



# The Federal Minimum Wage and American Samoa

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## Summary

In 1938, when the Fair Labor Standards Act (FLSA) was adopted, Congress appears to have given little consideration as to how its provisions might affect the various possessions and territories of the United States. The first off-shore jurisdiction to request exception from the FLSA was Puerto Rico, which, in 1940, along with the Virgin Islands, was given an exception under the act. Special industry committees were appointed to visit the Caribbean islands and to recommend minimum wage rates consistent with the insular economies.

In the wake of World War II, new attention was focused upon the Pacific islands. American Samoa, basically, had no industry other than harvesting of copra, the dried meat of the coconut, and an economy very different from the mainland. In the early 1950s, the Department of the Interior contracted with the Van Camp Sea Food Company to move onto the island and develop a fish processing plant. However, the FLSA minimum wage was regarded as too high to be competitive and, in 1956, Van Camp appealed to Congress to extend the Puerto Rican *special industry committee* (SIC) model to American Samoa. Thereafter, the Secretary of Labor would review economic conditions and establish minimum rates.

The SICs were admonished to reach “as rapidly as is economically feasible without substantially curtailing employment” the American standard under the FLSA. While the rates established by the committees were lower than those prevailing on the mainland, the device was regarded as temporary. During the 1980s and 1990s, special treatment of Puerto Rico and the Virgin Islands was phased out, and those islands came fully under the FLSA. Of the three jurisdictions, only American Samoa remained under the SIC structure.

Fish processing has become Samoa’s primary private-sector industry. In early 2007, the minimum wage for the industry was \$3.26 per hour: the federal minimum wage was \$5.15 per hour. However, in late May 2007, Congress adopted H.R. 2206 (P.L. 110-28) which, through a series of step increases over several years, would raise the federal minimum wage to \$7.25 per hour. At the same time, the SIC for American Samoa was abolished and the insular minimum wage was raised (through a more prolonged series of step increases) until the federal minimum level, whatever that may ultimately become, might be reached.

At least since the 1950s, the companies involved in fish processing have suggested that, were the minimum wage to be raised to the national rate, they might consider leaving the island and operating out of a country where wage rates were more favorable. Now, with the new wage rate for American Samoa in effect, what will be the reaction of the tuna canning companies? Will they improve technology to raise labor productivity, change the type of production done in Samoa, absorb the new rates—or migrate? And, if they were to migrate, what alternative employment might be available for the people of American Samoa?

This report will be updated as warranted.

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## Introduction

The Samoan archipelago, a series of sparsely populated islands in the south Pacific, is located about 2,300 miles southwest of Hawaii. The area is divided into two parts: Western Samoa, formerly British and now independent; and American Samoa, a cluster of about half a dozen islands governed from Pago Pago on the island of Tutuila. The population of the American group, although rising rapidly, is estimated to be about 60,000.<sup>1</sup>

Contacts between the Samoan islands and the United States developed late in the 19<sup>th</sup> century, but they were infrequent. A coaling station was opened at Pago Pago, but only in the wake of the Spanish-American War (1898) did the American presence become permanent. In 1900, President William McKinley “directed the Navy to assume responsibility for Eastern (thereafter, American) Samoa.”<sup>2</sup> His directive remained in effect until 1951, when the naval station was closed and jurisdiction was transferred to the U.S. Department of the Interior. During the middle 1950s, an insular constitutional government was developed; in 1960, a constitution was formally approved.

The islands are mountainous, the climate tropical. There is little land suitable for commercial agriculture. Fruits and vegetables, along with various root crops, are grown locally and consumed largely by the families of the growers.<sup>3</sup> More diverse products are imported. The harbor at Pago Pago provided, during earlier periods, a naval base, but now it appears to be especially notable as a tuna port. Although some tourism has developed over the years, the relative isolation of American Samoa has rendered the islands a somewhat exotic destination.

Fish processing is Samoa’s single primary private-sector industry. Under the Fair Labor Standards Act (FLSA), the insular minimum wage has been fixed by the Secretary of Labor through a Special Industry Committee (SIC). In early 2007, the rate for the tuna canneries was \$3.26 per hour; the federal rate, \$5.15 per hour. Then, in late May, Congress adopted a new minimum wage standard: to escalate to \$7.25 per hour over several years. At the same time, the SIC system was abolished and the insular rate was raised, though in more extended steps, until it might coincide with the federal rate.<sup>4</sup>

## The FLSA and Insular Coverage

In 1938, Congress enacted the Fair Labor Standards Act (FLSA)—a measure designed to provide minimum wages and overtime pay, to limit child labor, and to restrict industrial homework. Although the act would seem to have applied to the states and the territories (to Puerto Rico, the Virgin Islands, etc.), little thought appears to have been given to how that act might be applied to jurisdictions that were, in significant ways, economically different from the U.S. mainland.

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<sup>1</sup> U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Economic Report: The Minimum Wage in American Samoa*, 2005, p. 8. (Cited hereafter as *DOL Economic Report*, and by date. )

<sup>2</sup> Ruth G. Van Cleve, *The Office of Territorial Affairs*, New York, Praeger Publishers, 1974, pp. 60-65.

<sup>3</sup> See *DOL Economic Report*, 2003, p. 7, and the essay by Howard J. Critchfield, “Samoa,” in *The Encyclopedia Americana, International Edition* (Danbury, Conn., Grolier Incorporated, 2001), Vol. 24, pp. 180-183.

<sup>4</sup> *Federal Record*, June 13, 2007, p. 32683. See Public Law 110-28.

Shortly after its passage, the act was modified. In response to industry complaints, Puerto Rico and the Virgin Islands were exempted from the full force of the act (1940), being placed under a *special industry committee* (SIC) structure.<sup>5</sup> Thus, Puerto Rico and the Virgin Islands were set aside for special treatment under the FLSA—a process that would continue, in part, for the next 50 years.<sup>6</sup>

Under Section 8 of the original enactment, the Department of Labor (DOL) was required, “from time to time,” to convene an industry committee for each industry covered under the act and, through the committee, to “recommend” a rate (or rates) of wages that might be higher than those established by the act. Section 8(b) states:

The industry committee shall investigate conditions in the industry and the committee ... may hear such witnesses and receive such evidence as may be necessary or appropriate.... The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, *will not substantially curtail employment in the industry.* (Emphasis added.)

Rates the committee could recommend were not to exceed the statutory standard (40 cents per hour). The Administrator was admonished to “consider among other relevant factors ... competitive conditions as affected by transportation, living, and production costs....” Discretion rested with the Administrator.<sup>7</sup>

## Application to American Samoa

Following World War II, an unrelated circumstance brought American Samoa to governmental attention. The issue was a 1948 decision of the U.S. Supreme Court: *Vermilya-Brown Co. v. Connell* [335 U.S. 377 (1948)]. It involved application of the FLSA to employees of American contractors building a military facility for the United States in Bermuda (part of Great Britain). In its decision, *inter alia*, the Court identified a “possession” covered under the act as including “Puerto Rico, Guam, the guano islands, Samoa and the Virgin Islands.”<sup>8</sup> Even in dissent, Justice Jackson stated that a U.S. facility in Bermuda was of a character different from that of “our possessions” as specified by the Court’s majority—and, thus, covered by the act.<sup>9</sup>

In 1953, development of a tuna canning operation commenced in American Samoa, an industry which quickly became the island’s primary private-sector employer. With the Supreme Court decision in *Vermilya-Brown*, Samoan industry became gradually—and increasingly—aware of the likely enforcement of minimum wage and other FLSA standards.

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<sup>5</sup> P.L. 76-667, Title IV, Section 3 (June 26, 1940).

<sup>6</sup> Guam was covered under the FLSA in 1938—though the act may not have been enforced there until after World War II. The Commonwealth of the Northern Mariana Islands has maintained insular control over its minimum wage. The SICs were gradually phased out during the late 1980s and early 1990s—except for American Samoa.

<sup>7</sup> See Section 8 of P.L. 75-718. Section 5, of the original enactment, established the rules under which the committee would function.

<sup>8</sup> *Vermilya-Brown Co., Inc., et al v. Connell et al.*, 335 U.S. 388 (1948).

<sup>9</sup> *Ibid.*, pp. 391-392.

## **The 1955 FLSA Amendments**

In 1955, William D. Moore, Jr., Foreign Production Manager of the Van Camp Sea Food Co., wrote to Representative Graham Barden (D-NC), chair of the House Committee on Labor and Education, urging that “Samoa should be exempt” from the FLSA. He emphasized that few industries were located in the islands. “This company, at the behest of the Department of Interior, has gone to Pago Pago for the purpose of endeavoring to establish a fishery and a fish processing and canning plant. It is on a trial basis,” he suggested. “In the first 12 months of our experiment, it has been found that the American Samoans are adaptable to catching, cleaning, and processing fish and seafood, but it takes 3 to 5 people to do and perform what one American laborer or worker in the States can do.” If federal wage/hour standards continue to apply in Samoa, “... there will be no incentive for American concerns to move in and build up the island.”<sup>10</sup>

Further, Orme Lewis, Assistant Secretary of the Interior (DOI) wrote suggesting “the need for special consideration” for American Samoa. He explained to chairman Barden that Samoans “have clung to their ancient ways of life and their traditional forms of economic and social organization.” Thus, “...any justification for protective labor legislation in American Samoa should be cast in entirely different terms.” Lewis urged that the Secretary of Labor be allowed to “establish minimum wages for workers in American Samoa” as he may find that “economic conditions warrant.”<sup>11</sup>

C. S. Thomas, Secretary of the Navy, wrote to House Speaker Sam Rayburn to urge amendment of the FLSA to include a new provision for off-shore jurisdictions. Thomas reviewed the *Vermilya-Brown* decision and the likely impact if “...wage payments on the part of contractors performing work for the Department of Defense [were] to be made at higher wage scales than those generally prevailing in the area.” These wages, Thomas stated, “would obviously distort the local economy and, in some instances, objections have been received from foreign governments.” Thomas advised the Speaker: “In addition, such payment would result in higher costs to the United States.”<sup>12</sup> But, Representative Barden decided not to act “at this time.”<sup>13</sup>

## **The 1956 FLSA Amendments in the House**

It was with *Vermilya-Brown* in mind that representatives of Van Camp Sea Foods appeared before the Senate Committee on Labor and Public Welfare, May 1956, seeking FLSA amendment.

### *The Industry's Perspective*

William Moore spoke for the company. In 1952, DOI had circulated an invitation to bid on an unused facility at Pago Pago. Moore went out to the islands and presented a “discouraging”

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<sup>10</sup> U.S. Congress, House of Representatives, Committee on Education and Labor, *Amendment to Increase the Minimum Wage*. Hearings, 84<sup>th</sup> Cong., 1<sup>st</sup> Sess., June 1, 1955, and forward Washington, U.S. Govt. Print. Off., 1955, pp. 1180-1181. (Cited hereafter as House Hearing, 1955.) With Moore’s comments was a resolution from the Fono (the insular legislature) urging an exemption from the FLSA.

<sup>11</sup> House Hearing, 1955, pp. 1179-1180.

<sup>12</sup> House Hearings, 1955, pp. 1182-1185.

<sup>13</sup> See U.S. Congress, House, Committee on Education and Labor, *Amending the Fair Labor Standards Act to Make the Minimum Wage \$1 an Hour Effective March 1, 1956, Report To Accompany H.R.7214*, Report No. 1095, 84<sup>th</sup> Cong., 1<sup>st</sup> Sess., July 11, 1955, p. 2.

report, noting that the supply of fish was not apparent and that the local refrigeration plant (government owned) was “in rather poor repair.” Further, Moore stated: “We were aware, or soon learned during our survey, that the wage-and-hour laws applied to American Samoa and it was very unlikely, although we had not gotten into any operation at that time, whether or not our company could pay the minimum wages as required in the United States.”

Nonetheless, Van Camp bid on the operation and was awarded “a 5-year lease with the provision that the first year would be an experimental period.”<sup>14</sup> Under the lease signed with the government of American Samoa, the firm agreed “... to provide for improvement of the economy of American Samoa by developing the skills relating to fishing and fish processing among the Samoans, by providing local income through wages, and by insuring a local supply of raw, frozen, and processed fish.”

