CHAPTER I

TRIPARTITE WAGE DETERMINATION IN PUERTO RICO

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The industry committee is a device adopted by Congress for dealing with some of the problems associated with minimum wage legislation for Puerto Rico.[1] The Fair Labor Standards Act of 1938 (FLSA) made no special provisions for Puerto Rico, and the attempt to apply the 25-cents-per-hour minimum nearly wiped out the needlework industry on the Island. An amendment adopted in 1940 permitted the establishment of lower minimum wages in Puerto Rico than the statutory minimum for the mainland through the recommendations of industry committees. The industry committee program then established has been continued with modifications up to the present time.

The FLSA provides that these industry committees shall be composed of residents both of Puerto Rico and the U.S. outside of Puerto Rico and shall be tripartite in composition. Employer and employee representatives are to be drawn from the industry to be investigated by the committee and in their selection due regard must be given to the geographical region in which the industry is carried on.

Prior to the 1955 amendments to the Act, there was no statutory requirement with respect to frequency of committee action. A minimum wage established following committee recommendations might remain unchanged for several years. The 1955 amendments required annual review, and since June 1, 1958,

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1 Although industry committees are used for setting wages in the Virgin Islands and Samoa as well as in Puerto Rico, we shall consider their operation only in Puerto Rico.

there have been biennial reviews. The 1955 amendments also increased the responsibilities of the committees in an important respect. Addressing Special Industry Committee No. 19-A on January 9, 1956, Mr. Newell Brown, at that time Administrator of the Wage and Hour and Public Contracts Divisions, said:

> The responsibility of this committee is much greater than has been true for committees which some of you have served on in the past. Prior to the Fair Labor Standards Amendments of 1955, the industry committees made recommendations to the Administrator. The Administrator then reviewed the evidence before the committee, held hearings on the recommendations and decided whether or not the recommendations should be adopted. The revised law and regulations provide that upon receipt of your recommendations, the Administrator will publish them in the Federal Register and will at the same time issue an order putting the recommendations into effect 15 days after publication. He has no authority to approve or disapprove your recommendations.

The 1961 amendments introduced a further complication which is presently a source of considerable controversy. The Act continued to make provision for minimum wages in Puerto Rico that are lower than the statutory minimum for the mainland where such lower minima are established pursuant to recommendations of industry committees. The amendments, however, provided that minimum wages in industries in Puerto Rico were to be increased 15 percent when the minimum on the mainland went from $1.00 to $1.15 and increased an additional 10 percent when the minimum on the mainland went from $1.15 to $1.25. These automatic increases might be postponed in hardship cases. The Act provided for a petition by an industry to the Secretary of Labor for appointment of a special review committee, and authorized the Secretary to postpone the automatic increases indefinitely should that committee find that such increases would cause grave hardship and substantial unemployment. Thus, since the 1961 amendments, the law has provided for two types of industry committees with slightly different functions—the industry committee whose obligation it is to recommend the highest minimum wage (not in excess of the statutory minimum) that will not cause substantial unemployment and the committee whose function it is to determine whether the automatic increases provided for by the Act will cause undue hardship and substantial unemployment.

Procedure of Industry Committees

Industry committee hearings, while informal, follow somewhat stricter rules than is customary in arbitration proceedings. A recurring difficulty should be mentioned. The regulations provide for participation at the hearing by interested parties who will have the right to present evidence and to cross-examine witnesses. Among conditions that must be met to qualify as an interested party is the filing of a prehearing statement that includes a statement of position, an outline of the evidence that will be introduced in its support, and all written data that will be presented to the committee. Moreover, if the party intends to plead inability to pay higher minimum wages, it has the responsibility of submitting tangible objective evidence in support of that position as part of the prehearing statement, including unabridged profit-and-loss statements for a representative period of time. On committees upon which I have served, many employers whom the committee was anxious to hear did not qualify as interested parties. As a result they had no right to present evidence. This forced the committees to make what at best could only be an unsatisfactory decision. They could refuse to hear these employers and thus deprive themselves of whatever evidence the employers might be willing to present; or they could invite the employers to appear as the committees' own witnesses, and permit them to enjoy the most important of the rights of an interested person (that of presenting evidence) without meeting the conditions required by the regulations for such participation.

There are some who think that the committees should refuse to hear such persons and should draw appropriate inferences from the fact that having had the opportunity to qualify as interested parties they deliberately failed to do so. The usual assumption behind such thinking is that an employer refuses to present a comprehensive prehearing statement only because he wants to withold information from the committee. My impression is that many employers are quite ready to disclose detailed information about their business to the committees, or at least to the public members of the committees. They are unwilling to impart this information to their competitors. What is presented to the committees becomes a matter of public record, and the employer

who appears to testify before an industry committee may find competitors both in the audience and on the committee itself. Many of the companies operating in Puerto Rico are branches or subsidiaries of mainland firms, and few of them will readily consent to cross-examination by or before their competitors on the basis of an unabridged profit-and-loss statement or other evidence that might disclose what they consider valuable evidence for a competitor.

Most committees, I think, come to terms with reality and accept whatever useful evidence an employer is willing to produce, even going so far as to suggest to him ways of presenting evidence that will give the committee solid information without revealing data that the employer wishes to keep from competitors.

The committees work on a tight schedule. A typical committee may take evidence for three days, spend a fourth day visiting plants, and go into executive session and work out its recommendations on the fifth day. They lack a transcript and, as the hearings normally run throughout the day, committee members can devote only the evening hours to a review of the evidence. The question is sometimes asked whether under such circumstances a committee, as it deliberates on its recommendations, can have more than a broad general impression of the evidence.

My belief is that the public members have an adequate grasp of the relevant evidence and that some of the employer and labor members, because of their close association with the industry, may be even more familiar with it. Well in advance of the hearing all committee members receive copies of the *Economic Report,* prepared by the Division of Wages and Hours, and they usually come to the hearing with considerable information about the economics of the industry and some well-defined questions. The relevant evidence, after all, focuses on a rather narrow question—what is the highest minimum wage that will not substantially curtail employment? Early in the hearing the committee members form some tentative judgments: a minimum wage as high as "A" would not, a minimum wage as high as "B" would curtail employment. The appropriate minimum must fall between the limits, "A" and "B". Early in the hearing this range may be quite wide. As the evidence is developed throughout the hearing,

the committee members revise their judgments and the range tends to narrow. It has been my impression that public members of some committees on which I have served may have felt that the evidence available to them was barely adequate to sustain a finding; they did not, however, feel that they had an inadequate grasp of it.

Plant visits, which some people regard as boondoggles or junkets, are sometimes a source of extremely valuable information. When, for instance, one of the contentions raised during the hearing is that Puerto Rican workers are less efficient than mainland workers, a visit to the plant may be worth days of oral testimony. There usually are among employer and employee members of the committee, and occasionally among the public members, people who have had considerable experience in mainland operations in the industry. They know, for instance, what typical scrap ratios are. They have a good idea of the work pace that prevails on the mainland. They may have a reasonably good idea of the normal percentage of rejects at final inspection. Wide differences in efficiency between Puerto Rican and mainland operations, if they exist, become matters of observation. It may surprise some of you that a committee member would go outside the record made at the hearing and rely on his own observations. There is nothing at all improper in this procedure. The statute directs the committee to make an investigation. Hearings are one method of conducting an investigation; plant visits are another.

It is unnecessary to point out to this group that the process of wage determination by a committee bears little relation to solving a set of equations whose coefficients are supplied by the evidence. The evidence presented to committees, even in the best of circumstances, is rarely so precise and detailed as to yield pinpointed answers. Even if a committee had detailed cost and profit data and other tangible evidence, it would still have to deal with imponderables. Such data record past experience; but the committee has to determine the extent to which this past offers reliable guides for decisions that relate to the future.

Moreover, in a post-Keynesian world it is readily recognized that expectations are at least as important as past performance for determining levels of business activity. The committees must

make judgments about entrepreneurial response to wage changes. A particular recommendation, for example, may have an adverse effect upon employment, not because it establishes a level of cost so high that an employer cannot operate profitably, but because the employer, taking the committee's action as indicative of continued rapid upward movement of wages through the action of future committees, may decide to curtail operations. The same recommendation may stimulate another employer to introduce managerial reforms that will effect a reduction of labor costs. Such rationalization, of course, can of itself lead to a substantial reduction in employment, but the amount of the employment loss cannot be brought within the area of demonstrably reliable measurement. Thus the committees must deal with intangibles and weigh imponderables—procedures that, like value judgments, are not scientific.

The committees do not have the leisure for studying the evidence that arbitrators normally enjoy. I feel, however, that their grasp of the evidence is adequate and that a longer study would probably not yield significantly better results. This opinion rests in part upon a judgment about the kind of conclusions the evidence usually tends to support. It is also the result of some experience with the committees' processes of deliberation. The public members, as they caucus prior to the executive session, usually find that there is some difference of opinion among them as to what the appropriate minimum should be. The low man, for example, may have concluded that the minimum wage should be $1.10, but is willing to go as high as $1.15. The high man may feel that the minimum should be $1.20 but is willing to support a wage as low as $1.15. The third man may feel that the minimum should be $1.15 but may be willing to support a figure slightly higher or lower than that amount. It is reasonably certain that $1.15 is the amount upon which the public members will agree, and it is somewhat doubtful that longer study of the evidence would have brought them to any different composite judgment.

