

**OVERTIME PAYMENT OF CUSTOMS COLLECTORS
ON INTERNATIONAL BRIDGES, ETC.**

HEARINGS

BEFORE A

**SUBCOMMITTEE OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE**

SEVENTY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1758

**A BILL TO AMEND SECTION 451 OF THE
TARIFF ACT OF 1930**

MAY 3, 1944

Printed for the use of the Committee on Finance



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1944

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OVERTIME PAYMENT OF CUSTOMS COLLECTORS ON INTERNATIONAL BRIDGES, ETC.

WEDNESDAY, MAY 3, 1944

UNITED STATES SENATE,
SPECIAL SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met, pursuant to notice, at 10:15 a. m., in room 312, Senate Office Building, Senator Peter G. Gerry (acting chairman) presiding.

Present: Senators Gerry (acting chairman of the subcommittee), Taft, and Vandenberg.

Senator GERRY. The meeting will come to order.

We have for consideration S. 1758, to amend section 451 of the Tariff Act of 1930.

(S. 1758 is as follows:)

[S. 1758, 78th Cong., 2d sess.]

A BILL To amend section 451 of the Tariff Act of 1930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 451 of the Tariff Act of 1930, as amended (U. S. C., title 19, sec. 1451), is hereby amended by inserting before the period at the end thereof the following: "Provided, That the provisions of this section, sections 450 and 452 of this Act, and the provisions of section 5 of the Act of February 13, 1911, as amended (U. S. C., title 19, sec. 267), insofar as such section 5 requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a bridge, tunnel, or ferry between the United States and Canada or between the United States and Mexico, nor to the lading or unlading of merchandise, baggage, passengers, or other persons arriving in or departing from the United States by motor vehicle, trolley car, or on foot upon, over, or through any such highway, bridge, tunnel, or ferry. At designated ports of entry where any merchandise, baggage, passengers, or other persons shall arrive in or depart from the United States by motor vehicle, trolley car, or on foot upon, over, or through any highway, bridge, tunnel, or ferry between the United States and Canada or between the United States and Mexico, the collector, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as may be necessary to facilitate the prompt inspection and passage of such merchandise, baggage, passengers, or other persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be entitled to rates of compensation fixed on the same basis as in the case of customs officers and employees assigned to duty in connection with lading or unlading of vessels or cargo at night or on Sunday or a holiday; but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway, bridge, tunnel, ferry, motor vehicle, or trolley car."

Now, there is a rather long list of witnesses, so the chairman will appreciate it if you will make your statements as short as possible, and if you have anything further that you want to add, why, you can submit your briefs on it.

The first witness on the list is Mr. Herbert Gaston, Assistant Secretary of the Treasury.

Mr. Gaston.

STATEMENT OF HERBERT GASTON, ASSISTANT SECRETARY, DEPARTMENT OF THE TREASURY (ACCOMPANIED BY W. R. JOHNSON, COMMISSIONER, BUREAU OF CUSTOMS)

Mr. GASTON. The situation, Mr. Chairman, which gave rise to this bill was created by a decision of the Supreme Court in the case of Myers and others in January which held that the provisions of the Customs Overtime Act of 1911 were applicable to international tunnels and bridges.

The Customs Overtime Act, originally designed to provide for the customs inspection required in connection with the lading and discharge of vessels outside of regular working hours; prescribed rates of pay; double pay for overtime; both after the regular working day, 5 p. m., and on Sundays and holidays, and it provided also that the owner of the vessel should post a bond and to reimburse the Government for this overtime pay.

We have not considered that this act, as amended, was applicable to the international bridges and tunnels, but a suit was instituted in the Court of Claims by certain employees of the Bureau of Customs in Detroit claiming overtime pay over a period of years for services rendered at the bridges and tunnels in Detroit at the rates prescribed under this Customs Overtime Act, which is an act calling for reimbursement to the Government.

The Court of Claims decided generally favorably to the petitioners. It was appealed to the Supreme Court, and the Supreme Court held that the act would not apply to services performed outside the regular hours during week days but it would apply as to Sundays and holidays.

Then, the situation which faced us was that we were, as the result of the decision of the Supreme Court—we were enjoined to pay these men at these overtime rates for Sundays and holidays, and not only that but we were enjoined to pay them by a certain method. That is, we should exact a bond from the operators of the transportation facilities, in this case the tunnels and bridges. There was no other method by which the man could be paid.

Consequently, we served notice upon the operators of these bridges and tunnels, and some of them are public or quasi-public authorities, that it would be necessary for them to furnish bond and to agree to pay overtime services for all work performed by the inspectors on Sundays and holidays. The majority of the bridges and tunnels complied. That was generally true on the Mexican border. It was true and is true at the present time on the Canadian border with respect to three bridges and tunnel. Three bridges are operating without payment under injunctions previously granted. Two injunctions previously granted and a third injunction, as to the Thousand Islands Bridge, recently granted. We have, however, been served

with notice by the various bridges on the Mexican border that they propose to cancel their bonds and to decline the payment after May 1.

Now, as to the bill which—Well, I think I should perhaps say something more about the situation with respect to the Mexican border and how it is view by our consul general in Jaurez.

Senator VANDENBERG. Before you get into details, Mr. Gaston: On the basic proposition, is there any sound reason by the Government should not pay for all the services rendered by the Government to the public in connection with these facilities?

Mr. GASTON. In my opinion, Senator, the Government should pay for it.

Senator VANDENBERG. Why, certainly.

Mr. GASTON. That has been our position, and that has been the system which we applied.

These men who brough this suit were heretofore working on shifts of regular 48-hour—approximately 48-hour—weekly shifts, which employed them, some of them at nights and on Sunday, at the regular base pay, unless they worked additional time.

We believed under the law the Government was liable for that payment up until this decision of the Supreme Court which was to the contrary, and we believe now that the Government ought to carry this cost.

Senator VANDENBERG. So, you are not raising any controversy, first, as to the proposition that the men are entitled to overtime, and, secondly, that the Government should pay it?

Mr. GASTON. Well, we are raising any question as to the Government paying the cost. We believe that the Government should pay the cost. We do have a question as to whether the rates of pay fixed in this overtime statute are appropriate. We are suggesting a different arrangement as to that.

Senator VANDENBERG. But you agree that they are entitled to overtime.

Mr. GASTON. We have suggested, Senator, in our letter to the committee, that there be a differential established for night and Sunday work. We suggest a possible differential of 10 percent. We do not believe that the high rate of overtime pay established in the Reimbursable Overtime Act appropriate for this service.

However, I should call your attention to the fact that the Bureau of the Budget disagrees with us on this 10-percent differential. They believe the men should be subject to the regular basic rate of pay plus time and a half for any overtime beyond the regular established week.

I should say this in regard to the provisions of the bill. The provisions of the bill would establish the rates of pay, the system of overtime pay for these men that is applicable in the case of reimbursable overtime. That would result in the men being required to work a 7-day week. Otherwise, if you pay double time for Sunday, and then they already have their base pay, which cover a 5-day week, they would be twice paid for Sunday work, and I don't think that would get by the office of the Comptroller General.

So that I think the only way we could apply those provisions would be to require the men to work a regular week of 6 days a week, and then a seventh day at the double rate.

Senator VANDENBERG. Can you reduce that to figures so that we may have a concrete example of precisely what is involved in dollars and cents?

Mr. GASTON. Well, I have some estimates on the cost here.

Perhaps Mr. Johnson could tell you how it would apply to a single inspector.

Senator VANDENBERG. I would like to know now on the average, and what he would get under the decision and what he would get under your proposal.

Mr. JOHNSON. Mr. Chairman, the minimum base pay of a customs inspector is \$2,300 per annum, which comes out, we will say, roughly, \$6 a day.

Under the decision in the Myers in order to furnish service at the bridges, we are now required to assign a man who has worked the 6 days in the week to earn his base pay of \$2,300, \$2,400, or \$2,500, as the case may be, and then to work him the seventh day and give him 2 days' pay for that, or, say, \$12, making in all 9 days paid for 7 days work.

The old practice was to give him only his base pay, to work him only 6 days a week, and if one of those days was Sunday to give him another day of the week as lieu time. That has been discontinued by reason of the court's decision, and the men are working a 7-day, 56-hour week.

Senator VANDENBERG. Let us continue with the figures.

He has \$2,300 base pay. What would the average pay be under the decision—the comparable figure?

Mr. GASTON. You haven't included in that base pay the Ramspeck overtime, have you?

Mr. JOHNSON. No, sir.

Can one of you men give me the average base pay?

Boynton, what is 1 day's pay for a customs inspector including war-service overtime? \$6.38 plus 20 percent?

Mr. R. R. BOYNTON (overtime committee, National Customs Association, Detroit, Mich.). The war-service overtime under Public, 49 is not included in our base pay for overtime under the provisions of section 451.

Mr. JOHNSON. \$6.38 per day.

Senator GERRY. I think, in order to keep the record clear, Mr. Johnson, you should make your statement.

Now, Mr. Johnson, proceed.

Mr. JOHNSON. In round numbers, the present minimum annual salary for a customs inspector, including war-service overtime, is \$2,800. Adding 52 Sundays to that at \$12.76 per Sunday would add in round numbers \$650.

Senator VANDENBERG. That is \$3,450?

Mr. JOHNSON. Yes, sir.

Senator VANDENBERG. Now, what do you propose?

Mr. JOHNSON. Our proposal is to work the men only 48 hours per week on regular service, including service at the bridges and tunnels, to pay him \$2,800 plus a 10 percent—or whatever percent the committee may deem appropriate—differential for Sunday work, and also to give the same differential for any night work, and, further, to give that same differential to any other customs employee required to perform regular duty on nights, Sundays, and holidays.

Senator VANDENBERG. Well, in the course of events, give me an estimate as to what that would do to the \$2,800 figure.

Mr. JOHNSON. If the man worked every Sunday and every night it would take about a 14-percent differential to bring him up to the amount he would get now by working every Sunday—7 days a week.

The net income, under our proposal, to the man who gets the full benefit of it would be slightly less by approximately 4 percent of his base pay, on an annual basis, and assuming that he worked all the overtime tours.

Senator VANDENBERG. Well, what is the net figure then? That is around \$3,300?

Mr. JOHNSON. Yes, sir.

Senator VANDENBERG. All right.

Senator GERRY. How many people does this affect?

Mr. JOHNSON. My proposition would affect about 2,500 employees.

Senator GERRY. And would total what?

Mr. JOHNSON. About \$390,000, all told.

Senator VANDENBERG. Would you say that under your proposition you had robbed the customs employees of any advantage they won in the Supreme Court?

Mr. JOHNSON. The particular employees who won in the Supreme Court would get less actual cash, but the reduction in income would not compare with the reduction in labor-hours. Under our proposal the men who won in the Supreme Court would get a higher annual rate of pay, and the benefits given to them would likewise go to other employees of the Customs Service who have the same basis for receiving it. In other words, preferential treatment would not exist within the Customs Service.

Senator GERRY. Mr. Gaston, will you go ahead, now, please?

Mr. GASTON. Mr. Chairman, it is our position that the decision of the Supreme Court applies a system of payment to these men who are regularly employed on these tunnels and bridges for work outside of regular hours which is not applicable to that sort of a situation. The statute was not designed to meet that situation. The statute was designed to meet the case of emergency arrivals and departures of vessels, where men were put to an inconvenience by being called out at odd hours after having finished their day's work. Here we are facing a situation where we have to give 24-hour service, and a different plan should be applicable to that situation.

The plan we are suggesting is a plan to continue as we have, to employ them on regular shifts of 8-hour days and 48-hour weeks, reimbursing them at the regular overtime rates of time and a half if they go beyond those 48 hours, and at the same time giving them a differential for night and Sunday work, which we suggest might be 10 percent.

Senator TAFT. You agree to the time and a half for overtime over 48 hours?

Mr. GASTON. That is in the existing statute, Senator.

Senator TAFT. Over 48 hours?

Mr. GASTON. Over the 48 hours. Prior to this wartime overtime act it was 44 hours. They are getting overtime, at approximately a time and a half rate, for the additional four hours. The statute also provides for time and a half if they worked beyond the 48 hours.

Senator TAFT. You say they now get straight pay for 44 hours and time and a half for the other four?

Mr. GASTON. Before.

Senator TAFT. That was before?

Mr. GASTON. Well, yes.

This wartime overtime act—I think it provides approximately—no, it isn't time and a half, is it?

Mr. JOHNSON. 21.6 percent.

Mr. GASTON. It is about a 21 to 22 percent increase of the base pay.

Senator TAFT. With that wartime act, how much is served at straight time before the overtime applies?

Mr. GASTON. 44 hours.

Senator TAFT. 44 hours?

Mr. GASTON. Yes. Practically all of our outside employees are on a 48-hour basis. We have some inside employees, office employees, who are still on the old 44-hour week. Practically all of our outside employees are on the 48-hour week and get the special wartime overtime.

Senator TAFT. I am afraid I don't quite understand; but go ahead.

