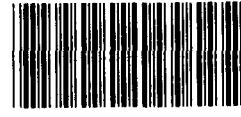


GAO

Testimony



144684

For Release
on Delivery
Expected at
10:00 a.m. PST
Wednesday
August 7, 1991

Labor's Child Labor
Enforcement Efforts: Developments After
Operation Child Watch

Statement of
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Operations
Human Resources Division

Before the
Subcommittee on Employment and Housing
Committee on Government Operations
House of Representatives

Board of Supervisors Chambers
401 Marshall Street
Redwood City, California



052240 / 144684

SUMMARY OF TESTIMONY BY SARAH JAGGAR
ON LABOR'S 1991 CHILD LABOR
ENFORCEMENT EFFORTS

Regulations issued under the Fair Labor Standards Act of 1938 limit the hours that children aged 14 and 15 can work, set a minimum age standard for work in specified occupations, and restrict employment in specific hazardous occupations for youths under age 18. In 1990, Labor implemented Operation Child Watch, a national child labor regulation enforcement initiative which detected over 29,000 child labor violations. As part of the FY 1991 budget legislation, Congress gave Labor authority to increase maximum penalties for nonwillful child labor violations from \$1,000 to up to \$10,000.

Too Early To Evaluate Labor's New Strategy To Deter Child Labor Violations During 1991, Labor is implementing a new strategy providing regional offices with greater flexibility for their enforcement/education efforts. At this time, it is too early to assess the effectiveness of this new strategy. However, we have questions regarding how Labor will oversee and assess (1) regional education/outreach efforts, (2) the level of regional resources committed to assure the strategy's successful implementation and (3) regional efforts to target child labor violations.

Labor Conducted Fewer Investigations During First 6 Months Of 1991 Compared to 1989 and 1990 Periods During the first 6 months of 1991, Labor conducted about 15,000 nonagricultural investigations nationally, about 30 percent fewer than the first 6 months of the 1990 period which included part of Operation Child Watch, and 24 percent below the first 6 months of 1989.

Labor's Enforcement Indicators For 1991 Below First Half of 1989 But May Surpass 1989 Annual Totals Labor detected 11,544 minors illegally employed in nonagriculture during the first half of 1991, a 52 percent decline from 1990. Although this total is also 14 percent below the levels of the first half of 1989, it represents an annualized rate slightly above FY 1989, the fiscal year prior to Operation Child Watch. In addition, the percent of investigations detecting a nonagricultural child labor violation rose from 8.5 percent during the first half of 1989 to 8.9 percent in 1991.

Investigator Staffing Levels Decline, In Part Explaining Decrease In Number of Investigations As of June 1991, Labor had 878 Wage and Hour Division (WHD) investigators nationally, almost 9 percent below FY 1990 and lower than any year since 1980. Labor believes that staff reductions have contributed to the decline in investigations but also that increased investigator training has contributed to higher quality but fewer inspections.

New Penalty Schedule Has Led to Higher Penalty Assessments In 1991 As a result of Labor's new child labor penalty schedule, total national assessments were about 43 percent higher during the first six months of 1991 compared with the same period in 1990, rising from \$4.2 million in 1990 to \$6.0 million in 1991.

Mr. Chairman and Members of the Subcommittee:

In 1990, acknowledging public and congressional concern about the exploitation of working children, Labor implemented Operation Child Watch, a national enforcement effort to detect child labor violations and deter violators. Operation Child Watch confirmed the widespread illegal employment of children, detecting over 29,000 violations throughout the United States. Today, I am pleased to be here to present some new data highlighting Labor's efforts to protect working children in the aftermath of Operation Child Watch. This data include information on investigations, detected violations and illegal employment, and Labor's new child labor enforcement strategy. As you requested, we also present information for Labor's Region IX, which includes California.