Moore explained that, though the company was operating at a loss, the loss was gradually diminishing and that the company was “...the only industry that has come into the island from the outside.”<sup>15</sup>

In 1956, the company had about 300 employees—reportedly a mixture of British and American Samoan.<sup>16</sup> Their productivity, it was explained, was somewhat less than cannery workers on the mainland. “Climatic conditions are not particularly conducive to energy and activities.” The temperature runs about 70 to 90 degrees throughout the year—but there is high humidity: upward of 80%. In terms of turnover, Moore stated, “... I am quite sure that the changeover in personnel there is less than it is stateside.” He added: “Most of our employees are women.”<sup>17</sup>

Moore then turned to the wage/hour law, stating that the cannery paid “from 27 cents an hour to \$1 an hour, which is only paid 1 employee.” Representative James Roosevelt (D-CA) then suggested: “You come before this committee to establish the fact that you are having difficulty making any profit, and that this [payment of not less than the minimum wage] would seriously impair your profit picture or your chances of making a profit...” The witness, Roosevelt stated, comes as something of “a special pleader” for his company. “Therefore, it seems to me incumbent that you show us what effect it would have, in some relation to your cost of operation, or what it would do to you if you had to pay, let us say, 75 cents an hour, or \$1 an hour, or whatever the wage law would require.”<sup>18</sup>

Roosevelt then turned to another issue: What would happen to regular U.S. workers in canning factories on the West Coast were the wage/hour statute modified for American Samoa? Moore responded that, from January 1954 through January 1956, “the total production was 3 ½ percent of the total production of Van Camp’s stateside plants for the same period.” Roosevelt was not entirely satisfied.

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<sup>14</sup> U.S. Congress. House, Committee on Education and Labor, *Minimum Wages in Certain Territories, Possessions, and Oversea Areas of the United States*, 84<sup>th</sup> Cong., 2<sup>nd</sup> Sess., February 15, 1956, and forward, pp. 5-7. (Cited hereafter as House Hearings, 1956.) The original firm had been started by Harold Gatty, an Australian, and had gone bankrupt. In 1956, Van Camp was still the only firm operating in Pago Pago. See also pp. 58-59.

<sup>15</sup> House Hearings, 1956, p. 9.

<sup>16</sup> House Hearings, 1956, p. 12.

<sup>17</sup> House Hearings, 1956, pp. 13-14.

<sup>18</sup> House Hearings, 1956, pp. 15-16.

Mr. ROOSEVELT. (...) What I am trying to get at is that I want to make awfully sure that I understand from you that this is not going to be a substantial part of your operation, the plans of your company and you and everybody else are such that they are not aimed at making this a substantial part of your production.

Mr. MOORE. That is true, it is not going to be a substantial part of our operations.<sup>19</sup>

Moore stated: “There may be some advantages gained on the one hand, but these advantages are definitely offset by additional expenses that we do not normally have stateside.”<sup>20</sup> Moore pointed to costs for the “the transportation of cans and cartons, and oil, and salt, and labels, and everything that goes into the product, and everything has to be transported to Samoa.”<sup>21</sup> As for wages, Moore observed, “we have a plan in effect now”—a 2 cent an hour raise annually—“that will increase those wages....”<sup>22</sup>

Roosevelt further questioned Moore on his statement that closing the cannery would have a deleterious effect on the general economy of the island and would deter other firms from entering insular commerce. Might that be a threat, he reasoned? “By implication,” he suggested, “that means to me that if you cannot get this relief that you would feel that it would be impossible for you to continue the operation....” Representative Roosevelt stated:

In other words, what you have in essence said is that this is important to the economy there, and which I believe it is, and on the other hand, I have to be shown that without this relief it would not be possible for you to operate. ... I for one, would want—and I think the committee would want—some information to back up the statement that you would not consider this possible of continuation unless the relief which you seek is granted.

Moore queried: “Are you asking that we give you a statement that says that unless we get this we will not continue?” Roosevelt suggested that the interpretation had been correct, to which Moore answered:

Mr. MOORE. It would put our costs out of line.

Mr. ROOSEVELT. And therefore, in order to maintain the operation at approximately the same cost as your west-coast operation, you would have to have this relief in order to stay in the islands.

Mr. MOORE. That is right, sir.<sup>23</sup>

### *Support from Officials of Government*

As the hearing progressed, there was considerable speculation about the impact of the minimum wage for Samoan workers.

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<sup>19</sup> House Hearings, 1956, pp. 17-19.

<sup>20</sup> House Hearings, 1956, p. 19.

<sup>21</sup> House Hearings, 1956, p. 16.

<sup>22</sup> House Hearings, 1956, p. 19.

<sup>23</sup> House Hearings, 1956, pp. 21-22.

Phil Landrum (D-GA) asked Wayne Aspinall (D-CO), a witness who had visited Samoa, what in his judgment would happen to Van Camp Seafood Co. if the minimum wage were enforced in the islands. "It would fail," Aspinall stated. "It would close up and these people would be put out of employment."<sup>24</sup> But, Aspinall acknowledged that Samoa has certain "cultural advancements or attributes" which are, "to me ... necessary to have retained among those people. Just how far," he added (in reference to the Samoan way of life, or *fa'asamoa*), "you can go in bringing in industries and uprooting their traditional economy is a question for continuing study."<sup>25</sup> Representative Orvin B. Fjare (R-MT) wondered if people of such "deeply seated customs" might not "[p]erhaps rebel at the so-called curse of civilization moving in on them."<sup>26</sup>

Roosevelt, from his understanding of the bill under consideration, stated that "they are not asking for complete exemption from the wage and hour law. We are using the same machinery which is already in effect ... in Puerto Rico, *so that the wage scale will be reviewed and established from time to time.*" (Italics added.) Roosevelt suggested that "the possibility exists, for instance, that another industry might come into the area, and we certainly would not want to just make a blanket exemption and invite industry to come down and exploit these people."<sup>27</sup>

"It will readily be seen," said William Arnold, Assistant Director, Office of Territories, DOI, "... that any application of stateside wage scales to industrial activity in American Samoa would completely disrupt the local economy, impose price inflation upon the people and create serious personnel and financial problems for the territorial government, to say nothing of the impact which such a situation would exert on the prevailing economic conditions of neighboring islands and territories."<sup>28</sup> A letter from Richard Barrett Lowe, Governor of American Samoa, was read into the record. The Governor explained the modest character of economic life in the islands and stated, as his first choice, placing decisions concerning the minimum wage in the hands of the Secretary of Labor. He urged Congress, "at an early date," to enact legislation that will "exempt American Samoa from the Fair Labor Standards Act."<sup>29</sup>

### *The Views of Organized Labor*

Walter J. Mason, AFL-CIO legislative representative, took a different approach. He pointed to the "first and foremost challenge facing this committee" as the removal of "unnecessary and unjust exemptions now provided in the law." He chose not to support *further* exemptions.

Turning to the islands, Mason stated that a Samoan exemption "would simply feed grist to the mills of the Communist propaganda machine. Our relationship with the peoples in underdeveloped areas," especially those under U.S. administration, "must be exemplary and beyond criticism..."<sup>30</sup> If an exemption were made for American Samoa, he stated, it might

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<sup>24</sup> House Hearings, 1956, p. 37.

<sup>25</sup> House Hearings, 1956, p. 39.

<sup>26</sup> House Hearings, 1956, pp. 40-41. The matter of *fa'asamoa* has continued to be an issue through the late 1990s and into the 21<sup>st</sup> century.

<sup>27</sup> House Hearings, 1956, pp. 39-40. As Representative Aspinall was departing, he was asked about the competitive impact for mainland production of having low-wage labor in the islands. Roosevelt suggested that, "at this moment," there really is not that sort of competition. See dialogue on page 42.

<sup>28</sup> House Hearings, 1956, pp. 84-85.

<sup>29</sup> House Hearings, 1956, pp. 92-93.

<sup>30</sup> House Hearings, 1956, pp. 149-150.

“provide the precedent to permit interested parties to request other exemptions from coverage under the act”—that could “precipitate a virtually endless chain of requests” from one group or another.<sup>31</sup>

Mason opposed making changes in the FLSA that “would make Samoa ... a refuge for runaway shops.” Further, he objected to placing the “entire discretion” within the hands of the Secretary of Labor.<sup>32</sup> Finally, he saw no excuse for condoning past violations of law (non-payment of the minimum wage) by “extending retroactive immunity from prosecution to those who knowingly failed to comply with the act’s requirements.”<sup>33</sup>

Representative Sam Coon (R-OR) asked if Mason would insist on payment of “the minimum wage of 75 cents even though it would put them out of business....” Mason replied: “I want them to stay in business and make money. But I also want to see that the Samoan workers get a fair wage....” Coon referred to the insular temperature as a debilitating force. Mason responded: “What I am saying is that we should take a look at it and consider all aspects of what the repercussions may be....” He affirmed: “...I do not think there is any need for hasty action....”<sup>34</sup>

If other options were not sustainable, Roosevelt questioned, what course might be acceptable to labor. Mason, reluctantly, suggested the Virgin Islands formula—with committees set up on “a tripartite basis so that all parties concerned will take a part in arriving at a fair determination of what the minimum wage should be.” Again: “If Samoa should be exempted from the statutory minimum, I believe the procedure should follow along the same lines that we have for the Virgin Islands.”<sup>35</sup>

Others voiced economic concerns. The Seafarers International Union explained that Van Camp tuna canneries located in San Diego and Terminal Island, Calif., “employ approximately 2,000 tuna-cannery workers” and pay \$1.65 and \$1.85 for women and men respectively. Tuna, from low-wage labor in Samoa, “enter the continental United States duty free and are sold to consumers under the same Van Camp label as tuna canned domestically. This,” he suggested, “is unfair competition to the domestic tuna industry and its workers.”<sup>36</sup> And, Representative Earl Chudoff (D-PA), suggested as a possibility that “...goods would be manufactured in a possession at very cheap labor rates and would be sent into the United States and sold cheaper than our own people could manufacture them....” Chudoff was open to the establishment of “industry boards or something” to provide for a fair labor scale in Samoa.<sup>37</sup>

## **The Senate Hearings of 1956**

Moore, spokesman for Van Camp Sea Foods, returned as lead witness in the Senate. He declared the existing minimum wage (75 cents per hour) “unrealistic” and “unwarranted” and affirmed that

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<sup>31</sup> House Hearings, 1956, pp. 150-151.

<sup>32</sup> House Hearings, 1956, p. 150.

<sup>33</sup> House Hearings, 1956, p. 152.

<sup>34</sup> House Hearings, 1956, p. 164-165.

<sup>35</sup> House Hearings, 1956, pp. 155-156.

<sup>36</sup> House Hearings, 1956, p. 365.

<sup>37</sup> House Hearings, 1956, p. 166.

it would “unquestionably ... have a deleterious effect upon the economic and social structure of the islands.” Moore then reviewed the “substantial losses” of prior years.<sup>38</sup>

The difference in labor costs is attributed, he suggested, to efficiency, reiterating: “... it takes from 3 to 5 Samoans to produce what 1 stateside employee can produce.”<sup>39</sup> Moore claimed: “If Van Camp is compelled to pay \$1 per hour, under these circumstances and not released of its liabilities under the act, it cannot go forward with its plans for developing the fishery and processing plant...” Notwithstanding the House hearings, Moore affirmed: “We know of no objection from organized labor.” He stated further that Van Camp “ must be relieved from its liabilities under existing law” and from costs that a \$1 dollar minimum will impose.<sup>40</sup>

Senator Paul Douglas (D-IL) observed: “I never thought of Samoa as an area in which the Fair Labor Standards Act would be applied...” Douglas questioned whether Samoa was actually covered by the act. Linton Collins, counsel for Van Camp, replied: “Samoa is now covered under the definition of ‘State’ in the bill.”