Mr. JOHNSON. Mr. Chairman, could I try to clarify that?

Senator GERRY. Mr. Johnson.

Mr. JOHNSON. Senator Taft, we have for discussion here three kinds of overtime. There is the war-service overtime, which, in practical effect, is an increase in the base pay and merges into and becomes a part of the flat rate, and doesn't have the ordinary incidents of overtime pay. The man gets that in serving his regular wartime tour of duty and not extra duty in wartime.

Senator TAFT. You mean the 48 hours?

Mr. JOHNSON. The 48 hours is now his regular tour of duty, for which he get additional compensation under the war-service overtime act.

If the man works beyond 48 hours on regular ordinary customs duties in which there is no special private interests, under that same statute he would get further overtime at a rate of about time and a half. That is the No. 2 class of overtime.

Then, No. 3. If he works beyond the 48 hours, in the situations described by Secretary Gaston as the emergency situations, in behalf of some private interest, such as the unloading of a vessel, and under the Supreme Court decision, at the bridges on Sundays, he gets overtime pay at a special rate established only for the Customs Service under an act of 1911 at double time on condition that it is reimbursed to the United States by the person receiving the benefit of that special class of overtime work.

Does that clarify it?

Senator VANDENBERG. It sounds to me like an income tax return.

Senator TAFT. The effect of this bill is to turn them back to the Government, so to speak, and take them off the private pay roll; is that right?

Mr. JOHNSON. Yes, sir.

Senator TAFT. You have no provision here proposing to change the—yes; you do.

Mr. GASTON. The provision there, Senator, makes applicable the rates of pay that are now applicable in the case of overtime that is reimbursed to the Government. In other words, the double time for Sundays.

Senator VANDENBERG. It would be a great inconvenience to the public if these facilities were closed on Sundays and holidays, would it not?

Mr. GASTON. I think it would.

Senator VANDENBERG. Therefore, the service is essentially in the public interest?

Mr. GASTON. I think so.

Senator VANDENBERG. Therefore, there is no argument about the fact that the Government should be responsible for the pay rolls of the customs officers?

Mr. GASTON. We believe it is. At least in the case of all important bridges where there is heavy traffic on Sundays, we believe that the Government should maintain 24-hour service, and pay for it, and that it should not be chargeable to the operator.

Senator VANDENBERG. Therefore, in your view, our problem is exclusively confined to the rate of pay that should be given these men?

Mr. GASTON. I would say so. And hours of service, Commissioner Johnson reminds me.

Senator VANDENBERG. Did I understand you to say something about the withdrawal of bonds on May 1, which might indicate that perhaps these facilities might be closed if something isn't done about it?

Mr. GASTON. That is right. We have been notified by the operators of the bridges on the Mexican border in identical notes that they propose to cancel their bonds as of May 1 and to cease to pay for the overtime services. If they do that, it will create a very serious situation. And in that connection we are disposed to suggest to the committee an arrangement by which we could come to an agreement with the owners of these bridges and prevent their closing them on next Sunday.

Our suggestion would be that you would include in the bill a provision that the bill would be retroactive to May 1, with respect to the Government assumption of those charges. With such a provision we think that we could talk to the operators of the bridges and perhaps get them to agree to pay the money in escrow until the bill is passed, when it would be refundable under such a provision.

You see, it isn't merely a matter of an hourly decision here, or the protection of the Treasury Department or the Commissioner of Customs. It is a matter of the protection of the collectors of customs on the border. They would be personally liable for any unlawful payments.

Senator VANDENBERG. Well, since there is going to be, obviously, substantial controversy over rewriting the fundamental structure of these groups, why wouldn't it be the sensible thing to immediately pass a joint resolution which accepts this responsibility for the Government and proceed accordingly and then take up this question of rewriting the basic pay structure as a supplement?

Mr. GASTON. Well, if this resolution were to restore us to the status which existed before the Supreme Court decision we would agree to that.

Senator VANDENBERG. I don't know why it should. These men went to the Supreme Court. It seems to me it has been a thousand years that they have been fighting this thing. I have been hearing about it ever since I have been in Washington. It would hardly be fair that they go back—that they ask for this status quo arrangement.

Mr. GASTON. I think it would, Senator. As I said, I do not think that the statute which the Supreme Court views in terms applicable to this situation on the tunnels and bridges, I don't think that the Supreme Court passed on the equity of the form of payment for men who were engaged on regular tours of duty.

Senator TAFT. Do you have two or three shifts of 8 hours?

Mr. GASTON. We have three shifts in 24 hours.

As a matter of fact, because of your 7-day week—it is three shifts on the 24-hour basis, and then you have to have replacements for overtime.

Senator TAFT. And how much is covered by the officers and employes assigned to this duty at night? That covers one shift of the three during the week and Sundays, is that it—everybody on Sunday?

Mr. GASTON. It would cover wholly—including the night work, it would cover wholly two out of the three shifts, and as to those men who were on the day shift, which would include Sunday, it would cover part of the third shift, also.

Senator TAFT. What do you call night—6 to 6?

Mr. GASTON. 5 p. m. to 8 a. m.

Senator TAFT. 8 a. m. to 5 p. m.—day.

Mr. GASTON. 8 a. m. to 5 p. m.

Senator TAFT. Nine hours—daytime.

Mr. GASTON. Those are the hours fixed in the statute.

Senator TAFT. I see.

Mr. GASTON. That reimbursable overtime statute—daytime work is considered work between 8 a. m. and 5 p. m. After that it is considered nighttime work.

Senator TAFT. Then, the effect is to give double time for two-thirds of all the time; is that right?

Mr. GASTON. No; that wouldn't be the effect because the Supreme Court held that the daytime hours were variable, that we were no longer bound by the 8 a. m. to 5 p. m. rate, so far as this particular act is concerned.

Senator TAFT. Then, why did you tell me you were—I am trying to find out how much of this time is subject to overtime.

Mr. GASTON. You asked me what hours were daytime, and I told you those were the hours of daytime fixed in the statute.

Senator TAFT. But I am trying to find out how much, under this proposal as it is proposed by Senator Wagner—how much of the time is going to be subject to this double time, or whatever it is?

Mr. GASTON. Well, it would be, if these men are working a 7-day week—it would be 1 day out of 7, and that would apply to all three shifts in the 24 hours on Sunday from 12 midnight Saturday to Sunday.

Senator TAFT. How many shifts during the week, one out of three?

Mr. GASTON. It would apply to all three shifts—I do not think I understand your question fully.

Senator TAFT. It says:

Officers and employees assigned to such duty at night or on Sunday or a holiday shall be entitled to rates of compensation fixed on the same basis as in the case of customs officers and employees assigned to duty in connection with lading or unloading of vessels or cargo at night or on Sunday or a holiday; * * *

How much of the full time is going to be subject to that provision? That is what I am trying to find out.

Mr. GASTON. I believe you have to consider that provision in the light of the Supreme Court decision, and that the double pay would apply only to the Sunday work.

Now, if you had three shifts covering 24 hours, and each one of those shifts worked part of Sunday, worked 8 hours on Sunday, then for that 1 day they would get, under this provision, double pay, which would be in addition to their base pay. They would get 2 additional days.

Senator TAFT. What about those working at night?

Mr. GASTON. They are repeating here the words of the customs overtime statute, but I think that has to be interpreted in the light of the Supreme Court decision which does not require us to pay for night duty if it is in a regular tour of duty. If the service were emergency service, for which a man were specially called out, and which is reimbursable to the Government, then it would be that the double rate would be applicable.

Senator TAFT. But in the normal course, as to these bridges, all nighttime work would be just like daytime work, is that right, even though a man is on the night shift?

Mr. GASTON. That is right, unless we should establish some differential for nighttime work.

Senator GERRY. Mr. Johnson.

Mr. JOHNSON. Senator, under the Wagner bill the customs inspectors working on bridges would get about three times what the Supreme Court gave them. It would give them overtime on nights which is not payable under the Supreme Court decision. The companion bill in the House gave them only what they got under the Supreme Court decision, but the Senate bill did go beyond that and gave them what the Supreme Court denied of their claim.

Senator VANDENBERG. Suppose we sealed the thing on the basis of the West bill, which you say implements the decision of the Supreme Court, would that do for the interim?

Mr. JOHNSON. Mr. Senator, my basic objection to that is that the Congress should not enact a statute that requires customs employees permanently to work 7 days a week, 56 hours a week. I do not believe that that calls for an efficient performance of duty, and the Department is opposed to the bill definitely on that basis.

Senator TAFT. How did you get on to a 7-day week?

Mr. JOHNSON. The decision of the Supreme Court.

Senator TAFT. Forced you to it?

Mr. JOHNSON. Forced us on the 7-day week at the bridges and tunnels.

Senator TAFT. Why was that?

Mr. GASTON. It makes it an overtime proposition, Senator.

Senator TAFT. What I meant is, if a man worked 5 days and 1 Sunday, you would have to pay him overtime on Sunday.

Mr. JOHNSON. Yes; but we would have no authority for releasing him on 1 day of the week, because he would be required to work that week to earn his base pay. Otherwise, he would become an irregular employee. If we gave a man 1 day a week off it would have to be charged first to his annual leave and thereafter to leave without pay.

Now, the Supreme Court decision places this regular week-in-and-week-out 24-hour service on Sunday on exactly the same basis as the

casual 1 or 2 hours or 3 or 4 hours, in the case of a vessel that happens to come in at night or a railway train that arrives in the night hours and requires just casual service in the private benefit category.

Senator TAFT. Are the daytime hours considered more desirable than the night shift?

Mr. JOHNSON. All employees would prefer to work from 8 to 5 than any other hours, with a very rare exception. Sometimes a man has some personal reasons for liking to work at night.

Mr. GASTON. I think differentials are quite common in industries, differentials for night work.

Senator TAFT. You are proposing a differential for night work of 10 percent?

Mr. GASTON. Yes; for all employees required to work at night.

Senator TAFT. You are also proposing that if a man works 6 days, including a Sunday, he gets no overtime for Sunday, but a 10-percent differential—that is your proposal?

Mr. GASTON. Yes, sir; and a day off through the week.

There seems to be some doubt about the interpretation of this Wagner bill, as to the effects of the nighttime. I am not just sure of that. I was under the impression that it was the other way, that it would apply only on Sunday.

Senator GERRY. Thank you, Mr. Gaston and Mr. Johnson.

(Letter of the Secretary of the Treasury addressed to Hon. Walter F. George, dated April 17, 1944, and enclosure are as follows:)

TREASURY DEPARTMENT,
Washington, April 17, 1944.

HON. WALTER F. GEORGE,

Chairman, Committee on Finance, United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your communication of March 8, 1944, enclosing a copy of bill S. 1758, to amend section 451 of the Tariff Act of 1930, and requesting this Department to submit a report thereon.

Section 451 of the Tariff Act and related statutory provisions provide for the payment to customs employees, and the reimbursement thereof by the owner, master, or person in charge of the vessel or vehicle, the common carrier, or the owner or consignee of any merchandise or baggage, whichever may be concerned, of extra compensation for certain customs services furnished at night or on Sunday or a holiday. The Supreme Court of the United States ruled on January 3, 1944, in the *Myers case* that the overtime compensation provisions apply to services at certain toll bridges and tunnels involved in that suit.

S. 1758 would add to section 451 of the Tariff Act a proviso containing three provisions. The first would exempt the owners, operators, and agents of international bridges, tunnels, and ferries along the Canadian and Mexican borders from the requirement to reimburse the Government for Sunday, holiday, and overtime compensation and would make the statutory requirement for the reimbursement of such overtime completely inoperative with respect to customs services in the lading or unloading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, or on foot via any international highway, bridge, tunnel, or ferry along the Canadian or Mexican border.

The second provision would require the collectors of customs to assign customs officers and employees to duty during the 24 hours of each day, including nights, Sundays, and holidays, at designated ports of entry when necessary to facilitate the prompt inspection and passage of such merchandise, baggage, or persons at the Canadian and Mexican borders.

The third provision would entitle customs officers and employees assigned to duty at night or on a Sunday or holiday at any such bridge, tunnel, or ferry to extra compensation on the basis prescribed by section 5 of the act of February 13, 1911, as amended, and sections 451 and 452 of the Tariff Act, as amended, and would require such compensation to be paid by the United States without reimbursement or guaranty of reimbursement on the part of the owners, opera-

tors, or agents of the highways, bridges, tunnels, ferries, motor vehicles, or trolley cars.

This Department is not opposed to the principle which the bill establishes that international bridges, tunnels, and ferries should be kept open to international traffic during the night and on Sundays and holidays as a necessary public service, without making public access to such facilities dependent upon the payment by the owners of such facilities of the extra compensation of the customs officials and employees necessarily assigned to protect the public revenues.