Our major points are as follows:

- Following the coordinated enforcement sweeps of Operation Child Watch, Labor has developed a new strategy to reduce the illegal employment of children. This strategy focuses on enhancing regional efforts to educate the public about child labor laws and permitting greater regional flexibility to allocate enforcement resources to child labor activities. At this time, it is too early to assess the effectiveness of this new strategy. However, we have questions regarding how Labor will oversee and assess (1) regional education/outreach efforts, and (2) the level of regional resources committed to assure the strategy's successful implementation and (3) regional efforts to target child labor violations.
- During the first 6 months of 1991, Labor conducted about 15,000 investigations, about a 30 percent decline nationally from the same period in 1990 and 24 percent below the comparable period in 1989. Labor detected a total of 11,544 children illegally employed in nonagricultural industries during the first half of 1991, a 52 percent decline from the same period in 1990.
- While the number of illegally employed minors detected during the first half of 1991 is below the heavy total of the same period in 1990, it is also about 14 percent below the number detected during the first 6 months of 1989. However, should it continue, 1991's annualized rate of about 23,000 minors is slightly above the 22,500 minors detected in FY 1989, continuing the rising trend in detected illegal employment begun in 1985. In addition, the proportion of investigations yielding at least one child labor violation during the first half of 1991 also increased slightly, to 8.9 percent compared to the 8.5 percent rate during the first half of 1989.

- National WHD investigator staffing levels have declined during 1991, contributing to the decline in total investigations conducted. As of June 1991, national WHD investigator staff totaled 878, down about 9 percent from 961 in 1990 and the lowest recorded level since 1980. Region IX WHD investigators totaled 91, down from 98 in FY 1990. Labor says that fewer investigators explain only a part of the decline in investigations with agency wide investigator training leading to higher quality but fewer inspections.
- Under its new penalty schedule, Labor is assessing higher civil monetary penalties in child labor violations. Average penalties assessed per violation, for the nation increased significantly, from \$252 during the first 6 months of 1990 to \$584 during the same period in 1991. Available data suggests that Labor is assessing the higher penalties for those violations which are more serious. For example, between April - June 1991, the first full quarter where Labor implemented its new penalty schedule, Region IX assessed the full scheduled penalty of \$1,000 - \$1,500 for each detected hazardous order violation.

BACKGROUND

The Fair Labor Standards Act of 1938 (FLSA) is the primary federal law regulating the wages and working conditions of child workers. In nonagricultural industries, the Act generally provides a basic minimum working age of 16, although minors who are 14 and 15 years old may work in specified occupations in retail, food service and certain other industries (minimum age standard). In addition, the applicable regulations limit the number of hours and times of day that children 14 and 15 years of age may work, especially during the school year, in nonagricultural industries (hours standard). For example, such minors are allowed to work only outside school hours and no more than 18 hours in a school week.

The Act also sets a minimum age for working in occupations determined by Labor to be particularly hazardous (hazardous order standards). Exercising this authority, Labor maintains hazardous occupations orders in 17 nonagricultural occupation and industry areas. These orders prohibit children under the age of 18 from employment in certain occupations and industries. For example, youths under age 18 cannot operate meat slicing machines or regularly drive a car or truck to deliver food.

Employers found in violation of any of these provisions may receive, among other sanctions, civil monetary penalties for each violation. As part of the Omnibus Budget Reconciliation Act of 1990, Congress gave Labor the authority to assess a maximum

civil monetary penalty of up to \$10,000 for each child who was the subject of any nonwillful child labor violation, up from the previous \$1,000 maximum. Under the legislation, civil monetary penalties collected for child labor violations will flow to the general fund of the U.S. Treasury rather than the Department of Labor, as they had in the past.

In February 1991, Labor issued regulations that implemented the legislated \$10,000 maximum penalty for a child labor violation. Labor has operationalized this authority by developing a new penalty schedule as guidance for its investigators. The new schedule assesses the maximum \$10,000 civil monetary penalty when an illegally employed child is fatally injured and in selected cases where a child is permanently disabled. The schedule also included higher penalty assessments for other violations, although these new penalties remained far below the \$10,000 maximum. For example, the schedule doubled assessed penalties for hazardous order violations from \$500 to \$750 to new maximum amounts of \$1,000 to \$1,500, depending on the age of the illegally employed child. The new penalty schedule applies to all child labor violations detected since November 5, 1990 on which Labor assessed a penalty on or after March 1, 1991.