When the entire committee meets in executive session, the labor members may be found supporting a wage much in excess of $1.15, and the employer members a wage well below that amount. The wage finally recommended by the committee, whatever it is, will reflect a composite judgment achieved through a

process of compromise. I would concede that often the committees' recommendations would be better if they had more evidence. I do not think, however, that the pace at which the committees work prevents their grasping the significance of the evidence that is made available to them.

Committees and the Policy of the Fair Labor Standards Act

An important question to which we shall give much less attention than it deserves asks whether the committees carry out the policy of the FLSA. That policy and the duty of the committees to implement it is succinctly stated by the Administrator, Wage and Hour and Public Contracts Divisions, in the foreword to the *Economic Report* on each industry:

> It is the policy of the Fair Labor Standards Act with respect to industries and enterprises in Puerto Rico engaged in interstate commerce or in the production of goods for interstate commerce to reach as rapidly as is economically feasible, without substantially curtailing employment, the objective of a minimum wage of $1.25 an hour. . . . It will be the duty of this committee, upon completion of the investigation to recommend the highest minimum wage which it determines will not cause substantial curtailment of employment in the industry or give the industry a competitive advantage over industry located elsewhere in the United States.

Whether industry committees have generally recommended the highest minimum wages that will not substantially curtail employment is a question that cannot, I submit, be placed beyond debate. Two considerations, however, incline me to the belief that minimum wages have been increased about as fast as was economically feasible: the rate of increase in the minimums, and what I shall call the biases of the industry committees.

From 1954 to 1964, as shown in Table I, average hourly employee earnings increased 136 percent in the manufacturing plants sponsored by the Economic Development Administration (EDA) of Puerto Rico. During the same period average earnings in manufacturing on the mainland increased 40 percent. Despite this rapid increase average earnings in manufacturing in Puerto

TABLE I

AVERAGE HOURLY EARNINGS OF PRODUCTION WORKERS IN EDA-SPONSORED MANUFACTURING PLANTS IN PUERTO RICO AND IN U.S. MANUFACTURING

1954–1964

	EDA Plants in Puerto Rico		*All Manufacturing in United States*	
Year	*Hourly earnings*	*Percent increase over previous year*	*Hourly earnings*	*Percent increase over previous year*
1954	$0.505		$1.81	
1955	.607	20	1.91	5
1956	.720	19	2.02	5
1957	.830	15	2.09	3
1958	.884	7	2.14	2
1959	.935	6	2.21	3
1960	.983	5	2.30	4
1961	1.031	5	2.34	2
1962	1.091	6	2.39	2
1963	1.159	6	2.47	3
1964	1.193	3	2.53	2
Percentage Increase 1954–1964		Puerto Rico 136 percent		United States 40 percent

Source: Puerto Rico, Economic Development Administration, *Annual Statistical Report of EDA Manufacturing Plants;* U.S., Bureau of Labor Statistics.

Rico in 1964 were but 47 percent of average earnings in manufacturing on the mainland.

Comparisons of average earnings in all manufacturing in Puerto Rico and in the U.S., however, have little significance as indicators of relative labor costs in the two areas. Most manufacturing in Puerto Rico takes place in highly competitive nondurable goods industries. Typically, these industries have high labor-to-capital ratios and pay relatively low wages. Four such industries—tobacco, textile mill products, apparel, and leather and leather products—account for 46 percent of all manufacturing employment in Puerto Rico; they account for 4.6 percent of manufacturing employment on the mainland. Even if Puerto Rican and mainland earnings were equal in the same industries, average hourly earnings in all

manufacturing would be lower in Puerto Rico than on the mainland; the greater importance of low-wage industries in Puerto Rico would make for lower average earnings.

More significant than a comparison of Puerto Rican and mainland earnings in all manufacturing would be a comparison of earnings in identical industries. Such a comparison is shown in Table II for the four industries mentioned above.

TABLE II

AVERAGE HOURLY EARNINGS IN SELECTED INDUSTRIES: PUERTO RICO AS PERCENT OF U.S. MAINLAND

1960 and 1964

Industry	*1960*	*1964*
Tobacco	36.6	45.8
Textile Mill Products	57.8	62.8
Apparel	51.9	60.7
Leather and Leather Products	44.8	52.9
Average [2]	48.9	57.3

Source: Puerto Rico, Commonwealth of Puerto Department of Labor, Bureau of Labor Statistics, *Employment, Hours and Earnings in the Manufacturing Industries in Puerto Rico,* 1965; U.S., U.S. Bureau of Labor Statistics, *Employment and Earnings.*

Two points are significant about the data in Table II. The first is that during the five-year period 1960-64 average earnings in the industries shown rose about 16 percent faster in Puerto Rico than on the mainland. The second is that in these industries employee earnings in Puerto Rico were 57 percent of such earnings on the mainland, as contrasted with a ratio of 47 percent when the comparison was based on earnings in all manufacturing.

Competition, however, does not take place on the basis of averages. The Puerto Rican manufacturer competes not merely with the mainland establishment where employee earnings are as high as the average for the industry; he competes also, and in some instances primarily, with establishments where earnings are

2 Weights: Ratios of employment in the industries to total manufacturing employment in Puerto Rico, 1964.

at the lower end of the range. Data are not available that permit comparison of employee earnings between competing Puerto Rican and mainland establishments. There are data, however, that show employee earnings for particular industries in individual states. Mr. Amadeo I. Francis, Economic Advisor to the Economic Development Administration of Puerto Rico, testifying before the Subcommittee on Labor, Committee on Labor and Public Welfare, U.S. Senate, presented some interesting data on earnings in the Apparel Industry for Puerto Rico and some Southern States. These data are reproduced in part in Table III, and are particularly relevant to the matter we are considering. The Apparel Industry accounts for 27 percent of Puerto Rican manufacturing employment, and it is also important in Southern States. In 1964, 56.8 percent of all production workers in the Men's and Boys Shirts (except Work Shirts) and Nightwear Industry, for example, were found in Southeastern States.[3]

TABLE III

EMPLOYEE EARNINGS IN THE APPAREL INDUSTRY: PUERTO RICAN EARNINGS AS A PERCENTAGE OF EARNINGS ON THE U.S. MAINLAND AND IN SELECTED STATES

October 1956 and October 1965

	October 1956	*October 1965*
U.S. Mainland	40.9	61.8
Alabama	53.0	77.2
Arkansas	52.1	78.2
Florida	45.9	72.8
Georgia	50.4	75.7
Louisiana	50.4	78.2
Mississippi	53.0	79.3
North Carolina	52.1	77.7
South Carolina	53.0	77.7
Virginia	50.8	75.2

Source: Supplemental statement of Amadeo I. D. Francis, Economic Advisor to the Administrator, Economic Development Administration of the Commonwealth of Puerto Rico, before the Subcommittee on Labor, Committee on Labor and Public Welfare, U.S. Senate, presented at San Juan, Puerto Rico, January 1966.

[3] U.S. Bureau of Labor Statistics, *Industrial Wage Survey, Men's and Boy's Shirts and Nightwear Industry*, Bulletin No. 14571.

rate of about 1 percent per year; from 1960 to 1964 employment increased at about 5 percent per year. If the latter trend continues, unemployment will remain at about the 1964 level, that is, at about 11 percent of the labor force. If the former trend is repeated, a group equivalent to about 5 percent of the present labor force must migrate annually or join the ranks of the unemployed. Under the most favorable circumstances that experience leads us to expect, Puerto Rico can look forward to continued substantial unemployment.

Puerto Rico needs a wage policy that will stimulate job creation. That is not the policy of FLSA.

Discussion—

DAVID M. HELFELD*

I find myself substantially in agreement with Leo Brown's general conclusion that industry committees on the whole have effectuated the policy entrusted to them by the Fair Labor Standards Act. Where we differ is in the area of procedure and the need for legislative amendment. I would argue that the industry committee process can be appreciably improved and protected against error through statutory amendments and changes in administrative practices. Although I would agree with Leo Brown's final statement that the policy of the Fair Labor Standards Act is not specifically concerned with stimulating the creation of new jobs, I am somewhat puzzled by his remark that "Puerto Rico needs a wage policy that will stimulate job creation."

If maximizing employment opportunities is viewed as an absolute, the argument might be advanced that wages should be frozen, or at most should be allowed to rise at a rate which would neither endanger any existing jobs nor discourage the creation of new ones. Whatever merit such a proposal might have in the realm of theoretical discourse, it is patently in conflict with economic and political realities. Given the fact that Puerto Rico is a fully integrated part of the American economy, it is difficult to visualize Congress exempting Puerto Rico completely from

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real output increasing 78 percent and real per capita income 70 percent during these years, we should have expected a marked rise in employment. The decade was also a period of rapidly rising wage rates, and the simultaneous decline in employment was not mere coincidence. Rising wages after 1955 stimulated rationalization of production and improved utilization of labor. Professor Lloyd G. Reynolds, using a technique whose results, he notes, must be interpreted with caution, has estimated that between 1954 and 1958 rationalization led to a loss of 29,000 jobs in the manufacturing sector alone.[4] This estimate is not inconsistent with the fact that between 1957 and 1964 real manufacturing output increased more than 90 percent, while manufacturing employment increased 43 percent. During the same period Commonwealth net income in terms of dollars of constant value increased 73 percent, while industrial employment increased 23 percent and nonagricultural employment increased about 37 percent. These data are suggestive of considerable rationalization under the pressure of rising wages.

