executive Branch of the Federal Government: Staff Report, tab. III at 10 (Confidential Committee Print, Mar. 24, 1945).

119Temporary Additional Compensation for Civilian Employees for the Duration of the War at 25 (1942).

120Temporary Additional Compensation for Civilian Employees for the Duration of the War at 36-37 (1942).

121Temporary Additional Compensation for Civilian Employees for the Duration of the War at 26 (1942).

122Temporary Additional Compensation for Civilian Employees for the Duration of the War at 27 (1942).
To be sure, "wherever you might make a salary cut-off it would be arbitrary, but in the judgment of those who are well acquainted with the Classification Act, the $3,800 level seems to be the most reasonable point to provide a salary cut-off." They also believed that it would be thoroughly inconsistent with the economic situation...to provide for an overtime pay authorization which would result in very substantially increased earnings for the high-paid employees at a time when purchasing power must necessarily be curtailed as part of an anti-inflationary program.

I am not sure that it is fully realized that an employee with an annual salary of $4,600 a year at present gets about $1,000 a year in overtime compensation...where he is authorized to receive overtime compensation. It is easy to see where that goes if you take it up to the $8,000 employee.

The $3,800 ceiling is written...in such a way as to prevent an employee in a subordinate capacity from receiving more pay than his superior. He may, though, receive as much.

Young admitted that the scheme would result in a clustering of earnings at $3,800, which would create some administrative complications, "but at least it would not be as bad as an arrangement providing for subordinates to receive higher pay than their superiors."

Young may have considered the cut-off level arbitrary, but the president of the National Federation of Federal Employees, Luther Steward, complained that the $3,800 threshold would deprive a substantial number of draftsmen, engineers, and other highly trained technicians, especially in the Navy Department, who were "neither executives nor administrators," of the overtime pay they had been receiving since 1940. The result, he predicted, would be their departure for similar work in the private war materials industry.

Charles Fisher, now a rear admiral, was the first witness to compare the FLSA, civil service salaries, and H.R. 7144 accurately. Modestly remarking that he was
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“not absolutely sure” of his figures for the FLSA, he stated them as $30 a week for executive and $200 a month for administrative employees, adding that the definition “is much lower down in the scale than we consider it in the navy yard. ... Our supervisory engineers are above that.” The supervisory positions under the Classification Act began at $3,200 to $3,800. Pleading for a fresh start “on a logical basis,” Fisher urged the committee to consider adopting for federal employees a pattern similar to the FLSA’s because he could not see to save his life why what was just and equitable for employees in interstate commerce would not be equally so in the government. The director of civilian personnel in the War Department, William Kushnick, also favored the $3,800 ceiling, despite the fact that it would exclude about 10,000 employees, because it “would be more consistent with the national pattern of not paying overtime to those in managerial and executive positions.”

Even if Fisher and Kushnick were right about the different hierarchical locations of executives and supervisors’ salaries in the private sector and the civil service, they neglected to mention that in addition large numbers of employees occupying nonsupervisory administrative and professional positions were excluded by the FLSA from overtime pay because their salaries exceeded $200 month, whereas thousands of their government counterparts receiving annual salaries up to $3,100 would have been entitled to overtime compensation under H.R. 7144 (and many more under later bills with a $5,000 ceiling).

A parade of labor union representatives expressed considerable criticism and resentment of the bill. William Hushing, the AFL’s legislative representative, praised the other bill under consideration by the committee, H.R. 7071, which the AFL had drafted and Ramspeck himself had introduced on May 11 at the

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128 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 94-95 (1942).
129 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 95 (1942).
130 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 101 (1942).
132 The FLSA regulations defining excluded administrative, executive, and professional employees would, as the chief of the Personnel Classification Division of the CSC observed, “describe many supervisory, administrative and professional positions in the middle and higher brackets” of the CAF and Professional and Scientific Service. Ismar Baruch, “Federal Overtime Policies,” PA 7(3):1-5 at 3 (Nov. 1944).
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organization’s request.\textsuperscript{133} It simply provided a $300 annual bonus to all federal civilian employees.\textsuperscript{134} Hushing suggested that the introduction of the AFL bill had impelled the Roosevelt administration—which opposed the bonus bill as perpetuating the inequalities of overtime compensation\textsuperscript{135}—to file H.R. 7144 two weeks later. Hushing also submitted an amended version of H.R. 7144, which provided for overtime pay also after eight hours daily, deleted the $3,800 ceiling, and substituted actual time and a half (using 2,080 hours as the divisor).\textsuperscript{136} The AFL opposed the ceiling because it would “result in a reduction in compensation for some worthy employees of the Government”: times might be “difficult for those in the lower brackets,” but their counterparts in the higher brackets were “also taking an awful rap.”\textsuperscript{137}

The CIO’s United Federal Workers,\textsuperscript{138} whose “sole purpose,”\textsuperscript{139} according to its leftist secretary-treasurer Eleanor Nelson, was to “make Government workers better war workers and the Government service a more efficient war industry,” displayed considerably less sympathy for the higher-paid civil servants. Although its jurisdiction extended beyond the “great civilian army of Federal employees which does vital mass-production clerical work,”\textsuperscript{140} the UFW made it clear that the

\textsuperscript{133} Temporary Additional Compensation for Civilian Employees for the Duration of the War at 64 (quote), 102-103 (1942).
\textsuperscript{134} H.R. 7071, § 1 (77th Cong., 2d Sess., May 11, 1942).
\textsuperscript{135} Temporary Additional Compensation for Civilian Employees for the Duration of the War at 15 (Flemming) (1942).
\textsuperscript{136} Temporary Additional Compensation for Civilian Employees for the Duration of the War at 103 (1942). Stengle of the AFGE added that although H.R. 7144 had not been introduced until after H.R. 7071, it had been two or three months in the making as a result of President Roosevelt’s feeling that uniform overtime regulation for government employees was necessary. Id. at 178
\textsuperscript{137} Temporary Additional Compensation for Civilian Employees for the Duration of the War at 104, 109 (1942).
\textsuperscript{138} The CIO chartered the UFW in 1937 to organize all federal civilian employees except the postal service and supervisors with the power to hire and fire. “Lewis Opens Drive for Federal Union,” NYT, June 22, 1937 (1:4).
\textsuperscript{139} Temporary Additional Compensation for Civilian Employees for the Duration of the War at 113 (1942).
\textsuperscript{140} Temporary Additional Compensation for Civilian Employees for the Duration of the War at 114 (1942). A year earlier Nelson had accused the federal government of unleashing a “virtual reign of terror” using “Gestapo methods” in trying to weed out Communists and CIO members employed by the government. “Says U.S. Officials Copy the Gestapo,” NYT, July 21, 1941 (28:1-2). On her later travails resulting from accusations of being a Communist, see Alexander Feinberg, “Compromise Fixes Spy Film Custody
organization

has consistently advocated top salary limitations for overtime pay similar to that carried in this bill. It is our belief that the overtime problem in the Federal service is most acute among the rank and file of Federal workers earning low salaries who often, because of inefficient management in the office, are kept late at night to perform hard, routine, and tiring work. We do not recognize the same problem as existing among executive and administrative workers who are compensated in prestige, interesting work, and advancement.141

The UFW’s commitment to defeating fascism was so all-encompassing, that, unlike the AFL unions, it was willing to postpone substituting the 260-day for the 360-day conversion factor to “some future date,” because any delay in passing H.R. 7144 “immediately...would detract from total-war efficiency, which is the paramount concern” of the UFW and all organized labor.142

Another left-wing union, the FAECT, which represented 2,000 technical employees in the War and Navy Departments, while agreeing with Nelson’s statement, nevertheless disagreed with the $3,800 ceiling.143 Although it had been stated that this ceiling was designed to approximate the exemptions of administrative, executive, and professional employees under the FLSA, because the latter had five or six other conditions attached, the union found it very difficult to apply an arbitrary salary limitation: “In many cases, particularly in the technical field, employees in private industry earn as much as $100 a week base pay and they are still being paid time and a half for overtime by the nature of their duties. In other words, they are not exempted.” The FAECT made no definite proposal, but requested that the $3,800 limit be reconsidered for P-3 employees in the technical

After long Fight,” NYT, Dec. 14, 1948 (1:8).

