will be the amount paid in by the employer and the employee. The way this bill is drafted, it seems to discourage that sort of assessment in a three-way degree by the individual State laws. To a much greater extent in unemployment insurance, we feel that the provision-I think it is on top of page 50—that no differentials based upon experience, no credit, can be allowed in this tax, because of differentials based on experience until after 5 years. I think it is line 15, page 50.

We believe that is too long. to wait. What we want to do, what we want to accomplish, is stablization of employment rather than payment of benefits from this fund. We want to give real encouragement to employers to stablize their employment seasonally in other ways, and those employers who would take wage-saving measures that might throw employees into this fund should be penalized by keeping the full rate while those employers who use their own establishment and manage to stablize the employment either seasonally or by not taking drastic labor-saving measures, should have the benefit of that stabilization earlier than at the end of 5 years. And. we think that the word "five" should be eliminated from that provision and "two" substituted, which will give 1 year for accumulating the fund and 1 year for experience. Those differentials can be made slowly, so that by the vatious State laws they do not operate too quickly and not too short an experience, but they should be made early so that as in other forms of insurance, you get the benefit of good performance, but of course as a corollary to that, provision should be put in the law giving minimum standards of benefits to the workers, so that a partially cooperating State cannot give differentials to its industries and give them a competitive disadvantage.

To sum up, we want to emphasize first that we are in genera.1 agreement with the situation and with the objectives of the bill; secondly, that we think as a means of a passage of the rest of the bill earlier, that the old-age insurance for those who are not now old should be eliminated, and that these changes should be made in the unemployment features of the bill.

The **CHAIRMAN**. Thank you very much.

The next witness is Elmer F. Andrews, State industrial commissioner of New York.

STATEMENT OF ELMER F. ANDREWS, NEW YORM CITY, STATE INDUSTRIAL COMMISSIONER OF NEW YORK

Mr. **ANDREWS**. Mr. Chairman and gentlemen of the committee, I am here representing Governor Lehman, and also the committee in New York State which prepared the administration unemployment-insurance bill now before the State legislature. That committee consisted of Prof. John P. Chamberlain, of Columbia University; Prof. Herman Gray, of New York University; George Meany, president, New York State Federation of Labor; Justine Wise Tulm, assistant corporation counsel of New York City; James A. Corcoran, assistant secretary, New York State Department of Labor.

The views which I express for the Governor and this committee are related solely to those sections of the bill under discussion having to do with unemployment compensation.

May I say that we feel that the bill as a whole represents a tremendously important step forward in social legislation for the United States. The suggestions to be made with reference to it are intended

to be cons truc tive. The points which the Governor wishes me to bring before you are given below and the accompanying suggested amendments are submitted in accordance with the wish expressed by Senator Wagner at a conference held with the members of the committee last week.

I do not mean to commit Senator Wagner directly to the suggested amendments but he thought this was the best way to get it before the committee, to give you definitely expressed recommendations.

1. PROVISIONS GOVERNING EMPLOYERS RATE OF CONTRIBUTION

The Federal bill which is to become effective January 1, 1936, does not set a fixed basis of contribution but provides a 3-percent employer's contribution, with a reduction in the first year to either 1- or 2-percent contribution based on the position of the adjusted index of the Federal Reserve Board's average of total industrial production, being 1 percent if under 84 percent of the average for the years 1923-25 and 2-percent contribution being payable if such index averages between 85 percent and 95 percent of 'such yearly average. At the present time we are informed that such production index is about 85 for the current month; the average index of production for the 12 months preceding October 1934 was 76.8.

In the second year, a similar sliding scale arrangement is provided, with the saving provision that the second year's contribution cannot be less than that made in the first, year.

Under the provisions of the bill introduced in New York State, the employers' rate of contribution is definitely fixed at 3 percent of the pay roll of his employees, with a provision calling for a report by the industrial commissioner to the legislature, not later than February 1939, relative to the financial aspects of the fund and the rates of contribution thereto. This latter provision was intended to cover the study of any possibility of the merit-rating system being used or special rates in cases where a guaranteed week's basis of employment could be utilized.

The Committee on Economic Security report states that a 3-percent contribution is necessary to support a plan of benefits contemplating $15 maximum weekly payment for a maximum period of 15 to 16 weeks unemployment. If the rated contribution in New York State must be reduced, it will have to reflect itself likewise in the weeks of benefit. Fluctuation and change in benefit periods, the basis of which will hardly be understood by the workers, will undoubtedly arouse suspicion and distrust of any plan.