As it looks to the future, Puerto Rico sees a formidable problem of providing jobs. Since the virtual cessation of migration in 1960, the labor force has been increasing rapidly. With an increase in the labor force of 110,000 between 1960 and 1964 and of 41,000 from 1963 to 1964, it is not unreasonable to expect annual accretions of 30,000 during the next few years. From 1960 to 1965 operation "Bootstrap" (the popular name for the EDA program) has added 6,000 manufacturing jobs annually. Mr. A. I. D. Francis, Economic Advisor to EDA, quotes an estimate that each new Bootstrap job creates 1.85 jobs in other sectors of the economy—in trade, finance, transportation, construction, etc.[5] Thus in recent years Bootstrap operations may have added 17,000 new jobs annually. This level of job creation, however, is far below the expected increase in the labor force.

Attempts to forecast future employment on the basis of the past are inconclusive. From 1950 to 1960 jobs disappeared at the

[4] Lloyd G. Reynolds, "Wages and Employment in a Labor-Surplus Economy," *American Economic Review*, March 1965, LV. 34.

[5] Statement of Amadeo I. D. Francis, Economic Advisor to the Administrator, Economic Development Administration of the Commonwealth of Puerto Rico, before the Subcommittee on Labor, Committee on Labor and Public Welfare, U.S. Senate, Presented at San Juan, Puerto Rico, January 3, 1966 (mss., p. 16).

TABLE V

EMPLOYMENT STATUS OF CIVILIAN POPULATION BY SEX, PUERTO RICO, 1950–1963

[In thousands of persons, 14 years and over]

	1950			1951			1960			1963		
	Total	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*	*Male*	*Female*
TOTAL	1287	638	649				1383	628	755	1513	714	799
Labor Force	686	507	179	713	508	205	625	455	170	715	527	188
Employed	596	434	162	604	431	173	543	392	151	627	453	174
Working				581	417	164	510	373	137			
35 hrs. or more				326	255	71	342	258	84			
Less than 35 hrs.				255	162	93	168	115	53			
Unemployed	88	71	17	110	78	32	82	63	19	88	74	14
Participation Rate (%)	53	79.5	27.6				45.2	72.4	22.5	47.3	73.8	23.5
Unemployment Rate (%)	12.8	14.0	9.5	15.4	15.3	15.6	13.1	13.8	11.2	12.3	14.0	7.4

Source: Puerto Rico Department of Labor, Bureau of Labor Statistics.

labor costs. But wage rates in Puerto Rico are determined neither by the market nor by collective bargaining. With a continuing and substantial labor surplus, the labor market would not support rapidly rising wages. The labor movement, although it is making headway, is still weak. Minimum wage legislation for some years has been and continues to be the effective force establishing wage levels; it is directly responsible for the sharp upward movement of wages in recent years.

What has been the effect of this wage policy on employment? Table V (p. 18) indicates that the employment situation changed little during the 13-year period 1950-63. Unemployment was 88,000 in both the first and the last year of this period. The unemployment rate was 12.8 in 1950 and 12.3 in 1963. This apparent stability, however, offers little ground for reassurance. Two phenomena made it possible: the removal of 500,000 from the Puerto Rican labor force by migration and the equivalent removal of 91,000 by a drop in the labor force participation rate from 53 to 47. Had 53 percent of the population of labor force age (the labor force participation rate in 1950) entered the labor force in 1963, the labor force in that year would have been 806,000. It was 715,000. Of this difference, increased school enrollment of people of labor-force age may account for about 27,000, and increased population age 65 and over may account for 10,000. Large numbers may be accounted for by a higher concentration of labor force participants among the migrants than among those who remained on the Island. It is certain, however, that involuntary withdrawal from the labor market by those who could not find jobs was also important in explaining the drop in the labor force participation rate. Many home needleworkers and tobacco stemmers in rural areas did not look for jobs when their work ceased in the 1950s, and by labor force definition they were statistically removed from both the labor force and the ranks of the unemployed. This fact may account for 40,000 withdrawals from the labor force during the period we are considering. Were these 40,000 counted as unemployed the unemployment rate for 1963 would be, not 12.3, but 17.0.

Particularly significant is the decline in employment from 596,000 in 1950 to 543,000 in 1960, a drop of 9 percent. With

$614 million in 1950, agriculture accounted for $149 million, or 24 percent, while manufacturing accounted for $89 million, or 14 percent. By 1964 the situation was reversed. Of a Commonwealth net income that had increased 150 percent in terms of physical output, agriculture accounted for 10 percent and manufacturing for 23 percent. Real output of agriculture had changed little in the fourteen years, while real manufacturing output had increased threefold.

This remarkable achievement has been the result of planned development. Its beginnings date from the creation in 1942 of the Puerto Rico Industrial Development Corporation (PRIDCO), the Puerto Rico Planning Board, and the Government Development Bank. PRIDCO was created to develop needed new industries. It was believed that this could be done by setting up government-owned plants in key industries that would provide essential materials and thus attract and stimulate private industry. It soon became clear, however, that government funds would be inadequate to provide the capital required for the industrial growth needed. The PRIDCO-owned factories were sold to private investors and PRIDCO's funds were used thereafter for two major purposes: (1) to construct facilities for lease or sale to private industry; and (2) to engage in intensive promotion to attract industries and to develop tourism. The government exempted from corporate and property taxes for a period of ten years enterprises that represented new industrial capital. By 1950 the basic structure of the present economic development program had been created. On February 17, 1950, Governor Muñoz Marin proposed, and on May 14, 1950, the legislature approved, the creation of the EDA. This reorganization established under one authority the various preexisting agencies that had been active in promoting industrial development.

However, of two matters of paramount interest to prospective investors—taxes and production costs—Puerto Rico controls but one. As Federal taxes do not apply in Puerto Rico, the Commonwealth may adopt whatever tax incentives it considers desirable. But it has only the most limited influence on production costs.

As already said, all production costs, except labor costs, are higher in Puerto Rico than on the mainland. If Puerto Rico is to attract industry, these higher costs must be offset by lower

workers in the needle trade but also an unknown but significant number of self-employed in highly marginal occupations.

Conditions changed remarkably after 1940. Table IV summarizes some aspects of this improvement.

TABLE IV

COMMONWEALTH AND PER CAPITA NET INCOME
PUERTO RICO, 1940 and 1950–1964

	Commonwealth Net Income		*Per Capita Net Income*	
Year	*Current Dollars (millions)*	*1954 Dollars (millions)*	*Current Dollars*	*1954 Dollars*
1940	$ 225.3	$ 407	$ 121	$ 215
1950	614	717	279	326
1951	705	794	318	358
1952	831	873	374	393
1953	886	912	401	413
1954	934	934	423	423
1955	960	959	431	432
1956	1,004	998	448	446
1957	1,053	1,028	469	457
1958	1,135	1,083	500	477
1959	1,237	1,162	539	506
1960	1,398	1,276	602	549
1961	1,545	1,380	654	584
1962	1,716	1,509	711	625
1963	1,907	1,637	773	663
1964	2,097	1,783	830	706

Source: Puerto Rico Planning Board, *Income and Product, Puerto Rico 1964*, Table I.

As shown in Table IV, Commonwealth net income (measured in 1954 dollars) rose from $407 million in 1940 to $717 million in 1950, to $1,276 million in 1960, and to $1,783 million in 1964. In the first decade of this 24-year period the increase was 76 percent, in the second decade it was 78 percent, and in the final four years it was 40 percent. Per capita net income (measured in 1954 dollars) rose from $215 in 1940 to $326 in 1950, to $549 in 1960, and to $706 in 1964, an increase in 24 years of 229 percent or an average annual rate of growth of about 5 percent. Of a net income of

not always, or even normally, balanced by an offsetting and unified tendency among employer members to favor lower rates. This lack of balance creates a bias that can be important where there is any significant difference of opinion among the public members as to the appropriate minimum.

The Committees and the Economic Interests of Puerto Rico

Another and at least equally crucial question is whether the wage policy of the FLSA fits the employment needs of the Puerto Rican economy.

Puerto Rico in 1940 was still largely an agricultural economy. Its inclusion for 42 years within the tariff area of the U.S. had accomplished little for the Island beyond giving impetus to the development of a sugar industry. Sugar production increased from 350 thousand tons in 1909 to 485 thousand tons in 1919 and to in excess of a million tons in 1940. Of a national product of about $340 million in 1940, agriculture accounted for more than 30 percent. Manufacture, by contrast, accounted for $30 million or 12 percent, and was confined to the processing of sugar and some other agricultural products, to the production of a limited number of items for the home market, and to a needlework industry. The manufacturing unit was small and was characterized by limited investment and high labor input. The needlework industry consisted largely of hand sewing by women working at home. The materials, owned by mainland firms, were distributed to the workers through agents or contractors in Puerto Rico.

