

APRIL 10, 1973

MEMBERS PRESENT: Chairman Banner, Mrs. Brookman, Messrs. Ullom, Barengo, Capurro, McNeel and Bickerstaff

MEMBERS ABSENT: None

GUESTS: Joseph J. Gannon, Jr., Electrolux Co.
Keith J. Henriksen, Peace Officers and Fire Fighters
Bob Kerns, Peace Officers and Fire Fighters
John Reiser, Nevada Industrial Commission
Lou Paley, AFL-CIO

Chairman Banner called the meeting to order at 4:00. The purpose of the meeting was to take action on various bills still in committee.

The first bill to be considered was SB 270, makes certain provisions concerning wages, hours, and working conditions of female employees in private employment applicable to all employees.

Mr. Gannon, Jr., representing the Electrolux Company presented a statement to the committee asking for an amendment to the bill. See Attachment I.

Mr. Gannon's proposed amendment would exempt outside sales from this bill. The amendment would delete the period after the word agricultural pursuit in Section 1, paragraph 5 (line 10 on page 2) and insert a comma and add the following words:

"or in outside sales."

Mr. Gannon went on to say that there were 33 states that had a minimum wage and they all exempt outside sales from this wage.

Mr. Ullom moved that the committee "Amend and Do Pass" and Mr. Capurro seconded the motion. There were no negative votes.

SB 309, provides that in specified circumstances heart diseases of certain peace officers are occupational diseases. Chairman Banner presented an amendment to the bill which would delete line 12 of Section 1, paragraph 1 and insert the following:

"as a firefighter, sheriff, deputy sheriff, city policeman, officer of the Nevada Highway Patrol, member of the University Of Nevada system police department, special investigator employed by any city attorney, district attorney or the Attorney General, or a uni-"

Keith Henriksen stated that they had tried and failed to get these additional people under the bill in the Senate. Since that time he has been assured that the Senate will concur with this amendment

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Mr. Barengo moved to "Amend and Do Pass" and Mr. Ullom seconded the motion. Mrs. Brookman, Mr. Barengo, Mr. Bickerstaff and Mr. Ullom voted yes with Mr. Capurro and Mr. McNeel voting no and Mr. Banner not voting. The motion carried.

SB 413, excludes students employed by school from unemployment compensation. Mr. Barengo stated that since the previous meeting he had checked into this and found that the reason for this was with the turn over that they have in student employment at schools the rate for the University would go way up and it would not be that beneficial.

Mr. Barengo moved "Do Pass" and Mr. Ullom seconded the motion. There were no dissenting votes.

SB 2, makes technical changes in Nevada Industrial Commission organization and procedures. Mr. Ullom stated that the position of Executive Director had been taken out of the bill.

Mr. Ullom moved "Do Pass" and Mrs. Brookman seconded the motion. There were no "nay" votes.

SB 188, Clarifies Nevada Industrial Commission's right of subrogation, Mr. Capurro moved "Do Pass as Amended" and Mr. Ullom seconded the motion. There were again no "nay" votes.

SB 184, allows Nevada Industrial Commission to invest in buildings anywhere in State whether occupied by commission or not. Mr. Ullom explained that the questions that had caused them to withdraw the bill and re-refer to Committee had been answer and so he moved the committee "Do Pass" and and Mr. McNeel second the motion. There were no dissenting votes.

SB 368, authorizes issuance of stop order to employers failing to provide industrial insurance. Mr. McNeel moved "Do Pass" and Mr. Ullom seconded the motion. There were no "nay" votes.

SB 536, limits scope of provision barring application of tips to minimum wages. Lou Paley explained that this really was just a clarification of the law to tie the minimum wage to the state. Mr. Barengo stated that this came about as a result of a case where an employer was misinterpreting the minimum wage law.

Mr. McNeel moved the committee "Do Pass" and Mrs. Brookman seconded the motion. There were no dissenting votes.

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Mr. McNeel stated that he was formally requesting a hearing on AB 945, which would repeal Nevada's right to work law for next Thursday. Chairman Banner agreed to schedule such a hearing.

Mr. Capurro then asked for reconsideration of SB 4, clarifies application of Nevada Administrative Procedures Act to Nevada Industrial Commission. Mrs. Brookman seconded the motion by Mr. Capurro to reconsider SB 4. Those voting in favor of that motion were: Mrs. Brookman, Mr. Capurro and Mr. Barengo. Not having the required 5 votes for reconsideration the motion failed.

Mr. Ullom moved that the meeting be adjourned and Mr. McNeel seconded the motion.

Chairman Banner adjourned the meeting at 4:40.