Following discussion, including reference to the *Vermilya-Brown* case, Senator Douglas stated: “This is news to me. I never thought the Fair Labor Standards Act applied to Samoa.” Collins replied: “... I don’t think the Congress had that in mind when the act of 1938 was passed, but I think in the definition of ‘State’ it had been left there and there was never been (sic.) any change....”<sup>41</sup>

## Creating a Special Industry Committee Structure (1956)

In May of 1956, Senator H. Alexander Smith (R-NJ), the ranking Member of the Committee on Labor and Public Welfare, introduced S. 3956—a bill to amend the FLSA.<sup>42</sup> On July 11, the bill was called up in the Senate. Senator John Kennedy (D-MA) explained that the measure, which had received unanimous support from the committee, would “provide means for adjusting the minimum wage in Samoa.” It further proposed “exemption from liability [for] those employers who ... have not observed the Fair Labor Standards Act.” Kennedy explained: “We feel that the provisions of the bill are acceptable, and are essential if the Samoan economy is to continue to operate.”<sup>43</sup>

There followed a dialogue between Senator Spessard Holland (D-FL) and Senator Kennedy.

Mr. HOLLAND. Is it not true that the rate of pay which is maintained in the one industry, which I believe is the sea-food canning industry—

Mr. KENNEDY. The Senator is correct.

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<sup>38</sup> U.S. Congress. Senate, Subcommittee on Labor, Committee on Labor and Public Welfare, *Amending the Fair Labor Standards Act of 1938*, 84<sup>th</sup> Cong., 2<sup>nd</sup> Sess., May 8, 1956, and forward, p. 387. (Cited, hereafter, as Senate Hearings, 1956.)

<sup>39</sup> Senate Hearings, 1956, p. 388.

<sup>40</sup> Senate Hearings, 1956, pp. 390-391.

<sup>41</sup> Senate Hearings, 1956, pp. 392-393. See also the discussion on p. 442.

<sup>42</sup> *Congressional Record*, May 29, 1956, p. 9147.

<sup>43</sup> *Congressional Record*, July 11, 1956, p. 12303.

Mr. HOLLAND. Has been fixed by reference to the request of the Department of Defense, which is the largest employer of labor in American Samoa, and which has not wanted to have any level of pay come into the picture which would disturb their ability to continue to operate as they are operating, and the general ability of the little island to preserve its economy on the present level? Is that correct?

Mr. KENNEDY. The Senator is correct. As the Senator knows, the company which is engaged in the industry to which he refers has been operating at a loss, even with the present wage scale. I think the statement of the Senator from Florida is correct.

And Kennedy explained: "... passage of the bill would also free employers of liability to maintain the minimum wage scale, which I think is a satisfactory situation."<sup>44</sup> Without objection, the Smith amendment (modified by the Humphrey amendment) was adopted by a voice vote—the measure then being dispatched to the House.<sup>45</sup>

On July 26, 1956, the Samoan bill was called up in the House. Representative Roosevelt placed a brief statement in the *Record* and, thereafter, the bill was adopted.<sup>46</sup> The measure was signed by President Dwight Eisenhower (P.L. 84-1023).<sup>47</sup>

## **The Minimum Wage in American Samoa (1956-1986)**

Taking into account the special economic circumstances existing in American Samoa, Congress opted to follow the Puerto Rican example. On October 1956, the first special industry committee (SIC) notice was published in the *Federal Register*.

### **The Structure and Functions of the Committee**

The SIC fell under the Secretary of Labor (and then, the Administrator of the Wage and Hour Division). It was stated: "The wage orders issued by the Administrator must by law give effect to the recommendations of the industry committees." The notice, which would largely apply to subsequent committees, provided the rules for the hearing, the evidentiary requirements, and names (in the first two cases) the various committee members.

The committee "will be composed of residents of the island or islands where the employees with respect to whom such committee was appointed are employed" and of other residents of the

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<sup>44</sup> *Congressional Record*, July 11, 1956, p. 12303. The reference to a "request of the Department of Defense" is not entirely clear.

<sup>45</sup> *Congressional Record*, July 11, 1956, pp. 12303-12304. There was a dialogue between Senator Hubert Humphrey (D-MN) and Senator Smith. There had been concern that the bill would have impacted Guam and the Panama Canal Zone—but Senator Smith denied such was his intent. See also U.S. Congress. Senate. *Amending the Fair Labor Standards Act of 1938, as Amended*. S.Rept. 2394, 84<sup>th</sup> Cong., 2<sup>nd</sup> Sess., p. 3.

<sup>46</sup> *Congressional Record*, July 26, 1956, p. 14849. *Inter alia*, Representative Roosevelt's statement for the *Record*: "I sincerely hope that all interested groups and particularly organized labor, the Department of State and the Department of Defense will come to a satisfactory agreement in the intervening months before the new Congress assembles."

<sup>47</sup> President Eisenhower signed the bill reluctantly "...because I am convinced that some adjustment of the existing provisions of the Fair Labor Standards Act to the Samoan economy is needed." But, he added: "... it is my earnest hope that the Congress at its next session will amend the Fair Labor Standards Act to provide for review by the Secretary of Labor of determinations of industry committees." See *Public Papers of the Presidents of the United States: Dwight D. Eisenhower, 1956*. National Archives and Records Service, GPO, 1958, p. 172.

United States from outside the affected islands. The Secretary will appoint “an equal number of persons representing (a) the public, (b) employees in the industry, and (c) employers in the industry.” The public members “shall be disinterested, and the Secretary will designate one as chairman.” Further, it was provided: “An industry committee shall cease to perform further functions when it has filed with the Administrator its report containing its findings of fact and recommendations with respect to the matters referred to it....”

Each industry committee is to be furnished a lawyer and an economist “to advise and assist the committee at all of its meetings.” Any person or association who “in the judgment of the committee has an interest sufficient to justify” participation shall be designated “an interested person.” The committee has subpoena powers.

The committee was advised: “No classification shall be made ... and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex.” Among factors to be considered were the following:

[c]ompetitive conditions as affected by transportation, living and production costs

the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing

the wages paid for work of a like or comparable character by employers who voluntarily maintain minimum wage standards in the industry

employment and labor conditions and trends ... on the mainland ... including such items as present and past employment, present wage rates and fringe benefits, changes in average hourly earnings or wage structure, provisions of collective bargaining agreements, hours of work, labor turnover, absenteeism, productivity, learning periods, rejection rates, and similar factors

comparative production costs ... on the mainland, and in foreign countries, together with the factors responsible for differences

financial conditions and trends ... as reflected in profit and loss statements and balance sheets

*Hardship testimony* must be documented. “Testimony on behalf of an employer or group of employers as to inability to absorb wage increases shall be received in evidence only if supported by tangible objective data, such as the pertinent profit and loss statements and balance sheets for a representative period of years....” As noted above, each committee “shall recommend minimum wages which will reach *as rapidly as is economically feasible without substantially curtailing employment*” the general federal minimum wage. (Emphasis added.)

The committee, charged with investigation of the insular economy, had before it “an economic report” prepared by the Department of Labor. Once established, the committee was to operate on its own initiative.<sup>48</sup>

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<sup>48</sup> *Federal Register*, October 6, 1956, pp. 7669-7672. The economic report, prepared by DOL, was advisory: it did not control the actual deliberation of the committee.

## Appointment of Industry Committee No. 1 (1957)

James Mitchell, Secretary of Labor, appointed the first industry committee for Samoa on March 20, 1957, admonishing them “to reach as rapidly as is economically feasible the objective of the minimum wage of \$1.00 an hour” (the standard federal minimum). Where there was variation within an industry, he urged the committee to “recommend such reasonable classifications ... as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate” that can be determined for the category. Both DOL and the Congress appear to have been in agreement: *that the highest possible rate should be reached as quickly as possible.*<sup>49</sup>

Samoan industry was divided into four categories—none of which initially came close to meeting the \$1.00 federal minimum. Wage/Hour Administrator Newell Brown (May 31, 1957) presented the findings in the *Federal Register*:

*Fish Canning and Processing Industry.* “This industry shall include the canning, freezing, preserving or other processing of any kind of fish, shellfish, or other aquatic forms of animal life and the manufacture of any by-product thereof.” The wage: *not less than 38 cents an hour.*

*Shipping and Transportation Industry.* “This industry shall include the transportation of passengers and cargo by water or by air, and all activities in connection therewith, including, but not by way of limitation, the operation of air terminals, piers, wharves and docks, including stevedoring, storage, and lighterage operations, and the operation of tourist bureaus and travel and ticket agencies....” The wage: *not less than 40 cents an hour.*

*Petroleum Marketing Industry.* “This industry shall include the wholesale marketing and distribution of gasoline, kerosene, lubricating oils, diesel and marine fuels, and other petroleum, products, including bunkering operations....” The wage: *not less than 45 cents per hour.*

*Miscellaneous Industries.* “Miscellaneous industries shall include all operations and activities not included in the shipping and transportation industry, the petroleum marketing industry, or the fish canning and processing industry....” The wage: *not less than 35 cents per hour.*

The *Federal Register* announcement called for a posting of the results (and minimum wage rates) so that each affected individual would be aware of the wages to which he or she was entitled.

## Thirty Years of Escalating Wages (ca. 1958-1986)

By 1958, the procedure for appointing committees had become standardized.<sup>50</sup> Thereafter, very minor changes were effected in the work of the committees. Some new classifications of employment were added; some were removed. (See **Table A-1** in the Appendix for the evolution of minimum wages.)

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<sup>49</sup> *Federal Register*, March 26, 1957, p. 1991.

<sup>50</sup> *Federal Register*, March 6, 1958, pp. 1604-1605, and June 6, 1958, p. 3967. Under Public Law 85-750 (August 25, 1958), the Secretary, “in his discretion, may order an additional review during any such biennial period.” See *Federal Register*, October 18, 1958, p. 8056.

In 1961, a further division was made, separating ‘shipping and transportation’ into two categories. Category “A” was reserved for seafaring: “all activities engaged in by seamen on American vessels which are defined as those vessels documented or numbered under the laws of the United States.” Category “B” would include all persons engaged in shipping, transportation and related crafts “other than those” engaged in seafaring—though such definitions would change from year to year.<sup>51</sup>

In 1963, a further category was identified: the construction industry. This would include “... all construction, reconstruction, structural renovations, and demolition, on public or private account, of buildings, housing, highways and streets, catchments, dams, and all other structures....” Other categories gradually came under the act. For example, in 1967, hotels, retail trades, hospitals and educational institutions were added; in 1969, laundry and dry cleaning, the bottling industry, and printing and publishing; in 1971, the wholesaling, warehousing, and finance and insurance.

In 1974, Warren D. Landis, then Acting Administrator, Wage and Hour Division at DOL, proposed “revisions” in the general instructions. It would no longer be sufficient for “an employer or group of employers” simply to testify “as to inability to pay the minimum wage rate specified” and, thus, to reduce labor costs. To the now standard “tangible objective data,” profit and loss statements, etc., a new section was added under the title “Evidence.” It affirmed, “Financial statements filed in accordance with this provision ... shall be certified by an independent public accountant or shall be sworn to conform to and be consistent with the corresponding income tax returns covering the same years.”

As for persons who could not be present at the hearing, it was possible to submit affidavits. “The committee will give such weight to these statements as it considers appropriate,” it was affirmed, “and the fact that such affiants [affirmations] have not been subject to cross-examination may be considered, along with other relevant facts, in assessing the weight to be given such evidence.” (It is not clear how seriously the various witnesses took this instruction nor, for that matter, how rigorously the arrangement was carried out.)

In appointing Industry Committee No. 11 in 1974, Secretary Peter Brennan expanded the scope of the committees to include government workers and others—reminding the committee that it should recommend the “highest minimum wage rate or rates” that it determines “will not substantially curtail employment in the industry....”<sup>52</sup>

In 1975 and forward into 1976, a new complication arose as the National Labor Relations Board investigated a contested election in the canning industry. “It is my concern that the investigations may substantially affect the industry committee process,” explained Labor Secretary John Dunlop. Thus, he delayed the meeting of Industry Committee No. 12 through the spring of 1976—though he recognized the “possible adverse effects of the delay.”<sup>53</sup>

In 1978, when Industry Committee No. 13 reported, another complication arose: namely, the Supreme Court’s decision in *National League of Cities v. Usery*....” In that case, the Court held

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<sup>51</sup> *Federal Register*, August 30, 1961, pp. 8101-8102. In 1973, there was a further restructuring of the categories and, since “no employees were covered in classification A (Seafaring) in the Shipping and Transportation Industry, this category should be excluded from this industry and that any seafaring activity” subsequently fall under the category of miscellaneous. See *Federal Register*, November 27, 1973, p. 32576.