In this economy the ordinary workman eked out a miserable existence on a rural hillside or in an urban slum. Agricultural wages ranged from 6 cents per hour in tobacco to 15 cents per hour in sugar cane, and employment was highly irregular. Wages in manufacturing ranged from a few pennies per hour in the home needlework industry to about 30 cents per hour in sugar refineries. Net per capita income in 1940 was about $121 per year in current dollars and about $252 in terms of 1964 purchasing power. An estimated unemployment figure of 18 percent in 1940 was conservative. It counted as employed not only the home

with EDA-promoted manufacturing plants which filed income tax returns for the fiscal year 1963, 476 reported profits; 223 (32 percent) reported losses. Yet similar considerations are relevant even when the industry is profitable. The committees have the obligation of imposing the highest minimum wage (not in excess of the statutory minimum) that will not cause substantial curtailment of employment. This generally forces the committees to ask what labor-cost differential is necessary for the Puerto Rican industry.

I said above that the record inclines me to a belief that the committees have advanced wages about as fast as was economically feasible. Underlying this belief are also certain judgments about the response of employment to rising wages that will be noted later. I also said that what I consider the biases of the committees gave further support to this belief. These biases are of two kinds. The first arises from the difficulty that committee members from the mainland may have in estimating the relative importance of specific amounts of wage increases in Puerto Rico. An increase of 5 cents per hour on the mainland may be related to a wage base of $2.50 per hour or higher. In Puerto Rico it may be related to a wage base of $1.00 per hour or lower. In the one case the increase is 2 percent or lower, in the other it is 5 percent or higher. Thus, committee members may unconsciously tend to disparage increases of a few cents per hour that within the Puerto Rican framework would be large percentage increases.

The other bias arises from the structure of the committees. The committees are composed, not merely of labor, industry, and public members, but these members must be drawn from both mainland and Island residents. The statutory requirement of selecting members from the industry brings to a committee people whose economic interests are immediately affected by its recommendations. It may also bring to an industry group on a committee people whose economic interests are opposed. The industry member who is a Puerto Rican manufacturer may be expected to favor a lower rather than a higher minimum wage. The industry member who is a mainland manufacturer and who has no Puerto Rican affiliate may be expected to favor a higher rather than a lower minimum. Thus, the tendency of labor members generally to support higher rather than lower minimums is

Observation during a plant visit showed that there was an important loss in the cutting room: the yield from hides was definitely lower than that obtained on the mainland. A claimed cutting loss of 5 cents per pair was not incredible. A claim of added incoming and outgoing freight costs of 4 cents per pair each way seemed plausible. Because of the training problem associated with the introduction of a new industry, more supervision was required. The estimated cost of this element, 2.5 cents per pair, did not appear to be unrealistic. These claims, if admitted, would reduce the favorable differential of 27 cents per pair arising from labor costs to 11½ cents. Higher costs of power, rent, communications, executive travel, and standby equipment were estimated at 5 cents per pair. Delays (arising chiefly from dock strikes) and the consequent obsolescence of product as a result of failure to make deliveries in time for seasonal sales was claimed to have caused losses estimated at 8 cents per pair. The cost of higher inventories was put at about 3 cents per pair. These last three asserted costs would convert the remaining favorable differential of 11½ into a deficit of 4½ cents per pair. Even more significant was the claim of a substantial difference in labor productivity—10 pairs as contrasted to 18 pairs per man-day. For people on the committee who were familiar with the industry, the plant visit afforded evidence of wide differences in labor productivity. It also showed that inexperience of the Puerto Rican worker afforded only a partial explanation of this difference. It was a result also of errors in the organization and utilization of labor.

Many of the "added costs" mentioned above were either of a transitory character or subject to managerial control. Moreover, all overhead elements of cost would benefit from any improvement in productivity. Thus, the committees in their deliberations were forced to make judgments about the effect of their recommendations on the course of managerial efficiency. I doubt that many of them took the further step of making judgments about the effect of improved managerial efficiency on employment.

The example that we have been considering was chosen for its usefulness in illustrating the problem of comparing labor cost advantage with alleged disadvantages in other costs. The unprofitable situation portrayed, however, is not typical: of 699 firms

The data in Table III show that while earnings in the Apparel Industry in Puerto Rico were but 62 percent of earnings on the mainland, they were 77 percent of earnings in nine Southern States. The significance of this comparison will become more apparent if we consider the burden that this differential in employee earnings must carry.

With the exception of labor cost, practically all costs of production are higher in Puerto Rico than on the mainland. Raw materials are usually brought from the mainland and most of finished product is sold there. This adds the costs of ocean freight and marine insurance. Because raw materials and finished product must be transported greater distances, there is a longer production cycle; and because of the longer production cycle, inventories must be larger. The uncertainties of ocean shipment also make for higher inventories. Rents normally are higher not merely on the basis of the square foot but also as a function of output per unit of area. Unpredictable costs, such as the costs of delays and of obsolescence associated with dock strikes either in Puerto Rico or on the mainland, may be significant. The greater distances involved increase the costs of communications, including executive travel. They may also add to costs by requiring more stand-by equipment or travel of specialized maintenance people from the mainland.

It may be of some interest to illustrate the committees' problems in trying to offset these higher costs against a lower labor cost. In the middle 1950s average hourly earnings were about 50 cents per hour in a shoe factory in Puerto Rico; in a mainland plant manufacturing a closely competitive product they were about $1.50 per hour. The Puerto Rican plant produced 10 pairs of shoes per man-day of work at an average labor cost of 40 cents per pair. The mainland plant produced about 18 pairs per man-day at an average labor cost of 67 cents per pair. The labor cost differential was 27 cents per pair. It was testified that other production costs were running about 50 cents per pair higher in Puerto Rico than on the mainland and that, despite the favorable labor-cost differential, shoes were being manufactured at a substantial loss in the Puerto Rican plant.

Some of these claimed costs were obviously real and important although it was impossible to determine their real dimensions.

federal wage and hour policies, unless there were some guarantee that substantially similar policies would be enforced by the government of Puerto Rico. The latter eventuality, it should be stressed, amounts at most to a theoretical future possibility. The immediate policy choices which Congress has before it are three in number: to retain the principle of flexibility as the guiding principle governing industry committee process, to superimpose a mechanical non-reviewable formula of automatic minimum wage percentage increases, or some variation of the other alternatives. Section 304 of H. R. 10518, as originally drafted and approved by the House Committee on Labor, did in fact adopt a mechanical non-reviewable formula for Puerto Rico. This was recently amended on the floor of the House to permit review of hardship cases. As of mid-July of 1966, the Senate had yet to act on the matter.

Shortly before the Academy's meeting in San Juan, I testified before the Senate Subcommittee on Labor concerning the risks to Puerto Rico if Section 304 were adopted. It is a summary of this testimony that I wish to present here; one can readily note the area of agreement and the points of difference between Leo Brown and myself.[1] I begin with a series of general and specific questions inquiring into the need and justification for changes in federal wages policies affecting Puerto Rico.

What role does federal minimum wage policy play in conditioning the possibility of economic progress in Puerto Rico? Why did the Congress adopt a flexible wage setting policy for Puerto Rico in 1940? To what extent was the policy of flexibility modified by the 1961 amendments as set forth in Section 6 (c) of the Act? Does the change proposed in Section 304 of the Bill constitute a reasonable extension of Section 6 (c) of the Act, or does it represent potential economic disaster to the economy of Puerto Rico? What risks are involved? Does the record of historical experience justify the change in statutory means proposed by Section 304? What alternatives are open? Is Section 304 compatible with overall national policy toward Puerto Rico? Is it in the public

[1] The statement in its original form, together with the transcript of questions and answers, appear in *Hearings on Amendments to the Fair Labor Standards Act,* before the Senate Subcommittee on Labor, 89th Cong., 2nd Sess., Jan. 3, 4 and 5, 1966, pp. 1718-30.

interest of Puerto Rico and the United States that Congress enact Section 304?

During the past two decades Puerto Rico has achieved great economic progress, successfully moving from a simple agricultural society to a modern, complex, multi-based economic community. Though much has been achieved, much remains to be done. Puerto Rico has the highest per-capita income if comparison is made with the nations of Latin America, but it has very far to go to catch up with the poorest state in the Union. There are areas of Puerto Rico, and whole classes of people, who have yet to benefit from the fruits of economic progress. Hence, the most that can be claimed is that Puerto Rico has made a substantial start toward resolving its economic problems.

Continued progress depends, as was true of past progress, on a complex of conditioning factors. To attract investment Puerto Rico offers tax exemption; plant facilities at reasonable rents; men and women eager to work and to learn new skills; government sponsored training programs and assistance to new industry; modern transportation and power facilities; a sound banking system; public investment in education, health, and social welfare measures; favorable climate; a democratic and stable political and legal order; and free access to the mainland American market place. These Puerto Rican factors are in turn buttressed or weakened by the operation of certain other critical factors which affect Puerto Rico from the mainland: federal minimum wage policies; the administration of tax regulations affecting United States companies investing in Puerto Rico; tariff policies; marine and air transportation policies; the administration of petroleum import regulations; federal grants and other forms of economic and social welfare assistance; the condition of the American economy; and the attitudes of corporate officials in regard to investing in Puerto Rico.

The latter list does not include all of the mainland conditioning factors, but only those of greatest significance. None of these factors is more crucial than federal minimum wage policy which, in varying degrees, may either be incompatible or compatible with Puerto Rico's efforts to achieve economic well being.