Respectfully submitted,

Sandee Gagnier,
Assembly Attache

DATE: 4-10-73 BILL NO.: SB 2 SPONSOR: Dodge and Close

SUBJECT: Makes technical changes in NIC organization and procedures

Committee Action

DATE: _____ AMENDED: YES NO

AMENDMENT MADE BY: _____

SECONDED BY: _____

COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	MCNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: 4-10-73 DO PASS: XXXX DO PASS AS AMENDED: _____

INDEFINITELY POSTPONED: _____

LABOR AND MANAGEMENT COMMITTEE - 57TH SESSION

DATE: 4-10-73 BILL NO.: SB 184 SPONSOR: Committee on Commerce and Labor

SUBJECT: Allows NIC to invest in buildings anywhere in State whether
occ
occupied by commission or not.

Committee Action

DATE: _____ AMENDED: YES NO
AMENDMENT MADE BY: _____
SECONDED BY: _____

COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	McNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: _____ DO PASS: XXXXXX DO PASS AS AMENDED: _____
INDEFINITELY POSTPONED: _____

Committee on

DATE: 4-10-74 BILL NO.: SB 188 SPONSOR: Commerce and Labor

SUBJECT: Clarifies NIC's right of subrogation

Committee Action

DATE: _____ AMENDED: YES NO

AMENDMENT MADE BY: _____

SECONDED BY: _____

COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	MCNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: 4-10-73 DO PASS: XXXXXX DO PASS AS AMENDED: _____

INDEFINITELY POSTPONED: _____

DATE: 4-10-73 BILL NO.: SB 270 SPONSOR: Herr, Blakemore, Drakuli, Echols, Swobe, Raggio, Neal, Close, Pozzi, Hecht, Walker, Foley, Wilson, Bryan, and Dodge

SUBJECT: Makes certain provisions concerning wages, hours, and working conditions of female employees in private employment applicable to all employees.

Committee Action

DATE: 4-10-73 AMENDED: YES NO

AMENDMENT MADE BY: Mr. Ullom

SECONDED BY: Mr. Capurro

COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	MCNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: _____ DO PASS: _____ DO PASS AS AMENDED: XXXXX

INDEFINITELY POSTPONED: _____

AMENDMENT: Section, paragraph 5 (line 10, page 2) after the words agricultural pursuit add:

"or in outside sales."

DATE: 4-10-73 BILL NO.: SB 309 SPONSOR: Herr Blakemore, Drakuli, Echols, Swobe, Raggio, Young, Hecht, Walker, Foley, Bryan, Lamb
 SUBJECT: Provides that in specified circumstances heart diseases of certain peace officers are occupational diseases

Committee Action

DATE: 4-10-73 AMENDED: YES NO
 AMENDMENT MADE BY: Mr. Barengo
 SECONDED BY: Mr. Ullom

COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	MCNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: _____ DO PASS: _____ DO PASS AS AMENDED: XXXX
 INDEFINITELY POSTPONED: _____

Amendment is to delete line 12 of Section 1, paragraph 1 and add
 "as a firefighter, sheriff, deputy sheriff, city policemen,
 officer of the Nevada Highway Patrol, member of the University
 of Nevada system police department, special investigator
 employed by any city attorney, district attorney, or the
 Attorney General, or a uni-"

Committee on

DATE: 4-10-73 BILL NO.: SB 368 SPONSOR: Commerce and Labor

SUBJECT: Authorizes issuance of stop order to employers failing to provide industrial insurance

Committee Action

DATE: _____ AMENDED: YES NO

AMENDMENT MADE BY: _____

SECONDED BY: _____

COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	MCNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: _____ DO PASS: XXXXX DO PASS AS AMENDED: _____

INDEFINITELY POSTPONED: _____

LABOR AND MANAGEMENT COMMITTEE - 57TH SESSION

DATE: 4-10-73 BILL NO.: SB 413 SPONSOR: Committee on Commerce and Labor
 SUBJECT: Excludes students employed by school from unemployment compensation

Committee Action

DATE: _____ AMENDED: YES NO
 AMENDMENT MADE BY: _____
 SECONDED BY: _____

COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	McNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: 4-10-73 DO PASS: XXXXX DO PASS AS AMENDED: _____
 INDEFINITELY POSTPONED: _____

LABOR AND MANAGEMENT COMMITTEE - 57TH SESSION

Committee on

DATE: 4-10-73 BILL NO.: SB 536 SPONSOR: Commerce and Labor

SUBJECT: Limits scope of provision barring application of tips
to minimum wages

Committee Action

DATE: _____ AMENDED: YES NO

AMENDMENT MADE BY: _____

SECONDED BY: _____

COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	MCNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: _____ DO PASS: XXXXX DO PASS AS AMENDED: _____