<sup>52</sup> *Federal Register*, July 5, 1974, p. 24713

<sup>53</sup> *Federal Register*, January 27, 1976, p. 3878.

that the minimum wage and overtime provisions of the FLSA “are not constitutionally applicable to the integral operations of the States and their political subdivisions in areas of traditional governmental functions.” While American Samoa was not directly involved in the case, Xavier M. Vela, for the Department, affirmed that “it is apparent, as a matter of statutory interpretation, that the restrictions imposed by *National League of Cities* should be the same in American Samoa.” But, The *League of Cities* case would be overturned in *Garcia v. San Antonio Metropolitan Transit Authority et al.* (469 U.S. 528 (1985)).<sup>54</sup>

To this point, for nearly 30 years, American Samoa had been under a system of administrated wage rates. Very gradually, the rates had moved up.

## Special Industry Committee No. 17 (1986)

On February 25, 1986, Labor Secretary William Brock appointed a new Special Industry Committee (SIC) No. 17. The instructions to the Committee appear to have been consistent with prior Committees in use since 1956.<sup>55</sup>

### Appointment of the Committee Members

When announcing appointment of Industry Committee No. 17, Secretary Brock advised members that Wage/Hour would “prepare an economic report containing the information which has been assembled pertinent to the matters referred to the committee.” Further, he stated: “The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.”<sup>56</sup> The notice was *pro forma*, similar to those issued with each appointment through the years.

In March 1986, the Department produced an economic report, *Various Industries in American Samoa*. It opened with a 63 page essay to which 138 pages of statistics was added.

### Guidance from the Department of Labor

In the mid-1980s, insular population was about 35,600 persons. The labor force was about 12,000 with female employment increasing steadily. Because of out-migration of workers (especially in the 20-29 age bracket), a large number of skilled craftsmen in the islands were from Western Samoa or Tonga. About 3,660 people (roughly 35 percent) worked for the American Samoan Government. About 6,740 were in the private sector “with the majority of these employed in the tuna canneries.”<sup>57</sup> Thus, the government and the canneries were primary employers and held a substantial and continuing interest in employee compensation.

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<sup>54</sup> *Federal Register*, June 15, 1978, p. 25816. See *National League of Cities v. Usery*, 426 U.S. 833 (1976).

<sup>55</sup> *Federal Register*, February 25, 1986, p. 6605.

<sup>56</sup> *Federal Register*, February 25, 1986, p. 6605. See *Federal Register*, May 26, 1959, p. 4219.

<sup>57</sup> U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Various Industries in American Samoa: An Economic Report*, March 1986, pp. 8-9. (Cited hereafter as *Various Industries In American Samoa*, and by date.)

Within the tuna industry, about 65% to 70% of cost was attributable to raw fish. “The price of fish is negotiated between the vessel operators and the processors and the contract period varies from several months to several years, depending upon perceived harvesting conditions and anticipated demand...” However, cannery workers, with little organization in a western industrial context, received low wages that kept labor market expenses down. “It is this situation that has enabled imports to capture so much of the U.S. market,” the *DOL Report* stated. “... U.S. producers have had to lower their prices and delay wage increases in order to survive.”<sup>58</sup>

By the mid-1980s, tuna canneries operated in only three areas within the United States: California (one cannery), Puerto Rico (five canneries), and American Samoa (two canneries). In California, cannery workers are represented by the Seafarers International Union, AFL-CIO. In Puerto Rico, two canneries had collective bargaining agreements: National Packing (Van Camp, with the Congreso de Uniones Industriales de Puerto Rico) and Caribe Tuna (Mitsubishi Foods, apparently with the Seafarers Union, AFL-CIO). In 1985, there seem to have been no collective bargaining agreements among Samoan cannery workers.<sup>59</sup> State and local governmental employees, conversely, had been gradually drawn into coverage under the FLSA—partly growing out of litigation under the *National League of Cities* (1976) and *Garcia* (1985) decisions.

Commission members were advised: “Once the rates in American Samoa reach the mainland levels, they are subject to the same time schedule for further increases that prevails on the mainland without further industry committee reviews.”<sup>60</sup> The *Report* then walked the parties through the currently existing minimum wage rates—ranging from a low of \$1.46 per hour for workers in laundry and dry cleaning to a high \$2.82 per hour for fish canning and processing. It was also pointed out that the tuna industry employed 72% of employees in the private sector subject to FLSA coverage.<sup>61</sup>

## Findings of the Committee

Under the chairmanship of Ronald St. Cyr, the SIC met on April 28 through May 2, 1986. It heard from 20 witnesses and received some 30 pieces of testimony “including one exhibit received in confidence under the committee’s seal.”<sup>62</sup>

Before looking at the individual industries, the Committee examined a more basic question. The evidence before them, in the judgment of the dominant group on the Committee, indicated that the minimum wage rate for Samoa could be raised to the mainland level without the risk that it would “substantially curtail employment in the industries” of the island.<sup>63</sup>

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<sup>58</sup> *Various Industries in American Samoa*, 1986, p. 18. The *Report* states: “The price of raw tuna to be processed is determined in the U.S. industry by exclusive dealing arrangements between the canneries and the fishing vessels. The price is set by a bargaining process between the canneries and the American Tuna Sales Association ... which represents the tuna boat owners.”

<sup>59</sup> *Various Industries in American Samoa*, 1986, pp. 42-46.

<sup>60</sup> *Various Industries in American Samoa*, 1986, p. 51.

<sup>61</sup> *Various Industries in American Samoa*, 1986, pp. 51-53.

<sup>62</sup> Transcript of Special Industry Committee No. 17 (1986), pp. 1-2. (Cited hereafter as SIC No. 17, 1986.) The *Report* (p. 2) stated: “The committee invited several other witnesses to submit confidential financial and other data under seal, but no others took advantage of the opportunity....” St. Cyr was Deputy Assistant Secretary for Labor-Management Standards.

<sup>63</sup> SIC No. 17, 1986, p. 9.

The Committee then reviewed the industrial rates. “Employee witnesses generally testified concerning the need for increases in [the] applicable minimum wage rates. Employer witnesses,” on the other hand, “in some cases opposed any upward adjustment of minimum wage rates and generally opposed reaching a \$3.35 per hour minimum rate over any specific future time period.”<sup>64</sup>

Governmental opinion was mixed—though, for budgetary purposes, it seems to have shared an interest in keeping wages low. One witness argued that an increase to \$3.35 per hour would have a deleterious impact for the insular budget. Yet, the director of nursing stated that “nurses and other workers in the government medical center were grossly underpaid with a resultant shortage of qualified help which has adversely affected the quality of health care in American Samoa.” Having heard the witnesses, the “... committee concluded that an increase in the minimum wage to \$3.35 an hour spread over a two-year period ... would not significantly curtail employment opportunities.”<sup>65</sup>

Witnesses for the tuna industry pointed to the “precarious position” of the industry, confronted with fish from other low-wage areas, and argued that there “should be no increase in the industry’s minimum wage rate.”<sup>66</sup> However, there was another side to that equation.

Evidence presented to the committee showed that production costs for the AS [American Samoa] tuna canneries between 1983 and 1985 declined substantially while the value of tuna shipments from AS increased very substantially from 1983 to 1984 (the latest available data). Also, the committee heard evidence that the tuna industry in AS enjoyed substantial advantages including: a favorable tariff posture (compared to foreign producers); an exemption which permits raw fish to be landed in AS in foreign vessels (not permitted in Puerto Rico or the mainland) resulting in lower raw fish prices which constitute 60% to 70% of total costs; and minimum wages 46% lower than average lowest regular wages for tuna canning in Puerto Rico and 135% lower than in the mainland U.S.

The Committee further pointed to “tax incentives” provided by the Samoan Government, with other similar advantages, that “have further contributed to a highly favorable economic situation” for the canneries. Reluctance of the industry to present evidence, “even under seal” from the Committee, seemed to raise further doubts. The Committee raised the industry standard to \$3.35.<sup>67</sup>

Gradually, from one industry to the next, the Committee mandated that the minimum wage be raised to the statutory federal rate of \$3.35 per hour—at least by April 4, 1988. The thirty-year sub-minimum wage rate for American Samoa, it seemed, would end. However, the Committee produced a mixed review. The *Report* was signed by the two members representing the public and the two employee members. The two representatives from industry declined to sign the document.<sup>68</sup>

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<sup>64</sup> SIC No. 17, 1986, p. 2.

<sup>65</sup> SIC No. 17, 1986, pp. 9-10.

<sup>66</sup> SIC No. 17, 1986, p. 10.

<sup>67</sup> SIC No. 17, 1986, p. 11.

<sup>68</sup> SIC No. 17, 1986, p. 17.

## Congress v. the Special Industry Committee

Under date of June 20, 1986, the findings of the Special Industry Committee were published in the *Federal Register*. The earliest increases in the insular minimum wage rate, to \$3.35, were to take effect after July 7, 1986.<sup>69</sup>

In the wake of the SIC's hearings, "several interested groups" commenced litigation to have the findings set aside so that employers might continue to pay rates lower than the national minimum.<sup>70</sup> However, the judicial process was cut short when Congress, calling up the "Insular Areas Regulation Act" (99<sup>th</sup> Congress), added language to overturn the findings of Special Industry Committee No. 17: that is, retaining wage rates *pre*-Committee No. 17 and directing that a new committee be appointed that would recommend minimum wage rates that would be less threatening to the insular economic structure.<sup>71</sup>

Representative Morris Udall (D-AZ), chairman, Committee on Interior and Insular Affairs, assessed the situation in Samoa. "A committee that met this year ... *failed to adequately comprehend* the reasons that Congress had determined that a special minimum wage should apply in the territory." (Italics added.) Udall explained: The rate increases "could cost the territorial government \$7 million by FY1988, a cost the Federal Government might have to make up." In addition, there were "clear indications that it would also force the tuna canning industry, which directly and indirectly accounts for half of the private sector employment in the territory, to substantially shift its operations to foreign locations." The new rates, Udall stated, "have already discouraged proposed investment from locating in the islands" and "... would make American Samoa more uncompetitive than it already is as a place of doing business." He continued: "Reasonable increases are warranted and we would favor increases as great as are reasonable. The proposed increases," he stated, "are not reasonable, however."<sup>72</sup>

Udall stated that the language of the "Insular Areas Regulation Act" does not amend the FLSA "nor does it modify the statutory system for periodic review and revision of minimum wages in American Samoa." Instead, he stated, "[i]t merely suspends the current wage order and continues the prior minimum wage in effect, pending the recommendations of a new industry committee convened in accordance with existing law." He admonished any further committee to consider "... the extent to which rates facilitate maximum employment; the extent to which they enable American Samoan businesses to be competitive within the region; and the potential impact on the insular and Federal budgets." Udall added: "We also appreciate the statesmanship on this matter of Delegate Sunia, who is concerned both about fair wages and maximum employment in the territory."<sup>73</sup>

The House then approved the conference report on H.R. 2478 by a voice vote.<sup>74</sup>

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<sup>69</sup> *Federal Register*, June 20, 1986, pp. 22517-22518.

<sup>70</sup> *Various Industries in American Samoa*, 1987, pp. 53-54.

<sup>71</sup> *Congressional Record*, August 1, 1986, p. 18612.

<sup>72</sup> *Congressional Record*, August 1, 1986, pp. 18617-18618. Representative Udall explained: "Legislative relief is needed because the Department of Labor takes the position that it lacks legal authority to grant administrative relief."

<sup>73</sup> *Congressional Record*, August 1, 1986, p. 18618. Delegate Fofu I. F. Sunia appears to have been involved here but, apparently, did not comment on the minimum wage.

<sup>74</sup> *Congressional Record*, August 1, 1986, pp. 18623-18624.

