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THE EFFECT OF VETERANS' REEMPLOYMENT RIGHTS, VETERANS PREFERENCE LAWS, AND PROTECTIVE LABOR LAWS ON THE STATUS OF WOMEN WORKERS IN THE WORLD WAR II PERIOD

Steven Lim*

Women's great progressive strides . . . are invariably made in time of war rather than in time of peace.

—Margaret Hickey 1944

When the classic work on the history of women comes to be written, the biggest force for change in their lives will turn out to have been war.

—Max Lerner 1945

War, after all, is the most dangerous of all threats to women in their tradition-hallowed family role.

—Elizabeth Nottingham 1947

Such evidence indicates that modern war is a factor of dubious value in the struggle of women for status and power in society.

—Leila Rupp 1979

America's entry into World War II marked the unofficial end to the Great Depression. All factions of society accepted their roles in the war effort as millions of men were inducted into the military and the nation mobilized for war production. It has been argued that working women's experiences during the war years permanently transformed the public's perception of women in the workforce. This

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4. Rupp, Woman's Place Is In the War, in Women In America 342, 357 (Carol Berkin & Mary Norton eds. 1979) [hereinafter cited as Woman’s Place]. See also L. Rupp, Mobilizing Women For War (1978).
author contends, however, that the old notions remained constant or were enhanced rather than weakened as a result of women's participation in the war effort. Moreover, it was chiefly public opinion and not the law which governed women's status in the workplace. Legal developments over the war years tended to reinforce rather than to reform traditional attitudes.

I. INTRODUCTION

High unemployment during the 1930's had evoked widespread opposition to women workers, especially to those with working husbands. However, by 1940 almost fourteen million women, including five million married women, were wage-earners, and although most women were employed in sex-segregated jobs, women did comprise a quarter of the total workforce.

As increasing numbers of men joined the armed forces, a severe labor shortage resulted. Many women assumed jobs traditionally performed by men, and the female labor force grew by six million to its peak in July 1944, when women constituted one-third of the labor force. More significantly, the number of women in manufacturing industries more than doubled from 2.3 million in 1940 to a peak of 4.8 million in November 1943.

From July 1945 to January 1946, however, the female labor force declined by four million, and by February 1946 the number of women in manufacturing had fallen by nearly two million to a low of 2.9 million. The total female labor force slipped below sixteen million in early 1945. Subsequently the number of working women gradually rose again surpassing the peak war level. The postwar gain, however, was not in traditionally male, high-paying manufacturing jobs. Instead, women were relegated to low-paying white-col-

8. Id.
13. NATIONAL MANPOWER COUNCIL, WOMANPOWER 162 (1957) [hereinafter cited as WOMANPOWER].
lar and service occupations.\textsuperscript{14}

What was responsible for the impressive increase in women's employment during the World War II period? The acute labor shortage caused by the war and the need for women as temporary war workers led to the relaxation of protective labor laws allowing millions of women to enter the workforce. After the war, veterans' employment rights and the reinstatement of protective labor laws were partly responsible for the elimination of millions of women from the labor force. However, many women left voluntarily, albeit under extreme pressure to resign, and many more were legitimately laid off when plants closed for reconversion to peacetime manufacturing.\textsuperscript{15}

Those women who were released on the basis of sex and who did not work under collective bargaining agreements could not turn to the courts for relief because existing employment discrimination statutes did not categorically protect women. There is little legal or historical documentation regarding the disagreements between these women and their employers. Thus, in evaluating the effects of changing employment rights of women, this article primarily considers those situations where employer discretion in dealing with women workers was legally restricted by collective bargaining agreements, protective labor laws, and Congressionally dictated reemployment rights and civil service rules respecting veterans.