INDEFINITELY POSTPONED: _____

LABOR AND MANAGEMENT COMMITTEE - 57TH SESSION

DATE: 4-10-73 BILL NO.: SB 4 SPONSOR: Dodge and Close
SUBJECT: Clarifies application of Nevada Administrative Procedure
Act to NIC

Committee Action

DATE: _____ AMENDED: YES NO
AMENDMENT MADE BY: _____
SECONDED BY: _____

MOTION TO RECONSIDER SB 4
COMMITTEE VOTE

BANNER	YES	NO	BICKERSTAFF	YES	NO
BROOKMAN	YES	NO	CAPURRO	YES	NO
BARENGO	YES	NO	McNEEL	YES	NO
ULLOM	YES	NO			

Disposition

DATE: _____ DO PASS: _____ DO PASS AS AMENDED: _____
INDEFINITELY POSTPONED: _____

Motion failed to pass for lack of required 5 members voting in favor of reconsideration.

Mrs. J. Gannon

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STATEMENT SUBMITTED BY JOSEPH J. GANNON, JR.
ELECTROLUX, DIVISION OF CONSOLIDATED FOODS CORPORATION

I am Company Counsel for Electrolux, Division of Consolidated Foods Corporation, 2777 Summer Street, Stamford, Connecticut. The statement I make to you will be endorsed by many other direct selling companies, by the Direct Selling Association, and by the Vacuum Cleaner Manufacturers Association.

We are not opposed to minimum wage legislation as such. As a matter of fact, we subscribe to the principles of such legislation with respect to our factory employees, our store employees, our general office employees - all of whom receive wages in excess of the minimum prescribed by any state.

But I respectfully submit that in the application of minimum wage laws, a distinction should be carefully drawn between

- (a) employees who can be supervised because they work on the premises of a factory, warehouse, office or store and
- (b) employees such as outside salesmen who invariably work away from their employer's place of business and whose activities cannot be supervised or controlled.

We oppose S. 270 only with regard to its failure to exempt outside salesmen from coverage, and we respectfully petition that you amend the bill to exempt outside salesmen.

This can be done on Page 2, Line 10 by deleting the "period" after the word "pursuit", adding a "comma" and the words, "or in outside sales."

Any bill which fails to recognize the unusual nature of the outside commission paid salesman's occupation, and fails to exempt such outside salesmen from wage-hour requirements, goes against an overwhelming weight of legislative precedent on the subject, and creates unreasonable burdens, which state legislatures all over the country and the Congress have taken cognizance of in careful study. The failure to exempt outside salesmen, in addition, creates administrative burdens of enforcement of such complex nature as to render it probably inoperable.

This statement will be in two parts. The first part deals with the utter unreasonableness of a bill which fails to exempt outside salesmen. The second part will review the legislative history and the administrative history of the exemption of outside salesmen from minimum wage laws throughout the country.

1. The Unreasonableness

Although our outside salesmen are considered employees for the purposes of State Unemployment Compensation and Federal Old Age Benefits, they are not supervised; their selling activities cannot be controlled, and their work is in the nature of that of an independent contractor. Our salesmen are continuously out in the field - working or not, as they choose. Their time is their own. A salesman may work one or two hours in the morning and quit for the day. He may not work at all that day. He may not work for a week. He may take a vacation for two weeks. We would not know; we could not know. Frequently he will handle products for several companies. It is impossible for us or for any company selling through an outside salesman to know what he does or how he spends his time.

Our outside salesmen are not confined to any given territory. They may work any place they choose. They are not required to report to any headquarters point. They work from their own residences, and work at times to suit their own convenience.

On a typical work day, if he chooses to work on that day, the outside salesman leaves his home at the hour he chooses to leave his home - at 8:00 or 10:00 or noon. He goes directly to his field of work which is of his own choosing. When he decides that he has worked long enough for the day, at 3:00 or 5:00 or perhaps at noon, he stops work. His office doesn't know where he has been working or how long he worked, or if he has been working at all! Only when he turns in an order for our products do we know that he has been working. Sometimes we don't see an outside salesman for weeks.

All our salesmen are paid solely on a commission basis.

No itineraries are prescribed for our salesmen, and the production of a minimum volume of business or sales quota is not required. Our salesmen are not required to submit reports of hours worked or customers called upon for the simple reason that any such reports could not be verified and therefore would be valueless.