Wage and Hour Division (WHD), a unit of Labor's Employment Standards Administration, is responsible for the administration and enforcement of federal child labor standards. WHD investigators enforce minimum wage, overtime and other Fair Labor Standards Act provisions as well as child labor provisions. Although Labor typically does not target investigations towards child labor, WHD investigators look for suspected child labor violations in response to complaints or referrals from sources such as newspapers, schools or state agencies. Enforcement of federal child labor standards in California is handled by Labor's Region IX, which is also responsible for enforcement in Arizona, Nevada, Hawaii and Guam. Region IX has five district offices-- Los Angeles, San Diego, Sacramento, San Francisco, and Phoenix-- and 15 satellite offices throughout the region.

LABOR'S CHILD LABOR ENFORCEMENT STRATEGY 1989 - 1991

Labor's Enforcement Strategies Prior To Operation Child Watch
Prior to Child Watch, Labor developed an annual program plan which provided guidance to each region on the number and type of FLSA investigations to be undertaken during the program year. This guidance also included estimates of the level of illegal minor employment consistent with each region's level of investigative activity. Although some regions did target some of their investigations to child labor violations there was no explicit investigation targeting requirement from the national office.

Operation Child Watch In 1990, Labor implemented a national child labor regulation enforcement initiative, Operation Child Watch. The operation's four enforcement efforts, held in March, June, August and September 1990 and typically lasting 1 to 3 days, accounted for almost 70 percent of Labor's FY 1990 total detected child labor violations.

Operation Child Watch was a centralized, nationally coordinated effort to detect child labor violations and deter violators. Labor developed explicit targeting guidelines for each of the four sweep operations. Although there were no specified regional standards for the number of investigations to be performed or the number of violations detected, Labor required each region to devote a specified amount of enforcement resources to each effort. For example, during the March 1990 effort, each region had to devote 50 percent of its investigators for a few days each to the sweep operation. During the second effort in June, 1990 each region devoted 100 percent of its investigators for at least one day.

Labor also provided the regions with specified guidelines to be used for Operation Child Watch. For example, the third child labor enforcement initiative undertaken in August 1990 was targeted primarily to four industries; garment manufacturing, construction, agriculture and the amusement and recreation industry. Within this general guidance, regions could take steps to improve the detection rate of illegal employment. For example, Region IX investigators used work permits in California to detect illegal employment. In September 1990 Labor initiated the educational component of Operation Child Watch where Labor and its regional offices targeted school systems, including teachers, students and their parents to inform them about child labor laws.

Operation Child Watch resulted in the identification of dramatically increased numbers of detected violations and illegally employed minors. At the end of FY 1990, Labor had detected 42,696 labor violations and over 38,000 illegally employed children. In FY 1989, the previous record year, Labor had detected about 25,000 child labor violations and almost 22,500 illegally employed children.

Labor's Enforcement Strategy Since Operation Child Watch Since those efforts, Labor has developed a new enforcement strategy which (1) shifts the direction of its enforcement and education activities from the national to the regional level and (2) increases the emphasis on employer outreach and education in the hope of achieving greater voluntary compliance by employers.

Under this new strategy, Labor no longer develops a program plan for expected WHD activity. Instead, Labor gives broad guidelines on education and enforcement to the regions,

encouraging them to use innovative techniques to implement these guidelines in a flexible manner. Region IX has further decentralized Labor's new strategy, shifting enforcement/education efforts to its five district offices, with each office developing its own implementation plan. The regional office reviews each district office's plan and performs limited oversight on the results of the district efforts.

The components of Labor's new strategy are:

- **Additional Education/Outreach Regarding Increased Penalties For Child Labor** - Following some initial national publicity, regions are to respond extensively to the continuing flow of information requests, mostly from school systems and parent-teacher associations, regarding child labor regulations.
- **Targeted Education/Outreach Initiatives** - Each region is to plan extensive efforts to inform employers during the conclusion of the current school year about child labor laws and compliance. Regions are to target outreach towards larger employers of children, resort areas, the amusement and recreation industry, construction and the garment manufacturing where applicable.
- **Targeted Investigation Program, Summer 1991** - During the summer months of 1991, regions are to target for investigation those industries where they previously performed outreach.
- **Targeted Investigation Program, Fall 1991** - Regions are to implement a second targeted enforcement effort in September - October 1991 to coincide with the resumption of the school year, depending on the results and compliance findings from other child labor investigations and subject to resource availability.