It is further the view of this Department that, as a corollary of the principle stated above, the provisions of the customs extra compensation statutes requiring 2 days' pay for any work done on a Sunday or holiday (sec. 5 of the act of February 13, 1911, as amended, and secs. 451 and 452, Tariff Act of 1833, as amended) are inappropriate for the payment of compensation by the Government. It is believed that these provisions were designed solely for the collection of extra compensation from parties in interest for services performed for their benefit at unusual hours, and that the high rate of extra compensation which they established was imposed because such services were considered not primarily in the public interest and requests for them were to be discouraged except in cases of necessity. The bill under consideration would maintain the present rates of extra compensation even where the Customs Service is provided as a necessary public service without reimbursement.

Existing law seems to require that, except for holidays, customs employees must work 6 days each week in order to earn their regular salary. Sunday work for which overtime is payable in accordance with the decision in the *Myers case* must be performed hereafter on a seventh day of the workweek. The result is that a substantial number of employees are now being required to work regularly on the basis of a 7-day, 56-hour week, and S. 1753 would perpetuate that situation indefinitely in addition to shifting the burden of paying the extra compensation to the Government. The Treasury Department believes that this is contrary to the interests of the employees on grounds of humanity and contrary to the interests of the Government on grounds of efficiency. It therefore urgently recommends the enactment of legislation which will remove any obstacle to the exercise in respect of customs inspectors and limited classes of other employees of the usual and ordinary authority it has to assign employees generally to regular tours of duty on Sunday with an allowance of lieu time on some other day of the week. Moreover, if Sunday and holiday service is to be provided as a public service at the expense of the Government, as contemplated by the bill, then the extra compensation features of existing law, if applied against the Government instead of as an expense against the operators of the facilities, become illogical and inappropriate in the presently accepted pattern of Government employee compensation. For example, immigration service is provided as a public service at public expense at bridges, tunnels, and ferries operating on regular schedules, and immigration employees assigned to duty at such places on Sundays and holidays are not entitled to extra compensation. In contrast, customs employees who may be working alongside the immigration employees at the same facilities on Sundays and holidays, would remain entitled under the bill to the high rate of extra compensation provided by existing law. It is therefore recommended that the extra compensation provisions of existing law be not applied where customs service is provided as a public service at the expense of the Government. If in the opinion of the Congress customs employees required to work on Sundays and holidays in the public interest merit special consideration, then a more appropriate system of compensation would seem to be the establishment of a pay differential of, say, 10 percent. This Department believes that such a differential would be just, and that it is deserved, not only for Sunday and holiday work, but also for work on regular tours of duty at night, i. e., between the hours of 5 p. m. and the following 8 a. m.

With respect to the ferries which, under S. 1758, would receive the privilege of free services, it should be mentioned that there are certain ferries operating between the United States and Canada in the Puget Sound region, and perhaps elsewhere, which arrive in the United States once a day outside regular office hours. At other places car ferries and occasionally passenger ferries operate at irregular hours. To employ the additional personnel that would be required to service such ferries on regular tours of duty would impose a cost on the Government far greater than the cost now borne by the operators for overtime services. It is suggested, therefore, that the privilege of free services in the case of ferries be limited to such as operate passenger service with ar-

rivals at intervals of at least once each hour during any period in which free services are to be furnished, and that a similar limitation be observed if any other transportation facilities are hereafter included in the bill.

As the provisions in lines 5, 6, 9, and 10 on page 2 covering arrival in or departure from the United States "by motor vehicle, trolley car, or on foot" exclude certain other methods of arrival or departure, such as by wagon, without any apparent logical reason for such exclusion, it is suggested that the language be broadened to include arrival or departure by all methods of travel in which the enumerated facilities might be employed.

It seems clear that the term "persons" as used in the bill would include "passengers." As some confusion might result from an apparent distinction between "passengers" and "other persons" (see lines 4, 8, and 18 on page 2), it is suggested that the term "passengers" be eliminated.

The second provision of S. 1758 (beginning at line 7, p. 2) seems subject to the interpretation that it would require collectors to maintain continuous 24-hour service, including Sundays and holidays, at all ports of entry along the Canadian and Mexican borders. There are approximately 135 such ports, including those on the Great Lakes. At many of them Sunday and holiday service would be wholly unwarranted, and the Government would assume a considerable unnecessary financial burden if it were required to furnish such service indiscriminately. It is believed that the bill should indicate clearly that the Customs Service may exercise a reasonable discretion, based upon the volume of traffic and the availability of customs personnel, in determining where and for what periods of the nights, Sundays, or holidays the services shall be furnished.

It is also recommended that a section be added to the bill to require owners or operators of international bridges, tunnels, and ferries to provide and maintain free inspection facilities for Federal agencies stationed at such bridges, tunnels, or ferries. A draft of a bill for this purpose was prepared by this Department and submitted to the President of the Senate and the Speaker of the House of Representatives in July 1930, with letters explaining the reasons for recommending such legislation. The proposed bill was introduced in the Senate on January 23, 1940, and became S. 8175. It was reintroduced in the Senate of the Seventy-seventh Congress on January 20, 1941, and became S. 649. No action was taken on the bill.

It has been the opinion of this Department that the operators of international bridges could not administratively be required to provide the Customs Service with free inspection facilities such as are universally furnished by vessel operators at seaports and by the operators of airports. It has, however, been the Department's practice to attempt to persuade the bridge operators to provide facilities free of charge. Some of the operators have complied with the Department's requests, while others have refused to do so. The Department does not believe that this is an expense which should be borne by the Government. The furnishing of inspection facilities is properly a burden which should be assumed by the bridge and tunnel companies as is done by the vessel operators at all seaports and by airport operators. However, suits are now pending against the United States in the Court of Claims to recover rent for facilities furnished to the Government at the Peace Bridge at Buffalo, N. Y., and the Blue Water Bridge at Port Huron, Mich. Operators of other bridges are pressing for payment, and other operators are now receiving payment.

A draft of a bill covering all the foregoing suggestions and recommendations is enclosed for your consideration.

The proposed legislation, together with the Department's comments thereon, has been submitted to the Bureau of the Budget in accordance with established procedure, and that Bureau has advised us as follows:

"You are advised that legislation to accomplish the following purposes would not be in conflict with the program of the President: (a) Exempt owners, operators, and agents of international bridges and tunnels along the Canadian and Mexican borders from any requirement for their payment of the compensation of such Customs employees as the Treasury Department may, within its discretion, assign to duty at such bridges and tunnels; (b) that the compensation to be paid by the Treasury Department to Customs employees for overtime services should be upon the same basis, as that paid to Immigration Service employees at bridges and tunnels, viz., time and one-half as provided under the War Overtime Pay Act, Public Law 49.

"With respect, however, to the proposal in your draft of bill for extra compensation of 10 percent for services on a Sunday or a holiday, or at night on any

other day, I feel obliged to advise you that such a provision would not be in accord with the program of the President."

Very truly yours,

HERBERT E. GASTON,
Acting Secretary of the Treasury.

A BILL To amend section 451 of the Tariff Act of 1930, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 451 of the Tariff Act of 1930, as amended by section 9 of the Customs Administrative Act of 1938 (U. S. Code, 1940 ed., title 19, sec. 1451), is hereby amended to read as follows:

"SEC. 451. EXTRA COMPENSATION—GENERAL PROVISIONS.

"(a) Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle shall be required to give a bond in the penal sum to be fixed by the collector conditioned to indemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unloading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act entitled 'An Act to provide for the lading, or unloading of vessels at night, the preliminary entry of vessels, and for other purposes,' approved February 13, 1911, as amended. In lieu of such bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unloading of vessels or vehicles belonging to such line for a period of one year from the date thereof. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the collector shall assign sufficient customs officers or employees, if available, to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services gives a bond in a penal sum to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unloading at night or on a Sunday or holiday.

"(b) The terms and provisions of section 5 of the said Act of February 13, 1911, as amended, and of sections 450, 452, 453, 454, and this section of this Act, as amended, pertaining to a special license, bond, and the payment of compensation by the master, owner, or agent of a vessel or vehicle for services and expenses of customs officers and employees shall not apply, when assignments of such officers and employees are made pursuant to this subsection or under a finding pursuant to subsection (c), to the owner, operator, or agent of a bridge, tunnel, or ferry between the United States and Canada or Mexico, nor to the lading or unloading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle or trolley car, on foot, or by other means upon, over, or through any highway, bridge, tunnel, or ferry between the United States and Canada or Mexico. At designated ports of entry where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle or trolley car, on foot, or by other means upon, over, or through any highway, bridge, tunnel, or ferry between the United States and Canada or Mexico, the collector, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees insofar as personnel is available to duty during all or part of each day, including nights, Sundays, and holidays when such night, Sunday, or holiday assignments are found by the Commissioner of Customs to be warranted by the volume of traffic, to facilitate the prompt inspection and passage of such merchandise, baggage, or persons. All compensation payable to such customs officers and employees under such assignments shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway, bridge, tunnel, ferry, motor vehicle, trolley car, or other means of arrival or departure. For the purposes of this subsection (b) the term 'ferry' shall mean a passenger service operated with the use of vessels which arrive in the United States on regular

schedules at intervals of at least once each hour during any period in which customs service is to be furnished pursuant to this subsection.

"(c) No extra compensation shall be payable under section 5 of the said Act of February 13, 1911, as amended, subsection (a) of this section, or section 452 of this Act for services performed by any officer or employee pursuant to subsection (b) of this section, or for any other services performed by customs officers or employees assigned to regular tours of duty at nights or on Sundays or holidays. Customs officers and employees shall not be assigned to duty at nights or on Sundays or holidays otherwise than in accordance with subsection (a) or (b) of this section or section 452 of this Act unless the Commissioner of Customs shall first make a finding approved by the Secretary of the Treasury that the performance of such service is necessary in the public interest.

"(d) Any officer or employee assigned to a regular tour of duty at night or on a Sunday or holiday pursuant to subsection (b) or (c) of this section shall be paid extra compensation for any period of time served on a Sunday or holiday or at night on any other day in an amount equal to 10 per centum of the pay which such officer or employee would have received for the same period of work at a time other than at night or on a Sunday or holiday. Nothing in this section shall affect the compensation or working hours of field officers and employees of the Division of Investigations and Patrol of the Bureau of Customs or prevent the extension of regular working hours of other officers and employees without extra compensation when such extension is necessary to eliminate an arrearage in, or to keep current, the general work of an office or district."

SEC. 2. INSPECTIONAL FACILITIES AT BRIDGES, TUNNELS, AND FERRIES.

(a) Any owner or operator of an international bridge, tunnel, or ferry between the United States and any foreign country shall, when requested by the head of any Federal agency, promptly provide and maintain, without expense to the United States, such suitable and conveniently located facilities as may be reasonably necessary to enable such Federal agency, stationed at such bridge, tunnel, or ferry, to discharge properly its legal functions relating to the regulation and supervision of commerce with foreign nations, including the enforcement of the immigration laws. The location and suitability of the facilities provided, or to be provided, shall be determined by the head of the Federal agency concerned.

(b) When used in this section, the term "facilities" means quarters, water, and heat, but shall not be construed to include lights, telephone service, office equipment (such as desks, chairs, filing cabinets, or similar equipment), or office supplies.

(c) In the event of the neglect, failure, or refusal on the part of any owner or operator of any such bridge, tunnel, or ferry to furnish facilities in accordance with the provisions of this section, the head of any Federal agency affected by such neglect, failure, or refusal is hereby authorized to close such bridge, tunnel, or ferry to all traffic until such time as the said facilities shall have been furnished.

(d) The provisions of this section shall be applicable to all international bridges, tunnels, and ferries between the United States and any foreign country, whether heretofore or hereafter constructed.

Senator GERRY. The next witness is Mr. Runals.

STATEMENT OF CLARENCE R. RUNALS, APPEARING ON BEHALF OF TOLL BRIDGE OPERATORS, NIAGARA, N. Y.

Mr. RUNALS. Mr. Chairman and gentlemen of the committee, lest our silence should be deemed assent to the interpretation of the decision of the Supreme Court in the *Myers case*—

Senator GERRY. I think, Mr. Runals, you should state that you represent the toll-bridge operators of Niagara, N. Y. Is that correct?

Mr. RUNALS. Yes. And I also appear on behalf of the bridge owners, 9 of 11 bridge owners, on the Texas border, and other bridge owners on the Canadian border. Since the problems which the present statute presents to my clients on the Niagara River are common to all bridge owners, the representatives of those owners have very kindly conceded to me the time which they would otherwise use in the pre-

sentation of their case. So that, I speak on behalf of all who are similarly situated.

We do not wish to take up the time of the committee in discussing the effect of the Myers decision in view of the fact that it is conceded by the Treasury Department, and I believe by all, that a statute should be enacted which would relieve bridge owners from the responsibility of paying the customs officers salaries and expenses. Statements were made, however, which perhaps ought to be clarified.

Mr. Gaston stated that the majority of the bridge owners and the tunnel owners had complied with the request of the Treasury Department that they file applications for special licenses and agree to pay the extra compensation of the employees. I may say that in every instance that an application for a special license was made it was made under protest. The bond was filed under duress with notice to the Treasury Department that claims would be filed and prosecuted for reimbursement. So that, in no instance has there been a voluntary application on the part of the bridge owners.