This study begins with a review of the reemployment provision of the Selective Training & Service Act of 1940\textsuperscript{16} and the Veterans Preference Act of 1944.\textsuperscript{17} The Selective Training & Service Act of 1940 was enacted before the war and was not intended to create new

\textsuperscript{14} See Milkman, supra note 5, at 533. Schloss and Polinsky found that the percentage of women in manufacturing who were employed in the heavy durable-goods industries rose from 15\% (340,000 out of 2,268,000) in 1939 to 25\% (816,250 out of 3,265,000) in 1946. The increase of nearly a half-million from 1939 to 1946 was attributed in large measure to seniority rights women acquired during the war, and in part to their employment in special classifications designated as "women's jobs". Schloss & Polinsky, supra note 10, at 413. Rising employment opportunities in the post-war economic boom also contributed to the increase. More telling are figures of the changing percentages of all workers in designated occupational groups who were women. From 1940 to 1947, the percentages rose for clerical workers (53\% to 59\%), service workers (40\% to 44\%), and sales workers (28\% to 40\%), but fell for professional and semi-professional workers (45\% to 40\%) and craftsmen and foremen laborers (3\% to 2\%). See Women's Bureau Handbook, supra note 6, at 3.

\textsuperscript{15} Schloss and Polinsky found that among factory workers between September 1945 and November 1946 women quit about 2.25 million jobs, employers laid off slightly more than 1 million, and 2.75 million were hired. Schloss, supra note 10, at 419.


benefits for veterans. The act’s purpose was to assure that returning veterans could resume their prewar employment status. The Veterans Preference Act of 1944, on the other hand, won Congressional approval during the heat of the war and gave veterans advantages in federal employment which they did not enjoy before entering military service. Both acts were for the most part sex-neutral legislation aimed at protecting veterans. When each act was passed, differential effects on women workers were not seriously anticipated by either Congress or the public. Furthermore, although the two acts may have played major parts in changing the composition of the women’s labor force after the war, legal and administrative challenges which arose under the acts were not initiated by women.

Government and public attitudes toward working women were directly responsible for sex-specific laws, employer rules and collective bargaining provisions. An analysis of the influence of these restrictions would not be complete without first examining the attitudes of particular interest groups toward women workers. The effect of accommodations in protective labor laws on the status of women’s employment in the World War II period will be discussed and a number of legal and administrative decisions will be considered. A separate section is devoted to the unique status of married women workers. Lastly, wartime changes in the employment rights of women are evaluated in light of the American post-war experience.

II. SELECTIVE TRAINING & SERVICE ACT OF 1940

The Selective Training & Service Act of 1940 provided for the conscription and training of men for the United States military services. Most legislative and public debates over the Act focused on the constitutionality and morality of peacetime conscription. Section 8 of the Act provided veterans with reemployment rights and seniority credit for time spent in the military, thereby enabling them to resume their pre-military service jobs by displacing workers who had been hired in their absence. Section 8 is significant because many of the women who entered the labor force during the war were hired to replace men entering military service and therefore could be displaced by returning veterans.

The proposed Act was a major topic of Congressional debate in

1940, and unions pressed Congress for its passage.\textsuperscript{21} The reemployment provision was primarily the result of strong public sentiment to encourage private reemployment of draftees,\textsuperscript{22} although the Act was amended in 1941 to give reemployment rights to volunteers. Congress debated whether the power to enact the reemployment provision was implied under the Commerce Clause,\textsuperscript{23} but the constitutionality of Section 8 was subsequently upheld in 1944 by a U.S. District Court.\textsuperscript{24}

The Act provided that if a permanent employee left a federal or private job for military service, he would be restored to his old position or to one of like seniority, status and pay. The veterans would resume their old positions only if they were satisfactorily discharged from the military, still qualified to perform the job and made a timely application to their former employer.\textsuperscript{25} A private employer unlike the United States Government, was not required to reinstate the veteran if the employer's circumstances had changed to the extent that reinstatement would be impossible or unreasonable. Additionally, the veteran could not be discharged without cause for one year following reinstatement.\textsuperscript{26}

Because of the wartime labor shortage, few problems arose concerning the application of the reemployment provision during the early war years. Most veterans secured better jobs than they had had prior to entering the military, and only a few requested reinstatement to their former jobs.\textsuperscript{27}