In the Senate, James McClure (R-ID) explained the conference report. “It is the intent of the FLSA that the minimum wage in American Samoa shall be increased to the national minimum wage at a rate that ‘will not substantially curtail employment.’ However,” McClure affirmed, “the previous Special Committee’s recommendation [No. 17], effective July 7, 1986, have [sic.] already resulted in the loss of 700 jobs.”<sup>75</sup> Again, the conference report was accepted by voice vote.<sup>76</sup> On August 27, H.R. 2478 was signed by President Ronald Reagan becoming P.L. 99-396.

## Special Industry Committee No. 18 (1987)

A new committee was promptly appointed and the process recommenced; but, unspoken, there was a cautionary note. *Reasonableness*, in terms of a minimum wage, rested with the Congress. The powers of a Special Industry Committee were now limited by what Congress would accept.

### A New Committee Appointed

Secretary of Labor Brock appointed a new committee that arrived in the islands on June 8, 1987, with the mandate to recommend the highest rates of wages that “will not substantially curtail employment” in the insular industries.<sup>77</sup> The Committee stated that it had heard from 16 organizations and companies including DOI, the Government of American Samoa, “the two tuna canning firms and the Chamber of Commerce of American Samoa. Other parties testifying at the Committee hearing consisted of 11 local businesses.” It noted: “In addition, there were other witnesses representing both employers and employees.” If unions were present, they were not identified by name.<sup>78</sup>

At the opening ceremony, Governor A. P. Lutali “recommended no increase in the current FLSA minimum wage rates because of the severe budget situation ... and the pressing need for an expanded employment base at the tuna canneries”—as well as with firms associated with the tuna industry. Delegate Fofu Sunia “also expressed concern” regarding the insular budget and “the economic situation of the tuna firms and other businesses.” However, he felt that “some increase in the minimum wage would be warranted at some future time once the budget and economic climate improved.” Richard Montoya of Interior was similarly dubious. The Government of American Samoa “... could not sustain any increase in payroll costs at this time.” Montoya referred to the plight of “the tuna canneries and other business” and stated that an increase in the minimum wage “would be counter-productive” to efforts “to to expand the employment base in the private sector of the American Samoan economy.” Ultimately, Montoya “recommended the Committee grant no increase in any of the minimum wage rates at this time.”<sup>79</sup>

The Committee was reminded of Representative Udall’s comments—“(1) the extent to which rates facilitate maximum employment; (2) the extent to which they enable American Samoa businesses to be competitive within the region; and (3) the potential impact on the insular and Federal Budgets.” It was noted that “such considerations *could be related to the Committee’s*

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<sup>75</sup> *Congressional Record*, August 9, 1986, p. 20394. The industry from which the jobs were lost was not identified here.

<sup>76</sup> *Congressional Record*, August 9, 1986, p. 20397.

<sup>77</sup> *Federal Register*, February 19, 1987, pp. 5219-5220.

<sup>78</sup> SIC No. 18, 1987, pp. 1-2.

<sup>79</sup> SIC No. 18, 1987, p. 2.

*assessment* of the impact of any possible changes in the current FLSA minimum wage....<sup>80</sup>  
(Emphasis added.)

## **The New Committee's Recommendations**

The committee commenced with the two major industries of the islands. Representatives of the government and the tuna canneries presented “a great quantity of economic data.” Government witnesses emphasized “budget and fiscal constraints.” Spokesmen for the tuna industry suggested the “increasing competition from foreign imports from low-wage countries” and stated that “the various economic advantages of performing their operations in American Samoa were lessening.” The committee was unable to agree on whether an increase in the minimum wage “would substantially curtail employment” and, so, “made no recommendations.” Thus, the old wage remained in place: government workers and cannery employees would not receive a raise.<sup>81</sup>

Similar controversies swirled around other industries. In petroleum marketing, no evidence was presented to the committee. However, “the largest employer” stated that his business was heavily dependent “on business from the fish processing and canning industry.”<sup>82</sup> So, they voted 4 to 2 against an increase. In shipping and transportation, testimony suggested that “much of the business activity in this category depended in some way upon the fish processing and canning industry.” One segment was given 10 cents the first year and 10 cents the second.<sup>83</sup> In construction, workers would receive 10 cents the first year and 10 cents the next.<sup>84</sup> Other industries experienced similar increases.

## **Minimum Wage in American Samoa (1987-2007)**

In March of 1990, Labor Secretary Elizabeth Dole announced the appointment of SIC No. 19.<sup>85</sup> But, a new complication arose—and the timing of the Committee's work was deferred.

## **Improving the Quality of Evidence**

When establishing an SIC for American Samoa in 1956, it was assumed that the committee would operate under the same rules as committees in Puerto Rico and the Virgin Islands. However, in the early 1970s, a group of agricultural workers in Puerto Rico argued that their rates, under the FLSA, should be increased because their employers had not established, *beyond a reasonable doubt*, that they were not able to pay a higher wage without “substantially curtailing employment.” Gradually, the issue led to the courts.

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<sup>80</sup> SIC No. 18, 1987, p. 3.

<sup>81</sup> The vote was 3 to 3, but a tie vote was regarded as negative—the former wage structure remained in place. SIC No. 18, 1987, p. 8.

<sup>82</sup> SIC No. 18, 1987, p. 10.

<sup>83</sup> SIC No. 18, 1987, p. 11.

<sup>84</sup> SIC No. 18, 1987, p. 12.

<sup>85</sup> *Federal Register*, March 28, 1990, p. 11454.

## Affirming Substantial Documentary Evidence (1974)

Regulations of the period suggested that “tangible objective data” must be assembled to show that employers were not able to raise wages to the federal minimum standard. For Puerto Rico, it seems, data may not have been possible to obtain. The farmers were often poorly educated and may not have had “profit and loss statements” or “balance sheets.” In such situations, the SIC could make recommendations “on the basis of evidence which is available;” but, the Court argued, those recommendations must be “sustained by the evidence.” In the Puerto Rican case, it found the record “devoid of a single subsidiary finding to support the Committee’s conclusion.”<sup>86</sup>

When reporting legislation that would evolve into the 1974 FLSA amendments, the House Committee on Education and Labor referred to the Puerto Rican case and explained that “Congress intended” that findings of the SICs “would be based on record-evidence adequate to reveal the financial and economic condition of the covered employers.” In the absence of such evidence, proceedings have sometimes “...degenerated into a process by which a majority of the members work their will knowing that the record is bare of the facts necessary to controvert their argument that higher wages would substantially curtail employment.” It proposed language to insure that a future SIC “be in a position to act rationally rather than arbitrarily.”<sup>87</sup>

The new language was contentious. Senator James Buckley (R-NY) opposed the evidentiary requirements. He stated: “The simple fact is that this requires a level of proof that too few Puerto Rican employers are unable [sic.] to provide.”<sup>88</sup> Senator Harrison Williams (D-NJ) disagreed. He argued that the bill reflected “broadly a consensus.” Williams pointed to a history of abuse and affirmed that “as long as it is part of the procedure to have these industry committees, let them be required to support their conclusions” with “substantial documented evidence.”<sup>89</sup>

Thus, in the 1974 FLSA amendments, there appeared an explanation: that there must be “substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years” or, where the employees are of the government “other appropriate information.” That documentation must establish that an “industry, or a predominant portion thereof, is unable to pay that wage.”<sup>90</sup>

## Controversy Over the Minimum Wage Rate (1990)

Gradually, DOL began to distinguish between Puerto Rico and the Virgin Islands, on the one hand, and American Samoa on the other.<sup>91</sup> In the 1976 report to the Congress, it noted: “If the committee has no objective data establishing the industry’s inability to pay the mainland rate, the

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<sup>86</sup> Comments are taken from *Sindicato Puertorriqueño de Trabajadores v. Hodgson* (448 F-2<sup>nd</sup> 1161 ff. (D.C. Cir. 1971)).

<sup>87</sup> U.S. Congress, House, *Fair Labor Standards Amendments of 1973. Report To Accompany H.R. 7935*, H.Rept. No. 93-232, 93<sup>rd</sup> Cong., 1<sup>st</sup> Sess., Washington, U.S. Govt. Print. Off., 1973, pp. 25-26.

<sup>88</sup> *Congressional Record*, March 7, 1974, p. 5737.

<sup>89</sup> *Congressional Record*, March 7, 1974, p. 5738.

<sup>90</sup> P.L. 93-258. The issue was not a central focus of hearings or debates (1973-1974), but the legislative history did make reasonably clear the general purpose of the provision.

<sup>91</sup> U.S. Department of Labor, Employment Standards Administration, *Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act*, Washington, U.S. Govt. Print. Off., 1975, pp. 7, and 21-24. (Hereafter cited as *Section 4(d) Report*, and by date.)

committee (*except in American Samoa*) is required under the 1974 FLSA Amendments to recommend the mainland rate without regard to the other criteria.”<sup>92</sup> (Italics added.)

In the late 1980s, American Samoa was, in effect, a *company town*—or, more precisely, a *three company island*. It may not be surprising, therefore, that the canneries and the Samoan Government opposed minimum wage increases and, where increases were unavoidable, sought to keep them to the lowest possible level. In so doing, the canneries have been afforded a relatively low wage workforce and the Government (with DOI support) has kept its budget accordingly low. Conversely, there seems to have been little alternative to existing work at whatever the wage rate—given the isolated location of American Samoa.

When, in March 1990, Secretary Dole announced appointment of SIC No. 19, no special reference was made to evidentiary requirements. On June 12, 1990, Samoan Governor Peter Tali Coleman wrote to the Department of the Interior on that issue. Governor Coleman stated:

The provision requires the Industry Committee to impose the mainland minimum rate unless an industry can establish its inability to pay that rate by “substantial documentary evidence.”

The term “substantial documentary evidence” is defined to include specific financial statements which many smaller employers do not have. Even those employers who do maintain formal financial records normally consider the information sensitive and confidential.

Coleman added that DOL had “specifically ruled that the requirement did not apply to American Samoa” and stated: “...the industry Committee could be forced to promulgate wage rates which are unreasonably high...”<sup>93</sup> An exchange of letters followed—generally expressing concern about a wage increase and objecting to the concept of *substantial documentary evidence*.<sup>94</sup>

If there was confusion over the concept of *substantial documentary evidence*, it seemed opportune to make whatever changes may have been appropriate. On July 20, Delegate Eni F. H. Faleomavaega of Samoa asked his congressional colleagues to “correct an inadvertent change” made in the 1989 amendments to the FLSA. With Puerto Rico and the Virgin Islands now subject to routine (national) minimum wage standards, only American Samoa remained subject to the SIC proceedings. My district, Faleomavaega noted, “...is unfortunately a one-industry community, and that industry is the canning of tuna.” Again: “Should Samoa lose this industry, the economic and social impact on the people in Samoa would be devastating.”<sup>95</sup> On August 1, 1990, nine Members of the House wrote to Secretary Dole—requesting a postponement of SIC No. 19.<sup>96</sup>

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<sup>92</sup> *Section 4(d) Report*, 1976, p. 43. Both Puerto Rico and the Virgin Islands were, even then, moving out from under the SIC system.

<sup>93</sup> Letter from Governor Peter Tali Coleman to Stella Guerra, Assistant Secretary for Territorial and International Affairs, DOI, June 12, 1990.

<sup>94</sup> See, for example, letter from Tuana 'Itau F. Tula, Speaker, House of Representatives, and Letuli Toloa, President of the Senate, to Governor Peter Tali Coleman, July 18, 1990; and Guerra of DOI to J. Danforth Quayle, President of the Senate, July 18, 1990.

<sup>95</sup> *Congressional Record*, June 20, 1990, p. 18538. Inserted with his statement was H.R. 5329, a bill to remove the “substantial documentary evidence” provision. See also S. 2930 by Senator James McClure (R-ID). Both are from the 101<sup>st</sup> Congress.

<sup>96</sup> Representative Carl C. Perkins (D-KY), et al., to Secretary Dole, August 1, 1990. The letter spoke of a hazard to “the regions’s tuna export market” and further stated their belief that “there is strong, bipartisan support for the technical correction” with respect to Samoa and the concept of *substantial documentary evidence*.