In view of some of the questions which have been asked, it occurs to me that possibly we could clear up a little misunderstanding that pertains to this situation. The proposed amendment to section 451 of the Tariff Act of 1930, as amended in 1938, to give meaning must read in connection with other sections of the Tariff Act of 1930. Those sections are sections 401, 451, 452, and section 5 of the act of February 18, 1911.

Now, those sections read together means this—and this is the summary of the existing law:

That no baggage, no merchandise, or passengers arriving in the United States from a foreign port or place shall be unladen from the carrying vessel or vehicle at night, on Sunday, or a holiday, except under a special license granted by the collector of customs under regulations prescribed by the Secretary of the Treasury. No such special license shall be granted until the master, owner, or agent of the vessel or vehicle shall apply to the collector for a special license and agree to and execute a bond conditioned as follows: First, to indemnify the United States against any loss or liability it may sustain by reason of the granting of the special license; secondly, to pay to the collector the compensation and expense of customs officers assigned to duty in connection with the unloading of the merchandise, baggage, or passengers, and to pay at the rates prescribed in the statute.

The proposed amendment would accomplish three things. One, it would exempt the owners and operators of bridges, tunnels, and ferries connecting the United States and Canada and with Mexico from the obligation which is alleged to be imposed upon them of applying for a special license and paying customs inspectors and employees for the service rendered by them, and it would also relieve the owners and operators of motor vehicles, private vehicles, and others crossing international borders between the United States and Canada and Mexico, from that obligation because the term "vehicle" as defined in the statute includes every description of carriage or other contrivance used or capable of being used as a means of transportation on land except aircraft.

You may well inquire how a bridge owner operating a bridge, which is a fixed structure, and in many instances has been fixed and immovable for a period of 50 years, can be a carrying vessel or vehicle, the master of which must report the arrival of the bridge to the collector of customs. Congress never intended the act to apply to bridges.

Senator Taft inquired if the proposed bill would take the cost off the private individuals and put it on the Government pay rolls, and I

say, to clear up any misapprehension that may exist with respect to that, that these officers have never been on the private pay roll. The attempt has been made by the Customs Bureau to impose upon the bridge owners and tunnel owners and the operators of ferries the cost of the service of the customs employees rendered on Sunday and on holidays.

Now, there is no basic reason why the bridge owner should bear that expense, and it is conceded by the Treasury Department and by the United States Tariff Commission that the customs inspectors render no service whatever to the bridge owners or the tunnel owners or the ferry owners. The services performed by customs officers at the bridge are for the purpose of collecting customs duties from those who declare merchandise upon arrival and preventing the smuggling of goods by those who fail to make declarations. There is no service rendered to the bridge owner.

Senator TAFT. Did the Supreme Court pass on this question in the same case?

Mr. RUNALS. No, Senator Taft. The question presented in the action of the *United States v. Myers* was whether the United States was liable to customs inspectors working at the port of Detroit at night, on Sundays, and holidays. The Government took the position that since section 5 of the act of 1911, which prescribed the rate provided, that the master, owner, or agent of the vessel or vehicle should pay whenever a special license was issued at the rates prescribed, and that, in turn, the collector would pay that money over to the employees. The Government contended that unless the Government collected the extra compensation from someone else, either the vessel owner or the vehicle owner, that the Government was not liable to the men for the compensation prescribed for services performed at night, on Sunday, and a holiday.

The Supreme Court held that the customs officers were employees of the Government and the Government was obligated to pay them at the rates prescribed, whether the Government collected that money from a vessel or vehicle owner.

Senator TAFT. I thought the rates prescribed were only for vessels and vehicles.

Mr. RUNALS. The definition of a vessel and a vehicle incorporated in the Tariff Act of 1930 is the same definition of each which has been on the statute books since 1866. The definition of the word "vessel" is that it shall include every description of watercraft or other contrivance used or capable of being used as a means of transportation on water but does not include aircraft. In that respect, sir, the definition is identical with the definition of the word "vehicle."

Now, the Supreme Court, over a period—and the Federal courts—of 75 years have held that the test as to whether an object is a vessel depends upon whether it is capable of being moved in the transportation of things or persons.

Senator TAFT. What I am wondering is whether by granting this pay to these employees of bridges the Supreme Court didn't by implication hold that this was a vehicle. How could they reach the decision in the *Myers case* without holding that the bridge was a vehicle?

Mr. RUNALS. They reached it in this way, as I interpret the decision—and I may say that it is not entirely free from ambiguity. After

the Court had finished its decision, decided in favor of the employes and stated the reasons, they wrote a single paragraph which has given rise to all this trouble. The Court said:

Two further conditions of the Government require consideration. It is said that section 5 of the 1911 act, as amended, does not apply to services rendered at a bridge or tunnel. This Court so held in 1922 (*International Railway Company v. Davidson*, 257 U. S.). At that time the section's application was limited to "vessel or other conveyance."

I may pause for a moment to say that the act of 1911 was substantially the same as the act now in force except that it was provided that the master, owner, or agent of a vessel or other conveyance was required to take out a special license. The Customs Bureau in 1920 served notice upon bridge owners that unless they made application for a special license and agreed to pay the extra compensation at the rates prescribed they would close the bridges.

The International Railway Co. started an action against the collector of the port of Buffalo for an injunction to restrain the collector from enforcing this Treasury regulation. The case found its way to the Supreme Court, and the Supreme Court unanimously held that the term "vessel or other conveyance" was not appropriate to describe the plant of a toll bridge, that Congress never intended by the enactment of that statute to impose that obligation upon the bridge owner, and it reached its conclusion based upon the history of the Treasury acts coming down from 1790.

It is perfectly evident that if the statute is read that the provision with respect to a special license related solely to vessels arriving at various ports at irregular intervals.

Now, the Court, continuing, said:

At that time the section's application was limited to "vessel or other conveyance." Since then sections 401, 450, and 451, of the Tariff Act of 1922 and of the Tariff Act of 1930 have expanded the instrumentalities to include every conveyance capable of being used as a means of transportation on land or water. The difference in definition, we think, brings bridges and tunnels under the overtime-pay requirements of section 5.

Now, it was unnecessary for the Supreme Court to decide in that case that a bridge is a vehicle to ascribe—

Senator TAFT. I am not so much interested in that. They did decide it. They have decided that you are subject to the statute.

Mr. RUNALS. That Senator, I could not concede.

Senator TAFT. That is the way it sounds. May I see the opinion?

Mr. RUNALS. Yes, sir.

Senator VANDENBERG. How does this all bear on the question immediately before the committee, since it is now conceded that the Government is responsible ultimately to pay for these services?

Mr. RUNALS. It was merely by way of explanation, Senator.

Senator VANDENBERG. Well, it is very interesting, but I have got to go at 12 o'clock, and I want to hear the rest of the witnesses.

Mr. RUNALS. I would like to know, Mr. Chairman, if the Treasury Department is pressing its suggested substitute of a bill for the Wagner bill. If it is, I would like to be heard upon that suggested bill.

Mr. GASTON. Yes; we stand on our suggested substitute.

Mr. RUNALS. Well, I may say then, Mr. Chairman, that we are—

Senator GERRY. Will you make your statement brief and then submit a brief?

Senator TAFT. I think we are agreed that the bridge should be accepted. That is why we are only interested really in fixing this pay question.

Mr. RUNALS. We are opposed to the suggested bill of the Treasury Department. It provides at page 3, lines 9 to 20:

At designated ports of entry where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle or trolley car, on foot, or by other means upon, over, or through any highway, bridge, tunnel, or ferry between the United States and Canada or Mexico, the collector, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees insofar as personnel is available to duty during all or part of each day, including nights, Sundays, and holidays when such night, Sunday, or holiday assignments are found by the Commissioner of Customs to be warranted by the volume of traffic, to facilitate the prompt inspection and passage of such merchandise, baggage, or persons.

Now, if the bill suggested by the Treasury Department is enacted it will give rise to the same questions as were presented to the Supreme Court in the case of *International Railway Company v. Davidson* and in that case I may say—

Senator TAFT. Have we an alternate to the Treasury bill?

Mr. GASTON. Yes, sir.

Mr. RUNALS. In the case of *International Railway Company v. Davidson* the Treasury Department, despite the fact that they had furnished customs service continuously 24 hours of the day for nearly 50 years, took the position that it was not insisting that the company should—that it would close the bridge or that the company should pay—but that it was without the personnel to assign to the bridge.

Now, I can summarize very briefly the contention of the Treasury Department and the decision of the Court by reading to you a short excerpt from the opinion of Mr. Justice Brandeis in the decision of the Supreme Court in that case, and you will see that if the law is amended as proposed by the Treasury Department, instead of putting at rest the controversies which have occupied the courts for a period of approximately 25 years, those controversies will be revived. Justice Brandeis stated:

It is also insisted that the Secretary of the Treasury has authority, independently of the power specially conferred by the act of 1911, as amended, to issue the instruction complained of. The contention is that his instruction to the collector was not to compel the bridge company to pay the cost of the inspection service, but merely to withdraw the service unless the company would agree to pay the cost; that since customs officials cannot be maintained at every point where merchandise may conceivably enter from contiguous countries, discretion must rest in the Secretary to determine whether the character and extent of the movement at a particular place justifies maintaining them there; and that the instruction given was a regulation under section 161 of the Revised Statutes. To this contention it is perhaps a sufficient answer to say that the instruction given was obviously not a determination by the Secretary that the travel over these bridges on Sundays and holidays was not such as to justify the Government in maintaining the inspection service. The travel was heavier on those days than on any other; and the service had been maintained continuously for more than 20 years.

Now, we believe that the way to end the controversy is to direct the continuance of customs service at ports of entry where customs service has been regularly maintained. There isn't any danger of a person starting up a ferry and arriving at a landing and saying that customs service must be provided.

The Wagner bill provides that the service shall be maintained at designated ports of entry where any merchandise, baggage, or passengers, or other persons, shall arrive in or depart from the United States by motor vehicle, trolley car, or on foot.

The suggested amendment by the Treasury Department vests in the Bureau of Customs the determination whether the volume of traffic warrants the furnishing of customs service.

Now, I respectfully submit in that connection that the operators of the bridges and tunnels and ferry boats, with the years of experience which they have had, are able to determine whether the volume of the traffic justifies the continuance of the service. They have a vital business interest in the operation of those facilities.

You can very readily see that a person sitting in Washington in charge of the Customs Department might say that the volume of traffic between the hours of 1 a. m. and 6 a. m. is not sufficient to warrant the customs service, without knowing the great public inconvenience that would be caused by closing any facility during that period of time.

I respectfully suggest to you that if the owner of the facility is willing to pay his money to his employees to keep the service open 24 hours of the day, the Government ought to be willing to pay its toll collectors during that period of time.

Just to give you an illustration of the danger incident to vesting in someone in the Customs Department the power to say that customs service shall not be furnished during a period of the day, let me refer to the situation on the Niagara border, which is common. People on the Niagara border cross the border. They have intermarried. It is like a community. The international border does not divide the people. They cross the river with the same relative ease that they would travel an equal distance of 1,000 feet in the State of New York. People from both sides of the river visit their relatives and their friends. Doctors resident on both sides of the river have patients on the other side. The family physician is called from one side of the river to the other.

Now, if someone, with the very best of intent—and I am not impugning anybody's motive—should say that the business between 1 a. m. and 6 a. m., the volume of traffic, doesn't warrant the maintenance of the customs service, a terrific amount of indignation and ill feeling would be aroused if those facilities were closed.

I may say that it wouldn't in many instances be difficult to find that the amount of revenue taken in by a bridge between the hours of 1 a. m. and 6 a. m. did not equal the amount that the bridge owner paid its employees for the service, but it is essential in the public interest that those facilities be maintained continuously.

Senator TAFT. Are you satisfied with the language of the Wagner bill on the subject?

Mr. RUNALS. Yes, sir.

Senator TAFT. That they shall assign customs officers and employees to duty at such times during the 24 hours of each day, including Sundays and holidays, as may be necessary to facilitate the prompt inspection and passage of such merchandise, baggage, passengers, or other persons?

Mr. RUNALS. Yes, sir.

Senator TAFT. That language is satisfactory?

Mr. RUNALS. Yes, sir.

Senator TAFT. What does the Treasury say?

Mr. GASTON. It seems to me, Senator, that it is necessary to have some discretion or we are going to have a very wasteful use of manpower, which will be particularly serious at this time when the demands for manpower are so serious.

Senator TAFT. Well, you have to watch the boundaries to prevent smuggling 24 hours a day, don't you?

Mr. GASTON. Yes. Mr. Runals has spoken particularly of the toll bridges, but the language is broader than that. I would like to have Mr. Johnson say a word on that subject.

Senator GERRY. Mr. Johnson.

Mr. JOHNSON. This matter was considered by the Senate and the House in 1938 and the limitation to the furnishing of services to such as could be performed by available men was enacted into the statute then after very deliberate consideration.