The failure to set a fixed rate of contribution will give support to lobbies which will seek to debase the standards in each State. States will be set at odds with one another and the difficulty in securing contributions necessary to adequate standards will thus be increased in every State.

No concrete suggestion for amending the bill is proposed inasmuch as it is obvious that if the 3 percent of employers' contribution would be made uniform it would simply mean the elimination of the sliding-scale features contained in section 601.

I might add there, Mr. Chairman, that we do not see how you can definitely in a State bill say how many weeks of unemployment benefits there may be, what the waiting period may be, or when the

benefits shall start to be paid, 1 or 2 years from now, unless the States may set up an income-producing system which will create a pool sufficient to produce enough revenues for a certain amount of the State benefits during a particular year, and how long the waiting period may be before a worker who becomes unemployed starts to receive benefi ts.

Senator COUZENS. Do you believe in the pool system?

Mr. ANDREWS. Yes, sir.

2. THE METHOD OF ALLOCATION OF ADMINISTRATION EXPENSES TO THE STATES

The bill under consideration makes an initial appropriation for the fiscal year ending 1936 of $4,000,000 for distribution to the States entitled thereto, complying with other provisions of the act, and thereafter a yearly amount for such purpose of $49,000,000. It further provides that only so much as the Federal Social Insurance Board deems necessary, "shall be apportioned among such States on the basis of need for such financial assistance in the proper administration of such laws.',

This would introduce in the bill the principle of a "means test." In the allocation to the States there is an extreme probability that in the handling of such a question New York State might easily be discriminated against. It would be possible for less wealthy States to have a greater need for financial assistance than New York State, and might therefore receive a larger proportion of the money available.

Regarding the expenses of administration, the New York bill contemplates that such administration expense shall be made up out of contributions paid by employers. The Federal bill requires a payment into the unemployment trust account of all contributions received and further provides (sec. 602-d), that all money requisitioned by a State agency must be used exclusively for the purpose of paying benefits. The amount of money scheduled in the Federal bill for allocation to the States for administrative payments would not appear to be adequate to meet the total administration cost, so that the Federal bill apparently expects direct appropriations from the State treasuries for the purpose of administration costs over and above the amount that might be allocated by the Federal authorities It appears that section 602-d should be broadened to permit the requisitioning of moneys, either to satisfy claims to benefits or when necessary to pay costs of State administration.

Proposed amendments: At page 29, line 23, after word "basis" insert: "of the proportion of the number of insured workers in each State and "; at the same page, line 24, change period after word "laws" to a comma, and insert:

Provided, however, That the amount to be distributed to the States in the discretion of the Board because of such additional need of financial assistance shall not exceed 10 percent of the total allotment to be made.

The proposed alternative amendment to permit requisitioning of trust fund for compensation payments and administrative expenses: At page 31, line 6, after word "compensation" insert:

Except when the Board in its discretion shall approve the separate application of a State to requisition a stated amount to be expended for payment of administration expenses made necessary by the inadequacy of the periodic allotment.

At page 37, line 6, after word "compensation" insert before semicolon: "and as otherwise provided in such section." At page 46, line 3, after word "compensation", insert: "and as otherwise limited under section 407 (5)."

3. THE DEFINITIONS OF WAGES IN THE STATE AND FEDERAL BILLS, SIMILAR IN MANY RESPECTS, DIFFER IN TWO IMPORTANT MATTERS

First: The New York State bill excludes at this time bonuses as part of the wages (although recognizing that such exclusion might develop an obnoxious practice which then could be met through proper legislation), while the Federal bill includes bonuses as part of the wages.

Second: The New York State bill includes tips or gratuities received from other than employer as part of the wages received by the employees on the theory that in many occupations it is an integral part of the wage, so recognized, and within reasonable limitations properly determinable. The Federal bill apparently excludes tips through nonmention, although it may be the intention of the framers of this measure to include tips in the words "and similar advantages", although it seems that the attempt to so consider it as payment "indirectly by the employer" might not stand up.

May I say that in connection with tips, that in the administration of the workmen's compensation law, the tips are recognized as basis of compensation payments in insurance-company premiums, on the basis of tips received by such classes of workers as taxicab chauffeurs, waiters, and waitresses. Perhaps you know that in Coney Island there are resorts where waiters have paid as high as $25 per week for the privilege. of waiting in those establishments. So that we think that tips are very important as part of the salary on which the taxes are paid.