141 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 114-15 (1942). The legislative representative of the CIO also urged immediate adoption of both bills. Id. at 144-45 (Nathan Cowan). Nelson’s reference to “interesting work,” which was presumably to be understood as non- or at least less alienated work, as ersatz-compensation, would seem to apply most convincingly to the one category she did not mention—professional employees. On the other hand, this criterion could just as well serve to justify lower (non-overtime) salaries for such professionals, an innovative pay practice whose time does not appear to have come yet. Remarkably, neither unions nor the WHD/DOL ever sought to impute this criterion to Congress in explanation of its intent to exclude white-collar workers from the FLSA.

142 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 115 (1942).

143 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 118-19 (George Curran, international representative) (1942).
category, who would not be exempted under FLSA. To be sure, the members’ average wage was $2,000-$2,400, but most of the FAECT’s high-paid P-3 technical workers with a salary of $3,200 would lose several hundred dollars in overtime pay. While the union in terms of its members basically had no interest in salaries above $3,800, “in the interest of fairness, some consideration should be given to applying the wage-hour standards to Federal employees rather than arbitrarily establishing a salary ceiling and saying that nobody earning more than that shall be paid overtime.” In the end, however, the FAECT abandoned the goal of general fairness and proposed raising the ceiling to $4,000 in order to include P-3’s at $3,200, while excluding supervisory employees.

Even unions that were largely unaffected by the $3,800 ceiling urged raising it. The union representing printers at the Government Printing Office thought that it should exclude only those whose salaries were high enough to have enabled them to save enough to offset the increased cost of living. The union estimated this amount to be about $5,000, but still insisted that “in principle a man with a high salary should be paid overtime, just as one receiving a lower salary should be paid overtime,” despite the fact that the increased cost of living had “meant the elimination of necessities for the low-paid employee, but only the elimination of luxuries for the high-paid employee.” Similarly, the International Association of Machin-

144 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 120 (1942). Grade 3 in the professional and scientific service (P-3), whose entry level salary was $3,200 and highest level was $3,800, was called “the associate professional grade,” and included “all classes of positions the duties of which are to perform, individually or with a small number of trained assistants, under general supervision but with considerable latitude for the exercise of independent judgment, responsible work requiring extended professional, scientific, or technical training and considerable previous experience.” Act of May 28, 1928, ch. 814, 45 Stat. at 777. The salaries were prescribed by Act of July 3, 1930, ch. 850, 46 Stat. 1003. Based on this general description, it is possible that the P-3’s would have been excluded by the FLSA professional duties tests.

145 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 121 (1942).

146 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 123 (1942). An employee at P-3 with an annual salary of $3,200 working eight hours of overtime every week all year would, on the basis of a 1/2,880 conversion factor, have earned $693.33 in overtime pay for total compensation of $3893.33; raising the ceiling from $3,800 to $4,000 would thus have preserved the employee’s entitlement to $93.33.

147 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 140 (James Holloman, chairman, legislative committee, Typographical Union
ists, whose members would also have been little affected, opposed the ceiling on the grounds that "employees receiving more than $3,800...a year usually are experts or have supervisory positions. In private industry they would get substantial bonuses; and therefore this overtime would not measure up to what they would receive in private industry." Even more expansive was Charles Stengle of the AFGE, who observed that the labor movement had been unable to find out how the $3,800 ceiling had been fixed and whether it had been designed to harmonize with the FLSA. In any event, it would exclude thousands of internal revenue agents, immigration experts, and non-supervisory technicians and experts in the Navy and War Departments, who would still have to work overtime just like their "humbler" coworkers. Under the slogan, "Let us be fair to everybody," Stengle was not prepared to exclude "supervisors and other administrative officers":

I hold no brief for administrative officers or supervisors, but I do not feel so badly toward them that I want to punish thousands who work under them in order to get even with them.

I have no objection to a good supervisor getting paid for overtime; and I object to a bad employee getting overtime pay as much as I would object to a bad supervisor getting it. [L]et us be fair about this thing.

The president of the AFL-affiliated International Federation of Technical Engineers, Architects, and Draftsmen's Union, C. L. Rosemund—a vocal political enemy of the left-wing FAECT—was unusual in taking a sarcastically belligerent position on the bill. He characterized the government witnesses' advocacy of H.R. 7144 for the purpose of meeting the cost of living "a rather novel approach to this question, and in my experience of 25 years with the organized labor movement, I have never had a proposition advanced to meet increased living costs by requiring employees to work additional hours. No private employer would have the temerity to even suggest a procedure of this nature and from this angle I do not believe that H.R. 7144 deserves serious consideration." With regard to the bill's

No. 101) (1942).

\[148\] Temporary Additional Compensation for Civilian Employees for the Duration of the War at 157 (N. Alifas, president, district 44) (1942).

\[149\] Temporary Additional Compensation for Civilian Employees for the Duration of the War at 180 (1942).

\[150\] Temporary Additional Compensation for Civilian Employees for the Duration of the War at 180 (1942).

\[151\] See above ch. 12.

\[152\] Temporary Additional Compensation for Civilian Employees for the Duration of the War at 189 (1942).
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overtime scheme, Rosemund did not hesitate to predict that if the $3,800 ceiling remained, “the very cream of essential employees...will be lost to the Government because...these same employees will be forced to accept employment in private industry engaged in defense work where there are no such restrictions.” He purported to have “evidence to show that in private industry all employees, with the exception of top executive and administrative positions, are now receiving overtime at...time-and-a-half. This includes subordinate officials such as foremen, squad bosses, and like positions, by whatever term they are designated.” To be sure, Rosemund did not claim that the FLSA required such payments, but since he realistically viewed the enactment of the overtime law for naval employees on June 28, 1940, as “action to conform to practices in private industry” that was “compelled” by the labor market,¹⁵³ he was in effect warning the committee that, with the absorption of the reserve army and navy of the unemployed, the FLSA had been overtaken by supply and demand.

Since the Navy and Army overtime laws expired in the midst of the committee proceedings, twice Congress had to pass joint resolutions extending them first until June 30 and then November 30, 1942.¹⁵⁴ The principal Senate bill (S. 2666) in the second session of the Seventy-Seventh Congress, when introduced in July 1942 by the upstate New York Democrat James Mead, a staunch New Dealer and pro-labor former railroad worker¹⁵⁵ who soon chaired hearings held by a subcommittee of the Civil Service Committee, applied to almost all federal civilian employees and imposed no ceiling on aggregate basic pay plus overtime compensation, but it limited full overtime pay to those with salaries of $2,900 or less and even these workers were left with little more than straight time by virtue of the bill’s use of the 1/360 conversion factor.¹⁵⁶

At the Senate hearings in September, the Civil Service Commission, again represented by Commissioner Flemming, vigorously urged the committee to act quickly to put an end to the morale-depressing inequity of entitling 58 percent of 2,234,000 civilian federal employees to overtime pay and denying it to the other 42 percent. Although he exaggerated in asserting that “[o]bviously, any private employer who indulged in such a practice would be violating the basic philosophy

¹⁵³ Temporary Additional Compensation for Civilian Employees for the Duration of the War at 190 (1942).
¹⁵⁶ S. 2666, §§ 1, 3(a) (77th Cong., 2d Sess., July 21, 1942).
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of the Wage and Hour Act," he was able to offer blatantly irrational examples of the $6,500-a-year Navy Department lawyer who was paid for overtime while his secretary was not and the stenographer in the Washington navy yard who was compensated while her counterpart in the Navy Department headquarters was not.157 His more wide-ranging commentary revealed that even Flemming considered overtime compensation (and presumably hours regulation as well) inappropriate for white-collar employees above a certain salary level without being able to conceptualize or justify the dividing line. Moreover, he was either unaware of or ignored the fact that Congress had never articulated any (let alone a coherent) policy or principle regarding such a line under the FLSA:

The present practice of the Federal Government in paying overtime for high-salaried employees is in conflict with the principle of the Wages and Hours Act.

As we all appreciate, the Wages and Hours Act provides that persons in supervisory and administrative positions are not to be paid for overtime. The Congress, in passing previous overtime legislation [for civil servants], has passed it, however, in such a way that at the present time approximately 16,000 employees earning in excess of $2,900 receive overtime compensation. That means that some persons who received $8,000 a year are eligible for overtime compensation.