Now, as the Secretary has said, we have the free bridges. This proposed change would leave us in the situation of having free bridges where we could refuse to accept the service and nobody could complain, and the toll bridges, where we would state that their services were not necessary, because of the slack volume of business, and there would be somebody immediately complaining.

Now, we have an international bridge on the border that is open 1 day in a week for 8 hours. Under the bill that bridge—which happens to be a free bridge—could demand 24-hour service 7 days a week.

Senator TAFT. If it opened the bridge.

Mr. JOHNSON. It isn't a toll bridge. It is the Fort Hancock Bridge down in the Big Bend of Texas.

I think the Wagner bill would require us, in terms, to furnish it, except with the possible escape the Senator pointed out on that word "necessary." I don't have any confidence in that as a reasonable limitation on the demands that would be made on us.

Now, since 1938 there has been absolutely no controversy over the availability of men to perform necessary services. We are getting now to a tighter time than we have ever had. We have had to make adjustments but everybody has agreed to it.

Senator TAFT. May I ask a question? This whole controversy is confined to bridges and does not apply to ordinary highways crossing into Canada, for instance. How is the compensation of men covered on ordinary highways?

Mr. JOHNSON. Senator, I wish I knew where the Supreme Court leaves us on that. Take the customs inspector at Rouses Point, working on a regular tour of duty on Sunday. That means that he gets no additional compensation but he is given a free day some other day of the week.

Senator TAFT. Are they drawing the same pay as the bridge employees?

Mr. JOHNSON. They are drawing the same base pay but they are not getting the overtime Sunday pay.

Senator TAFT. The statute does not apply to them anyway.

Mr. JOHNSON. Those men should bring a suit and they certainly, in all justice and equity, are entitled to exactly the same pay as the man

who happens to be working on a bridge. They would be equalized under the Treasury bill.

Senator GERRY. We will hear some of the other witnesses now.

Mr. RUNALS. I would like to say just this, Mr. Chairman, if I may: There is included in the proposed bill by the Treasury Department the requirement upon bridge owners and tunnel owners and ferry operators that they provide free facilities to any governmental agency that may be stationed at the bridge or tunnel. No mention was made of that by the Acting Secretary of the Treasury or Mr. Johnson.

Now, we are very strenuously opposed to that provision because there is a leverage in the suggested bill that if the facilities which are determined by the head of any Federal agency that takes up quarters at the bridge are not provided the bridge or tunnel or ferry may be closed. The operator or owner has no discretion whatever in determining the nature or extent of the facilities that will be demanded by each of several Federal agencies or the group of them, or their location.

That, we respectfully submit, is wrong in principle and is an exceedingly dangerous provision.

Senator TAFT. You mean the Government may close the bridge—if they do not furnish inspection they may close the bridge?

Mr. RUNALS. No; it is a question of facilities—buildings, quarters for any Government agency that may be stationed at the bridge.

Senator TAFT. I mean, if they don't furnish an inspector for 8 hours at night, can they compel you to close the bridge?

Mr. RUNALS. Well, they have done so. They have stationed armed guards at the Rainbow Bridge and at the Thousand Islands Bridge and have prevented people from crossing, even going into Canada.

Senator TAFT. I assume they have that power.

Mr. RUNALS. Now, we are opposed to that suggestion, Mr. Chairman. Basically—there is a danger incident to it—but basically, if the Government hires its toll takers, its employees, it should pay for them and it should provide the facilities which are necessary to house them, either by paying a rental to the owner of the facility, be it bridge or tunnel or ferry, or by building the quarters necessary.

Senator GERRY. Thank you, Mr. Runals.

(The following brief was received for the record:)

BRIEF FOR THE FINANCE COMMITTEE OF THE SENATE OF THE UNITED STATES IN SUPPORT OF S. 1758 ON BEHALF OF THE OPERATORS OF INTERNATIONAL HIGHWAY BRIDGES, TUNNELS AND FERRIES ON THE CANADIAN AND MEXICAN BORDERS

The basic problem which led to introduction of the bill was who should pay for Customs Inspection Services rendered on Sundays and holidays at toll border crossings. At the hearing, Acting Secretary of the Treasury Gaston conceded that the Treasury Department was in accord with the proposition that the Government should pay its Customs employees for services performed by them at all times without distinction between Sundays, holidays, or weekdays and without requiring reimbursement from the owners or operators of the highway bridges, tunnels and ferries at which these services are performed. The same concession was made by Commissioner of Customs Johnson, by the Treasury report and the Tariff Commission report filed in connection with this bill, and by everyone who testified at the hearing before the subcommittee on May 3, 1944. It is unnecessary, therefore, to argue further this provision of the Wagner bill.

Ten international toll bridges and one vehicular tunnel along the Canadian border at points from New York on the east to Minnesota on the west are effected. Several highway ferries across the St. Lawrence, Niagara, and St. Clair Rivers are also involved.

On the border between Texas and Mexico 11 toll highway bridges are affected, together with some ferries operating across the Rio Grande.

So far as the Texas-Mexico crossings are concerned, the Acting Secretary of the Treasury stated that his Department had been served with notices from all of these bridges that the bonds heretofore filed under protest are canceled effective as of May 1, 1944. If the Treasury Department pursues on next Sunday, May 7, the same course in respect of these bridges, as it did in other cases, Customs inspection services will be withdrawn at all of these crossings into Mexico and the border will be forcibly closed by the Customs Bureau through stationing of armed Customs Bureau patrol officers at each of the bridges.

On the Canadian border, the new Rainbow Bridge at Niagara Falls, which is operated by a public bridge authority created under an act of Congress, has been closed by the Customs Bureau each Sunday commencing on February 27, 1944, down to date. The highway has been barricaded from midnight of each Saturday until midnight of each Sunday with armed border patrol guards refusing admission to all persons attempting to cross the bridge in either direction whether these were Canadian citizens homeward bound or United States citizens attempting to return to their own country.

Thousand Islands Bridge across the St. Lawrence River, another public authority bridge, was closed by the Customs Bureau from February 27 throughout the month of March 1944, so far as travel at any time on Sundays was concerned. This bridge is now open by virtue of a temporary restraining order which it obtained from the United States district court. Trial of its action for a permanent injunction is pending and was scheduled to commence on May 4, 1944.

Two other bridges across the Niagara River are open only by virtue of injunctions granted in 1922 and 1923 under litigation which went to the United States Supreme Court (*International Railway Co. v. Davidson, Collector*, 257 U. S. 500): Motions recently made by the Government to vacate these injunctions are now pending undetermined.

The Peace Bridge at Buffalo is likewise one owned and operated by a public authority. It has complied with the Treasury Department demand for a bond under protest so as not to impede the movement of a vast amount of war material which passes over the bridge on Sundays.

Other bridges and a tunnel on the Canadian border and bridges on the Mexican border have until now maintained Sunday service through similar compliance under protest and for similar reasons. Outstanding examples include the Ambassador Bridge at Detroit and the tunnel between Detroit and Windsor, both of which carry thousands of vehicles and war workers every day in the week. Outstanding examples on the Texas-Mexican border are the bridges at Brownsville, Laredo, and El Paso over which military personnel, foodstuffs, and war materials move in large numbers and amounts on Sundays.

The whole problem is accentuated by the seasonal increase in traffic which is now occurring.

The uniform prior practice of the Customs Bureau and of the Treasury Department for some 50 years has been to furnish customs inspection service at certain Canadian and Mexican highway crossing points whether at highway bridges or a tunnel throughout the whole week, including Sundays, and for 24 hours of each day, without requiring reimbursement from the operators of these highway connections.

There was, of course, no logical reason during these years why the Government should pay its customs inspectors for work done on weekdays and not pay them for the same work done on Sundays and holidays, and no logical reason now exists why our Government should not pay its employees, just as the Canadian and Mexican Governments do, for their work whenever performed. It is a matter of common knowledge that public highway travel is frequently heavier on Sundays and holidays than on weekdays. The public interest requires customs inspection services even more on Sundays and holidays than on other days of the week.

It may be noted that the Customs Bureau always has furnished and now continues to furnish at international boundary crossings on land and at free highway bridge crossings the required inspection services on Sundays at the sole expense of the Government.

There are 10 international highway bridges across the border between Maine and Canada at which these Sunday services are freely provided by the Customs Bureau. We are informed that there are also a large number of highway crossings on land between the United States and Canada and between the United

States and Mexico where such free customs inspection services continue to be approved by the Government on Sundays.

The Wagner bill, S. 1758, with the clarifying amendments suggested at the hearing is entirely adequate to correct the situation arising as a result of the recent Supreme Court decision. So far as compensation of the Customs inspectors and employees assigned to duty on Sundays at toll highway bridges, tunnels, and ferry crossings is concerned, the Wagner bill with these modifications merely recognizes the formula for such pay established by that decision. Unlike the substitute Treasury bill, it does not take from the employees any compensation to which the Supreme Court held they were entitled.

The Wagner bill with the suggested modifications has the additional advantage of simplicity. It is not complicated by extraneous and involved additions which are a part of the proposed substitute bill of the Treasury Department.

This proposed substitute Treasury bill is seriously objectionable from the standpoint of the operators of international highway bridges, tunnels, and ferries. First, it does not require continuance of the "necessary customs inspection service which would afford to the public the right and opportunity to cross either the Canadian or Mexican border by means of these highway facilities on Sundays or holidays. It does not even assure to the public the continuance of customs service as heretofore rendered in the public interest on Sundays. Rather the proposed substitute Treasury bill would leave to the uncontrolled discretion of the Commissioner of Customs the right to provide customs service only if he found it warranted by the volume of traffic, a dangerous power the exercise of which in the past has led to much public dissatisfaction and litigation.

It is respectfully submitted that the qualification "necessary" which is contained in the Wagner bill (p. 2, line 17) is a sufficient standard and an adequate protection for the Customs Bureau in the assignment of its inspectors for duty.

In the second respect, the proposed substitute Treasury bill would require, under severe penalties for failure to comply, all international highway bridges, tunnels, and ferries to furnish and supply at all times in the future and at their own cost and expense all office space, quarters, and other accommodations deemed to be necessary by "any Federal agency" which is or may be stationed at such places. Accommodations which have been asked for include cattle pens, detention rooms, large warehouses, showers, garages for the automobiles of Customs agents, and the like, and there is no limit on the requirements which may be imposed by any Federal agency. The wording of the Treasury bill would leave the question of location, of suitability of the facilities to be provided for the determination, uncontrolled, of the head of the Federal agency concerned. The obligation thereby imposed upon the operators of the bridges, tunnels, or ferries is unlimited in cost, in location, in time and extent. Conceivably the requirement of a Federal agency may be such as seriously to interfere with the practical operation and maintenance of the bridge, tunnel, or ferry. This provision, which is section 2 of the proposed Treasury bill, was introduced "by request" in practically the same language in 1940 as S. 3175. It properly failed of adoption at that time. It was then and is now basically wrong in principle. Equally as the Government pays its customs employees for the services which they perform, the Government should provide at its own expense suitable and proper offices and quarters for Customs and Immigration officers at these highway facilities. If for the convenience of the Government office space and other accommodations are furnished and provided by the operators of the bridges, tunnels, and ferries, the Government should pay a reasonable rent for these accommodations.

The principle is no different from that affecting post offices. The Government there erects and owns its post offices or pays rental for leased property. It would not expect a town to provide a post office for the United States as a condition for delivery of mail therein. At some places, notably at Laredo, Tex., one of the border cities here involved, the Government has erected its own customshouse at a cost of several hundred thousand dollars. Under the proposed Treasury bill this obligation might be transferred to the operator of the bridge connecting Laredo, Tex., and Nuevo Laredo, Mexico.

The tremendous leverage which could be exerted by the Commissioner of Customs upon any bridge owner can easily be anticipated. However, at the present time practically all of the Mexican border bridges do receive rent from the Government for the office quarters furnished to the Federal agencies stationed there. The substitute Treasury bill would deprive the bridges of this part of their revenue to which they are entitled.

On the Canadian border the Customs Bureau has no uniformity of practice in respect to leased quarters. At some toll bridges and tunnels, rent is paid as it should be by the Government to the owners for the office and other building space which they furnish. At other toll bridges, and at the Detroit tunnel, no rent is paid at this time by the Government for the accommodations furnished to it. In two instances, suits are pending which have been brought by the bridge authorities to collect reasonable rent from the Government.

At free bridge and land crossings of the international border, the Government furnishes at its own expense all office space and other accommodations required for its customs and immigration officers. There is no reason why the Government should not adopt a uniform policy of providing its own quarters and facilities or paying a reasonable rent for them in respect to the Customs and Immigration Bureaus in the same manner as it does in respect to the Post Office Department. The expense of customs duties should be paid out of the customs revenue. Certainly there is no justification for imposing on some of the border-crossing facilities the obligation to provide quarters for the Customs Bureau at the risk of being closed and shut up if the compliance with the demands of the head of that Bureau are not as prompt and full as he may think they should be.