Senator CONNALLY. How about keeping an account of them?

Mr. ANDREWS. In our bill we say that is an administrative matter to determine. In the compensation law, the Industrial Board through its studies and through the years knows about how much a taxicab operator receives during the week as tips, and that is used by them and the insurance companies to promulgate rates.

Senator BARKLEY. You say in some restaurants the waiters pay $25 a month or per week?

Mr. ANDREWS. Before prohibition Coney Island, in some of the large beer gardens, some of the waiters paid as much as $25 a week for the privilege of waiting.

Senator BARKLEY. Whom did they pay it to?

Mr. ANDREWS. To the proprietor.

Senator BARKLEY. Is that true generally of restaurants in the city?

Mr. ANDREWS. I would not say so, because the weekly payment to waitresses in New York City may in some cases be $2 or $3 a week——

Senator BARKLEY (interposing). I meant to ask you whether there were many of them that paid for the privilege.

Mr. ANDREWS. Not now.

Senator CONNALLY. But this is true, that the wages are much less because of the prospect of tips, therefore they pay less than they would otherwise pay?

Mr. ANDREWS. Oh, yes; some restaurants rather high class pay $5 because the girls will average $25 on top of that, and that is the reason why that should be considered an integral part of their income.

Senator CONNALLY. Do not the proprietors usually require a division of tips with their help?

Mr. ANDREWS. I understand so. You know in hotels a great many times a fellow even to get a job must pay the employer. I do not mean the management itself, but the person who does the hiring. There has to be an arrangement for splitting tips and things of that kind.

The amendment for that would be at page 45, line 4, strike out word "and" and after word "advantages" but before period add words:

and gratuities received by the employee in the course of his employment from a person other than his employer, the value of which shall be determined by the Board. When so determined, such value shall be deemed an integral part of the wages of the employee and for pay-roll purposes as part of the wages paid by the employer.

4. STATE-WIDE POOLS

After careful consideration, it was decided in New York State to have an exclusive and State-wide pool of unemployment-insurance funds. This decision was based upon the following points:

(1) It seems essential to protect the certainty of payment of benefits. If strong employers are permitted to set up individual company reserves the stability of the general fund will be impaired.

(2) The administration of a system permitting individual company reserves would be so difficult and costly as to raise serious problems.

(3) Individual plant reserves would foster the growth of company unions.

Senator COUZENS. Have you studied the Wisconsin plan and know how it works?

Mr. ANDREWS. I have tried to find out as much as I can, but the the best reports I can get-perhaps it has not been in existence long enough to prove itself-but I have not heard anything too glowing about it. I understand that this act would not conform with this Federal bill.

5. TIME OF COMMENCEMENT OF UNEMPLOYMENT COMPENSATION PAYMENT

Benefits under the New York State bill are to commence 1 year after the contributions become effective, namely, under the provisions of the bill, October 1, 1936, and if amended to conform to the Federal act, January 1, 1937.

The Federal bill provides for approval of State plans that, "Commence under such State law 2 years after contributions are first made under such law." It is probable that this 2-year limitation was intended as a maximum provision and not as a restrictive or minimum period necessary for the accumulation of sufficient funds, although in view of the reduced contribution basis contemplated, it may have been intended that this 2-year period should be inflexibly operative.

Proposed amendment: At page 36, line 18, after word "law" insert: "not later than."

6. NEED FOR SOME MINIMUM STANDARDS TO BE ESTABLISHED IN THE FEDERAL BILL

Under the Wagner bill the matter of standards in limitation of maximum number of weeks of payment of compensation, maximum and minimum waiting period, and minimum and maximum rates and amounts of compensation payments are all left to the individual States.

The New York State bill calls for a 16-week maximum payment period. It fixed the payment on a 50 percent of wages basis as compensation with a maximum of $15 per week and a minimum of $5 per week and establishes a 5-week waiting period in the calendar year with an initial unemployed waiting period of 3 weeks.

Senator COUZENS. Do you have any employee contributions?

Mr. ANDREWS. No, sir.

Senator COUZENS. Not in New York State?

Mr. ANDREWS. No, sir. This is the New York State bill that I am talking about. We feel it will be taken out of the employee one way or the other, anyhow.