Now, the Commission has felt that basically this was wrong, that overtime compensation was not intended to apply to high-salaried employees. But, at the same time, we recognize that it is water over the dam, that we have 16,000 persons who have been receiving overtime compensation, and many of them occupy...key, critical jobs in connection with the war effort. Therefore, we feel that it would be unfortunate to take all of their overtime compensation from them.158

Whereas Flemming failed to take a position on the use of the 1/360 conversion factor, Rear Admiral Fisher testified that he would be “very pleased” if it were changed to 1/260 in order to “create more equitable treatment” between salaried and hourly wage employees.159 In contrast, AFL President Green erroneously believed that the bill already contained the 1/260 formula, which represented “the

best thought of both labor and management."\textsuperscript{160} Only Charles Stengle of the AFGE offered what he deemed an even better thought: although he opposed any ceiling, he urged the committee to raise the maximum for full overtime coverage from $2,900 to $5,000 because the "man under $5,000 is bumped up pretty hard with the high cost of living" and many experts who were not lawyers were needed to work overtime and were punished by the bill.\textsuperscript{161}

At the end of October, the Senate Civil Service Committee reported out S. 2666, which created full time and a half up to $2,900 by lowering the (annual hours) conversion factor from 1/2880 to 1/2080.\textsuperscript{162} The report observed that because under existing law 58 percent of federal employees were entitled to overtime pay while 42 percent were not, serious problems of personnel supervision and management had been created in offices where overtime could not be paid. In order to insure that the federal government moved toward "putting its own house in order" and to reduce the outflow of employees from government service, the bill treated all federal employees with regard to overtime compensation "in substantially the same manner as private employers are required to treat their employees" under the FLSA. In fact the combined use of the annual to hourly basic pay conversion formula of 1/2080 on salaries up to $2,900\textsuperscript{163}—only 7.3 percent of executive branch employees were in salary grades exceeding $2,999\textsuperscript{164}—meant that the Senate bill was more comprehensive since at the time the FLSA salary-level test for executives was only $1,560 and $2,400 for administrative and professional employees.\textsuperscript{165}

With the previous temporary overtime authorization having expired on November 30, Roosevelt sent a letter to the president of the Senate and speaker of the House on December 11, 1942, observing that the U.S. government, "the largest single employer in the Nation, has permitted a condition to develop regarding rates of pay, hours of work, and overtime compensation, which is grossly unfair, is one of the major causes of needlessly high personnel turn-over, and is impeding the successful prosecution of the war effort." Whereas pay rates and time and a half for work over 40 hours corresponding to the situation of nongovernment industrial employees had been established for most mechanics, tradesmen, and laborers in navy yards, arsenals, and other government production establishments, and certain

\textsuperscript{160}War Overtime Pay Act of 1942: Hearings at 61.
\textsuperscript{161}War Overtime Pay Act of 1942: Hearings at 94-95.
\textsuperscript{162}S. 2666, § 3(a) (77th Cong., 2d Sess., Oct. 29, 1942).
\textsuperscript{164}CR 89:2921 (Apr. 5, 1943) (data as of Oct. 31, 1942).
\textsuperscript{165}See above chs. 9 and 13.
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groups of salaried employees in the War Department, Navy Department, Maritime Commission, and National Advisory Committee for Aeronautics, might be paid for overtime, other employees in the same agencies and in other agencies performing the same work whose hours of duty had been extended beyond the peacetime 39-40 hours could not. Calling this situation "a complete violation of the principle of equal pay for equal work which has been the guiding policy in Federal pay matters since the enactment of the Classification Act of 1923," the president expressed his judgment that further temporary extensions of overtime pay authorization to limited groups was "only perpetuating a bad situation and should be avoided." He therefore proposed that Congress either take immediate action "to deal realistically with the whole problem" or delegate to him authority to deal with federal government pay, hours, and overtime compensation for the duration of the war.166

To be sure, at his morning news conference, where he read the letter, Roosevelt remarked that he was not optimistic about congressional action—the letter had just been "for the record." In turn, House and Senate leaders, while professing sympathy for the proposal, argued that if such a measure were called to the floor, it would be the signal for efforts to amend the law in order to increase the workweek to 48 hours in private and government employment.167

Despite initial congressional trepidations,168 ten days later Congress enacted an extension of the act of June 28, 1940 until April 30, 1943, but also for the first time authorized the payment of overtime compensation to all federal civilian employees (except in the judicial and legislative branches). In addition to retaining the use of the fictitious 360-day working year as an arithmetical device to deprive workers of real time and a half, the new law also restricted payment to that part of an employee's basic annual compensation not in excess of $2,900 and prohibited payment of any overtime pay that would cause an employee's total annual compensation to exceed $5,000.169

Two days before issuing an executive order implementing overtime compensation "at the rate of one and one-half times the employee's regular rate of

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166 CR 88:9469-70 (Dec. 11, 1942).
168 CR 88:9470-72.
169 Joint Resolution Extending Until April 30, 1943, the Period for which Overtime Rates of Compensation May Be Paid Under the Acts of June 28, 1940, ch. 798, Pub. L. No. 821, 56 Stat. 1068 (Dec. 22, 1942). Also excluded were those whose wages were fixed on a daily or hourly basis and adjusted in accordance with prevailing rates by wage boards, elected officials, and department heads or heads of independent establishments or agencies.
compensation subject to the [three] limitations,"\textsuperscript{170} which in fact insured that even low-paid federal workers would not be paid time and a half and that higher-paid employees would receive even lesser (or perhaps no) premiums, Roosevelt—demonstrating the impeccable logic of work-sharing in reverse—ordered all federal offices to adopt the six-day, 48-hour week in order to permit a reduction in personnel and eliminate the need to fill vacancies.\textsuperscript{171}

Chairman Mead introduced a new bill (S. 635) at the beginning of the Seventy-Eighth Congress, which was similar to S. 2666 in lacking an aggregate pay ceiling and limiting full overtime to salaries not exceeding $2,900; however, it substituted the full time-and-a-half 1/260 conversion factor for the 1/360 in the earlier bill.\textsuperscript{172} H.R. 1860,\textsuperscript{173} the bill that eventually became the War Overtime Pay Act, was introduced by Jennings Randolph, the West Virginia Democrat who chaired the Civil Service subcommittee appointed by committee chairman Ramspeck to hold hearings on it. Randolph had simply introduced Mead’s S. 635 “by request,” indicating that he was not necessarily in agreement or disagreement with it, but that it was only a vehicle for the House hearings.\textsuperscript{174} Both Civil Service Committees held hearings at the same time on the same bill.

At the Senate hearing, even Mead, who called attention to “this ridiculous setup” by which “the man who is paid for overtime dictates a sufficient amount of work to require overtime to the party that is not paid for overtime,” nevertheless regarded the situation as a “crisis.” Far from operating within a long-term framework, he instead assumed that when the wartime emergency was over, the federal workers would all return to a 40-hour week: “There will be no time and a half for overtime necessary. The legislation will become extinct....”\textsuperscript{175} In contrast, the president of the NFFE, Luther Steward, when asked by another senator whether it was his hope that after the war the system could dispense with overtime treatment, observed that “the principle of punitive overtime” was “a necessary corrective even in normal times” because, for example, many administrators and supervisors “un-

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\textsuperscript{170}Executive Order 9289, in \textit{FR} 7:10897 (Dec. 29, 1942 [Dec. 26, 1942]).
\textsuperscript{172}S. 635, § 2 (78th Cong., 1st Sess., Feb. 4, 1943).
\textsuperscript{174}Temporary Additional Compensation for Civilian Employees for the Duration of the War: Hearing Before a Subcommittee of the Committee on the Civil Service House of Representatives on H.R. 1860, at 4 (78th Cong., 1st Sess., Feb. 24-26, 1943).
\textsuperscript{175}Overtime Compensation to Government Employees: Hearings Before a Subcommittee of the Committee on Civil Service United States Senate 6 (78th Cong., 1st Sess., Feb. 25-Mar. 2, 1943).
\end{flushleft}
intentionally work employees overtime by not getting around to signing the mail until late hours of the evening”—a “bad habit[]” that would be corrected if the government had to pay for it.176

CSC Commissioner Flemming, while supportive of eliminating the $5,000 ceiling, opposed computing overtime on an employee’s whole salary on the grounds that “we just do not feel that that is sound,” but he failed to explain why.177 When Georgia Democrat Walter George, pointing to the possibility of “forget[ting] this time-and-a-half thing” because “[y]ou cannot apply it; you have to have all kinds of exceptions,” proposed that instead all salaries be increased by a flat percentage, Flemming, rather than rejecting this approach as fundamentally missing the point of overtime work regulation, merely stressed that too “much water had gone over the dam...to shift over to a new formula.” Flemming also mentioned the difficulty of treating federal employees differently than those in private industry,178 but since they always had been and remained so under S. 635, the objection lacked force.