As stated herein and at the oral hearing, the operators of the various highway bridges, tunnel, and ferry facilities are in entire accord with the representatives of the customs employees who testified in respect to all points covered by the Wagner bill. This bill with the recommended modifications, will afford relief for the serious emergency which confronts the operators of these facilities and the traveling public, and would eliminate possible international friction involved in closing of either the Mexican or Canadian border on Sundays. Immediate relief is imperative and should be provided.

The Wagner bill, as modified, meets the demands of all interested parties except for some relatively minor objections advanced by the Treasury Department. If for any reason it cannot be passed at once, we urge adoption of a joint resolution as suggested by Senator Vandenberg at the hearing which shall embody the substance of the Wagner bill and make effective the principle that the Government should pay for the service of its own employees.

Dated May 4, 1944.

Respectfully submitted.

Mexican border facilities: Rio Grande Gateway Bridge Corporation, Brownsville, Tex.; Brownsville-Matamoros Bridge; Valley Bridge Co., Hidalgo, Tex.; Starr County Bridge Co., Roma, Tex.; Zapata Bridge Co.; Laredo Bridge Co.; Eagle Pass and Piedras Negras Bridge Co.; The Citizens Bridge Co., Del Rio, Tex.; Presidio Bridge Co.; National City Lines (two bridges), El Paso, Tex.

Canadian border facilities: Thousand Islands Bridge, Alexandria Bay, N. Y.; Queenstown-Lewiston Bridge; Whirlpool Rapids Bridge, Niagara Falls, N. Y.; Rainbow Bridge, Niagara Falls, N. Y.; Peace Bridge, Buffalo, N. Y.; Ambassador Bridge, Detroit, Mich.; Detroit-Windsor tunnel; Blue Water Bridge, Port Huron, Mich.; Ogdensburg, N. Y.-Prescott, Ontario Ferry, Rooseveltown, N. Y.-Cornwall, Ontario Bridge.

Mr. Myers.

Will you state your name and whom you represent?

STATEMENT OF H. C. MYERS, APPEARING ON BEHALF OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, DETROIT, MICH.

Mr. MYERS. H. C. Myers. I represent the Detroit customs employees, American Federation of Government Employees, who are inspectors in Detroit.

Senator VANDENBERG. You are also the Mr. Myers whom the Supreme Court immortalized?

Mr. MYERS. I am, Senator.

This Wagner bill, insofar as the Detroit employees are concerned, seems to be all right to us. However, we consider it might need a few minor changes to protect what the Supreme Court has given us.

As far as the liability for that overtime goes, we are not interested in that at all. As far as we are concerned, we always got it from the Government anyway. We never had knowledge of the Government's collecting it from the carriers. We knew it was provided, but whether they did or not was of no interest to us.

We do think, though, that we should, in all equity, be protected in what the Supreme Court has given us, rather than the law being changed as suggested by the Treasury Department.

Senator VANDENBERG. Mr. Myers, what have you to say about the statement that the implementation of the Supreme Court decision would require you permanently to work 7 days a week?

Mr. MYERS. I believe that is right, Senator.

Senator VANDENBERG. That is agreeable to you, is it?

Mr. MYERS. Well, it isn't agreeable but it is the only way we can earn a decent salary. Our overtime now at the port of Detroit will run between \$400 and \$600 a year. If we do not get that overtime it leaves us in a pretty bad fix.

Mr. Gaston, in his bill, mentions a 10-percent differential. That would give us 60 cents for working on Sunday. He also mentioned what the annual take on it would be, but he figured that we would work nights continually and every Sunday of the year, which we wouldn't do. We wouldn't work over a third of the nights and we certainly wouldn't work over perhaps 40 Sundays in a year. We don't know.

He also mentioned in his letter of transmittal the unfairness of our drawing overtime on Sunday and working beside an immigration officer who does not get it. He didn't say that the immigration officer gets \$600 a year more basic salary than we do. That is the reason we are trying to keep our overtime, because we think we have very little chance of getting an increase in our base salary.

Senatory GERRY. How much did you say you get under this Wagner bill?

Mr. MYERS. Between \$400 and \$600. I wold say it would average about \$400.

Senator GERRY. And I take it from your testimony that you feel you won't have to work every Sunday, it won't be a 7-day week right through the year?

Mr. MYERS. Well, Mr. Chairman, I think I worked about 40 Sundays last year, and will probably work an equal number this year.

Senator VANDENBERG. Four hundred dollars is added to your base pay, averaging \$2,300?

Mr. MYERS. Yes.

Senator VANDENBERG. So that your ultimate compensation would be around \$2,700?

Mr. MYERS. That is right. Of course, we have added to that the wartime overtime.

Senator VANDENBERG. That would bring it up to about what?

Mr. MYERS. It would be about \$3,300—\$3,200 or \$3,300—somewhere around there.

Senator TAFT. Mr. Myers, how do you interpret this opinion on night work?

Mr. MYERS. In the Wagner bill, Senator?

Senator TAFT. No; under the Supreme Court opinion. There seems to be a good deal of doubt as to whether you get any pay for night work.

Mr. MYERS. That is right.

Senator TAFT. If you only work 8 hours a day in 24 it looks as if the Supreme Court decided that that was out. Is that your present construction?

Mr. MYERS. That is right. That has always been so. We have never received any overtime pay for night service on any kind of assignment except when it was in excess of our regular day work of 8 hours.

Senator TAFT. So that we are only then concerned with this Sunday pay?

Mr. MYERS. That is right.

Senator TAFT. Your contention is that you are entitled to the extra pay for Sunday really to raise your general salary. I take it that the logical solution to the thing would be to raise the salary rather than to run into this 7-day business with extra time for Sunday. I should think it would be better if the salary were raised and everybody was required to work 6 days a week.

Mr. MYERS. It would be; yes, sir.

Senator TAFT. With a day off somewhere at no extra pay for Sunday, or perhaps a little extra pay for the man who had Sunday in his 6 days.

Mr. MYERS. We would appreciate that. We don't like to work 7 days a week but we feel we have to, to get enough money to support our families.

Senator VANDENBERG. What do you think you would get out of the Treasury bill as compared to the \$3,300 you would get out of the other arrangement?

Mr. MYERS. I think we would get about \$300 a year less than we do now.

Senator VANDENBERG. About \$300.

Mr. MYERS. Yes, sir. I believe it would be close to that. I believe my colleague, Mr. Bushey, has the figures on it.

Mr. JOHNSON. Mr. Chairman—

Senator GERRY. Mr. Johnson.

Mr. JOHNSON. If I could say just a word to Senator Taft. We are in agreement with Mr. Myers' statement that the customs inspectors should have more money. We presented to the Bureau of the Budget last fall a recommendation for inclusion in the appropriation for the next fiscal year an amount to adjust inspectors' salaries. The Bureau of the Budget eliminated that item with advice to us to get the Civil Service Commission to survey and report to us. That matter is now pending. We are waiting for the Civil Service Commission to give us the survey to see if they would agree with us as to what the services of these men are actually worth on governmental standards—which are not high enough. Part of our position is that that is the way to take this thing up and get equal treatment for all customs officers who perform equal services.

Senator VANDENBERG. Are you saying that you recommended to the Budget an increase in base pay?

Mr. JOHNSON. Yes, sir.

Senator VANDENBERG. How much?

Mr. JOHNSON. One step; \$300 a year for a man who has passed his training period.

Mr. GASTON. We recommended upgrading the inspectors.

Senator GERRY. How long is that training period?

Mr. JOHNSON. We suggested 5 years originally, and on the basis of recent civil-service action in connection with similar positions for Immigration Service, we think likely that should be reduced to 1 year.

Senator VANDENBERG. Mr. Myers, were you familiar with that recommendation?

Mr. MYERS. Yes, sir. Mr. Johnson talked to me last fall.

Senator VANDENBERG. Did it meet with your approval?

Mr. MYERS. It did at that time, Senator, but since that time these immigration people, with whom we work and whose work is equal to ours, are now proposing to upgrade their inspectors one grade further. At this time, I might say, they are not in the classified civil service. But they are now going through a process of being upgraded and they will be in CAF-8, and if Mr. Johnson's proposal is finally approved by the Budget Bureau we will still be \$300 behind them.

Mr. JOHNSON. The Civil Service Commission is going to be responsible if there is any discrimination. We are going to work for everything the immigration men get where they work on comparable work.

Senator VANDENBERG. Why don't you start at that point in your bill?

Mr. JOHNSON. We have a Bureau of the Budget, Mr. Senator.

Senator TAFT. I don't know whether it is practical or not, but we could conceivably do what you want on the 6-day week with some mandatory requirement for the upgrading of \$300. I don't know. I think we could.

Mr. GASTON. It gets into the general base-pay structure in Customs, which is a pretty complicated matter.

Mr. JOHNSON. If I may say so, Mr. Chairman, we considered the position of the Bureau of the Budget very reasonable, and we have no fears whatsoever that the Civil Service Commission will disagree with us—we are perfectly satisfied to have it disagree upward. We will have a little trouble if they disagree downward with us.

Senator GERRY. But it will take time?

Mr. JOHNSON. They have promised us that they will do everything they can to get this finished before the 1st of July of this year.

Senator VANDENBERG. I come back to my original proposition. Why don't we accept this proposition on the terms of the Supreme Court decision and stop at that point, and then take 60 or 90 days to await these developments for the permanent legislation. I don't see anything wrong with that.

Senator TAFT. Just let the Government go on paying what the Supreme Court has required them to pay.

Mr. JOHNSON. That would continue discrimination among other customs employees. It would continue a situation where a customs worker performing an identical work at Rouses Point, N. Y., draws less pay than the man in Niagara Falls, N. Y.

Senator TAFT. We are inviting you to submit a bill proposing your 6-day plan with an upgrading of salary, and so forth.

Mr. JOHNSON. We have our recommendations right now, and the grading, I think, should be left under the general civil-service scheme. The Treasury Department is not inclined to recommend preferential legislation for its employees.

Senator TAFT. But you are asking us to take away \$300 a year from what the men have now and let them take a chance later on of something being done to get it back again, and that is not an easy position for us to take.

Senator VANDERBERG. Especially when they have the Supreme Court on their side.

Mr. JOHNSON. I am asking you to equalize this thing. It is true you will take something away from some men, but you will give something to more people. The net cost to the Government under the Treasury proposal, I am afraid I must admit, will be a little more than under the Supreme Court decision.

Senator VANDENBERG. But, Mr. JOHNSON, aren't you in this position: You have submitted a bill to us which revamps the entire compensation structure of these employees, and you ask us to do that at the very moment when you say the whole thing is being studied and that a comprehensive and adequate answer may be available a few months hence?

Mr. JOHNSON. No, sir. We do not propose to touch the pay structure of the Customs Overtime Act of 1911. We think that is very satisfactory. We say that if you are going to take the men part way out of that special overtime salary legislation, because it should not be applicable to them because they are serving in the public interest, we say that you should recognize that and go ahead and take them out and say then how men should be paid when they are serving in the public interest, and give equal treatment to all men in the Customs Service who are performing like service in the public interest.

Senator VANDENBERG. But we confront a situation, not a theory. We confront an emergency precipitated by a Supreme Court decision. It looks to me as though it were going to take time to liquidate all the arguments involved in rewriting the entire pay structure. It seems to me that if these facilities are to be kept open and they are not to be endangered by closing immediately, that our first proposition is to keep the facilities open on the basis of the Supreme Court decision and then, as speedily as possible, go to the guts of the thing and rewrite the basic structure.

Mr. JOHNSON. Could I suggest a brand-new suggestion, that I have not discussed with the Treasury officials at all?

Senator VANDENBERG. Yes.

Mr. JOHNSON. And purely my own.

Senator VANDENBERG. Yes.

Mr. JOHNSON. Enact your joint resolution good for 60 days, so as to give some assurance that the matter would be all cleaned up.

Senator VANDENBERG. Well, where does that leave the employees at the end of 60 days if the Bureau of the Budget and the Civil Service Commission are still lagging at the end of 60 days?

Mr. JOHNSON. At the end of 60 days and during the 60 days the customs employees would still be where they are today and they would

still be discussing this Treasury bill because that would be the matter before the House.

Senator VANDENBERG. I think we might be able to figure out some sort of a limitation contingent upon a report, which might serve to facilitate the production of the report. I don't see how we can do anything else except something of that sort under these circumstances. I don't believe it is going to be possible to do what you ask in your suggested substitute at the present moment because I don't think there is time to canvass the total problem.

Mr. JOHNSON. There is no question but what the Treasury proposal gives the maximum benefit to the over-all customs employees. It does prejudice a few selected special employees, who are selected and special on no reasonable or justifiable basis whatever.

Senator TAFT. But on your own admission you have recommended that they get this money in a different way, by upgrading.

Mr. JOHNSON. Not these men—a class in which these men happen to be.

Senator TAFT. That is right.

Mr. JOHNSON. These men would incidentally benefit by it, but the thing we are anxious to do is to be fair to all people without special privilege to a few because they happen to live in the very glorious State of Michigan.

Senator VANDENBERG. That is partial compensation of itself.