In May 1944 however, Major Lewis B. Hershey, the Director of the Selective Service System issued an interpretative memorandum stating that a veteran returning to his former job had superior employment rights over any non-veteran, regardless of the non-veteran's seniority.\textsuperscript{28} The Justice Department backed the Director's interpretation, although the Labor Department disagreed.\textsuperscript{29} Union leaders opposed the General's ruling as an over-exercise of his authority, especially since they had not been consulted prior to the issuance of the

\textsuperscript{21} See F. Peterson, \textit{American Labor Unions} 111-12 (1945).
\textsuperscript{22} Bus. Wk., Aug. 17, 1940, at 16.
\textsuperscript{24} Hall \textit{v. Union Light, Heat & Power Co.}, 53 F. Supp. 811 (E.D. Ky. 1944).
\textsuperscript{26} 50 U.S.C. §§ 301-303 (1976).
\textsuperscript{27} See Ingle, \textit{supra} note 23, at 748.
\textsuperscript{29} Id. at 153-54.
memorandum. More importantly, the Director's interpretation conflicted with traditional seniority principles.

Employer compliance with the Selective Service interpretation was inconsistent. Finally, in May 1946, the United States Supreme Court, in *Fishgold v. Sullivan Drydock & Repair Corp.*, held that collective bargaining contracts barred superseniority. As a result, veterans whose time in military service had been credited could not displace non-veterans with greater seniority. Several bills were introduced in Congress in 1946 proposing to release from liability employers who had followed the Service's interpretation, but only one such bill managed to pass the House of Representatives. Dire predictions that numerous non-veterans would file suits against their former employers proved incorrect, and in 1948, in *Lindsey v. Leewright*, the Fifth Circuit held that it lacked jurisdiction under the Act to try an action by a non-veteran to restore him to a job in which a veteran had been reemployed.

It is unclear how many veterans were entitled to reemployment rights under the Act. Although 4,531 veterans applied to the Justice Department for aid between July 1944 and July 1946, only 22 court cases were filed by veterans claiming violations of their rights under the Act between May 1944 and May 1946. Sources estimated that only one-fifth of the veterans qualified for protection under the Act because many of them had been unemployed, temporarily employed, or in school at the time they entered the military. A 1944 War Department survey of a small sample of veterans indicated that only 53% of those with reemployment rights wanted their old jobs back, and a 1946 poll revealed that only one-third of the veterans who held jobs before entering the military had returned to their former positions.

Regardless of the exact figures, it is apparent that many veterans had legitimate reemployment rights under the Act. Such rights

30. *Id.* at 149-50.
32. 328 U.S. 275 (1946).
34. 171 F.2d. 542 (5th Cir. 1948).
38. Couper, *supra* note 37, at 112.
when exercised resulted in the displacement of women workers. Furthermore, because of the uncertainty as to the applicability of seniority and other Act provisions, many employers may have felt that it was wiser to give returning veterans the benefit of the doubt whenever seniority disputes arose between incumbent women workers and veterans. Many women may have deferred to the veterans out of ignorance or public and spousal pressure.

Section 8 may have played an even more important role in putting the force of public opinion behind the employment of veterans. It was the policy of both employers and unions to safeguard veterans' interests. Almost all employer-union agreements included provisions which protected the seniority and job rights of returning veterans, many of which were more generous than the legal guarantees under the Act. The American Federation of Labor (AFL) the Congress of Industrial Organization (CIO), and the Veterans of Foreign Wars informally agreed on July 24, 1944 to provide seniority credit for military service to all veterans. Moreover, after the war, employer and union generosity toward veterans may have been fueled by the rumor that Congress was planning to give seniority credit to all veterans.