After the Bureau of the Budget informed the committee that using the 260-day formula would cost about $219,000,000 and eliminating the $5,000 ceiling for 18,000 employees an additional $15,660,000,179 Mead, who was again chairing the subcommittee hearing, implored the next witness, Rear Admiral Fisher, to “give us some very good material for the record....”180 He did not disappoint. After lamenting the “gross injustice” that until June 28, 1940 federal white-collar employees had been expected to work overtime without pay and that even since then their salaries, unlike those of their per diem and hourly colleagues, had not been increased, Fisher contrasted their situation with the FLSA regime: “In the Fair Wages and Hours Act the only employees exempted from time and a half for overtime work...are the administrative and executive employees, presumably these high officials of companies, rather than the lower ranks of supervisors or clerks, or draftsmen.”181 Apart from omitting the large numbers of excluded professional workers, Fisher (who, as his aforementioned testimony before the House committee eight months earlier revealed, knew better) severely distorted the FLSA’s white-collar coverage: in fact, it excluded an “executive” earning only $30 a week or $1,560 a year—just $120 more than “our stenographers, typists and clerks in the

176Overtime Compensation to Government Employees at 79.
177Overtime Compensation to Government Employees at 20.
178Overtime Compensation to Government Employees at 29-30.
179Overtime Compensation to Government Employees at 34 (testimony of Edgar Young, administrative analyst, Bureau of the Budget).
180Overtime Compensation to Government Employees at 48.
181Overtime Compensation to Government Employees at 48-49.
lower grades" (CAF-2) at a time when the average annual salary of “our white-collar workers was between” $1,800 and $1,900182 and one senator asked “how a man with a wife and children can live on $1,610 in Washington.”183 Fisher’s flawed empirical understanding (or, at least, description) of the FLSA’s exclusions of white-collar workers made it unnecessary for him to feel any need to reconcile them with his view that time and a half had become “definitely established in the economic life of this country...”184

Some labor union representatives even chided the committee for setting the full overtime maximum at $2,900: “Why put that little ceiling in the middle there unless you want to make this a poor man’s bill? In other words, you think that up to $2,900 is about as far as anybody ought to ask for overtime pay.”185 The president of an AFGE local at the Springfield Armory representing salaried engineers, draftsmen, technicians, metallurgists (“the people who really make a good gun or a poor gun”) criticized the $2,900 threshold as not covering “the most valuable employees” and urged raising it to $3,800.186

Before the House committee the Roosevelt administration supported the bill in order to create a uniform rule that would eliminate the “feeling” by some civil service employees that they were being treated unfairly.187 Speaking for the CSC, Flemming supported the 1/260 formula because it paralleled the treatment of blue-collar government workers and the FLSA’s approach; he also favored eliminating the $5,000 ceiling both to deal with the increase in the cost of living and because upper-bracket government salaries were lower than those for private-industry positions with comparable duties and responsibilities.188 Flemming did not mention that the FLSA presumably excluded such more highly paid private-sector white-collar employees from overtime pay.

Since Flemming had mentioned that working conditions had increased turnover among federal employees, Alabama Democrat Carter Manasco asked: “This is a very touchy question at the present time...but I think the people should know something about it, if you have the information. I have had quite a few girls from

182Overtime Compensation to Government Employees at 62 (Fisher).
183Overtime Compensation to Government Employees at 29 (Sen. Langer).
184Overtime Compensation to Government Employees at 51.
185Overtime Compensation to Government Employees at 84 (Charles Stengle, AFGE).
186Overtime Compensation to Government Employees at 99-100 (testimony of A.C. Cardinal).
187Temporary Additional Compensation for Civilian Employees for the Duration of the War at 3 (statement of William McReynolds, adm. asst to the President) (1943).
188Temporary Additional Compensation for Civilian Employees for the Duration of the War at 15 (1943).
my section of the country say that they left the Government service because of being ordered to work in offices and use the same rest rooms with people of other color. Of course, I realize that that is a very touchy question to bring up now, but have you made any investigation?” Flemming’s lack of any such information disappointed Manasco as much as the fact that civil service applications no longer bore applicants’ pictures and were not permitted to show their color.189

In contrast to the salary-based exclusions of white-collar workers under the FLSA, which unions had long ceased to protest, numerous labor representatives testified in favor of the elimination of the $5,000 ceiling on total compensation including overtime pay. Luther Steward, president of the NFFE justified abandonment of the $5,000 ceiling and urged at a “very minimum” that employees receive overtime on the first $5,000 of their salaries on the somewhat unusual grounds that “people in the so-called higher salaried brackets by reason of their normal financial commitments find it more difficult readily and rapidly to adjust themselves to a shrinking purchasing power and are the group which are among those hardest hit in times of inflation....”190 (At the Senate hearing Steward had additionally and erroneously asserted that raising the $2,900 full overtime threshold to $5,000 was necessary to place those in “key positions throughout the executive branch on an equality with those in private employment...in great demand....”)191 The FAECT, which represented two to three thousand scientific and technical workers in navy yards and arsenals, both supported eliminating the $5,000 ceiling and proposed raising from $2,900 to $3,200 the maximum for full overtime coverage in order to cover more technical employees. Again, it is not clear (since members of Congress were as confused and ill-informed as the witnesses) whether mere ignorance prompted the erroneous claim that the bill (not to mention the proposed changes) did not treat federal employees better than those in private industry.192 Three organizations representing 2,000 designers and supervisors at the Philadelphia Navy Yard that supported eliminating both the $5,000 and $2,900 ceilings also incorrectly asserted that, with those changes, the bill would have placed salaried employees on the same overtime basis as both federal blue-collar workers and private-sector white-collar employees. In fact, whereas blue-collar government workers were not subject to those limits, very few of them would have earned $5,000 a
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year; in contrast, the FLSA denied overtime pay to professional or supervisory salaried employees in private firms earning more than $2,400 or $1,560 annually. The navy yard organizations were concerned about the $5,000 limit because it meant that a supervisor with base pay of $4,600 supervising another professional employee earning $3,800 would wind up with $1.67 less every two weeks. A representative of the organization of professional employees of the Agriculture Department did not object to retention of the $2,900 ceiling, but supported eliminating the $5,000 total compensation limit in part because salaries of federal government professionals such as chemists were considerably below those in private industry. Yet he failed to note that because the private-sector monthly salaries ranging from $227 to $564 (depending on seniority) that he listed all exceeded the FLSA salary limit (of $200) for professional employees, none of their recipients was entitled to any overtime pay at all.

The Senate bill (S. 635) reported out by the Civil Service Committee on March 26 retained the $2,900 ceiling (on full overtime) and reinstated the restrictive 1/360 conversion formula, but lacked the $5,000 ceiling on total compensation. As reported out by the House Civil Service Committee on April 1, H.R. 1860 both imposed a $5,000 ceiling and reverted to the 1/360 conversion formula, which reduced overtime compensation almost to mere straight time. Both the Senate and the House Civil Service Committees frankly characterized "[t]he major purpose" of their respective bills as providing government employees with additional compensation to enable them "to meet wartime living costs."