The clearest example of Congress' power to harm or to help is

demonstrated by the consequences which followed when the Fair Labor Standards Act was first passed in 1938 and made uniformly applicable throughout the United States, including Puerto Rico. The result was economic disaster, particularly for the needlework industry, then the Island's largest single source of manufacturing employment. For innumerable employers, the legal minimum wage was incompatible with economic survival. After thoroughly investigating the situation and considering the range of feasible policy choices, a Congressional Committee recommended, and Congress adopted, a flexible approach to setting minimum wages for employees in Puerto Rico covered by the Fair Labor Standards Act. The goal of the Act remained unchanged: to reach the statutory minimum "as rapidly as practicable . . . without substantially curtailing employment or earning power." It was the statutory means which was changed; the statutory goal was to be achieved industry by industry through periodic economic investigations and the resulting recommendations of tripartite industry committees selected by the Secretary of Labor to represent the several interests and geographical areas involved. Industry committees were instructed to press toward the statutory minimum "as rapidly as is economically feasible," limited at one extreme by the injunction against "substantially curtailing employment," and at the other extreme against providing any industry in Puerto Rico with a "competitive advantage over any industry in the United States." To insure greater refinement in effectuating the statutory goal, industry committees were authorized to recommend "reasonable classifications within any industry." Despite periodic reassessments, this flexible approach, with certain modifications, has remained the foundation of federal wage policy for Puerto Rico.

The most significant modification, in terms of departing from the principle of flexibility, was the application in 1961 of a partially mechanical percentage formula of wage increases which sought to duplicate similar percentage increases made effective on the mainland. The formula is fairly characterized as partially mechanical since the way was left open for review committees to hear hardship cases. Under this formula 7 industrial groupings, involving 21 separate classifications, petitioned and obtained a review committee hearing to pass judgment on the economic

feasibility of the statutory percentage increases. Even with the possibility of review of hardship cases, I would have strong reservations about repeating the 1961 experiment: *first,* because legislative percentage assumptions run a needless risk of serious error; *second,* because such assumptions result in pressures which may adversely affect rational judgment by review committee members; and *third,* because the requirement of a majority of employees as a prerequisite to review means in effect that the Act provides no remedy for automatic increases which curtail employment substantially, up to but not exceeding 50 percent, if employers employing a majority of employees for any reason decide not to petition for a review committee. My *fourth* and fundamental reason, which I shall develop later, is that I am convinced that the industry committee process alone can do the job more effectively and with less risk of error.

Section 304 of H. R. 10518 would increase minimum wages of presently covered employees by 40 percent in percentage increments over a period of from two to three years, eliminate hardship review committees completely, although retaining industry committees for both old and newly covered employees. No explanation for this radical break with established practice can be found in Report No. 871 which accompanies H. R. 10518. I assume from this that the potential consequences of grave economic harm to Puerto Rico, implicit in Section 304, were not fully realized by the House Committee. These are: *first,* entire segments of industrial groupings simply cannot absorb a 40 percent increase no matter how high the increase on the mainland. These are firms principally in competition with foreign enterprise. A 40 percent increase would mean their elimination from the Puerto Rican economy. *Second,* other industrial groupings might find great difficulty in adjusting to rapid, short-term, heavy increases in their wage bill. The minimum wage, or something close to it, tends to be the prevailing wage in Puerto Rico, in contrast to the mainland where only a small percentage of the labor force is paid the statutory minimum. The impact of automatic statutory increases would thus be greater in Puerto Rico. The extent to which this might result in plants closing, retrenching, or putting off plans for expansion is admittedly incalculable and speculative, but at the least it is fair to say that there is a strong

risk of serious economic harm. *Third,* automatic non-reviewable increases would inevitably make it more difficult for Puerto Rico to promote future economic development.

To appreciate fully the risks implicit in Section 304, it is essential to consider labor trends and statistics which vitally affect Puerto Rico's goal of achieving a fuller and wider sharing of the benefits of economic progress. The achievement of that goal depends on the interplay of four variables: the number of persons entering the labor market; the creation of new, steady and decently paid jobs; the extent of unemployment; and the amount of net out-migration. Net out-migration has fallen off sharply during the sixties in contrast to the fifties. Puerto Rico would have suffered a disastrous unemployment rate in the fifties had it not been for large-scale migration to the mainland. In fiscal 1964, for example, net out-migration amounted to less than 5,000, as compared to over 61,000 in 1956.[2] The consequence has been a rapidly increasing labor force in the sixties contrasted with a declining labor force in the fifties. The labor force declined from 686,000 to 625,000 in the period 1950-60 and then climbed to 734,000 by fiscal 1964. By September 1965, the labor force amounted to 786,000 persons. The rate at which jobs have been created almost equals the rate of influx into the labor force. Thus, for the period fiscal 1960-64, the labor force increased by 109,000 and the number of new jobs by 111,000. This in turn meant little or no improvement in the unemployment rate which, as a heritage from past decades, fluctuated between 10 percent and 13 percent of the labor force. Although genuine progress has been registered over the past fifteen years in the quality or compensation of jobs created—in September 1965, for example, the hourly average earnings of jobs in manufacturing was $1.25 for work weeks which averaged 36.9 hours—unemployment continued at two to three times the rate on the mainland. These statistics sum up human effort, values and aspirations; the effort it takes to promote a good job in Puerto Rico, the value of a job once it is created, and the need to realize this community's aspiration to provide employment opportunities for all those who wish to work.

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2 These and succeeding statistics are taken from the annual reports of the Planning Board and the reports of the Bureau of Labor Statistics of the Puerto Rico Department of Labor.

The alternative to Section 304 is the industry committee process which has been time-tested and time-proved for twenty-five years. Through that process a record of solid accomplishment has been achieved, and this has been especially so during the past decade. By March 1961, for example, there were some 90 rate classifications ranging as follows:

Wage Rates	*Number of Rates in Each Classification*
$1.00	23
.90–.99	14
.80–.89	12
.70–.79	17
.60–.69	11
.59 and less	13
Total—	90

Four and one half years later, in September of 1965, there were 182 rate classifications:

Wage Rates	*Number of Rates in Each Classification*
$1.25	48
1.15–1.24	37
1.00–1.14	36
.90–.99	22
.80–.89	24
.70–.79	8
.69 and less	7
Total—	182

Sixty-six percent of all federal minimum wage rates had thus reached one dollar or more by September 1965. There is no reason to doubt that substantially similar results could have been achieved through biennial industry committee hearings without the intervention of statutory automatic increases.

I do not wish to argue that errors are not committed by industry committees, only that the possibility of serious and permanent error is substantially less than would be true under a system of non-reviewable, automatic percentage increases. Excessive increases under either scheme would be without remedy. Under the industry committee approach, however, unduly conservative in-

creases can be rectified in three ways: through collective bargaining if the industry is organized, by the next biennial review, or more quickly if an earlier hearing is deemed warranted by the Secretary of Labor. Since I consider the industry committee process to be the wisest approach, I would urge a search for ways in which it might be improved through measures which would enhance flexibility and permit more refined judgments.

My own proposals come under two headings: proposed statutory amendments and suggested changes in administrative practices. Under the first heading I would recommend:

1. Discretionary review should be authorized by the Secretary of Labor (or his delegate acting as a hearing officer) of the rates recommended by special industry committees. Under the present law, the "recommended" rates are in fact final and non-reviewable, except for a judicial review proceeding which is rarely utilized because almost all lawyers consider it a fruitless remedy. Industry committees do in fact make economic errors, and those that are grievous and death-dealing in their impact should be reviewable. Administrative review was available until the 1955 amendments to the Act. To avoid delaying tactics and improper use of review procedures, availability of review should be at the discretion of the Secretary, analogous in approach to the *certiorari* jurisdiction of the Supreme Court. When a final decision is reached, it should, of course, be effective retroactively to the original date of the industry committee recommendation.

2. The flexibility of the industry committee process could be enhanced in at least two ways. *First,* committees should be empowered to recommend increases in yearly increments. It happens rather frequently that because of varying degrees of economic development of companies within a classification, committee members have doubts whether a substantial increase can be absorbed all at once, but they are fairly confident that such an increase would be feasible if it were divided in two increments and imposed over two years. To avoid the dilemma of undue conservatism or undue risk, increases by increments over a period of years would permit more refined and less hazardous judgments. *Second,* just as the Secretary has authority to schedule industry committee hearings more often than every two years, so he should be authorized, on recommendation of a committee, to order hear-

ings less frequently than bienially for industries which are relatively static and principally in competition with foreign low wage areas. In the latter industries token increases in minimum rates is the most that can be anticipated if a committee faithfully applies the standard of avoiding substantial curtailment of employment. The adoption of this approach would make possible a more thorough investigation and would allow concentration on those industries which can feasibly reach the statutory minimum within a reasonable time.

3. Twenty-five years of industry committee functioning represents a rich record of experience which merits scientific study and evaluation under Congressional auspices. This ought to be undertaken not only as the basis for determining how long and with what modifications industry committees should be retained, but also because of the possible relevance industry committee experience may have for dealing with wage situations on the mainland where collective bargaining has failed or is inapplicable.

Under the second heading of proposed changes in administrative practices, the following recommendations reflect my personal experience as a public member serving on industry committees:

1. A greater effort should be made to insure continuity of public membership; at least one, and preferably two, of the public members should have served on the prior committee two years previously. Less exaggeration of claims by either side, as well as greater refinement and confidence in making judgments, can be expected if public members have some degree of historical appreciation of an industry's development, based on their participation in previous hearings.