Labor believes that this decentralized enforcement/education initiative, coupled with the increased deterrent effect of higher penalties, will generate sufficient voluntary compliance within the employer community to reduce the future illegal employment of children. Consequently, Labor forecasts a decrease in the amount of detected illegal employment to 27,000 minors in FY 1992 and 25,700 minors in FY 1993, far below the over 38,000 children detected as illegally employed in FY 1990.

Too Early To Evaluate Labor's New Enforcement Guidelines

Because Labor's regional offices have only begun to implement the new strategy, it is too early to assess its effectiveness. However, we have questions about the new strategy that may aid Labor in more fully considering aspects of its plan.

- **Can Labor, Without Developing Criteria and Guidance, Assess The Adequacy Of Regional District Office Outreach Efforts?** Labor, at this time, has no explicit criteria for assessing regional/district office outreach efforts, activities which can vary substantially in form and required effort. For example, Region IX's Sacramento district office performed a variety of different outreach activities in 1991, including informing many area high school districts about child labor requirements, participating in radio and TV shows regarding child labor in agriculture and other projects. In contrast, the San Francisco district office's primary activity was to hold seminars for Work Experience Counselors throughout its area. With assessment criteria, Labor could provide regions with guidance on what constitutes sufficient outreach efforts, and how they can achieve such levels.
- **Without Resource Objectives, Can Labor Assure That Regions Will Contribute The Level Of Resources Necessary To Assure The Strategy's Effective Implementation?** Labor is letting the regions determine the level of resources to be allocated to the new enforcement strategy and at this time has set no explicit expectations as to amount of resources regions should commit to child labor enforcement activities. Thus, some regions/district offices may devote fewer (greater) resources to child labor activities than others. For example, one Region IX district office (Los Angeles) committed all 17 of its investigators to the summer investigation program while the Phoenix district office allocated 6 investigators. In contrast, the San Francisco district office did not perform a summer targeted investigation effort while the Sacramento district office implemented a pilot program based on employer self-auditing for child labor violations, rather than conduct a more traditional targeted child labor investigation program.¹ To assure an adequate regional commitment to child labor regulation enforcement, we believe that Labor will need to

¹ Under this program, investigators first determine by phone whether the employer has any prohibited equipment, minimizing the likelihood of a hazardous order violation. If an employer has prohibited equipment then the investigator conducts a personal visit to the employer site. If the employer has no such equipment, the investigator audits the employer for hours violations using time cards which the employer sends to the investigator. Investigators also conduct random telephone interviews of employees to further establish the possibility of a hazardous occupation violation. If such a possibility is detected, the investigator then conducts a personal visit to the employer site.

develop better tools to effectively evaluate regional child labor resource commitments.

- Without Additional Guidance, Can Labor Oversee The Adequacy Of Regional Efforts To Target Child Labor Violations? Regions may need additional guidance on how to target scarce child labor investigation resources effectively towards violators. For example, Labor urges its regional offices to target serious violations and systemic violations involving large numbers of illegally employed children in resort cities and in the recreation/amusement, construction or garment manufacturing industries. However, we have seen no explicit guidance concerning how regions should target serious/systemic violations in those industries or what to do if most of those industries are not significant in their areas.

FEDERAL CHILD LABOR ENFORCEMENT SINCE OPERATION CHILD WATCH

1991 Enforcement Indicators Below Levels of the First Half Of 1989 But May Surpass 1989 Annual Totals

Our comparison of data on Labor's child labor enforcement efforts for the first six months of 1991 with that of the first 6 months of 1990 (a period which included the first two Operation Child Watch enforcement sweeps), shows a significant decline in enforcement activity (Table 1). The number of illegally employed minors (11,544 minors) detected during the first half of 1991 is also 14 percent below the number detected during the first half of 1989. However, at an annualized rate, the total for the first half of 1991 slightly exceeds the level of detected illegal employment for FY 1989 (about 22,500 minors), continuing an annual trend of increased amounts of detected illegal employment which began in 1985.² In addition, the percentage of investigations in which at least one nonagricultural child labor violation was detected during the first 6 months of 1991 was about 8.9 percent, far below Operation Child Watch but slightly above the 8.5 percent rate for the first 6 months of 1989.