The congressional floor debates underscored how thoroughly the principles of overtime work regulation had been instrumentalized in favor of mere wage policy. Robert Ramspeck, the Georgia Democrat who chaired the House Civil Service Committee for many years, made this point unmistakable. When George Mahon of Texas, an opponent of the 40-hour week during wartime, asked whether there was some way Congress could raise federal employees' pay "without putting our

193 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 96-98 (Edwin Alm) (1943).
194 Temporary Additional Compensation for Civilian Employees for the Duration of the War at 104-105 (S. Fracker) (1943).
195 War Overtime Pay Act of 1943, at 1-2 (S. Rep. No. 142, 78th Cong., 1st Sess., Mar. 26, 1943). Oddly, despite this account by the committee, the printed version of the bill (which was not included in the report) did in fact contain the $5,000 ceiling. S. 635, § 2 (78th Cong., 1st Sess., Mar. 26, 1943).
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stamp of approval on time and a half for overtime over 40 hours a week, Ramspeck forthrightly replied that they were not putting their stamp of approval on it because, whereas the FLSA used 260 as the divisor, which produced an overtime wage increase of 30 percent, the bill used 360: “It does not figure time and a half. It figures only 1.6 percent over straight time.” And in response to Mahon’s question, “The gentleman is just using this as the mechanics or vehicle for raising the pay?” Ramspeck replied: “That is correct. We are not endorsing any 40-hour week. As a matter of fact,...prior to this war employees in Washington worked only 39 hours a week. So we have really raised the number of hours 9 hours per week and we have given them 21.6 percent more money, which is just straight time.” And then with all imaginable clarity in response to a similar query Ramspeck declared: “It has nothing to do with the principle of the 40-hour week. It is simply a method of arriving at the pay.”

Token resistance—under procedural rules the bill could no longer be amended—to the $5,000 ceiling was offered by Manhattan Democrat Arthur Klein, whose amendment to eliminate it had already been rejected in committee. With the exception of agency heads, he argued that it was unfair to discriminate against a civil servant who faced the increased cost of living merely because he had “worked his way up after years of hard work....” Finally the House voted 224 to 107 to pass the bill.

In the Senate, debate focused on an amendment by Utah Democrat Elbert Thomas to use the 1/260 conversion factor to create actual time and a half. This proposal had been the major question before the Civil Service Committee, a large majority of which had voted against it primarily because it would have added over $200,000,000 to the cost of the bill. Virginia Democrat Harry Byrd also noted that the committee majority had been of the view that civil service employees “should not be considered on an hourly basis” as under the FLSA or like the mechanical workers in the navy yards and arsenals. In addition, Byrd opposed actual time and a half because civil service employees had 26 days of paid vacation and 15 days of paid sick leave per year, which, as far as he knew, no private enterprise offered. Ultimately the Senate rejected Thomas’s amendment and passed H.R. 1860.202

The conference committee, adopting that feature of the Senate bill, eliminated

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199 CR 89:2921. Klein also favored the real time-and-a-half 1/260 divisor, as did Mendel Rivers (Dem. SC), who was not known as a friend of labor. Id.
200 CR 89:2922.
201 CR 89:3128-29 (Apr. 8, 1943).
202 CR 89:3175, 3186 (Apr. 9, 1943).
the $5,000 ceiling, but after the Senate had agreed to the conference report, the change met resistance in the House, some of whose members purported to resent paying more than $11,000,000 a year in overtime to the 18,000 bureaucrats with salaries above the ceiling. Initially the House voted 162 to 157 to reject the conference report, but two weeks later, reversing itself without debate, it agreed to it by a vote of 275 to 119.

The War Overtime Pay Act of May 7, 1943, which was to expire at the latest on June 30, 1945, applied to all civilian annual federal officers and employees (with the exception of GPO and TVA employees, those of the field service of the Post Office Department, elected officials, judges, and department and agency heads). Although it prohibited the payment of overtime compensation on any portion of an employee's basic pay over $2,900, it provided for payment of overtime even when it caused his aggregate compensation to exceed $5,000 annually. The law also gave department heads discretion to grant per annum employees compensatory time off from duty in lieu of overtime compensation for work beyond 48 hours per week.

From the perspective of developing a uniform and consistent policy with

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204CR 89:3560 (Apr. 19, 1943).
205CR 89:3655, 3657, 3659 (Apr. 21, 1943). Rep. Clarence Kilburn, an upstate New York Republican who opposed eliminating the ceiling, told the House that as a member of the conference committee he had proposed lowering the ceiling to $3,200, but that his amendment had been rejected. Id. at 3658. The proposal seems odd since, by disadvantaging even more civil servants, it would not have been a compromise, but would have driven the House position even further from the Senate's. A compromise would have raised the ceiling to somewhere between $5,000 and $9,000.
208Act to Provide for the Payment of Overtime Compensation to Government Employees, § 1, 57 Stat. at 75-76.
209Act to Provide for the Payment of Overtime Compensation to Government Employees, § 2, 57 Stat. at 76. Although the salary brackets used in the data presentation did not permit an exact count of employees whose total salaries exceeded $5,000, as of January 1, 1945, fewer than 6 percent of more than 1.2 million per annum federal employees paid in accordance with the Classification Act received $4,428 or more in annual salary including overtime pay, while about 3 percent received $5,228 or more. U.S. Congress, House Committee on the Civil Service, Special Report Concerning Pay Structure of the Executive Branch of the Federal Government: Staff Report, tab. VIII at 39.
regard to overtime work and pay, the new law was seriously flawed by virtue of the fact that, as Labor Secretary Frances Perkins commented, its "express purpose" was to make it possible for federal employees to "meet the change in the cost of living." Because the principles that should have underlain discussion of the length of the standard workweek were subordinated to and distorted and in effect wholly supplanted by extraneous and temporary wartime demands, Congress subverted the entire history of overtime regulation by abandoning all the traditional justifications for maximum hours and/or penalty-premium overtime pay and introducing, for the first time, indirect wage supplements as the exclusive criterion. Consequently, the risk arose that the secular goal of shortening the workweek might be displaced by that of higher total pay.

A Permanent Overtime Law for Federal White-Collar Workers

This section should be stricken out because it discriminates against outstanding executives in the departments....

Some of the people who would be affected are...Mr J. Edgar Hoover who has done such a splendid job during this emergency, who has made one of the finest records in the defense and protection of our country against saboteurs and other undesirables.... They would lose about $682 on overtime.... I cannot support that...emoluments are...taken away from such men...who could get five times as much in private employment as they presently make in Government employment. You are destroying the morale of some valuable Government officials....

The only substantial change which adds anything to the cost of the bill...grew out of the situation where a few employees, like J. Edgar Hoover,...were getting overtime above their $10,000-a-year salaries. With respect to that we made a compromise which permits those who are in that category on June 30 of this year to continue to receive the present overtime. ...If the overtime hours are reduced after July 1, then there will be a corresponding reduction in the overtime pay of Mr. Hoover....

In its annual report of November 1944, the Civil Service Commission, while conceding (the undeniable fact) that the federal government qua employer had

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210Frances Perkins, Letter to Editor, NYT, Nov. 20, 1943 (12:5-6).
211CR 91:6067 (June 13, 1945) (Samuel Dickstein, Dem. NY).
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been "slow in recognizing the necessity for compensating its salaried employees for overtime despite the fact that existing laws required private employers to pay higher rates for overtime work," urged the proposition that the "United States Government...must be the most progressive employer in the Nation." In spite of the fact that the FLSA's overtime provision had been in effect for only six years (and, to boot, excluded a significant proportion of white-collar workers), the CSC, anticipating the postwar period, confidently assumed that "this Nation will once again subscribe to the policy that overtime work is something to be avoided, and that when it becomes necessary it should be compensated for at higher rates of pay." Its certitude on this point derived from its vision of employers' having learned the lessons of mass unemployment: "Any other policy would invariably result in some workers receiving large incomes while others, who would be just as anxious to work, would find themselves deprived of such an opportunity." Consequently, the commission concluded that after the war the government "should do everything it can to discourage overtime work within the Government by providing for additional compensation at higher rates of pay." Institution of penalty overtime rates was the government's most powerful weapon—overlooking the existence for decades of an actual maximum eight-hour regime. Recurring to the view that underlay the NIRA, the CSC asserted that it would be "necessary for all employers, both public and private, to follow such a policy if the goal of full employment is to be achieved." Ultimately the CSC recommended enactment of a permanent law that would entitle salaried employees to time-and-a-half compensation after 40 hours computed by a formula that converted annual to hourly rates on the basis of 2,080 annual hours.

Then at the beginning of 1945, President Roosevelt, in what turned out to be his final annual budget message, admonished the legislative branch:

214 US CSC, *Sixty-First Annual Report* at 2. The chief of the CSC's Personnel Classification Division was even more explicit in suggesting that depression-era unemployment was "normal": "From a national standpoint..., the overtime rate should be a premium rate because overtime work is to be discouraged in favor of better management and, in normal times at least, the desirability of affording more widespread opportunity for employment." Ismar Baruch, "Federal Overtime Policies," *PA* 7(3):1-5 at 4 (Nov. 1944).
215 See above.
Prior to the expiration of the overtime pay law, the Congress should reexamine the entire subject of hours of work and pay. Regardless of the progress of the war in Europe, many Federal employees will continue to be needed on a 48-hour work schedule, and provision must be made for their overtime compensation. I recommend that the Congress enact permanent legislation which would authorize overtime compensation at true time and a half rates.