From time to time in the last twenty years, we have tried, and other companies in the direct selling industry have tried, various methods by which accurate reports from salesmen as to the number of calls and demonstrations made, etc., could be obtained, inasmuch as such reports would be of considerable aid to us in our business. All such attempts, however, failed completely by reason of the fact that a careful investigation disclosed that such reports were exaggerated and distorted. We submit that if reports of calls made on customers were found to be incorrect, it is not likely that reports of hours worked will be any more accurate, particularly since there is no way in which to check such reports, and it would be to a salesman's advantage to report the maximum number of hours.

Salesman could report that they worked eighty or ninety hours in a given week, and we would have only the salesman's word for the number of hours he worked. Obviously, it would be to his great interest to report that he worked many hours when, as a matter of fact, he may not have worked at all at selling out products.

If it is impossible to keep accurate records of the hours spent at work, it would certainly be unreasonable to require compensation to be measured against the number of hours worked.

One company made an extensive and expensive experiment. In the period February 1952 to July 1953, they paid salesmen in 26 districts a salary of \$50.00 plus commission and certain other benefits. This experiment extended to 20% of their sales organization, covering sections of the country from the Atlantic to the Pacific.

At a cost in excess of one million dollars, the company found out that the plan was completely unworkable; that it is economically impossible to pay a man for time worked without knowing whether or not he has worked.

Obviously, it would be highly impracticable to attempt to apply any wage and hour legislation to such an uncontrollable employer-outside salesman relationship. Salesmen could hold back all of their sales for a week or two or three and collect minimum wages for each of those weeks and then turn in all of their sales for a big fourth week. They would have their employer at a complete disadvantage.

Our salesmen do not work only for us. They may be working for several different employers or carrying products for several different companies at the same time. Many of them hold regular jobs with other companies. A great variety of enterprises encroach, generally without our knowledge, on the time presumably devoted to the sale of our products by our salesmen.

To illustrate how impracticable and unreasonable it would be to expect us to pay our outside salesman an hourly rate, consider this fact; several years ago, of 27 men working for us in Utah, we learned that 17 of them actually had other employment concurrently, and some of these are regular full time jobs. For example:

- Mr. Baum owns and operates a motel.
- Mr. Bartholomew works in a factory.
- Mr. Bell sells electrical products.
- Mr. Cutler is a City Judge.
- Mr. Dalkey is a student at Snow College.
- Mr. Everett is in the furniture and rug cleaning business.
- Mr. Henson has an appliance store.
- Mr. Hopkins drives a milk truck.
- Mr. Judd is an insurance agent.
- Mr. Lindeman owns and operates a motel.
- Mr. McBride owns an auto wrecking establishment.
- Mr. Nuttall owns a radio shop.
- Mr. Paulson is a furniture repairman.
- Mr. Peterson owns a theater.
- Mr. W. Peterson is a student.
- Mr. Rasmussen is a school teacher.
- Mr. Whitehead is a bookkeeper.

We recently cooperated with the Department of Labor in New York State, in trying to determine methods of operation employed by outside salesmen and whether or not accurate reports of time worked could be obtained from them.

I quote to you some comments that were drawn from outside salesmen who were interviewed at their homes by Department of Labor investigators. The Department of Labor decided that such reports of time worked could not be obtained.

- (Mr. Wise) "I work my own hours. The Company does not set my hours. I work when I feel like working - as I damn please."
- (Mr. Gartmayer) "I don't know how a question of hours applies to us. We are in business for ourselves. What hours we work are our own affair. I don't have any regular hours - sometimes I work one hour, sometimes ten hours. It depends upon how much money I want."
- (Mr. Sperling) "Oh, yes, I sell Electrolux and washing machines, and toasters, and silver, etc. If the customer does not want an Electrolux, maybe she wants a toaster. If another customer doesn't want a washing machine, maybe she would want an Electrolux. I work about four hours a day. My company doesn't know how many hours I work a day, and I wouldn't tell them. If I was paid on an hourly basis - oh, brother, would I report the hours!!"

II. Persuasive Precedent for Exemption

There is a vast amount of persuasive precedent for the continued exemption of outside salesmen from wage hour laws. Every examination made by every government since the first enactment of the Fair Labor Standards Act clearly justifies continuing the exemption.

Recognition was given to the unusual nature of the outside commission-paid salesman's occupation and the necessity for exempting him from minimum wage and maximum hour legislation as far back as the NRA period when it was proposed that outside commission-paid salesmen be excluded from wage-hour provisions. Hearings were held at that time and the record made before the NRA on this occasion is represented by three volumes containing 1,128 pages. As a result of these deliberations, it was concluded by the various boards that NRA legislation should not be applied to outside salesmen, and they were specifically excluded in the various codes. Bearing in mind that at the time of the NRA the desire was great to include everyone under its provisions, it is clear that the reason for specifically excluding outside salesmen must have been most persuasive.