Mr. JOHNSON. That is right.

Mr. MYERS. Mr. Chairman, Mr. Johnson speaks of the inspectors who wouldn't benefit, those working, say, at Rouses Point. I would like to point out that since 1911 that same condition has existed and nothing has been done about it during those years.

Senator VANDENBERG. Mr. Myers, how long have you and your group been fighting this issue?

Mr. MYERS. We filed the suit in 1937, Senator.

Senator VANDENBERG. And the issue was brought in here before that repeatedly, was it not?

Mr. MYERS. That is right. It had been brought up many times.

Senator VANDENBERG. I can't remember when I haven't been talking about this.

Mr. MYERS. That is right. Many times.

Mr. JOHNSON. May I correct Mr. Myers? Two men have been in the same status all the time.

Mr. MYERS. Insofar as the application of the overtime, they haven't been.

I believe I haven't anything more to say.

Senator GERRY. Thank you, Mr. Myers.

Mr. Bushey, will you state whom you represent, please?

STATEMENT OF E. A. BUSHEY, REPRESENTING AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, DETROIT, MICH.

Mr. BUSHEY. Mr. Chairman, I am with the American Federation of Government Employees, the customs employees of Detroit.

The Wagner bill as introduced is generally satisfactory to us, with some changes in the latter portion that would bring us more fully under the provisions of the Supreme Court opinion.

Previously a statement was made that the Supreme Court opinion only applied to Sundays and holidays. That is not the case. It also applies to overtime service; that is, hours beyond normal daytime work of 8 hours. Those 8 hours might be midnight to 8 or 4 to 12, or whatever it is. But the Supreme Court opinion allows us extra compensation for extra hours of work as well as extra pay for Sunday or holiday work.

This 10 percent night differential, as my colleague has stated, would amount in most instances to some 60 to 70 cents premium for working on a Sunday as compared to a Tuesday, for instance.

In order to earn this \$3,400 that has been previously mentioned, we would first work, under the War Pay Act, a 40-hour week. We would earn our basic pay for working a 40-hour week. We would earn the war overtime pay by working the difference between 40 and 48 hours a week. And this other extra compensation for Sundays and holidays would be for working still extra hours per week.

So the amount of pay that is involved also involves a greater number of overtime hours.

On the rate of pay, it sounds like quite a bit. From time to time you hear 2 additional days' pay, or anything up to 5 days' pay, for Sundays and holidays. The way that actually works out, under the Revised Statutes, is in this way:

At the present time our daily rate of pay is arrived at, as provided in the Revised Statutes, substantially by taking one three hundred and sixtieth of the annual pay to determine the daily rate. Now, under the War Pay Act we work 40 hours a week to earn our basic pay. Generally throughout industry a day's pay is on the basis of the 40-hour week requirement. On that basis there would be 260 working days in a year. Now, a comparison is: One three-hundred-and-sixtieth is slightly over 72 percent of the one two-hundred-and-sixtieth. So this pay that we get for a Sunday or a holiday has been stated to be anywhere from 2 to 5 days. In other words, it is less than 145 percent of straight time computed on the basis of a 40-hour week.

Now, so far as this upgrading is concerned, I would like to tell you the experience we have had in that respect in the past. When we were first brought into the classified civil service the minimum grade was CAF-5, with an entrance salary of \$2,000 and a maximum of \$2,600. By the time most of us had reached the minimum of grade 6 we were upgraded to grade 6 with no increase in pay.

As I understand the proposal it is that we are to be upgraded to grade 7. Most of us in this time have reached the minimum of grade 7, and therefore there is no increase in pay. If any further recommendations for upgrading are in prospect I don't know of them, but as it stands it will mean no increase in our base pay on the basis of the recommendations made to date.

Now, this amount that our pay would be cut with the substitution of 10 percent for the present extra compensation—it is conservative to say that it would cut it \$300. I would be inclined to increase that.

Senator TAFT. Do I understand you to claim that under the Supreme Court opinion you get extra pay—you are claiming now that you are entitled to extra pay for night work?

Mr. BUSHEY. Not for night work as night work. The Supreme Court ruled that the night rate became the overtime rate under the revision of the law and that we are entitled to overtime pay for extra hours of work. That is, if we are assigned 8 hours a day and work 10, we are entitled to overtime pay for the 2 hours.

Senator TAFT. There is no difference of opinion on that, then.

Mr. BUSHEY. Yes; there is considerable difference of opinion. We are still in the courts trying to collect it. But I don't see how there can be much question about it.

Senator TAFT. If we wanted to use this Wagner bill purely as a temporary bill we would have to cut out the highways and provide that officers and employees assigned to such duty at night or on Sundays and holidays shall be entitled to rates of compensation fixed on the basis of Myers against the United States.

Mr. BUSHEY. This [indicating] is a rewrite of the Wagner bill, and it has been concurred in by the representatives of the facilities and the customs employees. It retains the present features of the Wagner bill but clarifies certain features on the basis of the Supreme Court opinion [handing paper to the chairman].

Senator TAFT. It also extends your pay to those men serving at highway ports of entry.

Mr. BUSHEY. Yes.

Senator TAFT. Which the suggestion of Senator Vandenberg did not include. He was proposing that we maintain the status quo for 60 days while this thing is worked out.

Mr. BUSHEY. Well, the Supreme Court found that the amendment to the general provisions extended these provisions to passengers and baggage arriving by vehicle. Now, it hasn't been settled by the court whether that would apply to highways or not. But certainly if I were working at a highway port, I would take the position that I was entitled to extra compensation. I believe it does cover the highway ports.

Mr. RUNALS. I may say the suggested amendments are satisfactory to the owners of the facilities.

Senator GERRY. Are you submitting these amendments for the record?

Mr. BUSHEY. Yes.

Senator GERRY. Give it to the clerk.

Mr. BUSHEY. The omitted portions are indicated by asterisks, and the inserted portions are in italics.

Senator GERRY. Thank you.

(The rewrite of S. 1758 submitted by Mr. Bushey is as follows:)

[S. 1758, 78th Cong., 2d sess.]

A BILL To amend section 451 of the Tariff Act of 1930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 451 of the Tariff Act of 1930, as amended (U. S. C., title 19, sec. 1451), is hereby amended by inserting before the period at the end thereof the following: "Provided, That the provisions of this section, sections 450 and 452 of this Act, and the provisions of section 5 of the Act of February 13, 1911, as amended (U. S. C., title 19, sec. 267), insofar as such section 5 required payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a bridge, tunnel, or ferry, *providing a highway link* between the United States and Canada or between the United States and Mexico, nor to the lading or unlading of merchandise, baggage, passengers, or other persons arriving in or de-

parting from the United States by motor vehicle, trolley car, or on foot upon, over, or through any such highway, bridge, tunnel, or ferry. At * * * *customs ports of entry and at customs stations* where any merchandise, baggage, passengers, or other persons shall arrive in or depart from the United States by motor vehicle, trolley car, or on foot upon, over, or through any *such* highway, bridge, tunnel, or ferry between the United States and Canada or between the United States and Mexico, the collector * * * shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as may be necessary to facilitate the prompt inspection and passage of such merchandise, baggage, passengers, or other persons. * * * *Customs officers and employees assigned to any Sunday, holiday, or overtime duty that may lawfully be performed by them during regular hours of business shall be paid extra compensation at the rates as fixed by section 5 of the Act of February 13, 1911, as amended (U. S. C., title 19, sec. 267); but all compensation payable to such customs officers and employees shall be paid by the United States from the appropriation for salaries and expenses for collecting the revenue from customs without requiring or being conditioned upon any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway, bridge, tunnel, ferry, motor vehicle * * * trolley car, or pedestrian."*

Senator GERRY. Mr. Horsky.

STATEMENT OF CHARLES R. HORSKY, APPEARING ON BEHALF OF NATIONAL CUSTOMS SERVICE ASSOCIATION, WASHINGTON, D. C.

Mr. HORSKY. Mr. Chairman, I represent the National Customs Service Association, which is an association of a large number of the customs employees.

I think it is unnecessary for me to say very much, because I think that everything I had planned to say has been said. I would like to say, however, that in essence the suggested modifications of the Wagner bill are satisfactory to the National Customs Service Association.

I think it is quite apparent, from what the committee has brought out, that this is not the time to undertake to revise the basic customs overtime structure either in part or in whole. As Senator Vandenberg stated, the situation here is a situation which calls for remedial measures to meet a particular situation. It can be met by the Wagner bill. I think it can be clarified by these suggested amendments. In that fashion it will be taken care of until such time as the committee can, upon receipt of further information from the Civil Service Commission, take up the various other aspects of Customs overtime regulations, including the Customs base rate of pay as constituted, with other Government officials.

We prepared, simply as a memorandum which conceivably could be helpful, a history of the Customs overtime legislation. I would like to submit that to you. I think it probably isn't particularly necessary in view of the way the hearing has gone, but for your information I would like for you to have it in your file for whatever value it might have.

Senator GERRY. I suggest that you give it to the stenographer so that he can put it in the record as part of your statement.

Mr. HORSKY. Very well. I think I need take no more time.

Senator GERRY. Thank you very much.

(Brief of R. R. Boynton, chairman, overtime committee, National Customs Service Association, submitted by Mr. Horsky, is as follows:)

BRIEF OF THE OVERTIME COMMITTEE OF THE NATIONAL CUSTOMS SERVICE ASSOCIATION

CUSTOMS OVERTIME LAWS

A brief history of laws covering extra compensation for additional work at night, or on Sundays and holidays, with some comment thereon.

Act of March 2, 1799 (1 Stat. 607), provided that customs inspectors attend to the delivery of cargo under their care from "the rising to the setting of the sun on each day, Sundays and the Fourth of July excepted * * *." In case of distress, unloading at night was provided for under special license from the collector of the port. This statute was in effect without change until 1873. All vessels were sailing vessels. No compensation was provided for customs officers supervising unloading under the special license authorized.

Gradually demand for services at night increased, more particularly after steamships came more generally into use. Officers were assigned to unloading of these vessels in addition to their regular daily work. There was no legal authority for payment of inspectors for this work; however, methods of compensating the inspectors for this extra work were many and varied and unsatisfactory from every viewpoint.

A committee was appointed by, I believe, the Forty-second Congress to investigate the subject and, after report by that committee, legislation was enacted authorizing unloading at night at the expense of the master of the vessel.

Act of March 3, 1873 (17 Stat. 570) R. S. 2871: Provided for the unloading of steamships from foreign ports at night, under special license and bond. Collectors were authorized to fix a reasonable rate of compensation, collect the same from the master, and distribute it to the inspectors assigned to unloading the cargo.

This was the first law authorizing unloading of vessels at night when not in distress, and provided legal authority for unloading at night for the convenience or profit of the owner of the vessel, the extra expense to be paid by the master or owner, not the Government.

Act of June 26, 1884 (23 Stat. 59) : Amended the act of March 2, 1799, to provide that when a license to unlade was granted a sailing vessel for unloading between the "setting and rising of the sun a fixed, uniform, and reasonable rate of compensation may be allowed inspectors." Conditions of collection from the master and payment to the inspectors assigned were similar to the act of 1873.

Act of June 5, 1894 (28 Stat. 65) : First provided for preliminary entry of vessels and was confined to steamships running in a regularly established line. Related to unloading only. No provision was made for extra compensation for boarding officers.

Act of June 30, 1906 (34 Stat. 633) : Amended the act of March 3, 1873, to provide for lading as well as unloading under special license and bond of a "steamship or other conveyance from a foreign port or place or from another port in the United States if belonging to a line designated by the Secretary of the Treasury as a common carrier of bonded merchandise."

This was the act that first extended the "privilege" (and it was designated as such) of lading or unloading imported merchandise at night to railroads, and this was done at the request of railroads. The Senate committee amended the bill which became Public, 378, Fifty-ninth Congress, to extend the privilege to other vehicles than vessels with the intent of including freight cars. The House agreed to the amendment (conference report, Congressional Record, 59th Cong., 1st sess., p. 9532).

Act of February 13, 1911 (36 Stat. 901) : Extended the authorization of special license for lading or unloading of cargo at night, or on a Sunday or holiday, to any vessel or other conveyance from a foreign port or place directly, or by way of another port in the United States, and also authorized collection of the compensation of storekeepers, weighers, and other customs officers who were required to be on duty, as well as inspectors, from the master, agent, or consignee, and payment to the officers required to work, by the collector of customs.

This act was ruled by the Attorney General not to apply to the examination and unloading of baggage (50 Op. Atty. Gen. 125). Therefore, from March 3, 1913, until the amendment of the act in 1920, officers assigned to the examination of baggage were not paid, while officers assigned to unloading cargo were paid.

Act of February 7, 1920 (41 Stat. 402) : Amended section 5 of the act of February 13, 1911, to provide for an 8-hour day by specifying the hours of night to be from

5 o'clock postmeridian to 8 o'clock antemeridian, and included examination of baggage as a service which should be paid for by the parties in interest.