The War Labor Board's decisions were less favorable toward veterans. In several cases the Board was unresponsive to unilateral requests for artificial seniority clauses in collective bargaining agreements. Regional War Labor Boards denied employer requests for contract clauses providing for double seniority to veterans in James-town Metal Equipment Co.; for equal seniority to veterans not previously employed but residing within a hundred-mile radius around the plant in Buckeye Traction Co.; and for the superseniority clause similar to the Selective Service interpretation in Scovill Manufacturing Co. Furthermore, in Firestone Tire & Rubber Co. and American Can Co., the National War Labor Board vacated Regional Board orders to include contract clauses providing for military

40. See Shishkin, Organized Labor and the Veteran, 238 ANNALS 146, 153 (1945).
41. F. Peterson, supra note 21, at 112.
42. Shishkin, supra note 40, at 154.
44. 17 War Lab. Rep. 252 (New York Regional Board 1944).
45. 20 War Lab. Rep. 247 (Cleveland Regional Board 1944).
46. 21 War Lab. Rep. 200 (Boston Regional Board 1944).
47. 28 War Lab. Rep. 483 (1945); 24 War Lab. Rep. 322 (Atlanta Regional Board 1945).
seniority credit to newly hired employees.

Some employers and unions did agree to contract clauses granting seniority credit to newly hired veterans. In such cases, newly-hired veterans could not displace incumbent employees. After serving a probation period these same veterans were granted seniority credit for military service and could not be laid off before other employees who may have begun working for the company years earlier. In *Ford Motor Co. v. Huffman,* 49 the United States Supreme Court rejected the challenge of a laid-off non-veteran who claimed that the union had violated its duty of fair representation in permitting such a clause to be included in the contract. The Court held that "a wide range of reasonableness" must be accorded bargaining representatives in serving the units they represent, subject to good faith and honesty, despite the fact that there may be adverse effects on some union members. 50 Of particular significance to women workers, the Court approvingly cited *Hartley v. Brotherhood of Railway & Steamship Clerks,* 51 a Michigan Supreme Court case upholding a collective bargaining provision which denied employment to married women. 52

Disturbing forecasts of mass-unemployment among veterans after the war did not go unheeded. Although fewer than two million veterans were employed in August 1945, by August 1946 more than ten million veterans had jobs and one-fourth of all employed men were veterans. 53 Unfortunately, the number of women workers directly displaced by returning veterans because of Section 8 or collective bargaining agreements is indeterminable.

Women veterans, however, did not share in the postwar veteran hiring boom. A total of about 350,000 women served in the four women’s services, the WAAC, WAVES, SPARS, and the United States Marine Corps Women’s Reserve. 54 From 1945 to 1948, the number of women in the military declined from 266,000 to 14,000. 55 In February 1946, when millions of their male counterparts had returned to the civilian labor force, half of the women veterans were

49. 345 U.S. 330 (1953).
50. Id. at 338. The Court’s analysis included an examination of discriminatory, but acceptable collective bargaining practices, including discrimination based on “family responsibilities.”
51. 283 Mich. 201, 277 N.W. 885 (1938).
55. Id. at 10.

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receiving unemployment compensation. Because many of the women veterans were not working before they joined the military, few were in a position to take advantage of reemployment opportunities. Of those women who were working before entering military service, the Women's Bureau of the Department of Labor found that most of them were searching for jobs similar to those they had had before the war, and only a few were seeking jobs for which their service training and experience had prepared them. In contrast to the male veterans, the experience the female veterans acquired in the military may have been negligible. One colonel conceded that women in the WAC were doing work comparable to work they might do in civilian life, i.e., clerical work and telephone switchboard operations.

The numbers, however, may be deceptive in that many women veterans may not have actively sought civilian jobs. "Of fifty WAVES and SPARS who were asked in [one] questionnaire why they joined the service, more than half included in their reply a need 'to get out of a rut,' or 'to meet more men." WAC women frequently denied feminist sympathies, and an Air Force questionnaire on the postwar ambitions of WACS found that 73% preferred marriage and homemaking. Ironically, the Women's Bureau found that 75% of civilian women workers polled wished to continue working after the war. A relatively high proportion of the women veterans were young, unmarried, middle-class women who planned to marry middle-class men, and therefore felt that they did not need to earn a living. The military service was viewed as a patriotic duty rather than as a form of employment or job training.