When at some future date it becomes possible for most Federal employees to go on a 40-hour work week, their earnings will be materially reduced. A situation of hardship and unfairness will then exist unless an increase in basic salary rates has been granted in recognition of the rise in the cost of living. I recommend a prompt reexamination of Federal salary rates with a view to making adjustments consistent with the national stabilization policy.218

Not until Roosevelt had put Congress on notice that permanent overtime legislation was needed did it begin to act.219 In early April, the chairman of the Senate Civil Service Committee, Sheridan Downey—who had been the candidate for lieutenant governor in Upton Sinclair’s End Poverty In California gubernatorial campaign in 1934220—introduced a bill to amend the Classification Act of 1923 so that the overtime hourly rate for employees whose basic compensation was less than $3,800 annually would be time and a half for all hours over 40 and the basic hourly rate would be calculated by dividing by 2,080 hours. In contrast, the overtime hourly rate per 416 overtime hours for employees whose basic annual compensation was $3,800 or more would begin at $1,140 for $3,800 and taper down to $654 for salaries of $6,500 and over.221 This framework of what was “generally referred to as the white-collar pay bill for Federal employees”222 proved to be more generous than Congress as a whole was willing to be.

During the final days of the war in Europe, the committee held hearings on salary and wage administration for federal employees, which revealed widespread dissatisfaction with existing law and support for a permanent change. Testifying once again, CSC commissioner Arthur Flemming blamed the use of 2,880 hours as the divisor for the fact that “[t]he so-called provision for time and one-half pay

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220"Sheridan Downey Dead at 77,” NYT, Oct. 27, 1961 (33:2-3).
221S. 807, § 102(a)-(b) (79th Cong., 1st Sess., Apr. 2, 1945). The 416 hours equaled eight hours per week or a 48-hour week 52 weeks a year.
for overtime, in the existing law, is a misnomer. The existing law provides, in fact, for only time and one-twelfth pay for overtime work." Noting that the bill would create a true overtime system for salaries under $3,800, he pointed out that the new tapering-down formula was designed to insure that employees in the upper brackets ($6,500 and up) did not receive less than they were paid under existing law ($628.33 on salaries of $2,900 and above). Government stabilization policy, according to Flemming, was based on a recognition that when hours were extended and some workers obtained additional overtime pay, they might receive more pay than those doing "more difficult or responsible work" unless some provision were made for workers in the higher levels. In this sense he saw the bill as creating a permanent overtime pay policy that was fair to employees and the government. Even though it was true that before the war emergency white-collar workers had not worked much overtime and that after the war the hours would certainly revert to 40, Flemming, implicitly criticizing the FLSA, insisted that: "Government must set the right kind of an example. If some people are going to work a lot of overtime it means that some other people are not going to have an opportunity to work at all."

Much more mundane concerns underlay the testimony of Rear Admiral R. G. Crisp, the director of Shore Establishments and Civilian Personnel of the Navy Department, who did not even have to reach the issue of overtime to complain that naval white-collar salaries were often far below those of less-skilled jobs. It was bad enough, for example, that the lowest level P[rofessional]-1 navy chemist had the same salary as a navy laborer or a telephone operator in a private shipyard. But: "Perhaps the worst situation, and one which has given the Navy a great deal of trouble, is that in which white-collar employees earn less than the blue-collar

24Salary and Wage Administration in the Federal Service at 17 (Senate).
25Salary and Wage Administration in the Federal Service at 18 (Senate). The House Civil Service Committee stressed that the government stabilization policy was based on a recognition that when, during a period of extended hours, some workers received additional pay, "adjustments in aggregate compensation must be made for other workers in order that proper relationships may be maintained between duties and responsibilities, on the one hand, and pay, on the other. The adjustment...is to authorize additional amounts of pay to employees in the higher classifications...in such a way that each succeeding higher level receives a proportionately less amount." Federal Employees Pay Act of 1945, at 3 (H. Rep. No. 726, 79th Cong., 1st Sess., June 8, 1945).
26Salary and Wage Administration in the Federal Service at 50 (Senate).
27Salary and Wage Administration in the Federal Service at 96, 103 (Senate).
employee they supervise.”

And because white-collar employees were aware of these higher scales, many requested transfers to blue-collar jobs; denials of such requests, in turn, had led to lower morale.

The perspective offered by union representatives was monolithically in favor of a revamped overtime regime. Donald Murray, the acting legislative director of the United Federal Workers, bluntly told the committee: “I don’t think it would be telling you people any secret to tell you that Federal workers regard this time and a twelfth provision as a chiseling device.” The president of the NFFE, Luther Steward, harked back to unions’ earlier conception of overtime regimes, stressing that: “We feel...that overtime pay should not be looked upon primarily as a means of augmenting the amount of take-home pay, but should be fixed at a punitive rate so that overtime will be worked only in cases of real emergency.” To be sure, he distinguished between two different patterns. On the one hand, at agencies such as the Bureau of Internal Revenue and the Forest Service, which were “periodically under the necessity of requiring excessive hours from employees to meet service emergencies,” this “required work should be paid for at punitive rates.” Where, on the other hand, an agency required overtime constantly over months or years, the Budget Bureau was in a better position to control the situation and better administrative personnel practices had to be enforced. Consequently, although the proposed tapering provision was an improvement over existing law, in the NFFE’s view, “employees, regardless of their salary, should be paid in full for all overtime performed under competent direction.”

The president of the Design Supervisor’s Association at the Philadelphia Navy Yard, Angelo Stefano, agreed that the proposed $3,800 limitation should be eliminated. Not the first or the last participant in the controversy to overlook the pervasive white-collar exclusions under the FLSA, he urged that the same principles that the federal government required in its work with private corporations under the wage and hour law, “which in part requires that private industry pay time and one half for overtime over 40 hours, with no limitations, should also be accorded per annum Federal technical employees.” In particular, Stefano pointed out that “all salaried technical employees, who by their initial qualifications and meritorious services have achieved responsible supervisory positions” with salaries

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228 Salary and Wage Administration in the Federal Service at 105 (Senate).
229 Salary and Wage Administration in the Federal Service at 111 (Senate).
230 Salary and Wage Administration in the Federal Service at 155 (Senate).
231 Salary and Wage Administration in the Federal Service at 168 (Senate).
232 Salary and Wage Administration in the Federal Service at 169 (Senate).
233 Salary and Wage Administration in the Federal Service at 182 (Senate).
above $3,800, would be penalized by the bill.234

As reported out by the Senate Civil Service Committee a few days after the capitulation of Nazi Germany, the framework had been radically rolled back: overtime pay was applicable only to the first $2,900 of an employee’s compensation and hourly pay was to be calculated, reverting to the fictitious 360-day work year, by dividing the annual salary by 2,880.235 The bill substantially continued the provisions of Public Law No. 49 of the 78th Congress (especially time and one-twelfth). The committee rejected the proposed modification of computing overtime because it "felt that it was dealing with an issue of rapidly decreasing significance since committee members looked toward a post-war period of little or no overtime."236

Immediately after the Senate committee had issued its report, a subcommittee of the House Civil Service Committee held its own hearings in mid-May on two bills that were identical with Downey’s with respect to time and a half up to the $3,800 threshold, the 2,080 divisor, and the tapering scheme.237 The subcommittee was chaired by Representative Henry Jackson of Washington—then early in his congressional career—who had introduced one of the bills in March. Several subcommittee members were puzzled by the Senate committee’s cut-backs, Jackson himself observing that if the Senate’s reasoning “were followed to its conclusion, we should have to put in a proviso in the Fair Labor Standards Act and say we will repeal it as soon as V-J day comes because there probably won’t be the problem of a 48-hour week."238

Arthur Flemming of the CSC expressed the commission’s judgment that as an empirical matter overtime work would virtually disappear in the executive branch after the end of the war with Japan (though some law-enforcement agencies like the Secret Service might continue to perform some).239 Nevertheless, as a matter of policy, employees should be paid more than the regular rate for overtime to compensate for increased fatigue, the decrease in normal leisure time, and the additional expense. Moreover, it was also a device to discourage the government

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234Salary and Wage Administration in the Federal Service at 183 (Senate).
235S. 807, § 102 (79th Cong., 1st Sess., May 12, 1945) [Report No. 265].
239Salary and Wage Administration in the Federal Service at 17 (House).
as employer from working overtime. After all, it was generally recognized that overtime work was less effective than regular hours and was, in normal times, the result of bad management practices. Thus if appropriations were adequately controlled, the extra expense of overtime would discourage its use and encourage better management. Flemming’s attack on the abusive and irrational imposition of overtime on government white-collar workers included the charge that “in the past in the Federal services there have been tens of thousands of hours of uncompensated overtime that were absolutely unnecessary and brought about simply because...the boss didn’t properly plan his work when he came in the morning, but he sat around for a while, began to apportion the work about noon, and then expected the employees to work overtime in order to make up for his failure to apportion the work properly at the beginning of the day.”