During the first 6 months of 1991, Labor:

- conducted 15,241 total investigations or 31 percent fewer investigations;
- detected violations in 63 percent fewer investigations;

²The number of total nonagricultural child labor violations detected during the first half of 1991 was also below the levels of the first half of 1989. However, the annualized rate for 1991, should it be sustained will result in more violations detected than in 1989.

- detected 12,588 nonagricultural violations and 11,544 illegally employed children, over 50 percent fewer;
- detected 158 or 28 percent fewer serious injuries of illegally employed children;

than during the first six months of 1990.³

Region IX Efforts Below First Half Of 1990 Levels But Above 1989

Total detected illegal employment and violations in Region IX fell by close to 60 percent from the first half of 1990 to the same period in 1991 (See Table 2). Although the largest decline was in hours violations, which fell by 68 percent, the number of detected hazardous order violations increased slightly (4 percent) over the two periods. However, Region IX enforcement totals for the first half of 1991 exceeded the levels reached during the first half of 1989.

Region IX detected only a small number of illegally employed children sustaining serious injuries-- thirteen during the three periods combined. Labor officials attributed the small number of serious injuries to the state of California's refusal to permit child labor investigators access to workers' compensation data regarding the reported injuries of working children. Such data provides industry and occupational information on the injured working child, enabling investigators to determine whether a violation occurred and then citing the employer.⁴

Decline In Investigator Staffing Levels

As of June 1991, Labor had 878 WHD investigators for all 10 regions, 8.6 percent below the FY 1990 total of 961 and lower than any year since 1980. Region IX staffing levels fell from 98 to 91 investigators.⁵ Every district office in Region IX has vacancies for investigators and in 1991, Region IX closed its

³Consistent with Labor's definition, we defined serious injury as either (1) an injury that caused the loss of at least one working day by the child, (2) a permanent total or partial disability, or (3) a fatality.

⁴ In 1990, Region III investigators successfully used workers compensation data in Pennsylvania to detect 22 of the 50 serious injuries sustained by illegally employed children during Operation Child Watch.

⁵ Region IX district office investigator staffing totals are: Los Angeles - 17, San Francisco - 22, Sacramento - 14, Phoenix - 21, and San Diego - 17.

single person area office in Modesto California, shifting enforcement responsibilities to other area offices.

An agency wide hiring freeze has prevented regional offices from replacing investigators who leave. Labor officials explained that a hiring freeze has been in effect since November 1990 because of explicit budget reductions and the FY 1991 budget legislation which redirected all penalty funds from Labor to the general fund of the U.S. Treasury.

Labor told us that the decline in investigator staffing has contributed to the decline in the number of investigations performed by WHD investigators. Further, a one week training session held for most WHD investigators in the second quarter of 1991 also reduced inspection activity. Finally, Labor believes that the newly trained investigators are now conducting higher quality but fewer investigations.

Illegal Employment Of Minors Remains A Significant Problem

The number of detected illegally employed minors during the first half of 1991 are lower than those detected during periods which included Operation Child Watch. However, should it continue at its current annualized rate, 1991 totals for illegal employment will slightly exceed FY 1989 levels, continuing a trend of rising detected illegal employment since 1985. This is consistent with other information which suggests that illegal child labor remains a serious problem in the United States.

First, in a June 1991 report we estimated levels of illegal employment far larger than the levels detected by Labor. Using available data we prepared an estimate of the number of 15-year-olds likely to be illegally employed under selected federal child labor regulations.⁶ We estimated that in 1988, about 18 percent of all employed 15-year-olds--about 166,000--were working in violation either of the regulations governing maximum hours of work or the minimum age for employment. The estimate of 166,000 is far above the approximately 14,000 children Labor found employed in violation of either regulation in 1988.