57. Id. at 28.
59. Nottingham, supra note 3, at 673 n.11.
61. See 91 CONG. REC. A5369 (1945).
63. See Nottingham, supra note 3; M. Honey, Popular Magazines, Women and World War II (1979) (unpublished Ph.D. dissertation, Michigan State University, in Library of Congress) (analyzes class differences by comparing stories in Saturday Evening Post (middle class) and True Story (lower class)); (WAC stories in Post but not in True Story).
III. VETERANS’ PREFERENCE LAWS

A. Veterans Preference Act of 1944

The Veterans Preference Act of 1944 was passed by Congress with little debate and almost no opposition. Some critics asserted that veterans preference in civil service employment lowered the quality of federal personnel, while others feared that the Act was the first step in creating a military caste system.

For the first time, women were recognized as veterans; however, male and female veterans did not benefit equally under the Act. An amendment proposed by Rep. Charles LaFollette (R. Ind.) which passed in the House version of the Act would have given the same preferences to husbands of disabled women veterans and unmarried widowers of deceased ex-servicewomen as the Act allowed to wives of disabled male veterans and unmarried widows of deceased ex-servicemen. Concern was expressed in the House committee hearing that unscrupulous men might take advantage of disabled ex-servicewomen. In the House debate, it was declared that the husband of a female veteran should have to establish some degree of dependency on the woman veteran, although no similar requirement was placed upon wives of male veterans. One Congressman acknowledged that the real purpose of the amendment was to keep the veteran’s family intact as much as possible. The Senate passed the measure without debate but with a few changes, including the deletion of LaFollette’s amendment.

The Act provided substantial advantages to preference eligibles including:

- Entrance examinations—ten points added to scores of disabled veterans, wives of disabled ex-servicemen, and widows of deceased ex-servicemen; five points added for all other veterans;
- Positions for guards, elevator operators, messengers, and custodians reserved for preference eligibles for five years after the war;

64. See 90 CONG. REC. 3501-07, 5784-85 (1944). The House vote was 312 to 1 with 116 not voting and Rep. Howard Smith (R. Va.) did not state his reasons for dissenting. Id. at 3507.
66. See, e.g., id. at 65 (statement of N.P. Alifas, Pres. of Dist. No. 44 of the IAM).
67. Id.
68. Id. at 35 (letter from Millard W. Rice).
69. See 90 CONG. REC. 3504 (1944).
70. Id. at 3505 (1944).
71. Id. at 5784-85 (1944).
Age, height, weight, and minimum educational requirements waived in certain cases;
Preference eligible’s name placed ahead of all others with the same rating;
Appointing officer who passes over a veteran eligible in favor of non-veteran must file his reasons for doing so in writing with the Civil Service Commission;
Reduction in personnel—military service seniority credit for all veterans; all preference eligibles with efficiency rating of “good” or better retained in preference to all other competing employees;
Transfer of agency function—preference eligibles transferred before additional employees from any other source.72

Veterans preference laws have been challenged ever since they were first enacted.73 By the end of World War II, veterans preference statutes were upheld by courts as long as the discriminatory practice was deemed reasonable.74 Women, however, did not begin challenging the statutes on the basis of sex discrimination until 1973.75 No cases reached the United States Supreme Court until 1979, when in Personnel Administrator of Massachusetts v.Fee-ney,76 the Court rejected an equal protection challenge to the Massachusetts veterans preference laws on the grounds that the state’s interest in providing for veterans was not unreasonable and that purposeful discrimination on the part of the state’s legislature was not substantiated.