Finally, Stella Guerra, Assistant Secretary for Territorial and International Affairs, DOI, wrote to William C. Brooks, Assistant Secretary for Employment Standards at DOL. She observed that DOL had “already postponed the hearing at the request of the American Samoan Government” but she urged further delay. Ms. Guerra stated that the procedure “created a possibility of wage increases that could bankrupt small businesses, cause the largest businesses (the tuna canneries) to abandon the territory, and force the territorial government to lay off workers....” She sought additional time to allow Congress to “complete action on the amendment that we have proposed.”<sup>97</sup>

### **New Legislation (1990)**

On July 20, 1990, Mr. Faleomavaega introduced H.R. 5329, a measure that would have stricken the entire section on “substantial documentary evidence.”<sup>98</sup> Other bills followed: H.R. 5382, by Representative Austin Murphy (D-PA)<sup>99</sup> and S. 2930 (at the request of the Department of the Interior) by Senator James McClure (R-ID).<sup>100</sup> On August 4, S. 2930 was called up for floor consideration. The bill, in its original form, was passed by the Senate.<sup>101</sup>

In the House, S. 2930 was called up by Mr. Murphy on October 18 who explained that the bill would accommodate “two separate groups of employers. It is very narrowly drafted.” He continued:

When we originally passed the Fair Labor Standards Act amendments last year, the intent was to continue to provide American Samoa with the right to have their minimum-wage level set by the Commission in the Department of Labor. We did not make that clear, and the Senate bill is addressing that particular matter.<sup>102</sup>

Murphy was seconded by Representative Steve Bartlett (R-TX) and, then, by Representative William Goodling (R-PA).<sup>103</sup>

At this juncture, Murphy proposed a slightly different amendment. He would insert: “unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.” Murphy explained:

This amendment is intended to soften this additional burden for private sector employers in American Samoa. While still requiring proof of economic hardship, the language of the amendment makes it clear that the evidence necessary to justify special wage orders relates to economic and competitive conditions on the island which affect the employment situation for Samoans.<sup>104</sup>

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<sup>97</sup> Stella Guerra to William C. Brooks, Assistant Secretary for Employment Standards, DOL, August 7, 1990.

<sup>98</sup> *Congressional Record*, July 20, 1990, p. 18538.

<sup>99</sup> *Congressional Record*, July 26, 1990, p. 19769.

<sup>100</sup> *Congressional Record*, July 27, 1990, pp. 20097 and 20099-20100.

<sup>101</sup> *Congressional Record*, August 4, 1990, pp. 23403-23404.

<sup>102</sup> *Congressional Record*, October 18, 1990, p. 31021.

<sup>103</sup> *Congressional Record*, October 18, 1990, p. 31022. Representative Faleomavaega explained more fully the character of the measure (to “correct an inadvertent error”) in a statement for the *Record*. No dissenting views were expressed.

<sup>104</sup> *Congressional Record*, October 18, 1990, pp. 31023-31024.

Thus, the measure passed the House. The amended version required reconsideration by the Senate, and on October 27, the Senate agreed to the House-passed bill.<sup>105</sup> The measure was signed on November 15, 1990 (P.L. 101-583).

## **Hearings on the Samoan Minimum Wage (1991-1992)**

On November 26, 1991, Representative Murphy introduced a bill to amend the FLSA and, *through a three-year period*, “to bring the minimum wage in American Samoa up to the wage in effect in the United States.”<sup>106</sup>

As chairman of the Labor Standards Subcommittee, Murphy convened a hearing on June 3, 1992, on H.R. 4011—a bill intended “to stimulate debate and interest in the welfare and well-being of American Samoan workers” whom, he suggested, were “sometimes neglected and overlooked in the crush of other important national issues.” Our objective, he noted, is to bring the Samoan wage up to par with the federal rate “as rapidly as possible without curtailing employment.”<sup>107</sup>

### **Comments from Public Officials**

Governor Peter Tali Coleman’s testimony, submitted for the record, began: “The American Samoa Government vigorously opposes this bill.” It would “raise artificially the minimum wage of American Samoa” without taking into account the status of its “economic development.” Coleman urged an appreciation of “the uniqueness of our culture and its impact in the workplace ... “ Describing Samoa as “a group of very small islands with few natural and human resources,” he stated: “We are heavily dependent on ... the economic strength of our largest private sector employers, the tuna canneries. These two companies, StarKist and Van Camp, are responsible for much of our economic growth...”

Coleman added that he was “... especially troubled by the potential for *substantial* increases in unemployment.” (Emphasis in the original.) He continued:

We lack the diversity, capital, raw materials, skill levels, market or transportation systems of the United States. Geographically, the Territory is remote and isolated. Our natural resources are severely limited. (...) Tuna canning continues as our primary private sector employer. (...) Rather than improving the income levels of our people, thousands may be thrown out of work with no present job alternatives.

The SIC system “works well in American Samoa.” Under that system, “...statistical data and economic conditions are examined to determine whether the Territory’s minimum wages can be increased without substantially curtailing employment....” Coleman concluded: “This is simply an ill conceived piece of legislation. It fails to take into account how the present system is working or the tremendous adverse consequences that could result from enactment.”<sup>108</sup>

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<sup>105</sup> *Congressional Record*, October 27, 1990, pp. 36376 and 36392.

<sup>106</sup> *Congressional Record*, November 26, 1991, p. 35873.

<sup>107</sup> U.S. Congress, Hearing before the Subcommittee on Labor Standards, Committee on Education and Labor, *Hearing on H.R. 4011, Minimum Wage Rates in American Samoa*, 102<sup>nd</sup> Cong., 2<sup>nd</sup> Sess., June 3, 1992, pp. 1-2. (Cited hereafter as House Hearing, 1992.)

<sup>108</sup> House Hearing, 1992, pp. 4-9.

Delegate Faleomavaega's testimony, now, provided something of a contrast. "Since entering office, many of my constituents have related to me tales of woe about the rapidly increasing cost of living in American Samoa, which has far outstripped salary increases of average wage earners." These "cries for help" are "growing in number." "Perhaps," Faleomavaega suggested, the hearings will provide the answer to why American Samoa, unlike people in other US territories, "are told they must be satisfied with the substandard wages set by the Department of Labor's industry committees."

It may be, Faleomavaega suggested, that StarKist and Van Camp, "invaluable mainstays of our territory's economy, are overly sensitive." From "media reports," one hears of highly compensated executives whose corporate income is many times more than "the combined annual salaries of the 2,500 cannery laborers gutting tuna in Pago Pago." Such reports may be "wrong or outright lies" but "... perhaps the canneries should open their books and let their financial records speak for themselves." He observed: "Continuing to fail to divulge relevant financial information while pleading lack of funds for wage increases ... will only be seen as a sign of bad faith." Still, he suggested that it was a "... delicate economic balance that must be struck to keep our canneries in the territory."<sup>109</sup>

John R. Fraser, Deputy Wage/Hour Administrator, resisted any increase. "There was concern that the industry might respond to a larger increase by shifting production to lower-cost areas, possibly resulting in very significant reductions in employment in the American Samoan canneries." This was of special concern "... in an economy dominated by only two major employers and where there is scant evidence that the territory can significantly expand its employment base in other areas to provide additional job opportunities."<sup>110</sup>

Donald Senese, Deputy Assistant Secretary for Territorial and International Affairs, DOI, was equally candid. He recalled the abortive SIC No. 17 and suggested that H.R. 4011 was essentially "the same proposal." Detailed economic studies suggested, he stated, that "any large increase in minimum wages would encourage the tuna canneries to move at least some of their operations from American Samoa." In our view, he concluded, "... the artificial setting of wage rates at the U.S. minimum would be very likely to eliminate the tuna canning industry and, in turn, threaten to destroy the entire private sector economy of American Samoa."<sup>111</sup>

## **Comments from the Industrial Sector**

In over 30 years as an executive with StarKist, Robert W. Hetzler stated: "... I have seen the tuna industry change from a homebred domestic industry ... to the foreign-dominated business it is today." He added:

As this shift has occurred, the industry has suffered massive job losses, first in California and more recently in Puerto Rico, as tuna processors have moved to lower labor cost areas such as Thailand, Indonesia, and the Philippines. As costs to U.S. producers rise, compounding the cost advantages of foreign producers, the elimination of domestic production will

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<sup>109</sup> House Hearing, 1992, pp. 11-14.

<sup>110</sup> House Hearing, 1992, pp. 16-17.

<sup>111</sup> House Hearing, 1992, pp. 28-29. Senese, during the hearing and in the transcript, was identified, in error, as an official with the Department of Labor.

continue and even quicken, to the detriment of U.S. producers, their workers, and the communities in which they live.

With factories in Mayaguez, Puerto Rico, and Pago Pago, “the canneries provide the majority of private employment as well as create many additional jobs in service and support industries.” The current bill would have “a devastating effect on tuna operations in American Samoa” and StarKist “must emphatically oppose H.R. 4011.”<sup>112</sup>

Hetzler pointed to the alleged differences between American Samoa and elsewhere: the costs of environmental protection, the absence of routine living costs. “Most cannery workers do not pay rent, there is no property tax, clothing costs are minimal due to the single-season climate, and medical costs are covered nearly 100 percent by the government.” Some workers were not American: a “large majority of cannery workers in American Samoa are from Western Samoa....”<sup>113</sup>

The government, Hetzler stated, “continues to add costs to U.S. industry through labor regulations, environmental controls, and numerous other measures.” There is “simply no replacement industry” and “...no way to recover the cost increases in the market-place.” Further: “If government desires to place such wage and other controls on industry ... job and business transfers to foreign low cost areas will result....”<sup>114</sup>

Jose Munoz, president and CEO of Van Camp, argued that the “...typical tuna consumer is a very budget conscious homemaker, raising a family.” Although his firm had experimented with off-setting pricing, he had found “The consumer is unwilling to pay more for canned tuna to protect or to save U.S. jobs.” Munoz reviewed various initiatives and affirmed: “We all ultimately report to somebody, and in the tuna industry, we report to the consumer.” Even in the best of times, he suggested, the consumer “had been unwilling to pay an increase.”<sup>115</sup>

As the hearing closed, Representative Murphy announced that “we had two witnesses representing organized labor, both of whom have served on the special industry committees, who were unable to make today’s hearing. The record of this particular hearing,” he stated, “will be kept open in order to give them an opportunity ... to submit a written statement.”<sup>116</sup> No statement from labor appears.

## **Rejecting the Special Industry Committee System (2007)**

The Murphy proposal of 1992 was not adopted, and instead, the SIC system continued through the next several years with missions being sent to Samoa at two-year intervals. On May 10, 2007,

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<sup>112</sup> House Hearing, 1992, pp. 51-52.

<sup>113</sup> House Hearing, 1992, pp. 52-53. In subsequent testimony, p. 84, Jose Munoz, CEO of Van Camp, agreed that the majority of lower level employees are Western Samoans. “We work very closely with the government to hire American Samoans. Whenever there is a job opening, we advertise it on the local radio stations, we post it in the newspapers, and we work with the government training and job employment offices. Only when we have been unable to find any American Samoans to do the job do we then go to Western Samoans.” Conversely, John Fraser of DOL stated, p. 15, that “American Samoa’s unemployment rate has remained at about 13 percent over the last decade....”

<sup>114</sup> House Hearing, 1992, p. 53.

<sup>115</sup> House Hearing, 1992, pp. 65-66. See also *ibid.*, p. 74.

<sup>116</sup> House Hearing, 1992, p. 89.

Secretary of Labor Elaine Chao appointed a new commission.<sup>117</sup> The instructions were routine. An economic report on labor conditions in Samoa, traditionally the responsibility of the Department of Labor, had been prepared and was circulated.<sup>118</sup>

In the 110<sup>th</sup> Congress, George Miller became chair of the Committee on Education and Labor. Targeted for immediate action was H.R. 2, the “Fair Minimum Wage Act of 2007.” The bill (with some 222 cosponsors) had two provisions: (1) to raise the federal minimum wage, in steps, to \$7.25 per hour, and (2) to render the federal minimum wage applicable to the Commonwealth of the Northern Mariana Islands—to take place in steps through the next several years. No mention was made of American Samoa: its Special Industry Committee was, by this point, an established institution.