Secondly, a more recent informal survey of children, parents, and employers and cooperative education counselors, performed by Region IX's Los Angeles district office, suggests that substantial illegal employment of children continues, at least in southern California. The Los Angeles office mailed 250

⁶See Child Labor: Characteristics of Working Children, (GAO/HRD 91-83BR, June 14, 1991). Because of limitations in the available data, we believe that this estimate understates the number of 15-year-olds employed in violation of federal child labor regulations.

questionnaires to six area high schools, and received 204 responses from children 14 - 17 years of age. The survey results suggest that the illegal employment of children is quite extensive in Los Angeles, with 5 percent of the 16-to 17-year-olds reporting that they worked in violation of a hazardous occupation order. In addition, 50 percent of the 14- to 15-year-olds reported that they had violated the federal hours standard, and 15 percent reported that they had violated the federal minimum age standard.

New Penalty Schedule Has Led to Higher Assessments In 1991

As a result of Labor's new child labor penalty regulations, total assessments, average penalties per violation and per illegally employed minor were significantly higher during the first six months of 1991 compared with the same period in 1990 (See table 3). Total national assessments increased by 43 percent, from \$4.2 million in 1990 to \$6.0 million in 1991, with Region IX assessments increasing from \$161,000 to \$540,000. The national average assessed penalty per minor increased from \$277 during the first half of 1990 to \$584 during the first half of 1991.

Labor appears to be assessing the higher penalties for those violations which are more serious; for example hazardous order violations. Although Labor does not have penalty data on individual cases at headquarters, we were able to obtain and analyze such data for Region IX. Between April-June 1991, the first full quarter in which Labor implemented its new penalty schedule, Region IX assessed the full scheduled penalty of \$1,000 - \$1,500 for each detected hazardous order violations.

This concludes my statement. I will be glad to answer any questions you may have.

Table 1: National Nonagricultural Child Labor Regulation Enforcement Indicators, First 6 Months of 1989 - 1991

	1989 Jan - June	1990 Jan - June	1991 Jan - June
Total Number of Investigations	19,977	22,227	15,241
Number of Investigations With a Child Labor Violation ¹	1,705	3,658	1,358
Illegally Employed Children	13,449	24,259	11,544
Total Violations	14,620	26,778	12,588
Hours	9,745	19,632	9,043
Minimum Age	1,180	2,608	1,143
Hazardous Orders	3,695	4,538	2,402
Serious Injuries Sustained By Illegally Employed Children	105	158	114

¹These are investigations which detected at least one minor illegally employed in a nonagricultural industry. Because the number of detected minors illegally employed in agriculture is about 1.0 percent of all illegally employed minors detected by Labor, we exclude them from the analysis.

Table 2: Region IX Nonagricultural Child Labor Regulation Enforcement Indicators, First 6 Months of 1989 - 1991

	1989 Jan - June	1990 Jan - June	1991 Jan - June
Total Number of Investigations	1,900	2,054	1,495
Number of Investigations With a Child Labor Violation ¹	157	347	125
Illegally Employed Children	600	1,935	799
Total Violations	782	2,159	875
Hours	477	1,684	546
Minimum Age	157	233	78
Hazardous Orders	148	242	251
Serious Injuries Sustained By Illegally Employed Children	8	3	2

¹These are investigations which detected at least one minor illegally employed in a nonagricultural industry. Because the number of detected minors illegally employed in agriculture is about 1.0 percent of all illegally employed minors detected by Labor, we exclude them from the analysis.

Table 3: Civil Monetary Penalties For Child Labor Violations¹,
 United States and Region IX, First 6 Months of 1990 and 1991

Indicator	Nation		Region IX	
	1990	1991	1990	1991
Total Penalties Assessed (Millions \$)	\$4.163	\$6.018	\$.161	\$.540
Total Penalties Collected (millions\$)	\$2.449	\$4.664	\$.219	\$.455
Estimated Average Assessed Penalty Per Violation (dollars)	\$252	\$531	\$284	\$531
Estimated Average Assessed Penalty Per Minor (dollars)	\$277	\$584	\$312	\$584

¹Because Labor does not have separate penalty assessment data for nonagricultural and agricultural violations, this table presents combined dollar totals.