Former federal employees who returned from military service were also protected by the reemployment provision of the Selective Training & Service Act of 1940.77 Between July 1944 and July 1947, 284,360 of more than 680,000 federal employees who had joined the military returned to their former jobs.78

An initial look at the numbers of women and veterans employed in the federal service during the World War II period suggests that the Veterans Preference Act of 1944 may have substantially affected women’s employment. The number of female federal employees rose from 186,000 (18.6% of the federal workforce) in 1940 to 1,106,000

73. See generally Annot., 161 A.L.R. 494 (1946).
76. 442 U.S. 256 (1979).
77. 54 Stat. 890 (1940).
78. F. CAHN, FEDERAL EMPLOYEES IN WAR AND PEACE 8-9 (1949).
In the two decades before the war, approximately 25% of all federal appointments in the classified civil service went to veterans, but in the two years following VJ-Day, 1,150,000 to 2,000,000 appointments (57%) went to preference eligibles. Veterans comprised 16% of the federal workforce in 1945 and 43% (29% WWII veterans) by 1947.

Since March 16, 1942, all federal recruits had been awarded war service appointments which expired six months after the end of the war. At least 700,000 of the 1.1 million women employed by the federal government in 1945 were under wartime appointments. The government was, therefore, in a position in early 1946 to discharge a substantial proportion of the female employees. Employment statistics for the first half of 1946, however, do not reveal an accelerated decline in women's federal employment. The number of both male and female non-veterans receded steadily from July 1945 to July 1947, when male non-veterans numbered 658,000 (52% drop from July 1945), and female non-veterans 401,000 (63% drop). The total number of federal employees fell almost 1.1 million in the two years, whereas the number of veterans employed in the federal service rose by only 329,000. These figures imply that war service appointees were not released wholesale to be replaced by veterans, but were instead kept on the payroll only as needed.

Perhaps the most influential factor in the decline of women's federal employment immediately after the war was the concentration of women in temporary positions in the war agencies. In 1944, four out of every five women in the federal service were employed by war agencies. The number of employees in the War and Navy Depart-

80. F. CAHN, supra note 78, at 8.
81. Id. at 9.
82. Women in the Federal Service, supra note 79, at 63.
83. War service appointees were also given an edge over persons seeking federal employment for the first time. The five points credit in examinations was not granted until all veterans (who were ahead of the war service appointee on the list) were placed. F. CAHN, supra note 78, at 109.
84. See F. CAHN supra note 78, at 16. In July 1941, women in the federal service numbered 266,000 and in July 1942, 558,000. America entered the war in December 1941. I estimate that approximately 400,000 women were part of the federal service in March 1942. Therefore, at least 700,000 of the 1.1 million women in the federal service at the end of the war were under war service appointments.
85. Id. at 63.
86. Id.

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ments fell from 1,922,000 in 1944 to 649,000 in 1947, and during that period 615,000 women left the two departments.

Women and men often were not competing for the same jobs. Much of the work performed by women in the war agencies was the kind traditionally assigned to women. Although many of the female applicants were more interested in higher-paying munitions jobs, the office or department requesting a list of eligible persons had the right to specify the sex of the applicants. Mary Anderson, Director of the Women's Bureau from 1920 to 1944, favored allowing appointing officers the power to sex-type jobs because she reasoned that otherwise male veterans would end up at the top of almost all lists of qualified applicants. In the 1920's, Jessie Dell of the Woman's Party persuaded President Hoover to issue a presidential order taking away the right of the appointing officer to request applicants on the basis of gender, but the order was revoked a year later by the new presidential administration. In her biography, Mary Anderson protested, “because of the mistaken zeal of a few ultrafeminists, [women] were deprived for a while of the opportunity that should have been theirs to hold jobs for which they were better qualified.”

Nevertheless, in July 1946, Margaret Hickey, who chaired the Women's Advisory Council of the War Manpower Commission, announced that higher paying civil service jobs were being tagged “men only” although it was claimed that Civil Service policy was nondiscriminatory. Mary Anderson had failed to note that most male veterans did not apply for the positions traditionally held by women, and, therefore, the effect of allowing the appointing officer discretion was to give him the opportunity to discriminate against women who were qualified to perform the higher paying jobs traditionally assigned to men.