Discussion of the salary ceiling on full overtime pay was initiated by Massachusetts Republican Christian Herter (a future Secretary of State under Eisenhower), who asked: “[C]an you tell me what the philosophy is of paying the fellow who gets $3,800 a year roughly $3 an hour overtime, whereas the fellow who gets double the salary, and who presumably is worth twice as much per hour, gets only half of that? ... I just think that that is an awfully hard scale to justify as a permanent peacetime matter.” Flemming was constrained to agree that “[f]rom the standpoint of strict logic you cannot justify it.... A fellow at $3,800 gets paid a certain overtime rate whereas a man whose duties are important enough to justify his being paid at the rate of $8,000 gets an overtime rate that is below the man getting $3,800.”

Although both witness and members of Congress appeared ill-informed about the structure of overtime regulation for white-collar workers under the FLSA—which instead of a taper simply excluded all executive, administrative, and professional employees above a rather minimal salary level—Representative Jackson directed the discussion in that direction in an effort to justify what Herter

240Salary and Wage Administration in the Federal Service at 42 (House).
241Salary and Wage Administration in the Federal Service at 43 (House).
242Salary and Wage Administration in the Federal Service at 48-49 (House).
243Salary and Wage Administration in the Federal Service at 49 (House).
244For example, Flemming testified that federal employees were entitled to overtime pay, “that being the general practice, of course, as far as industry is concerned.” Salary and Wage Administration in the Federal Service at 43 (House). In fact, the FLSA excluded large numbers of private-sector white-collar employees from such an entitlement. Similarly, Flemming stated: “We are trying to climb up to the level of where private industry is at the present time....” Id. at 68. See also id. at 59 (statements by Rep. Rees and Rep. Miller).
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and Flemming regarded as an anomalous salary cut-off point by asking: "Is there a distinction in federal law relating to time and a half between executive positions and the so-called hourly rate position? I am wondering if there isn't some justification for this formula on that basis." When Flemming responded that the FLSA recognized "a line of demarcation of that kind," Jackson expressed his agreement with "the logic of the argument." At this point, however, it began to dawn on the congressmen that adoption of the FLSA's logic was hardly a panacea. Alluding to the salary level at which the taper terminated and apparently hoping to hear that the FLSA's exclusion of executives could eliminate the anomaly, Representative Charles Vursell (Rep. IL) asked Flemming: "Now, most men who are hired at from $5,000 to $6,000 are, more or less, executives; are they not?" Contrary to his expectation, Vursell learned that "[a] good many are chemists, physicists, engineers, and so on. Many are doing scientific work but without supervisory responsibility." Undeterred by this revelation, Vursell then discerned a species of moral hazard: "Who is going to keep the time over these executives, who is going to say when it is necessary to work a little overtime in the evening? It seems to me that when you get up to where they are drawing $5,000 a year you ought to be a little more sparing about this overtime. I just don't get that myself." Responding to Vursell, first-term California Democrat George Miller pointed out that "if I am a $6,000 executive I just can't come in in the morning and say, 'I decided to stay at the office last night for two hours and, therefore, I want $1.75 an hour.'" Flemming then explained the constraints on executives' authority to keep their hands in the overtime till—the necessity of a budget appropriation and an order or approval of the work by agency heads, who were themselves excluded from overtime compensation—but committee members continued to be divided over whether the flaw in the bill consisted in conferring on higher-paid federal employees a lower overtime compensation rate or in entitling them to any overtime pay at all. In contrast, Jackson sought an escape from this impasse in pragmatism:

Isn't this essentially a compromise? ... You have got to have some sort of rule of thumb to take care of a situation like this. I think there is a vast difference...where a man acts in an administrative capacity his hours are indefinite. He may have to get to the office before the rest of the crew and he is there after the rest of the crew. But the difficulty is

245 Salary and Wage Administration in the Federal Service at 49 (House).
246 Salary and Wage Administration in the Federal Service at 50 (House).
247 Salary and Wage Administration in the Federal Service at 51 (House).
248 Salary and Wage Administration in the Federal Service at 51 (House).
249 Salary and Wage Administration in the Federal Service at 50 (House).
that if you just take the salary brackets there are so many people that are purely employees, without any administrative responsibilities, and are hired almost on a per hour basis, because of their peculiar skill, knowledge, or scientific ability.\textsuperscript{250}

As much confusion and ignorance concerning the scope of white-collar workers’ overtime entitlement under the FLSA prevailed among the leaders of federal employee unions as among the congressmen. For example, James Burns, the national president of the American Federation of Government Employees, after declaring that “we feel that all employees, regardless of the salaries received, should be paid in full for all overtime ordered and performed,” was asked by Representative Jackson: “Do you make a distinction at all between one who has an executive position or one who is doing administrative work and an individual, we will say, who is an expert chemist or technician...who is normally paid on a 40-hour-a-week basis?” Standing his ground, Burns replied: “If the overtime being performed...is ordered, and if it is under supervision, I do not make any distinction.” Seeking to undermine Burns’s absolutist position, Jackson pointed out that such an approach would mean that someone with a $9,000 annual salary would be paid $11,270—more than the head of his department (who was limited to $10,000). When Burns agreed that there would be a few such cases in the higher salary brackets, Jackson insisted that such an outcome “would hardly be practicable, because the person that presides over the department...in his executive capacity...may work 60 hours.” At this point Burns finally conceded that legislation might be passed for that head, but still insisted that “the principle of true time and a half for overtime should be recognized on the statute books, as it is in general principle in industry; and indeed it has been prescribed in industry by no less an authority than the Government itself.”\textsuperscript{251}

This vast underestimation of the magnitude of the exclusions of private-sector white-collar workers from the FLSA’s entitlement also marked the testimony of Foster Pratt, the president of the International Federation of Technical Engineers, Architects, and Draftsmen’s Unions (AFL). Explaining that the small amount of money that government saved by failing to pay overtime it lost in lower morale, Pratt stated that one and one-twelfth time had been a “very sore spot with the technical engineers and architects,” many of whom, resenting the injustice of not receiving the “true overtime” that their fellow workers in industry received, had transferred to mechanical positions in government or to technical positions in industry.\textsuperscript{252}

\textsuperscript{250}Salary and Wage Administration in the Federal Service at 50 (House).
\textsuperscript{251}Salary and Wage Administration in the Federal Service at 135 (House).
\textsuperscript{252}Salary and Wage Administration in the Federal Service at 205 (House).
Following the House hearings Jackson introduced a new bill, which set the ceiling for full time and a half at $2,980, flattened the taper, and imposed a ceiling of $10,000 on aggregate pay including any overtime. The Civil Service Committee promptly reported the bill out and the House debate began almost immediately. Congressmen displayed an odd amalgam of realistic appreciation of the need for overtime regulation among federal white-collar employees—67 percent of whom earned $2,000 per year or less—and a pervasive misunderstanding of the counterpart scheme under the FLSA. Jackson, who played a leading role in guiding the bill through the debates, asserted that under the FLSA "they recognize time and a half up to $3,800 in private industry. After that they make no provision for time and a half. That is the line of demarcation between a per hour employee and an executive who is paid by the month. We went beyond that and reduced it even more...to $2,980...." In fact, from 1940 to 1950, the salary level above which bona fide executives forfeited their entitlement to overtime pay under the FLSA was $30 a week, which equaled $1,560 per year—barely one-half the proposed ceiling for federal employees and two-fifths of the $3,800 erroneously alleged and repeated by Jackson.