On January 10, 2007, H.R. 2 was called up in the House and, as a clean minimum wage bill, was adopted on a vote of 315 yeas to 116 nays. The measure was promptly referred to the Senate where it was also adopted: 94 yeas to 3 nays. But, in the Senate, several revenue-oriented proposals were added, posing a procedural problem. The result was a variety of votes and new bills until, in late May 2007, H.R. 2206 (P.L. 110-28) was adopted and signed by the President. The final bill was a compromise. Minimum wage constituted only a very small part of the composite bill—the rest being concessions to industry in exchange for support of the wage measure. In addition, American Samoa had been added to the bill on final passage.<sup>119</sup>

No immediate hearings had been held on application of the minimum wage to American Samoa. Some concern had been voiced, however, about not having Samoa included in a bill that included the Commonwealth of the Northern Mariana Islands. And, some suggested that a ‘special exemption’ had been instituted for the vested interests of the Samoan islands. Rather than contest the issue, Samoa was added, but with a slightly different procedure. Of the several classifications of industry in Samoa (now numbering about 18), each would be given a 50 cent increase in the minimum wage to take effect on July 25, 2007. Thereafter, a 50 cent increase by industry classification would be affected each year until the collective minimum wage of Samoa reached the standard national minimum wage: namely, \$7.25 per hour or whatever new wage might be imposed. Then, the insular minimum would rise (or fall) in tandem with the national rate.

Further, within eight months after enactment of P.L. 110-28, the Department of Labor was asked—under mandate from Congress (Section 8104)—to produce a study of the impact of the minimum wage for Samoa and for the CNMI. No action was associated with the report, which was purely advisory.<sup>120</sup>

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<sup>117</sup> *Federal Register*, May 15, 2007, pp. 27337-27338.

<sup>118</sup> U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Economic Report: The Minimum Wage in American Samoa, 2007*. 135 pp. The report was reasonably complete with various charts and tables representing employment in American Samoa—including a lengthy section on the tuna industry and pro and con arguments with respect to the minimum wage.

<sup>119</sup> See CRS Report RL33754, *Minimum Wage in the 110<sup>th</sup> Congress*, by (name redacted).

<sup>120</sup> See U.S. Department of Labor, Office of the Assistant Secretary for Policy, *Impact of Increased Minimum Wages on the Economies of American Samoa and the Commonwealth of the Northern Mariana Islands*, January 2008. 45 pp.

On June 13, 2007, with P.L. 110-28 in place, Secretary Chao “discharged the Industry Committee” that had recently been appointed and closed that aspect of the case of American Samoa.<sup>121</sup>

Meanwhile, Representative Faleomavaega introduced H.R. 5154, an amendment to the ‘U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.’ The bill would allow the several minimum wage increases to go into effect if, in the case of American Samoa, “the Secretary of Labor determines, based on the study required under section 8104 [the DOL study] and in consultation with the Secretary of the Interior and the government of American Samoa, that an increase under this subparagraph will not have an adverse impact on the economy of American Samoa....” New studies would be conducted at each two-year interval. The bill adds: “The Secretary of Labor shall make the determinations required ... each year at least 60 days before the scheduled increase in the minimum wage” and publish such determinations in the *Federal Register*.<sup>122</sup>

H.R. 5154 has been referred to the Committee on Education and Labor. No action has been reported.

## Concluding Summary

Throughout most of the United States, the minimum wage is a floor—the lowest wage that can legally be paid to covered workers. In American Samoa, the minimum wage tends to represent both a floor and a ceiling—though some rates do go up a few cents beyond the minimum. It appears that most fish processing workers in Samoa are paid at or near the minimum wage.

Through now fifty years (1956-2007), American Samoa had been under the Special Industry Committee structure. During the early years, that option included Puerto Rico and the Virgin Islands. However, during the late 1980s and into the 1990s, Puerto Rico and the Virgin Islands graduated to a full minimum wage leaving only American Samoa under the SIC umbrella. Where the two Caribbean territories have special characteristics that have allowed for the gradual elevation to a full minimum wage, American Samoa is in a somewhat different position. Samoa evidences no serious or sustained movement into an industrial world with a diversified economy.<sup>123</sup>

American Samoa is isolated: 2,300 miles southwest of Hawaii. The population, though modest by mainland standards, has been expanding: perhaps, now, to about 60,000 or a little above. Distances render major tourism unlikely. There may be some market for handicrafts, but hardly enough to sustain even native/resident workers under current marketing arrangements. In spite of a relatively high level of Samoan unemployment (somewhere in the teens during recent years),<sup>124</sup>

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<sup>121</sup> *Federal Register*, June 13, 2007, p. 32683.

<sup>122</sup> H.R. 5154 also applied to the CNMI.

<sup>123</sup> In *American Samoa Economic Advisory Commission: Transforming the Economy of American Samoa*. Vol. One: A Report to the President of the United States of America through the Secretary of the U.S. Department of the Interior, Honolulu, July 2002, p. 9, it is stated: “...the people of American Samoa make clear they will not support any economic development that ultimately undermines the tenets of *fa’asamoa*, the Samoan way of life.”

<sup>124</sup> The unemployment rate reached 13.6 percent in 1999, though it has fluctuated at somewhat lower levels. See *Economic Report: The Minimum Wage in American Samoa, 2003*. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, May 2003, p. 9.

workers often arrive from Western Samoa (a former British colony, now independent) to engage in fish canning and to replace those workers who migrate to the States. There would seem to be little interest in trade unionization and, it appears, the territory offers little reward for national labor federations.

In the early 1950s, the Department of the Interior sought a tenant for a vacant fish processing plant at Pago Pago. The search seems to have been difficult—but Van Camp Sea Foods took up the challenge. Soon, the firm was confronted with payment of a federal minimum wage. In order to sustain its insular existence, Van Camp sought two concessions from the Congress. *First*, the minimum wage for the island should be overturned, placing responsibility in the hands of a special industry committee under the Secretary of Labor (as had been done for Puerto Rico and the Virgin Islands). *Second*, it sought immunity from past underpayment of the minimum wage in Samoa. In each case, Congress concurred.

Gradually, the tuna industry has come to dominate the island's private sector as the primary employer. For workers in the canneries, there would seem little option but to take jobs at whatever wages the companies chose to pay (assuming that the SIC and the Congress would agree). A second option, less desirable by insular standards, would have been to migrate to the States or elsewhere.

With the first dispatch of a SIC to the islands in 1957, the native economy was assessed and a minimum wage was assigned—to be updated every year or two. At first, cannery workers were to be paid 38 cents an hour. Petroleum workers earned 45 cents an hour; shipping, 40 cents; and miscellaneous workers, 35 cents. The upward movement was slow until, in 1986, SIC No. 17 determined that the federal minimum wage (\$3.35 per hour) could be instituted without endangering employment. However, under pressure from the canneries and the insular government, the judgment of SIC No. 17 was overturned and Congress urged reestablishment of a lower rate.<sup>125</sup>

What some may have seen as a further setback occurred in 1990 when Congress enacted legislation reducing the level of evidence required in order for an employer to affirm his or her inability to meet a minimum wage payroll. Further, in 1992, legislation was introduced that would have increased the insular minimum, over time, to the full federal minimum rate. But, with industry in full opposition, the bill was not adopted. Since that time, little new has developed. In 2001, SIC No. 24 visited the islands and raised the wage for fish cannery workers from \$3.20 to \$3.26. No further increases in that category of work, it seems, have been instituted, though Committees were dispatched in 2003 and 2005 and would have met in 2007. Other rates of pay for insular workers have remained similarly low.

In 1992, John R. Fraser of DOL explained that there is “concern that the industry [tuna] might respond to a large increase [in the minimum wage] by shifting production to lower-cost areas” and, for that reason, “the department opposed” legislation to provide equality with the general federal rate.<sup>126</sup> Robert W. Hetzler of StarKist was more blunt. Were the tuna industry to disappear, “the entire Samoan economy will collapse, resulting in massive social welfare costs to the

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<sup>125</sup> See *Amerika Samoa: The Lutali Years, 1985-1986*. Privately published for the Samoan Government, p. 7.

<sup>126</sup> House Hearings, 11992, pp. 16-17.

government of American Samoa and the United States.” There is, he stated, “simply no replacement industry” and “...no way to recover the cost increases in the market-place.”<sup>127</sup>

That rationale, however justified by insular economic conditions, may not satisfy the workers in tuna and in other industries. “[M]y district,” observed Delegate Faleomavaega during hearings in 1992, “is the only jurisdiction where the American flag flies and Federal minimum wage law applies, yet our people ... are told they must be satisfied with the substandard wages set by the Department of Labor’s industry committees.”<sup>128</sup>

On May 15, 2007, Labor Secretary Elaine Chao announced appointment of a new Special Industry Committee to meet in Pago Pago in mid-June.<sup>129</sup> But, the work of the committee was interrupted by congressional action. In late May 2007, Congress adopted (and the President signed) the “U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act” (H.R. 2206, P.L. 110-28). Under the act, the SIC system was abolished and a new insular minimum wage was mandated—to be raised each year in fifty-cent increments until the new federal minimum rate, however specified, might be reached.

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<sup>127</sup> House Hearing, 1992, pp. 52-53.

<sup>128</sup> House Hearing, 1992, p. 12.

<sup>129</sup> Bureau of National Affairs, *Daily Labor Report*, May 15, 2007, p. A11.

# Appendix.

**Table A-I. Part A. Compilation of Wage Rates Established by the Various Special Industry Committees for American Samoa**  
(in dollars)

Date and Committee Numbers	FLSA Standard	Cannery Workers	Petroleum	Construction	Hospital and Education	Hotels	Retail Trades	Shipping (1) <sup>a</sup>	Shipping (2) <sup>a</sup>	Shipping (3) <sup>a</sup>	Misc. <sup>b</sup>
1957 (1)	1.00	.38	.45	—	—	—	—	.40	—	—	.35
1958 (2)	1.00	.52	.52	—	—	—	—	.50	—	—	.38
1959 (3)	1.00	.75	.75	—	—	—	—	.75	—	—	.55
1961 (4)	1.15	.90	.90	—	—	—	—	—	.50	.90	.70
1963 (5)	1.25	1.00	1.00	.70	—	—	—	—	.55	1.00	.80
1965 (6)	1.25	1.00	1.03½	.70	—	—	—	—	.55	—	.80
1967 (7)	1.40	1.05	1.15	.75	.62	.65	.80	—	—	1.10	.90
(2 <sup>nd</sup> year)	1.60	1.10	1.20	.80	.70	.70	.85	—	—	1.15	.95
1969 (8)	1.60	1.15	1.25	.84	.80	.75	.90	—	—	1.20	1.00
(2 <sup>nd</sup> year)	1.60	1.20	1.30	.88	—	.80	.95	—	—	1.25	1.05
1971 (9)	1.60	1.23	—	1.00	.90	.85	1.00	—	.60	—	—
(2 <sup>nd</sup> year)	1.60	1.28	—	1.08	1.00	.95	1.10	—	.70	1.30	—
1973 (10)	1.60	1.35	1.37	1.15	1.05	1.00	1.20	—	—	1.37	—
(2 <sup>nd</sup> year)	2.00	1.42	1.44	1.20	1.10	1.05	1.25	—	—	1.44	—
1974 (11)	2.00	—	—	—	—	—	—	—	—	—	—
Correction	2.00	—	—	—	—	—	—	—	—	—	—
1976 (12)	2.30	1.54	1.64	1.35	1.20	1.10	1.30	—	—	1.57	1.10
(2 <sup>nd</sup> year)	2.30	1.66	1.70	1.45	1.30	1.15	1.35	—	—	1.70	1.15
1978 (13)	2.65	1.81	1.82	1.52	1.35	1.22	1.42	—	—	1.82	1.25
(2 <sup>nd</sup> year)	2.90	1.96	1.95	1.60	1.42	1.30	1.49	—	—	1.95	1.35
1980 (14)	3.10	2.16	2.15	1.75	1.48	1.40	1.57	2.08	—	2.15	1.43