Up to this time, February 7, 1920, our hours of duty were, by law, from "sunrise to sunset," the same as in 1799. Administratively, the hours of work were specified as from 7 a. m. to 6 p. m., these hours being a reasonable average of sunrise and sunset winter and summer.

It is for noting that only the services especially covered by law were paid for by the parties in interest when performed at night up to the act of February 13, 1911, and subsequent to that act on Sundays and holidays. Any other services performed by customs officers at the seaports for private parties at night, or on Sundays or holidays was gratuitous, the law did not provide for extra compensation.

During all this time customs officers who were required to work on Sundays and holidays at border ports, by administrative order, were not paid extra compensation for such work because the law did not cover such services, but they worked just the same. From the earliest demand for services on Sundays and holidays, by any transportation facilities at border ports, service was provided, at the expense of the employees' time. They just worked another day, Sunday or a holiday as the case might be. Night work at the larger border ports was covered by the "platoon" system whereby officers who were required to work at night were not required to work in the daytime. At the small "one-man" ports the officer worked day and night, when required, and 7 days a week the same as officers at the larger border ports.

We officers on the border were denied our Sundays and holidays at home with our families, by administrative requirement that we work. Congress had not required us to work on Sundays and holidays for the benefit or the convenience of private interests, however, Congress had failed to provide for extra compensation for such work when required by administrative direction.

Before the advent of the automobile traffic by way of highways and bridges was not extremely heavy on Sundays and holidays and at ports where there were several officers some of them could be off duty on such days. With the increased use of the motor car demands increased year after year until, immediately before the war, practically every inspector was required to be on duty on Sundays and holidays. Practically none of this traffic prior to the war was commercial, and very little will be after the war. There is no importing done on Sundays or holidays. The customhouse is closed, no entry can be made for merchandise until the following day.

After considerable urging by the inspectors the Treasury Department made attempts to apply the provisions of the act of February 13, 1911, as amended by the act of February 7, 1920, to railroads, ferries, and bridges. These facilities applied for injunctions to restrain the Government from collecting extra compensation. The bridges at Niagara Falls, N. Y., were granted an injunction, which is still in force (257 U. S. 506 (1922)). Railroads were also granted an injunction (*Minneapolis, St. Paul and Sault Ste. Marie Railway v. Mellon*, 52 App. D. C. 243 (1922)). Ferries were held to be subject to the law (*Port Huron Ferry Co. v. Lawson*, 292 Fed. 216 (1923)).

The injustice of requiring officers at border ports to work overtime and on Sundays and holidays without extra compensation for such work when Congress had provided for payment, in money, for similar work at seaports was brought to the attention of the late Hon. Joseph W. Fordney, then chairman of the Ways and Means Committee, who endeavored to rectify this injustice and provide the same rate of compensation for the same work and hours at all ports of the United States, and properly at the expense of the parties in interest who wanted customs service at night, or on a Sunday or holiday. To this end sections 450, 451, 452, and 453 were inserted in H. R. 7456, Sixty-seventh Congress, which became the Tariff Act of 1922. This act also repealed the first four sections of the act of February 13, 1911, as amended.

Act of September 21, 1922 (Tariff Act, 1922): The substance of legislation contained in the act of February 13, 1911, as amended, was rewritten in sections 448, 450, 451, and 452. A change was made in one word for the purpose of clarification, "vehicle" being substituted for "conveyance" in the former law. Section 401 (b) defining a "vehicle."

Endeavoring to enforce the provisions of the Tariff Act, the Treasury Department was again faced with suits for injunction. The International Railway Co. at Niagara Falls applied for continuance of the injunction granted by the Supreme Court January 30, 1922 (257 U. S. 506) (covering bridges owned by that com-

pany), and Judge Hazel, in the District Court for the Western District of New York (at Buffalo) decided on December 20, 1923, that the change in law was not sufficient to bring bridges within the purview of the Tariff Act of 1922 and continued the injunction. Judge Hazel had decided in the original suit in favor of the Government, was sustained by the circuit court of appeals, but reversed by the Supreme Court. His decision of December 20, 1923, is unreported and was not appealed by the Government (*International Railway Co. v. Bradley*).

The Minneapolis, St. Paul & Sault Ste. Marie Railway also sought continuation of the injunction granted under the act of February 13, 1911, as amended, in the District Court of the District of Columbia. This was granted by the District Court, but upon appeal the Court of Appeals for the District of Columbia reversed the trial court. Upon certiorari by the Supreme Court the Court of Appeals was sustained and certiorari denied May 24, 1926 (*Minneapolis, St. Paul and Sault Ste. Marie Railway v. Mellon*, 271 U. S. 679) thus applying the provisions of the Tariff Act of 1922 to railroads. A dozen other railroads joined with the Soo Line in this case.

The case of the *Niagara Ferry & Transportation Co. v. Bradley* covering operations of a ferry from Buffalo to Fort Erie was decided by Judge Hazel, January 12, 1925, in favor of the Government (unreported).

It is for note that denial of certiorari in the *Soo Line* case by the Supreme Court in 1926 (271 U. S. 679), thus vacating the injunction which had been in effect under the act of February 13, 1911, as amended, was on the same provisions of law that Judge Hazel decided on December 20, 1923 (unreported), did not apply to a bridge or trolley cars operated thereon. Had the decision of the Supreme Court been earlier probably Judge Hazel's decision would have been different, or had his decision been appealed by the Government the present controversy would have been settled 20 years ago. This thought is borne out by the decision of the Supreme Court in *Myers v. United States*, January 3, 1944, on substantially the same wording of law (Tariff Act of 1930, secs. 450, 451, and 452, and sec. 5 of the act of February 13, 1911, as amended).

There then existed and continued until 1929 a condition where officers assigned to work at railroads and ferries unloading freight and examining baggage were paid extra compensation, at the expense of the transportation facility, and officers assigned to work at bridges were not paid such extra compensation for Sunday and holiday services. In November 1929, when the Ambassador Bridge was opened, the ferries were paying for Sunday and holiday service, and overtime when required, while the bridge would not have to pay, applying the conditions of the injunction in force at Niagara Falls to other like bridges. Upon complaint of discrimination between transportation facilities at the same port by the ferries at Detroit they were relieved of the expense by administrative action of the Bureau of Customs, without change in the law, and contrary to the decisions of the courts (292 Fed. 216, 13 F. (2d) 389, decision of Judge Hazel, Jan. 12, 1925 (unreported)). Railroads and vessels, other than ferries, were, and still are, required to pay for overtime and Sunday and holiday service thus causing discrimination between transportation facilities at the same port.

The attention of the Bureau of Customs was called to the fact that this action on the part of the Bureau relieving the ferries of payment for Sunday and holiday service was not in conformity with law, at a hearing on complaint of the inspectors before the then Commissioner of Customs September 15, 1931, without securing redress. Protests were made again in 1934 and 1935, by certain officers at Detroit, to the Treasury Department, the Attorney General, and the Comptroller General, also without result.

Subsequently, in September 1937, suits were instituted in the Court of Claims (*Myers et al v. United States*) which decided twice that the Inspector's were entitled to extra compensation, not only for Sundays and holidays, but for night service on regular tours of duty as well. The last decision on February 1, 1943, was, on certiorari to the Supreme Court, sustained as to overtime, Sundays, and holidays, and reversed as to night service (not overtime) in the decision of January 3, 1944, amended February 28, 1944. The decisions of the Supreme Court in this case (*Myers v. United States*) are published as Treasury Decisions Nos. 51004 and 51018, respectively.

This is the first decision of the Supreme Court relative to the effect of the provisions of the Tariff Act of 1922, sections 450, 451, and 452, as these provisions were continued and enlarged in the same sections of the Tariff Act of 1930, in relation to bridges and Sunday and holiday service performed at such facilities.

Act of June 17, 1930 (Tariff Act, 1930): In the meantime the Tariff Act of 1930 became law. The provisions of the Tariff Act of 1922 were continued and section 451 was enlarged to include entering and clearing of vessels, issuing and recording marine documents, bills of sale, mortgages, or other instruments of title, at night, or on a Sunday or holiday, as services for which extra compensation would accrue.

Act of June 25, 1938 (Customs Administrative Act, 1938), section 9: Amended section 451 of the Tariff Act of 1930 to provide that upon request for overtime services of officers or employees they shall be assigned to perform any services at night, or on a Sunday or holiday, which may lawfully be performed during regular hours of business.

This amendment extended the services for which extra compensation accrues at night (overtime), and on Sundays or holidays to include "any services which may lawfully be performed by them during regular hours of business." Former laws had always limited payment of extra compensation to certain specified services.

Now, after 20 years, the law is being applied to bridges, and the owners thereof promptly request Congress to change the law so that they will enjoy the same immunity that they have for over 20 years, under an injunction continued by reason of misconception of the law, and secure service on Sundays and holidays without cost to themselves as they have since the first officer was assigned to duty at a time when there existed no law under which he could be paid extra compensation for such service, but had to give up his Sunday or holiday for the benefit of a private interest.

In connection with legislation on this subject, a bill, S. 1774, was introduced in the first session of the Sixty-seventh Congress having for its purpose transfer of the cost of extra compensation for night, Sunday, and holiday work by customs officers from ships on regular runs between ports of the United States and foreign ports not more than 200 miles in length to the Government. Another bill, S. 2188, proposed to exempt railroad trains arriving from contiguous foreign territory from the provisions of law requiring payment of extra compensation. The law, at this time, the act of February 13, 1911, as amended, did not apply to railroad trains. Neither of the bills became law.

It is interesting to note that 8 months after Senate hearings on the above-noted bills (January 19, 1922) Congress enacted the Tariff Act of 1922 incorporating therein sections 450, 451, and 452 which did require railroads to pay extra compensation for overtime at night, and for Sunday and holiday service.

Again when hearings were being held on H. R. 2667, which became the Tariff Act of 1930, representations were made before the Senate Finance Committee for inclusion of a provision in section 451, which would have, after the effective date of that act, exempted "railroad trains, ferryboats, or international bridges or tunnels," from paying extra compensation for Sunday and holiday service.

Again when the bills, H. R. 6738 and H. R. 8099, were under consideration by committees of Congress, the latter of which became the Customs Administrative Act of 1938, bridges made representations to the committees at hearings in 1937 and 1938 asking to be exempted from payment of extra compensation for Sunday and holiday service of customs officers. In both instances Congress took no action permitting the law to remain in effect.

Administratively, enforcement of laws requiring parties in interest to pay the extra compensation accruing for overtime at night, and Sunday and holiday service, has not been all that could be desired, the outstanding example at the present time being holidays.

Since December 31, 1941, holidays between the hours of 8 a. m. and 5 p. m. have been regular work days, by administrative order, without change in the law, and the Bureau of Customs has refused to collect extra compensation, for services performed during those hours, from the parties in interest.

In some instances collection was made and payment for such service made to the officer or employee who performed the service. In such instances the Bureau of Customs has made demand, through collector of customs, for refund of such moneys. No wait of 20 years permitted for such refund; we were informed that if not paid by a certain date the amount would be deducted from our pay check.

Collection has been made and moneys disbursed for similar services performed between the hours of 12 midnight and 8 a. m., also for the hours between 5 p. m. and midnight of all holidays for services performed in the interest of steamships, railroads, and air lines. Only part of an act of Congress is being abrogated by

this administrative order, that part of a holiday between the hours of 8 a. m. and 5 p. m. is not a holiday for the purposes of customs overtime.

Protests have been made to the Bureau of Customs and to the Treasury Department against this administrative ruling requiring work on holidays between the hours of 8 a. m. and 5 p. m., in the interest of private parties, without extra compensation provided by law, but to no avail. The practice continues.

Respectfully submitted.

R. R. BOYNTON,
*Chairman, Overtime Committee,
National Customs Service Association.*

APRIL 1944.

Senator GERRY. Mr. Hall.

Mr. SCANLON. Mr. Chairman, Mr. Hall intended to speak in behalf of the Thousand Islands Bridge Authority, a public authority, but with the concessions which have been made on the part of the Treasury as to the merits, if I may so call them, it becomes unnecessary.

My name is Daniel Scanlon; I am attorney for the Thousand Islands Bridge Authority.

But we would like to ask from the committee and from the Senate immediate relief. We feel it is necessary. There are two court actions presently pending, one of which was scheduled to be tried in Syracuse tomorrow, and which involved this very question, and in which the Treasury is taking the position that the bridge owners should be compelled to make the payment or to make the agreements as a condition to keeping their bridges open. We don't think that is right under the circumstances and we ask that some sort of immediate and uncomplicated relief be extended.

Senator GERRY. Thank you.

Mr. SCANLON. What has been said applies to the highway ferries. The highway ferries are in the same situation as the tunnels and bridges. I think that is conceded in the substitute bill of the Treasury and it was also intended to be covered by the Wagner bill. Those ferries which are purely highway ferries between the two countries ought also to be covered as extensions of highway needs.

Senator GERRY. Thank you.

There being no other business, the meeting is adjourned.
(Thereupon, the hearing was concluded.)