

STATEMENT OF RAY MARSHALL
SECRETARY OF LABOR
BEFORE THE
SUBCOMMITTEE ON LABOR STANDARDS OF
THE COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

March 24, 1977

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present the Administration's views on minimum wage legislation.

I am well aware of the contributions made by this Subcommittee over the years to the evolution of the Fair Labor Standards Act and you are to be commended for your efforts.

I believe that the basic concepts underlying the Fair Labor Standards Act represent sound social and economic policy -- namely, that substandard wages and working conditions not only victimize individual workers, but also constitute unfair competition. The Act was at the forefront of pioneering social legislation and it continues to be an essential part of our efforts to achieve a decent standard of living for our working citizens.

DEPT - 8 mil.
Admin's - 4 mil. - Tip Credit

It is necessary to assure that this law continues to further these sound social policies. We must, for example, be alert to the effect that inflation can have on the minimum wage levels which the Act attempts to guarantee. Clearly, we must now act to raise the minimum wage. But we must also be alert to the need for structural changes in the law which will permit it to more effectively achieve its intended purposes. The time has come to put in place a mechanism to assure that fair labor standards will not be continually eroded by inflationary pressures. The time has also finally come to achieve equality of treatment under the law by providing a single minimum wage level for all employees.

As with previous proposals to amend this law, the precise level of the minimum wage and the economic effects of such levels are the subject of considerable controversy. As we go forward with this legislation, we must recognize diverse views and interests concerning appropriate policies. My hope is that together we can achieve a reasonable reconciliation of these various conflicting views and interests and enact an appropriate increase in the Federal minimum wage.

The economy and economic stimulus

Before we address the specifics of this legislation, I want to place it within the framework of the Administration's response to the serious economic problems confronting us.

Current rates of unemployment are wasteful and intolerable. They exact a toll which cannot be reduced to simple numbers and statistics. The Administration's economic stimulus package is intended to lower these unacceptably high levels of unemployment. Full economic recovery will, of course, require maximum efforts by all sectors of the economy, and on many fronts. I believe that minimum wage increases will contribute to the economic upturn by increasing the purchasing power of lower paid workers and their families and by increasing productivity as employers are induced to seek more efficient operations.

The 1974 Amendments to the Fair Labor Standards Act

The 1974 Amendments which this Subcommittee played such a critical role in developing will be fully implemented by the end of this year. The minimum wage for nonfarmworkers is now \$2.30 an hour. The farmworker minimum wage will increase to \$2.30 on January 1, 1978. The last three major amendments to the Act broadened coverage to the point where 76 percent of the nonsupervisory workforce is now subject to the minimum wage provisions. Congress has also questioned the need for any of the existing exemptions under the Act. As you are aware, the 1974 Amendments mandated studies of the remaining exemptions. These will be completed next year, and specific recommendations will be forthcoming.

2.50 →
2.75 - 2.95 Jan 1
3.00
July 3.10 Jan 1

Minimum wage levels

The Administration is convinced that an increase in the minimum wage is essential at this time. We must, of course, recognize that increasing the minimum wage means at least initially an increase in labor costs for many low-wage firms. We know that there are several million minimum wage workers and that an increase in their wages now causes concern in some segments of our economy. I believe that employers can improve the way they utilize their labor force in order to avoid significant increases in total labor costs as a result of an increase in the minimum wage. In fact, employers of low-wage workers often lack incentive to increase productivity as long as depressed wage levels are maintained in their business. I believe that these employers will find that an increase in the minimum wage will serve their best interests by increasing productivity, output and employment opportunities.

Your bill, H.R. 3744, Mr. Chairman, would establish a minimum wage for nonfarmworkers of 55 percent of the annual gross average hourly earnings for production workers on manufacturing payrolls beginning 30 days after the date of enactment, and beginning January 1, 1978, and each succeeding year on that date, 60 percent of the manufacturing annual average wage for the 12-month period ending each preceding September 30. The farmworker minimum would be the nonfarmworker rate less 5 cents in the first year only.

We have carefully reviewed this proposal and believe that in light of current economic conditions, a somewhat different approach is warranted at this time. Accordingly, the Administration proposes an increase in the minimum wage to \$2.50 per hour for all covered workers on July 1, 1977. We propose an annual indexing of the minimum wage, beginning on July 1, 1978, at a rate equal to 50 percent of straight time hourly earnings of production and nonsupervisory workers in manufacturing. The base period for this indexing would be the 12 months ending in the March before each increase. We estimate that the minimum wage would be about \$2.73 on July 1, 1978 and \$2.92 on July 1, 1979. This proposal eliminates the different wage levels currently maintained between employees who were first covered by the Act prior to 1966 and those brought within the Act's coverage since then.