When Federal wage and hour legislation was first introduced, the question of exempting outside commission-paid salesmen was again given considerable consideration with the result that in the final enactment of the Fair Labor Standards Act of 1938 "employees" who are outside commission-paid salesmen were specifically excluded from the provisions of the Act and are so excluded at the present time. Nothing has happened since that time to warrant any different treatment of outside salesmen.

At every review of the Fair Labor Standards Act, both legislative and administrative, and there have been a number of these, the exemption for outside salesmen has been continued unaltered.

Consider the states. There are 33 states that now have minimum wage laws applying to men as well as women and in not a single one of them are our outside salesmen subject to the minimum wage law. Maine, Michigan, Georgia, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut, New York, Pennsylvania, Wyoming, Idaho, New Mexico, North Carolina, Alaska, Illinois, Arkansas, Hawaii, Washington, New Jersey, California, North Dakota, Oklahoma, West Virginia, South Dakota, Kentucky, Delaware, Indiana, Maryland, Nebraska, Texas and Oregon, the only states in the country that have minimum wage laws applying to men, all have provided for the exemption of outside salesmen. In addition the District of Columbia and the City of Baltimore, Maryland, have such laws, and outside salesmen are similarly exempted. In fact, Nevada presently exempts them.

This universal exemption of outside salesmen from wage-hour and minimum wage laws is not casual or accidental; it is the consequence of thoughtful study and understanding.

Several years ago, the State of New York extended coverage of its minimum wage law to men without adequate opportunity being given to employers, such as ourselves, to present the peculiar problems of covering outside salesmen. When, after the legislation had been enacted, these matters were brought to the attention of the Commissioner of Labor in New York, he embarked on an extensive investigation.

The matter was brought before the Board of Standards and Appeals in New York. After considerable analysis and review, over a period of more than a year, during which they had time to become thoroughly familiar with the problem, the Board of Standards and Appeals in New York found it "unreasonable" to apply wage and hour legislation to our outside salesmen and exempted them from coverage. I quote you a portion of their decision:

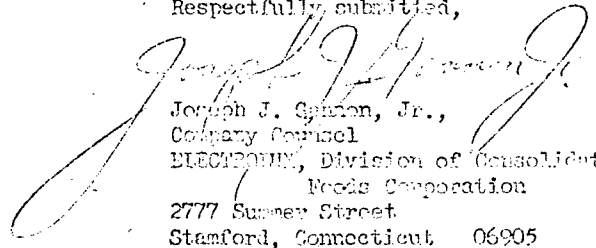
"A realistic appraisal of the evidence in the record of these proceedings leads us to the conclusion that there is not present in the employer-employee relationship inherent in the above-mentioned described employment status the customary exercise of such authority and superintendence by the employer over the employee essential to feasible compliance with the record-keeping provisions demanded by the Order. To legally comply with the provisions of the Order, the employer must possess adequate means to direct, control and keep account of the working hours and working methods of those persons employed during their periods of employment. The burden of maintaining records as to the periods an employee is engaged in employment, the exact hours and so forth, and entries which develop upon an employer . . . the employee's statements are the only source from which the employer could possibly obtain this vital and necessary data. Such conditions subject the employer to the control of the employee respecting the amount of earnings and the periods the employee is actually engaged in work for the employer. Experience establishes such conditions are neither desirable nor salutary. We are convinced that reliable and accredited representatives of Labor and Management are eager to maintain concord and amity in the business family, and are not sympathetic to any policy or instrumentality which may result in dislocating and destroying a commercial enterprise."

Still quoting:

"It is self-evident that to compel an employer to pay an employee for services which cannot, in accordance with feasible business practices, be verified or substantiated by the employer must ultimately fertilize an atmosphere of misgiving and distrust and culminate in fostering and promoting irritation and acrimony and discord, which will inevitably impair their mutual harmonious relationship so vital to the successful conduct of the commercial enterprise. The uncontroverted evidence in the record establishes that all bona fide efforts on the part of the Petitioners to comply with the terms of the Order, in its application to commission-paid outside salesmen, resulted in failure."

For all of these reasons, the fact that outside salesmen cannot be supervised or controlled, the fact that we cannot possibly know whether they are working or not, and cannot secure accurate reports of hours worked, and in view of the overwhelming weight of precedent for continued exemption, I respectfully urge the exemption of outside salesmen from S 270.

Respectfully submitted,



Joseph J. Spahn, Jr.,
Company Counsel
ELECTROWIRE, Division of Consolidated
Needs Corporation
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