2. Because of the time factor, an industry committee would have great difficulty in effectively using the subpoena power. That power, however, can be effectively employed by the Wage and Hour Division's staff at the stage of the economic investigation prior to the committee hearing. It should be used whenever needed to gather all relevant economic data. No company which is not paying the statutory minimum has a legitimate basis for denying its financial records to the Division's economists. This kind of data, in precise detail, should as a matter of course be made available to every industry committee. If companies are reluctant to

divulge financial data out of fear that they may be used by their competitors, the data may be presented in coded form without revealing the names of any particular enterprise. This approach is used very effectively by the Minimum Wage Board of Puerto Rico.

3. Utilizing past experience, Division economists should assume the initiative of gathering a number of concrete examples of comparative economic costs. This would have the beneficial effect of providing a more solid foundation for the comparative economic judgments which committees are obliged to make.

4. It would be helpful if more comprehensive follow-up studies were made to measure the consequences of past industry committee rate increases. It is not unusual for committees to hear the most contradictory claims concerning the impact of prior increases. On this score, the public members frequently feel the need for greater enlightenment, particularly if it is their first experience with the industry under study. Additional insight could also be achieved by insisting that committees draft their findings and recommendations in a manner which fully reveals the considerations underlying their minimum wage recommendations.

A final word is in order on the role of federal wage policy within the overall network of federal policies which affect Puerto Rico. As a community of American citizens, the Commonwealth of Puerto Rico shares in all national programs established to achieve the Great Society. Long before President Johnson set forth that goal for the nation, Washington's concern for Puerto Rico was made manifest in a series of special measures to assist Puerto Rico in resolving its economic problems. Prime examples of this concern are the policy of minimum wage industry committees; special tax, revenue and tariff treatment; and the recent approval by the President of a large petroleum import quota which will permit Puerto Rico to promote the development of a complex of petro-chemical industries. The combined thrust of general national policies and special policies established to assist Puerto Rico add up to the proposition that Puerto Rico's interest and the nation's interest in economic progress have become one fully integrated interest. If I have stated the proposi-

tion correctly, all statutory measures ought to be directed toward realizing that integrated interest. To put the matter concretely, it would make no sense for the Federal Government on the one hand to assist Puerto Rico through including it in the anti-poverty program, and on the other to enact minimum wage legislation which would have the likely effect of reducing employment and restricting the possibilities of promoting future employment. Consistency between federal policies calls for measures by the Congress which in combination help Puerto Rico to help itself, and thereby help to realize the nation's interest in the economic progress of this island. In the field of federal minimum wage legislation that national objective can best be realized through a policy of continued reliance on industry committees as the soundest instrument yet devised for increasing minimum wages in Puerto Rico "as rapidly as practicable . . . without substantially curtailing employment or earning power."

Discussion—

MITCHELL J. COOPER*

It comes as no surprise that Leo Brown has given us a thoughtful and clear analysis of the way the Fair Labor Standards Act operates in Puerto Rico. I think it fair to say, however, that his experience in this program has been tempered by the wisdom he has brought to bear on the committees on which he has sat. Perhaps because such wisdom has not always been available to committees before which I have appeared, or perhaps because my objectivity may have been shaken by my advocacy in behalf of industry, I cannot share Father Brown's endorsement of tripartite wage determination in Puerto Rico.

Let me illustrate my reservations by telling you what has happened to the Rubber Footwear and Sweater Industries.

In 1953 one of the largest mainland manufacturers of sneakers established a plant in Puerto Rico for the manufacture of casual footwear. The company was advised by the Wage and Hour Division that it was part of the Shoe Industry and should pay the Shoe

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minimum. Three years later another company came to Puerto Rico to manufacture a similar product, but it was advised by the Wage and Hour Division that it belonged in the Rubber Industry. At that time the shoe rate was 46 cents and the rubber rate was 60 cents. For about six months these two companies, making similar products by a similar process, operated in separate industries with a differential of 14 cents. When the Wage and Hour people realized what they had done, they took the first company out of the Shoe Industry and created a new Footwear Division in the Rubber Industry. Skipping the intervening tribulations, let me tell you where we are today:

The Shoe Industry is one of the larger and better established industries in Puerto Rico. Thanks in part to the fact that Leo Brown has often chaired its minimum wage hearings, its minimum has progressed in an orderly and sensible fashion. The present shoe minimum is 90 cents.

The Rubber Footwear Industry has grown at a much slower rate and has operated at a much lower profit ratio than has the Shoe Industry. The Rubber Footwear minimum is $1.03.

When is a shoe not a shoe but rubber footwear under this program? This distinction is not determined by the process of manufacture for vulcanized leather shoes have been defined as a part of the Shoe Industry. Nor is it determined by the material used, for non-vulcanized leather shoes and non-vulcanized fabric shoes are both in the Shoe Industry. Vulcanized fabric shoes are in the Rubber Footwear Industry.

There are some companies in Puerto Rico which produce both leather shoes and fabric shoes by vulcanization. Thanks to this program, when an employee happens to be working on leather, his legal minimum is 90 cents; but when fabric comes through the production line, the same employee's legal minimum is $1.03.

There are other companies in Puerto Rico which manufacture uppers only. The minimum rate for fabric uppers is determined by their customers' legal minimum: when they sell fabric uppers to companies which vulcanize, the rubber footwear rate is paid; but, if their customers do not vulcanize, the shoe rate is paid.

In recent years we have been able to persuade the Wage and

Hour Administrator to appoint the same public members to the Rubber Footwear hearing that he appoints to the shoe hearing, but it will take many hearings before this thoroughly artificial 13 cents differential in rates can be eliminated.

Consider next the Sweater Industry. Here we have a dramatic illustration of the effect of what Father Brown has called a "lack of balance" creating "something of an upward bias." I have represented this industry at five hearings. Each time the committee has had among its nine members three from labor and one from mainland industry who had gone on record before the hearing commenced in favor of a $1.25 rate. Thus, labor has needed the vote of but one public member in order to get a majority, whereas Puerto Rican industry has needed the votes of all three public members. What has been the effect of this imbalance? Let me first say that I cannot accept Father Brown's statement, "That employment has not been substantially curtailed in the industries is, of course, a matter of record." The record will show that Sweater employment in Puerto Rico is currently well below what it was in 1959 and that not a single new sweater plant has opened here in three years. Yet the Sweater minimum is above the average for Puerto Rican industry and is by far the highest of any of the garment industries. The sweater profit margin is less than 2 percent on sales and its shipments equal 3 percent of mainland shipments. Compare this, for example, to the brassiere industry whose minimum is considerably lower, whose profits and employment are much larger, and whose shipments are more than 40 percent of total mainland shipments (indeed, at the last Sweater hearing I called the committee's attention to the fact that in Puerto Rico sweaters have shrunk while brassieres have expanded).

The current Sweater minimum is either $1.17 or $1.22, depending on the outcome of a law suit we have just filed challenging the last committee's decision—a challenge, incidentally, which is in part based on the fact that the rate was set by a majority of five, consisting of one public member and four members previously on record for a minimum of $1.25.

Speaking of law suits, let me advise you that this is no business for slow-thinking arbitrators. While I cannot agree with Father Brown's view that no harm is done by setting a rate promptly

after the close of the public hearing, there is no question but that this is the way the program operates. Members who may never have been to Puerto Rico before and who have had no occasion to study its economy, who have no familiarity with the problems of doing business here, and who may have had no previous exposure to the industry before them, will hear evidence for two and three days and will then, without any time for reflection, research, or study of the record, go into executive session and come out with a rate. Such a procedure may work when you have quick thinkers, but the system broke down in the Sweater hearing to which I have just referred. In that instance, the committee held its hearing, went into executive session and announced its rate. But, lo and behold, after the two Puerto Rican industry members had left the meeting, one public member changed his mind. When the remaining members of the committee reconvened for the announced purpose of signing its report, he requested a reconsideration of the minimum. Thereupon, he, the three labor members, and the mainland industry member voted for the highest rate. The Court of Appeals has now stayed this committee's action, and it will be many months before we know whether this kind of reconsideration is legal.

I have several reservations about this program, but my principal ones are the following:

1. The wide variety of viewpoints among the public members who have served, and the fact that frequently members are appointed who have no knowledge of the unique industrial problems of Puerto Rico, have been in part responsible for an irrational relationship between the minimum rates of similar industries.

2. Allegedly tripartite committees are not tripartite when they in effect have four Labor votes and two Industry votes.

3. More often than not, a sound decision cannot be rendered without an opportunity to reflect upon, study, and evaluate the complex and often contradictory testimony of two or three days of hearing.

4. There is no appeal from a committee's determination other than a law suit.

In short, I am of the view that this is an unsatisfactory way to set minimum wages, which can do approximate justice only when the parties are fortunate enough to have a committee all of whose public members are of the caliber of Leo Brown, Dave Helfeld, Perry Horlacher, or of anyone who has had the wisdom to attend this session!