Although there may seem to be sound reasons applying against the inclusion of definite standards in the Federal bill on all these factors, it is imperative in our judgment that any governing bill of this type shall provide that any State unemployment fund or system, to qualify, must provide for paying compensation to unemployed workers at not less than the rate of 50 percent of their full-time wages. In the absence of any such regulation of this feature, State plans might provide for payment to unemployed of any amount from perhaps 50 cents a week to full weekly wages.

Proposed amendment: At page 37, after line 21, insert new subdivision G: "(g). The State law provides for payment of compensation benefits after a specified waiting period of not less than 3 weeks, at a rate not less than 50 percent of the employees full-time weekly wages."

7. DIFFERENCE IN DEFINITION OF EMPLOYER

In the bill under discussion the employer is defined as any person who "within each of 13 or more calendar weeks in the taxable year employed at least four persons in employment subject to this title." The New York State bill defines an employer as anyone who has employed four or more persons "at any time in any 3 months' period, or such shorter accounting period as the Commissioner may establish." Considerations of administrative expediency are thought to justify the New York definition.

Proposed amendment: At page 43, line 17, strike out word "within"; same page line 18, strike out words "each of" and insert: "at any time in any;" same page, line 18, strike out words "or more", so that passage shall read: "who or whose agent or predecessor in interest at any time in any thirteen calendar weeks."

8. COVERAGE OF FARM LABOR

A complication would also ensue in relation to the credit permitted to be allowed against the Federal pay roll tax up to 90 percent of the amount contributed to the State unemployment fund. Farm labor is exempted from the payment of any contributions under the New

York plan, whereas the Federal bill is silent on this point and apparently intends to include farm and agricultural workers. Therefor, the New York employer in such fields, having to pay the 3 percent Federal tax or such other adjusted rate as the provisions of the bill may finally provide, would not be able to secure any deductions or credit because he would have paid nothing to the unemployment fund in New York State. In other words, New York farm employers would be required to pay contributions but their employees would not be eligible to benefits.

We feel that at least at the inauguration of the unemployment insurance plan that farm labor should be exempted because to bring this class under the law would add too greatly to the administration difficulties and expenses causing an undue dram upon the unemployment fund.

Proposed amendment: At page 44, line 23, after word "Congress" and before period insert: "or employment as a farm laborer."

Very informally, I might say that we do not think as an administrative expedient it is wise to include farm employees and we feel that it would be very difficult to pass the bill in New York State were farm l abor included.

9. EXCLUSION OF HIGH-SALARIED WHITE COLLAR WORKERS

Those I represent believe that the Senate bill by not providing any exemption for the exclusion of nonmanual workers who receive more than say $2,500 annually, will require the States enacting unemployment insurance legislation to administer a cumbersome law. Such high-salaried persons as bank and insurance company presidents are not considered to need the protection afforded by the New York State bill.

Proposed amendment: At page 47, line 15, after word ('thereunder" and before period insert: "but shall not' include any person employed at other than manual labor when such nonmanual worker is paid at a rate of wage or salary of more than $2,500 a year or more than $50 a week."

The **CHAIRMAN.** What is your limit in New York?

Mr. **ANDREWS.** For nonmanual workers, $2,500. For manual workers, no limit.

Senator **CONNALLY.** Do you tax them?

Mr. **ANDREWS.** We only tax the pay rolls of those who would be entitled to benefit.

Senator **CONNALLY.** Why should not the president of a comapny drawing a big salary pay a tax toward unemployment on his salary even though he does not draw any benefit himself? It is a part of industry?

Mr. ANDREWS. Well, I think if we ever have any merit rating, we will have to annul the very direct relationship between the income from pay rolls of employees who have received benefits and who may receive benefits. I think it would be very hard from any sort of actuarial standpoint to tie in your relationship between the unemployed and the employed, and the income from your pay rolls to take care of these unemployed.

Senator **CONNALLY.** It would be just so much velvet above the present plan. I think if industry is going to be taxed, I think everybody that draws a salary from the concern, whether he be the presi-

dent or the doorkeeper, ought to pay. The whole theory is that industry is going to bear its burden. If you come along here and exempt a man drawing $25,000 a year salary from it, and tax the fellow drawing $15 a week, it seems to me it is an unjust shifting of the burden.

Mr. ANDREWS. I think that opens a very interesting point.

Senator CONNALLY. What is vour reaction to it?

Mr. ANDREWS. I think there is a lot in what you say, sir. We are working out in New York State-we have decided that if we have 3 percent on 2,300,000 workers within 2 years, we can start paying $15 benefits for 15- or 16- week period, but if you are going to get everybody in New York State from Wall Street operators down,. you can probably cut that 3 percent down.