88. Id. at 76.
89. Id. at 25.
90. Id. at 35.
93. Id. at 153.
94. Id.
95. Id. at 154.
96. See Better Jobs Held Barred to Women, N.Y. Times, July 8, 1946, at 26, col. 1 Cf. F. Cahn, supra note 78, at 8-9, 108-09.
97. See G. Kammerer, Impact of War on Federal Personnel Administration 1939-1945 317 (1951). Federal unions did not offer women much protection against discriminatory treatment. Consequently, little impetus for organization existed among the clerical and stenographic force. Id. In the War and Navy Departments, where a large number of women
B. State Veterans Preference Laws

The Selective Training & Service Act of 1940 declared that re-employment rights "should" be granted to veterans who were employed by states or other political subdivisions before joining the military.\(^8\) Almost every state provided that employees entering the military were to be considered on leaves of absence and thus entitled to their former jobs when they returned.\(^9\)

A quarter of the states specifically provided that school employees in the military were to be considered on leaves of absence.\(^10\) Some localities which prohibited the employment of married women as schoolteachers relaxed the rules during the war.\(^11\) In October 1947, 1,529,000 of the state employees were school workers.\(^12\) Compared to workers in the private sector, and in particular to workers in manufacturing industries, a higher proportion of male schoolteachers probably returned to their former jobs and displaced women hired in their absence.

Almost every state in some way granted veterans preference in civil service employment. In some states, veterans preference was merely a statement of legislative policy, but in a few states veterans were expressly awarded preferences in public departments or works.\(^13\) A third of the states also gave veterans preference in civil service examinations.\(^14\)

Veterans preference laws may have adversely affected female state employees more than federal employees because of the sheer size of the state and local workforce. In October 1947, there were 3,789,000 state and local employees, as compared to 2,002,000 federal employees.\(^15\) Unlike many of the women in the federal government who assumed temporary positions specially created to help prosecute the war, most of the women who entered the state and

\(^{98}\) See Ch. 720, 54 Stat. 890 (1940).


\(^{100}\) See, e.g., Married Women Teachers, Hartford Times, May 19, 1945, at 6, col. 1.

\(^{101}\) See Women in the Federal Service, supra note 79, at 77.

\(^{102}\) See State Veterans Laws, supra note 99.

\(^{103}\) Id.

\(^{104}\) Id.

\(^{105}\) See Women in the Federal Service, supra note 79, at 77.
local government workforce during the war took over jobs previously filled by men. Many of these women were undoubtedly displaced by returning veterans. Unfortunately, the Bureau of the Census figures are not broken down by sex or veteran status, and conclusive figures on the effects of state veterans preference laws are not available.

IV. ATTITUDES OF THE GOVERNMENT, EMPLOYERS, AND UNIONS TOWARD WOMEN WORKERS

A. Government Propaganda and Why Women Worked

If women were indeed “forced out” of jobs after the war, it is ironic that labor shortages existed throughout the duration of the war. The shortages, however, were usually due to acute, temporary demands in certain cities or confined to low-paying essential civilian services.\(^{106}\)

Conscription of women for wartime labor was publicly debated but never initiated, although registration campaigns were organized in several cities.\(^{107}\) A Gallup poll conducted in August 1943 revealed that although only 39% of the men favored drafting of women, 51% of the women, including 58% of the women between the ages of 21 and 35, approved of some kind of draft.\(^{108}\)

Instead of conscription, the government relied on intensive propaganda campaigns to sell war work to women. The Office of War Information (OWI) colluded extensively with magazine and newspaper writers and editors and the advertising industry to encourage women’s war work.\(^{109}\) Although most campaign plans publicized high wages, some plans emphasized a highly emotional, patriotic appeal which dramatized women’s selfless, patriotic sacrifice to the war effort.\(^{110}\) Womanpower programs also often used fear as a recruiting stimulus by frequently alluding to casualty lists and suggesting brutal and ruthless treatment of women by the Germans and the Japanese.\(^{111}\)