Is there an alternative? I venture to suggest one, even though it would work against my own economic interests—and also yours. I propose that every industry in Puerto Rico be required to raise its minimum by, say, 4 percent a year until it reaches the Federal minimum. The only exception would be when an industry makes a prima facie showing to the Wage and Hour Administrator that such an increase would cause undue economic hardship. In that event, the Administrator would assign a hearing examiner to conduct a hearing and to recommend a rate to the Administrator. Such an examiner would acquire a measure of expertise in this unique field and the parties would have the added protection of a review of the hearing examiner's proposed ruling. I would further urge that this 4 percent rate of progression should also apply whenever the Act is amended to provide a higher mainland minimum; such a progression would do equity while not causing the disruption occasioned by the cumbersome procedure adopted when the Act was last amended, and it would cushion the Puerto Rican economy against the effect of a large one-shot increase when the mainland minimum goes up. This proposal would not correct all of the inequities which have developed through the years, but I think it would help. Indeed, I think something would be gained merely by requiring the same official who defines industries to take the responsibility for the rates set under those definitions.

I should add that I have not been able to sell this proposal to anyone—including my clients—but I hope that in the course of this session you experts will tell me what's wrong with it.

Finally, while I am seeking your advice, let me raise a few questions which I hope somebody will find time to answer: Of what possible value is a plant visit to a member who has had no previous exposure to the industry and who has never been in a mainland plant with which to compare his experience? Should

there be different criteria for organized and unorganized industries? That is to say, should a committee refrain from pressing an organized industry to its outer limits on the theory that something must be left for collective bargaining? Have wages in Puerto Rico been rising too rapidly, as Lloyd Reynolds suggests in his March 1965 article in the *American Economic Review,* in view of the facts that the rate of unemployment is about as high as it was when this program began and that virtually every city and town in Puerto Rico is on the Labor Department's list of areas of persistent and substantial employment?

I want to conclude by saying that however we may criticize this program, it is tremendously important in the life of this Commonwealth, and you perform a singular service when you accept a request to take part in it.

Discussion—

VAL WERTHEIMER*

Father Brown's presentation raises a number of interesting issues. The process of wage determination by industry committees under the Fair Labor Standards Act, originally set up for the determination of minimums on the mainland and later adopted for Puerto Rico, has a number of unique features which distinguish it from the typical arbitration procedure. This process of minimum wage determination is not an adversary proceeding. In effect, it is a quasi-judicial determination under a statute that imposes specific obligations on all the committee members, be they drawn from the public, employer or labor sectors. All of them are employees of the Federal government, appointed to their office by the Secretary of Labor, sworn to properly execute the duties of their office and entrusted with a specific task. Thus, in their quasi-public character there is no basic difference between committee members. While employer and employee members are drawn from milieus which have by their very nature given them a certain amount of knowledge about the industries with which they deal, such a background is not always present in the

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case of public members of committees. Nonetheless, it is their duty to render decisions in the light of the statutory directives and in accordance with the law and instructions of the Secretary of Labor as contained in his published regulations.

The regulations issued by the Secretary of Labor also set forth what the parties who wish to appear before committees must do to assure being heard. They also give binding instructions to the committees. In some cases committees have admittedly dealt too charitably with the failure of employers or their representatives to file the required data as a pre-condition for their appearance. Father Brown does not seem to frown on such leniency and even seeks to excuse it. Thus he tells us "Most committees . . . come to terms with reality and accept whatever *useful evidence an employer is willing to produce*" (italics supplied) even though in effect this invites additional future non-compliance with the regulations and deprives committees of important information to which they are entitled under the regulations and which is basic to responsible decision making. This view is surprising since employers do not seem to have filed any objections with the Secretary of Labor to these regulations. In effect, by coming to easy terms with such non-complying employers, Father Brown exhibits a probably unintentional bias as a public member. And yet he sees bias only in employer and employee members of committees.

It is interesting to learn that Father Brown feels that "Early in the hearing the committee members form some tentative judgments." Apparently, it is true of him. It is not true of me. I do not know how to read the minds of other committee members. But one thing is clear: early in the hearing there is not enough data on which to base even tentative judgments. While the economic studies prepared by the Wage and Hour and Public Contracts Division for committee use contain quite an amount of varied and useful economic information, of themselves they do not provide a sufficient basis for an intelligent judgment. Typically, after the government economist presents these studies, testimony is then generally offered by the local employer spokesmen who in their presentations typically either urge no increase or only a token adjustment. Thus, when such employer testimony is completed, one still has a one-sided and unbalanced view of

what the range of possible rates could and should be. It is only after the testimony of all the parties is completed, including that of employee representatives, and all the evidence is in, that one can begin to form a balanced view of the range of possible rates. In effect the process of decision-making by committee members should, and indeed must, operate in the way members of a jury are expected to function: they must hear *all* the evidence before they begin to formulate their decisions. Thus, it seems to me unfortunate that a responsible member of minimum wage committees, especially of Father Brown's stature, suggests that decisions about the range of possible rates are and should be formulated before all the evidence is in.

It is, of course, quite proper, and, indeed desirable, for industry committees to tap all sources of information that are available to them. And yet, I have a feeling that Father Brown unduly stresses the importance of plant visits as a device for obtaining information. While employer and employee members familiar with a given industry may obtain some marginally useful impressions that may be helpful in wage determination, they generally do not. It is even more difficult for public members, who are often unfamiliar with the industry involved, to get any useful information from such visits. These visits may, however, reinforce misconceptions generated by selective testimony. Father Brown, for example, recalls a visit he made to a shoe plant in the middle 1950's when he chaired a committee in that industry and his impressions on that occasion. Not all members of that committee, however, got the same impression he did. The dissenting opinion filed in this case notes emphatically that when the committee visited that particular plant, "the plant manager would not allow the workers to talk to the committee members" who sought to obtain information on their "wages, working conditions and units of production." [1] Under these circumstances, reliance on impressions alone is a poor gauge of comparative productivity and scrap rates, to say nothing about costs.

Contrary to the impression one gets at times from Father Brown's paper, the basic issues in minimum wage determination are not by their nature imponderable. Of course, imponderables

[1] Dissenting opinion of Special Industry Committee No. 19-C, p. 2.

are always present. But if "a committee had detailed cost and profit data and other tangible evidence" before it, its ability to deal with imponderables would be enhanced materially. The fact that committees must take into account many factors requiring the exercise of judgment should not be used, as Father Brown tends to suggest, as a waiver of key information, particularly if committees are legally entitled to get such data. On the other hand, if such information is denied to the committees by employers in whose possession it rests, committees quite properly should take account of the well established principle that failure by a party to produce relevant and important data, of which it has knowledge and which are peculiarly within its control and which would conclusively determine the facts, raises a presumption that if produced such evidence would be unfavorable to its cause.[2]

Father Brown poses a question as to whether industry committees have generally recommended the highest minimum wages as called for by the Act and answers it in the affirmative while admitting that this is a question that cannot be placed beyond debate. I agree that there is room for disagreement with Father Brown; I, for one, disagree with his conclusion. If anything, I find that the bias of committees generally is in the downward direction resulting in minimum wage determinations which are lower than those called for by the Statute. This takes place mainly because public members, as is evident from some of their statements during committee discussions, feel that it is better to go slow because a subsequent committee, two years hence, could rectify their action . . . in effect correct their bias.

One must draw attention to another recent development in Puerto Rico which promotes a downward bias in committee decisions. Before the hearings take place, employers often decide to appear before the committees only through those few firms in their industry which have the worst possible record of profitability in the preceding year. Thus, even though such presentations before committees are backed financially by a cross-section of the particular industry, the committees are given only a few, deliberately selected unrepresentative examples. Thus at times public

[2] See for example *Tayloe* v. *Riggs*, 26 U.S. 590 at page 595; and *Tendler* v. *Jaffee* 203 F.2d 14.

members are, unfortunately, unduly influenced by such deliberately lopsided presentations.

Yet, with all its imperfections, the mechanism of tripartite industry committees undoubtedly offers the best approach to the handling of non-statutory adjustments in Puerto Rican minimum wages. Conceivably, members could be briefed more thoroughly by representatives of the Secretary of Labor on their responsibilities and the statute and regulations that are binding on them while in the service of the United States. Without a doubt, a stricter application of the existing regulations would also raise the level of economic data made available and thus reduce the downward bias in committee decisions.

The models that Father Brown seeks to erect to justify his opinion do not prove his point. While he makes statements freely regarding differences in non-labor costs between Puerto Rico and the mainland, he offers no proof. When he speaks of higher inventory requirements in Puerto Rico as against the mainland, a perusal of the *Census of Manufactures* for identical years in Puerto Rico and the rest of the United States reveals, in industry after industry, that there is no significant difference in ratios of inventory to sales or else that they are lower in Puerto Rico than on the mainland. He does not recognize that typically ocean freight costs less than corresponding overland transportation, a point stressed time and again by the Puerto Rico Development Administration in its studies.[3] He fails to explore, in an adequate fashion, the comparative physical productivity of Puerto Rican and mainland enterprises—in Committee after Committee in the last few years, the question of lower productivity in Puerto Rico has not even been raised by employers who seek a wage advantage there. In fact, in recent committees on which I have served it has been stipulated by all, including employer representatives, that for all practical considerations productivity in Puerto Rico is identical to that in mainland operations.[4]

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[3] See for example its *Profit Opportunities in Puerto Rico for Canadian Manufacturers* 1962; or its *Puerto Rico 1963: A Report to Industry on Productivity and Profit Potential.*

[4] See also, Lloyd G. Reynolds and Peter Gregory, *Wages, Productivity and Industrialization in Puerto Rico* 1965, pp. 20, 61, 194; and Puerto Rico Economic Development Administration, *Investment and Business Opportunities in Puerto Rico,* 1965.