The indexing concept, which both your bill and the Administration proposal include, would provide, even in the absence of Congressional consideration, for regular minimum wage increases on a yearly basis. There are other advantages to indexing. It would eliminate the irregular pattern which has characterized the history of minimum wage adjustments. It would enable the business community to more accurately anticipate and adjust its wage costs by providing a system for increasing the minimum wage at regularly

established intervals. It would also eliminate erosion of the real income of recipients between legislative increases.

Because indexing represents a major departure from previous methods of adjusting the minimum wage, we also propose that the Secretary of Labor study the effects of indexing and submit his findings in the annual 4(d) report to Congress. Some of the effects we would expect to study are whether the indexing formula performs as expected, whether it has increased the sensitivity of wages to past inflation experience, and whether it has upset the wage-setting process in the rest of the economy. We would, of course, also review and report on the employment effects of all minimum wage increases included in legislation enacted by the Congress.

Miscellaneous provisions

I would like to discuss briefly a few other issues which your bill does not address directly but about which I am sure you would like to have our views.

The Act makes it unlawful for an employer to discharge or otherwise discriminate against an employee who files a complaint or participates in a proceeding under the Act. It does not, however, authorize the employee to institute any legal proceeding to protect this right, although he does have authority to sue for unpaid wages. Accordingly, the only recourse available to a wrongfully discharged employee

is to persuade the Department to institute suit on his behalf. This places a heavy burden on the Department's resources and leaves the employee without a remedy in those cases where the Department decides not to sue.

An amendment giving these employees an individual right of action would allow employees to pursue their own legal rights. It would also relieve the Department of some of the enforcement burden in this area.

We have similar enforcement concerns with regard to the administration of the Age Discrimination in Employment Act (ADEA). Although ADEA is a separate statute, it incorporates the enforcement machinery of the Fair Labor Standards Act. In addition to this machinery, the ADEA provides that the Department will attempt to achieve voluntary compliance (through the conciliation process) before instituting suit. Such suits are subject to the same statute of limitations applicable to suits brought under the Fair Labor Standards Act. The difficulty we face, however, is that the conciliation process does not toll the operation of the statute of limitations as it does in Title VII of the Civil Rights Act. The result is that employers have no incentive to engage in prompt or serious conciliation. Every day in conciliation means a diminution in any relief which the employer may ultimately be required to provide. I think it clear that the conciliation process would be greatly enhanced if the Act were amended to provide, as you did

in Title VII, for the tolling of the statute of limitation during the conciliation process.

A second issue concerns the notice of intent to sue which an employee must file with the Secretary prior to instituting court action. The ADEA, although providing for a two and three-year statute of limitations, contemplates that this notice will be filed within 180 days of the asserted violation. A number of courts have construed this notice requirement as a jurisdictional prerequisite to suit. This interpretation has frustrated achievement of the purposes of the ADEA in a significant number of cases. Although this issue is now before the Supreme Court, it is our view that an amendment deleting the notice requirement would materially advance the purposes of the ADEA and would re-focus litigation from procedural matters to the substantive merits of each case.

Noncompliance

Finally, Mr. Chairman, in your invitation to me to testify today, you asked for my views on testimony by Dr. Edward Gramlich on March 9 stating that an increase in the minimum wage would pose serious enforcement problems for the Department. First of all, our primary focus should be what is the appropriate level of the minimum wage -- not the question of enforcement. With respect to enforcement problems which might result from an increase in the

minimum, these can then be addressed by providing the necessary resources.

Since the last FLSA Amendments in 1974, the Department has received an unprecedented number of employed complaints. As a result, the Department is not now able to process complaints with available resources as quickly as we would like. As Dr. Gramlich indicates an increase in the minimum wage will undoubtedly add to the complaint workload. However, there are problems with his study which tend to overstate the degree of noncompliance. Dr. Gramlich's studies do not take into account the fact that many low-wage workers are employed in establishments not covered by the Federal minimum wage or are paid subminimum wages permitted by the Act. For example, certificated learners, apprentices, full-time students and handicapped workers may also be paid at special subminimum wages. In addition, perquisites like food and lodging may be credited toward the minimum wage and the cash wage of workers could thus be reduced below the minimum. When all of these factors relating to the FLSA are considered in the enforcement process, the rate of compliance is quite high.

Conclusion

Mr. Chairman, in conclusion, I would only add that this Administration is fully committed to necessary improvements in the Fair Labor Standards Act which will permit this vital law to better achieve its intended purposes. I look forward to cooperating with you in this endeavor.