In contrast, congressmen emphasized that time and a half was a penalty designed to "discourage overtime employment" and "spread out the work." Jackson agreed "absolutely" with Detroit Democrat John Dingell that it was "a

253 H.R. 3393, §§ 201 and 603(b) (79th Cong., 1st Sess., June 6, 1945).
256 CR 91:5906 (June 11, 1945).
257 CR 91:6009 (June 12, 1945). Rep. Samuel Dickstein (Dem. NY) stated that "true time and one-half" up to $2,980 "is in line with established Government policy which the Congress made explicit in the Fair Labor Standards Act." Id. at 6006. During the 1940s the threshold for administrative and professional employees under the FLSA was $200 per month, which equaled $2,400 per year. Referring to the FLSA, Homer Angell (Rep. OR), who had introduced a bill similar to Jackson’s, felt that it “would seem fair for the Federal Government to accord the same treatment to its own employees it requires of others.” CR 91:6062. At the other end of the spectrum, Representative Frank Keefe (Rep. WI) did “not know that stenographers in many private businesses are getting time and one-half.” CR 91:6059.
259 CR 91:5913 (Rep. Vursell). Rep. Lansdale Sasscer (Dem. MD) agreed that: “The overtime provision in this bill, like all overtime pay, should have a tendency, when employment demands are less heavy, to reduce the working hours to a basic workweek of 40 hours.” Id.
grave injustice” not to pay overtime to white-collar employees “because it does not make any difference whether he is a clerk or an executive, if he works overtime he should get time and one-half. ... Clerk or executive should be compensated on the same basis without distinction.”

Emblematic of the broad congressional support for an overtime system for federal white-collar employees more comprehensive than the FLSA’s is the fact that even the radical right-wing California Republican Bertrand Gearhart paid homage to it: “Congress has before it...an elementary question...of doing justice to the white-collar workers in the service of our Government,” against whom the law had “discriminated....” Gearhart even offered a humanitarian critique of the bill’s failure to provide true time and a half for upper-bracket employees:

This, of course, is based on the theory that the lower-bracket employees need the greater increases, which may be true enough, but it also seems clear that as a matter of abstract justice there should be no distinction; if a man’s effort is worth a certain amount per hour, whether it is much or little, the principle of premium pay for overtime work is still sound. That principle is derived from the fact that human beings are not machines and that there is a limit to the time they can work, or should work, in the interest of their physical health.

Gearhart went on to declare that it was generally conceded that in normal times 40 hours was best for the employee’s welfare and the quality and quantity of his production: “Scientific studies indicate that the average man is probably able to do good work for a 48-hour week but that a 40-hour week is better for the average

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260 CR 91:5909.


262 CR 91:5913 (June 11, 1945).

263 CR 91:5914.

264 CR 91:5914.
woman, not necessarily because of physical health but because she usually has home responsibilities that take considerable time. In either event, however, when we impose a 48-hour week, we are asking people to work a schedule that may possibly imperil their recuperative powers.\textsuperscript{265}

The version of the bill that the House then passed by the overwhelming majority of 317 to 36\textsuperscript{266} differed considerably from the Senate version, and in conference the Senate receded with respect to all the aforementioned significant overtime issues, in particular concerning the determination of the hourly rate of pay, which in the Senate version would have limited overtime pay to one and one-twelfth time.\textsuperscript{267}

Thus as finally enacted on June 30, the Federal Employees Pay Act of 1945, which applied to all civilian officers and employees in the executive branch, but excluded elected officials, judges, heads of departments and agencies, and the field service of the Post Office Department,\textsuperscript{268} provided time-and-one-half overtime for all hours, officially ordered or approved, in excess of 40 per week for employees whose basic annual compensation was less than $2,980; time and a half was computed on an hourly rate determined by dividing the annual rate of compensation by 2,080. For employees with an annual compensation of $2,980 or more, the overtime rate of compensation per 416 hours was $894 at $2,980, tapering down to $628.334 at $6,440 and above.\textsuperscript{269} A crucial component of the

\textsuperscript{265}CR 91:5914.

\textsuperscript{266}CR 91:6068-69 (June 13, 1945).

\textsuperscript{267}Federal Employees Pay Act of 1945 (H. Rep. No. 784, 79th Cong., 1st Sess., June 23, 1945); CR 91:6666-74 (June 25, 1945) (House); id. at 6709-13 (June 26, 1945 (Senate).


\textsuperscript{269}FEPA, § 201, 59 Stat. at 296-97. With an annual salary of $6,440 equal to an hourly rate of $3.10 (for 2,080 hours), an hourly overtime rate of $1.51 (=$628.334/416) was less than half the regular rate. At an annual salary of about $4,080 the overtime rate dropped to straight time. H. Rep. No. 726: Federal Employees Pay Act of 1945, at 11 (79th Cong., 1st Sess., June 8, 1945). Years later, the chief of the Personnel Classification Division of the CSC explained "the mathematics" of the cut-offs this way: In order to prevent workers from receiving higher wages than their supervisor by working overtime, private industry raised executives' and administrators' base pay to maintain a "logical differential"; the wartime wage stabilization program required approval of the Salary
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law was an annual overtime cap prohibiting payment to any employee, for any pay period, of basic compensation plus additional compensation provided for by the FEPA in excess of an annual rate of $10,000.270

With enactment of the FEPA Congress established a considerably broader scope of coverage for federal government white-collar workers than it and the DOL ever had for their private-sector counterparts—a gap that would last into the twenty-first century. (When the acting commissioner of labor statistics informed the Senate Education and Labor Committee in early 1944 that “factory workers are customarily paid premium rates for overtime while the office worker only infrequently enjoys this added compensation,” it was unclear whether this infrequency resulted from the expansive exclusions or pervasive noncompliance.)271 And the

Stabilization Unit of the Treasury Department for white-collar workers, which informed the Senate Civil Service Committee that $6,400-$6,500 was the cut-off point where no overtime, even pursuant to a tapering procedure, would be granted to an executive, whereas the supervisor closest to the employee would be given the full 50-percent premium. The committee therefore selected CAF-7, the grade where minor executive or administrative positions began, and calculated time and a half on the CAF-7 base rate of $2,980, which was $894 for eight hours of overtime for 52 weeks a year; from the total of $3,894 the committee then tapered the payment off to a point at which the overtime pay would not be reduced that the higher-paid government employees had been receiving under the War Overtime Pay Act of 1943; this point turned out to be overtime pay of $628.33 at a base salary of $6,440, the $2,900 being the lower ceiling under the 1943 act. Compensation for Overtime and Holiday Employment: Hearings Before a Subcommittee of the Committee on Post Office and Civil Service United States Senate on S. 354, at 36 (82d Cong., 1st Sess., Sept. 6-7, 1951) (testimony of Ismar Baruch).

270FEPA, § 603(b), 59 Stat. at 303. A grandfather clause made an exception for any employee who was receiving overtime pay on June 30, 1945 and whose aggregate rate of compensation on that date was over $10,000 annually: he was permitted to receive overtime compensation at such a rate as would not cause his aggregate rate of compensation for any pay period to exceed what he was receiving on June 30, 1945, until he ceased to occupy that position or until the overtime hours in his workweek were reduced, at which time such a compensation rate had to be reduced proportionately. Id. This section was amended the following year to include any payments provided for by any amendments to FEPA. Federal Employees Pay Act of 1946, ch. 270, Pub. L. No. 390, § 7, 60 Stat. 216, 218.

unfairness that many members of Congress perceived in the tapering off of the overtime scale for higher-salaried employees found no historical equivalent in the FLSA context. This legislative achievement in the interim between V-E and V-J day was especially significant in light of the fact that just a month after the end of the war the president of General Motors, Charles E. Wilson, was already urging modification of the FLSA to mandate a 45-hour week without overtime pay during a three- to five-year postwar adjustment period.272

AFL, testified to the same committee that whereas members of the union working under contracts in the private sector received time and a half after 8/40 hours, the unorganized usually did not. Id. at 1393.

27245-48 Hour Week Urged by G.M. Head as Wage Solution," NYT, Oct. 21, 1945 (1:1).