Senator CONNALLY. All of these funds are going to run behind what you figure they are going to run actuarilly, experts to the contrary notwithstanding, but the point I make is this, that this is not getting back something that you paid in entirely, because the man who never loses his job and continues in employment has to pay his tax and he will never get it back, that is true, isn't it?

Mr. ANDREWS. Yes.

Senator CONNALLY. You are taxing him on the theory that the industry in which he is engaged ought to bear the hazard of the man who does lose his job. Now, why should not the president of the company contribute something to take care of the hazards of the people who lose their jobs, as well as the man who works with his hands?

Mr. ANDREWS. Because after all, he would be the man who would have to contribute I suppose to charity and so forth.

Senator CONNALLY. I know, but other people contribute to charity too.

Mr. ANDREWS. If this works out the way we think it will, we won't have to depend so much upon charity, and therefore if we set up a sound reserve, those people who now contribute to community chests of course will be relieved from such contributions.

The CHAIRMAN. The committee was told that the advisory committee unanimously agreed that there ought to be a limitation of this provision.

Mr. ANDREWS. We were thinking of it more from the administrative end.

The CHAIRMAN. That is a question which, the committee will have to decide. Proceed, please.

Mr. ANDREWS (continuing):

10. ASSURING COLLECTION OF CONTRIBUTIONS WHEN EMPLOYERS BECOME INSOLVENT

Based on our experience in the administration of the workmen's compensation law and the difficulties of collecting payments due under awards under such law from insolvent employers and insurance companies, it is necessary to afford to the State in collecting any amounts due for contributions under unemployment insurance plans a preferential status over other and general creditors. Accordingly an amendment to the Federal Bankruptcy Act is recommended to provide a definite priority status in insolvency proceedings for amounts of contribution due from employers covered by any State

act to any State unemployment fund when such amounts are unpaid and owing to such State unemployment fund at the time of such bankruptcy or insolvency.

Although unemployment insurance does not provide a panacea, any bill should establish minimal standards and in our opinion nothing less should be encouraged by the Federal Government which has proposed a program of social security to the workers of the country. We recommend that minimum standards similar to those in the proposed New York State bill be incorporated in the Wagner bill as an additional condition to granting employers credit for contributions made under State laws and in order to avoid confusion, conflict, and the evasion of responsibility by the States in moving toward the goal of social security. Prompt action is urged in order to permit the enactment of suitable laws by States whose legislatures are soon to adjourn.

Senator **BLACK.** I would like to ask you just one question. There is a provision in this bill which was based on the theory that you can work out a system whereby an employer who stabilizes employment could get certain exemptions. Do you believe it is possible for that to be done fairly without having a constant pressure of lobbyists on both legislatures and on bureaus, to try to get certain exemptions?

Mr. **ANDREWS.** As I stated before, Senator, we say that at the end of the 3 years, the industrial commission shall make a report to the legislature as to whether such a thing would be feasible.

Senator **BLACK.** No; what I am getting at is this: Do you believe that from your experience that would give rise to a constant pressure on the part of certain employers on both the legislatures and bureaus to get exemption from part of those taxes? Isn't that human nature?

Mr. **ANDREWS.** Oh, yes; there is no doubt about that.

Senator **BLACK.** And where there is a loophole left for exemption, some will get it.

Mr. **ANDREWS.** That is true of all of our labor laws.

The **CHAIRMAN.** Thank you very much. Mrs. Mary T. Bannerman.

STATEMENT OF MRS. MARY T. BANNERMAN, CHAIRMAN COMMITTEE ON LEGISLATION, CONGRESS OF PARENTS AND TEACHERS, WASHINGTON, D. C.

Mrs. **BANNERMAN.** The National Congress of Parents and Teachers is an organization of a million and a half members with organized branches in every State except Nevada, and in the Territory of Hawaii, and the District of Columbia.

It was organized in 1897—

1. To promote child welfare in home, school, church, and community; to raise the standards of home life; to secure adequate laws for the care and protection of children.

2. To bring into closer relation the home and the school that parents and teachers may cooperate intelligently in the training of the child, and to develop between educators and the general public such united efforts as will secure for every child the highest advantages in physical, mental, and spiritual education.

This explains why we have not discussed or taken action on old-age pensions, and unemployment insurance, as they of course, do not deal directly with the welfare of children.