One does not need to exhaust the list of items Father Brown fails extensively to document with regard to non-wage costs. And when it comes to wage costs, he fails to make his analysis in terms of wage costs per unit of output. He could, for example, compare actual wages paid and adjust such levels for comparative productivity on the mainland and in Puerto Rico. His reference to the mid-fifties case in the shoe industry does not meet this challenge—the data are out of date, and besides it was questioned even at the time as can be seen from the dissenting report submitted following hearings by Committee 19-C.

Father Brown seeks to defend his thesis by comparing percentage changes in average hourly earnings in Puerto Rico and on the mainland and by suggesting that they were higher in Puerto Rico. There is no doubt that when wages are low to start with, every penny of increase will represent a higher percentage than the corresponding or a higher adjustment in high wage rates. But competition in labor costs is not reflected by changes that take place in percentages. What counts are the actual cents-per-hour differentials, after allowance for differences, if any, in productivity. And since there is a substantial overall parity of productivity between Puerto Rico and the mainland, we can take another look at some of the data that Father Brown puts forth. Table I which provides data concerning average hourly earnings in Puerto Rico and on the mainland shows that between 1954 and 1964 average hourly earnings in Puerto Rico advanced 69 cents, while on the mainland they advanced 72 cents. In other words, given the maintenance of comparable productivity differentials, these figures show that whatever advantage Puerto Rico had during this period, it remained substantially unimpaired. To the extent, however, that during this period productivity in Puerto Rico, and this appears most likely, advanced at a faster pace than on the mainland, the greatest likelihood exists that the actual unit cost differential widened in favor of Puerto Rico.

Parenthetically, examination of data covering longer periods of time than those examined by Father Brown also supports the view that cents-per-hour differentials between most Puerto Rican industries and their mainland counterparts have actually widened

rather than narrowed.[5] I have no doubt that economic data cited by Father Brown do not lend credence to his thesis that minimum wage adjustments were "just right." Puerto Rican plants continue to enjoy a competitive wage advantage over comparable plants on the mainland.

In the last section of his paper, Father Brown seeks to answer the question as to whether the wage policy of the Fair Labor Standards Act fits the employment needs of the Puerto Rican economy. Aside from the fact that he continues to repeat some of the unsubstantiated assertions regarding comparative costs between Puerto Rico and the mainland, he recognizes, though somewhat less than adequately, that the increase in Puerto Rican employment since 1940, when the amended act was made applicable to Puerto Rico, to date, has been considerable. As his own table IV shows, between 1940 and 1964, Puerto Rican real net income rose from $407 million to $1,783 million in 1954 dollars, while real per capita income more than tripled, rising from $215 to $706. This was indeed a remarkable achievement which continues without interruption.

Although one does not in any way begrudge Puerto Rico its phenomenal rate of economic growth, it is rather significant that recent employment changes in Puerto Rico manufacturing industry—a key economic sector covered by the Fair Labor Standards Act—show growth that was more rapid than that of the United States as a whole and substantially above that of every southern state. Furthermore, in the most recent period for which data are currently available—i.e. the period when wages in Puerto Rico were at their highest, its economic growth was even more rapid than in the past. The annual rate of change in manufacturing employment between 1957 and 1964 and between 1960 and 1964 (i.e. the period during which automatic minimum wage adjustments applied to Puerto Rico) can be seen from the following table:

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[5] See for example *Hearings before the U.S. Senate Subcommittee on Labor, Amendments to the Fair Labor Standards Act (Puerto Rico)*, January 3-5, 1966, at p. 1766. Some of the data contained in Father Brown's tables unfortunately are not accurate. Some of the figures in his Table III, which is cited in part from Mr. Francis' submission to the Senate Hearings, *supra*. pp. 1479f., are in error, as are some of the other data which were submitted by Mr. Francis to the same committee.

	Average Annual Increases	
	1957–1964	*1960–1964*
PUERTO RICO	+5.3%	+6.1%
UNITED STATES	+0.1%	+0.7%
Alabama	+0.6%	+2.1%
Arkansas	+5.3%	+5.3%
Florida	+4.5%	+3.6%
Georgia	+1.9%	+2.5%
Kentucky	+1.6%	+3.0%
Louisiana	+0.1%	+2.0%
Mississippi	+3.9%	+4.0%
North Carolina	+2.5%	+2.3%
Oklahoma	+1.0%	+2.8%
South Carolina	+2.6%	+3.2%
Tennessee	+2.6%	+3.4%
Texas	+1.1%	+2.4%
Virginia	+2.2%	+2.9%
West Virginia	+0.8%	+0.1%

Source: Puerto Rico Department of Labor, Employment, Hours and Earnings in the Manufacturing Industries in Puerto Rico, 1957-1964; U.S. Bureau of Labor Statistics Bulletin 1370-2, Employment and Earnings Statistics for States and Areas, 1939-1964 (data for 1964 is the latest published by the Bureau for the different states).

At the same time, the value of goods produced in Puerto Rico rose at a much faster rate than the value of goods produced in the United States. This is evident from data on the average annual changes in shipments of goods from Puerto Rico to the United States between 1957 and 1965 and between 1960 and 1965:

Period Covered	*Average Annual Increases*	
	Shipments from Puerto Rico	*Manufacturers' Sales United States*
1957 to 1965	+10.7%	+4.3%
1960 to 1965	+10.5%	+5.5%

Source: U.S. Department of Commerce, U.S. Trade with Puerto Rico and United States Possessions (FT800), and Manufacturing and Trade Sales and Inventories.

Chairman Ramon Garcia Santiago of the Planning Board of the Commonwealth of Puerto Rico, writing in the 1965 annual review issue of *Industrial Puerto Rico,* also records continued progress:

> "A quick reading of the economic indicators for fiscal 1964-65 shows the Puerto Rican economy in good health and still growing at the vigorous pace it established in 1960. Manufacturing, construction, government, and tourism continue to spearhead the advance. The growth of these primary sectors sets the rhythm for the rest of the economy."

Similarly, in an article appearing in the *New York World-Telegram and Sun* on January 17, 1965, Rafael Durand, Administrator of the Puerto Rico Economic Development Administration, proudly records that "The island's rate of growth, one of the highest sustained in an economy over the past decade and a half . . . continues undiminished."

Progress is unmistakable. It is surprising and unfortunate therefore that Father Brown seeks to discover tarnish on the superb work of the Commonwealth of Puerto Rico's Operation Bootstrap. In his table V he seeks to examine some of the labor force statistics for selected fiscal years, ending with that for the year ending June 30, 1963 (even though figures through June 30, 1965 were available).[6] Nor did he go into employment changes in that sector of the Puerto Rican economy that was most directly affected by the impact of the Fair Labor Standards Act—the nonagricultural sector. The relevant data for the same years as were chosen by Father Brown, and brought up to date, are shown in the table on p. 44.

These figures demonstrate that the major curtailment of employment occurred in agriculture, a development encountered in Puerto Rico and elsewhere throughout the world. However, employment outside agriculture—the area most affected by wage-hour legislation and the work of industry committees—showed a most healthy growth!

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[6] Father Brown draws attention to the decline in the rate of labor force participation in Puerto Rico, a phenomenon which actually paralleled a similar development on the mainland of the United States and one that affected most, though not all, age groups. His analysis is sketchy and incomplete. He fails to recognize, for example, that the labor force participation rate for the ages of 25 through 54—the most active years—exceeds 90 percent among male workers and in the age groups of 20 through 24 and 55 through 64 it exceeds 80 percent. The most substantial declines in labor force participation rates took place among young people under 20 years of age, clearly under the impact of higher school attendance records, and after the age of 65 due to retirement under the Social Security Act. Even so, labor force participation among these oldsters is higher than on the mainland of the United States, as is also the case of Puerto Rican women between the ages of 25 through 34.

Fiscal Year	*Total Employment*	*Agriculture, Forestry & Fisheries*	*Non-Agricultural Sector*
1950	596,000	216,000	380,000
1951	604,000	203,000	401,000
1960	543,000	125,000	418,000
1963	606,000	142,000	464,000
1964	654,000	140,000	514,000
1965	688,000	124,000	564,000
1966 (*)	716,000	111,000	605,000

(*) Data for fiscal 1966 was estimated on the basis of figures for the first ten months of the fiscal year.
Source: Puerto Rico Department of Labor.

This is not to suggest that Puerto Rico does not have problems. It needs additional economic growth. Unemployment is high even though the average duration of unemployment is substantially lower than on the mainland of the United States. But the tempo of its employment growth has accelerated materially in recent years, even though this was the period of automatic adjustment in minimum wage levels and the period during which wages in the Commonwealth continually reached new highs. The solution of Puerto Rico's economic problems does not lie in the search for either lower wages or a slower advance in the wage rates. The problems lie elsewhere, and their consideration is outside the scope of the present discussion.

Minimum wage determination in Puerto Rico encompasses many more issues than Father Brown or I, together with other commentators on his paper, had a chance to cover thoroughly. At the same time, there are many points which Father Brown raised which cannot even be touched upon in the confines of these brief comments despite my disagreement either with his facts, or his conclusions, or both.