Date and Committee Numbers	FLSA Standard	Cannery Workers	Petroleum	Construction	Hospital and Education	Hotels	Retail Trades	Shipping (1) <sup>a</sup>	Shipping (2) <sup>a</sup>	Shipping (3) <sup>a</sup>	Misc. <sup>b</sup>
(2 <sup>nd</sup> year)	3.35	2.33	2.32	1.85	1.54	1.50	1.65	2.21	—	2.32	1.50
1982 (15)	3.35	2.55	2.53	2.00	1.60	1.60	1.75	2.42	—	2.53	1.59
(2 <sup>nd</sup> year)	3.35	—	—	2.15	1.66	—	1.85	—	—	—	1.67
1984 (16)	3.35	2.67	2.65	2.25	1.74	1.68	1.94	2.53	—	2.65	1.75
(2 <sup>nd</sup> year)	3.35	2.82	2.80	2.38	1.84	1.77	2.05	2.67	—	2.80	1.85
1986 (17, 1) <sup>c</sup>	3.35	3.35	3.35	2.93	2.19 (to 7/7/86)	2.12 (to 7/7/86)	2.35 (to 7/7/86)	3.22	—	3.35	2.30 (to 10/1/86)
		—	—	3.35	2.54 (to 1/5/87)	2.47 (to 1/5/87)	2.65 (to 1/5/87)	3.35	—	—	2.65 (to 4/1/87)
		—	—	—	2.89 (to 7/6/87)	2.82 (to 7/6/87)	3.00 (to 7/6/87)	—	—	—	3.00 (to 10/1/87)
		—	—	—	3.24 (to 1/4/88)	3.17 (to 1/4/88)	3.35	—	—	—	3.35
		—	—	—	3.35	3.35	—	—	—	—	—
1987 (17, 2)	3.35	2.82	2.80	2.38	1.84	1.77	2.05	2.67	—	2.80	1.85
1987 (18)	3.35	—	—	2.50	—	1.85	2.15	2.75	—	2.90	—
(2 <sup>nd</sup> year)	3.35	—	—	2.60	—	—	2.25	2.85	—	—	—
1991 (19)	4.25	2.87	2.91	2.70	2.34	2.03	2.34	2.96	—	3.12	1.92
(2 <sup>nd</sup> year)	4.25	2.92	3.03	2.81	2.43	2.11	2.43	3.08	—	3.25	2.00
1993 (20)	4.25	3.00	3.15	2.90	2.55	2.20	2.50	3.20	—	3.35	2.10
(2 <sup>nd</sup> year)	4.25	3.05	3.30	3.00	2.75	2.35	2.60	3.35	—	3.50	2.25
1995 (21)	4.25	—	3.45	3.05	3.00	2.45	2.70	3.60	—	3.65	2.35
(2 <sup>nd</sup> year)	4.75	3.10	3.55	3.20	3.10	2.60	2.80	3.70	—	3.75	2.45
1997 (22)	5.15	—	3.60	3.30	3.17	2.70	2.87	—	—	—	—
(2 <sup>nd</sup> year)	5.15	3.17	3.73	3.40	3.24	2.78	2.94	3.76	—	3.87	—
1999 (23)	5.15	—	—	3.45	—	—	2.97	—	—	3.92	—
(2 <sup>nd</sup> year)	5.15	3.20	3.78	3.50	—	—	3.01	3.81	—	3.97	2.50

Date and Committee Numbers	FLSA Standard	Cannery Workers	Petroleum	Construction	Hospital and Education	Hotels	Retail Trades	Shipping (1) <sup>a</sup>	Shipping (2) <sup>a</sup>	Shipping (3) <sup>a</sup>	Misc. <sup>b</sup>
2001 (24)	5.15	3.26	3.82	3.55	3.29	2.82	3.06	3.87	—	4.03	2.54
(2 <sup>nd</sup> year)	5.15	—	3.85	3.60	3.33	2.86	3.10	3.92	—	4.09	2.57
2003 (25)	5.15	—	—	—	—	—	—	—	—	—	—
2005 (26)	5.15	—	—	—	—	2.93	—	—	—	—	2.63
(2 <sup>nd</sup> year)	5.15	—	—	—	—	3.00	—	—	—	—	2.70

**Sources:** Wage rates are drawn from the *Federal Register* with each SIC entry.

**Notes:** This table, which covers a widely ranging series of fields, is broken into two parts because of the number of columns. Some of the 21 fields or occupations analyzed appear for a time and then are absent before re-emerging, as is the case of some components of “Shipping.” Others emerge later, are active for a period and then disappear, as in “Laundry, Dry Cleaning.” The table begins with 1957 and moves forward to 2005.

- a. Through the years, some variation may appear with respect to certain worker categories. The several classifications of workers under the title of “shipping,” for example, seem to fluctuate over time making precise definition uncertain. Each classification has some bearing upon transportation and/or longshore workers. However, workers dealing with “petroleum,” under certain conditions, may fall into a separate category.
- b. The classification of “miscellaneous” seems to be a catch-all for non-governmental occupations that are not listed separately. The classification of “government employees” serves a similar function for its sector.
- c. In 1986, the SIC set rates that would, eventually, reach those of the general federal FLSA standard. In 1987, at the mandate of the Congress, the rates were set back to the lower wage levels in effect in 1985.

**Table A-2. Part B. Compilation of Wage Rates Established by the Various Special Industry Committees for American Samoa**  
(in dollars)

Date, Committee	FLSA Standard	Laundry, Dry Cleaning	Bottling	Printer, Publishing	Wholesale Warehousing <sup>a</sup>	Finance, Insurance	Travel & Transport	Government Employees	Ship Maintenance	Shipping (4) <sup>b</sup>	Garment Workers	Publishing Industry
1957 (1)	1.00	—	—	—	—	—	—	—	—	—	—	—
1958 (2)	1.00	—	—	—	—	—	—	—	—	—	—	—
1959 (3)	1.00	—	—	—	—	—	—	—	—	—	—	—
1961 (4)	1.15	—	—	—	—	—	—	—	—	—	—	—
1963 (5)	1.25	—	—	—	—	—	—	—	—	—	—	—
1965 (6)	1.25	—	—	—	—	—	—	—	—	—	—	—
1967 (7)	1.40	—	—	—	—	—	—	—	—	—	—	—
(2 <sup>nd</sup> year)	1.60	—	—	—	—	—	—	—	—	—	—	—
1969 (8)	1.60	.85	.95	.95	—	—	—	—	—	—	—	—
(2 <sup>nd</sup> year)	1.60	—	—	—	—	—	—	—	—	—	—	—
1971 (9)	1.60	—	1.00	1.00	1.10	1.10	—	—	—	—	—	—
(2 <sup>nd</sup> year)	1.60	.90	1.10	1.10	1.20	1.20	—	—	—	—	—	—
1973 (10)	1.60	.95	—	1.16	—	1.27	—	—	—	—	—	—
(2 <sup>nd</sup> year)	2.00	1.00	1.15	1.22	—	1.34	—	—	—	—	—	—
1974 (11)	2.00	—	—	—	—	1.27 (cor)	—	—	—	—	—	—
(2 <sup>nd</sup> year)	2.10	—	—	—	—	1.34	—	1.15	—	—	—	—
1976 (12)	2.30	—	1.20	1.30	—	1.45	1.45	1.20	—	—	—	—
(2 <sup>nd</sup> year)	2.30	—	1.25	1.40	—	1.60	1.50	1.30	—	—	—	—
1978 (13)	2.65	1.05	1.32	1.50	—	1.70	1.57	1.40	—	—	—	—
(2 <sup>nd</sup> year)	2.90	1.10	1.39	1.60	—	1.80	1.64	1.50	—	—	—	—
1980 (14)	3.10	1.15	1.49	1.72	—	1.93	1.76	1.60	—	—	—	—
(2 <sup>nd</sup> year)	3.35	1.20	1.59	1.84	—	2.05	1.88	1.70	—	—	—	—
1982 (15)	3.35	1.26	1.69	1.99	—	2.18	1.98	1.79	—	—	—	—

Date, Committee	FLSA Standard	Laundry, Dry Cleaning	Bottling	Printer, Publishing	Wholesale Warehousing <sup>a</sup>	Finance, Insurance	Travel & Transport	Government Employees	Ship Maintenance	Shipping (4) <sup>b</sup>	Garment Workers	Publishing Industry
(2 <sup>nd</sup> year)	3.35	1.32	1.84	2.09	—	2.31	2.13	—	—	—	—	—
1984 (16)	3.35	1.38	1.93	2.19	—	2.42	2.23	1.87	—	—	—	—
(2 <sup>nd</sup> year)	3.35	1.46	2.04	2.31	—	2.56	2.35	1.97	—	—	—	—
1986 (17, 1) <sup>c</sup>	3.35	1.95 (to 7/7/86)	2.35 (to 7/7/86)	2.86 (to 1/7/86)	—	3.11 (to 1/7/86)	2.90 (to 1/7/86)	2.30 (to 10/1/86)	—	—	—	—
		2.30 (to 1/5/87)	2.65 (to 1/5/87)	3.35	—	3.35	3.35	2.65 (4/1/87)	—	—	—	—
		2.65 (to 7/6/87)	3.00 (to 7/6/87)	—	—	—	—	3.00 (10/1/87)	—	—	—	—
		2.95 (to 1/4/88)	3.35	—	—	—	—	3.35	—	—	—	—
		3.35	—	—	—	—	—	—	—	—	—	—
1987 (17, 2)	3.35	1.46	2.04	2.31	—	2.56	2.35	1.97	—	—	—	—
1987 (18)	3.35	—	2.15	2.40	—	2.61	—	—	2.50	—	—	—
(2 <sup>nd</sup> year)	3.35	—	2.25	2.50	—	2.71	—	—	—	—	—	—
1991 (19)	4.25	—	2.34	2.60	—	2.82	2.44	2.17	2.60	—	—	—
(2 <sup>nd</sup> year)	4.25	—	2.43	2.70	—	2.93	2.54	—	2.70	—	—	—
1993 (20)	4.25	—	2.55	2.80	—	3.05	2.65	—	2.80	—	—	—
(2 <sup>nd</sup> year)	4.25	—	2.75	2.95	—	3.25	2.85	2.37	2.95	—	—	—
1995 (21)	4.25	—	2.85	3.05	—	3.45	3.00	—	3.00	3.50	—	—
(2 <sup>nd</sup> year)	4.75	—	2.95	3.20	—	3.60	3.10	2.45	3.10	3.62	—	—
1997 (22)	5.15	—	3.01	3.25	—	3.69	3.16	—	3.15	—	2.45	3.30
(2 <sup>nd</sup> year)	5.15	—	3.07	3.35	—	3.78	3.22	2.57	3.20	3.72	2.55	3.45
1999 (23)	5.15	—	—	3.37	—	3.83	—	2.63	—	—	—	3.48
(2 <sup>nd</sup> year)	5.15	—	3.10	3.40	—	3.88	—	2.69	3.25	3.77	2.60	3.53
2001 (24)	5.15	—	3.15	3.45	—	3.94	3.27	2.73	3.30	3.83	2.64	3.58
(2 <sup>nd</sup> year)	5.15	—	3.19	3.50	—	3.99	3.31	2.77	3.34	3.88	2.68	3.63

Date, Committee	FLSA Standard	Laundry, Dry Cleaning	Bottling	Printer, Publishing	Wholesale Warehousing <sup>a</sup>	Finance, Insurance	Travel & Transport	Government Employees	Ship Maintenance	Shipping (4) <sup>b</sup>	Garment Workers	Publishing Industry
2003 (26)	5.15	—	—	—	—	—	—	—	—	—	—	—
2005 (27)	5.15	—	—	—	—	—	3.39	2.84	3.42	—	—	—
(2 <sup>nd</sup> year)	5.15	—	—	—	—	—	3.48	2.91	3.51	—	—	—

**Sources:** Wage rates are drawn from the *Federal Register* with each SIC entry.

- a. Wholesale and warehousing were merged into retail trades.
- b. Through the years, some variation may appear with respect to certain worker categories. The several classifications of workers under the title of “shipping,” for example, seem to fluctuate over time making precise definition uncertain. Each classification has some bearing upon transportation and/or longshore workers. However, workers dealing with “petroleum,” under certain conditions, may fall into a separate category.
- c. In 1986, the SIC set rates that would, eventually, reach those of the general federal FLSA standard. In 1987, at the mandate of the Congress, the rates were set back to the lower wage levels in effect in 1985.

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