A great deal of attention was directed at lowering the resistance of husbands toward working wives.\(^{112}\) Many families believed that

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107. See Woman’s Place, supra note 4, at 343-44.
109. See Woman’s Place, supra note 4, at 344.
111. Id. at 214-15.
112. E. Straub, supra note 60, at 141. Straub’s dissertation in particular and Chafe’s book, infra note 122 are the two best secondary sources of information on women workers during the World War II period.
under the Selective Service program working wives would cease to be dependents and therefore expose their husbands to the draft.\textsuperscript{113}

Expressions of dissatisfaction with housework and childcare were tolerated during the labor shortage although women often expressed more socially acceptable reasons for joining the workforce.\textsuperscript{114} Self-dependent single, divorced, and widowed women were already working in 1941, but it is unclear what prompted millions of married women to seek employment. When 559 women at one Chicago plant were asked why they took war jobs, 73\% responded, “to help win the war”; 12\%, “to be independent”; 8\%, “to get high pay”; and 7\%, “part economic, part patriotic.”\textsuperscript{115} Employers and other observers asserted that money was the primary motive,\textsuperscript{116} and that patriotic responses were often a front for financial motives.\textsuperscript{117} If money was not the main reason women began working, it was a major factor in women’s choice of jobs,\textsuperscript{118} and the primary reason why women wished to continue working after the war.\textsuperscript{119}

Women war workers were glamorized by advertisers and writers. Even factory workers did not escape the attempts of commentators (and publicists) to highlight their femininity to the public,\textsuperscript{120} which may account for the following observation:

The unvarnished truth at present is that girls are flocking to factory and mechanical jobs because that is where the available men are. No one can be sure how strong the motive is or how many are influenced by it, but it is quite unrealistic to deny its existence.\textsuperscript{121}

As women moved into the high-paying war jobs, essential civilian services lost much of their cheap womanpower. For example,
400,000 black domestics left their employers for war jobs. The OWI conceded that essential civilian jobs had to be glamorized because it was otherwise impossible to make them more attractive.

It is difficult to measure the significance of the OWI campaigns. If high pay was why most women worked, then the OWI propaganda may have been unnecessary. Even without OWI prodding, it is not unlikely that writers, editors, and advertisers would have adopted themes of selfless patriotism and glamour. Nevertheless, by stressing the temporary nature of women’s wartime work early in the war, the OWI accelerated the social acceptability of women’s wartime work. Simultaneously, the agency contributed to the postwar ambivalence towards working women.

B. Employers

Employers were hesitant to hire women until they were compelled to do so out of economic necessity. Early in the war, many employers had rules prohibiting the hiring of married women. A woman’s place was believed to be in the home. Employers had no incentive to use women for “heavy” work in industry as long as there was a surplus of male labor. Hiring women for jobs which men could perform was not only bad public relations but could also provoke male employees and lower production.

As men departed for the military, employers had to take on women in order to fulfill contract obligations. Nonetheless, few industrial employers lost money by hiring women. War production boosted industries’ profits before taxes from 3.7 billion dollars in 1939 to 17.2 billion dollars in 1944. Moreover, manufacturers with federal contracts were often guaranteed a profit when the government agreed to assume any costs incurred in employing women.

Some employers tried to prevent the newly hired women from joining unions. In S.H. Camp & Co., the National Labor Relations Board found an unfair labor practice where the employer threatened a woman with discharge if a national organizational cam-

122. W. Chafe, The American Woman 142 (1972). The number of black women workers increased by 334%. Unfortunately, a study of the fate of black workers during the World War II period is beyond the scope of this article.
124. The Brewery Worker, October 10, 1945, at 8.
125. See Milkman, supra note 5, at 529-30.
paign was successful. In *A. Sartorius & Co.* and *Revlon Products Corp.*, the NLRB held that the companies were guilty of interfering with union activities where they attempted to segregate newly hired non-union women from union employees.

Once women were put on the payroll, employers spoke effusively of the performance of their new workers; some employers proudly declared that women increased the efficiency of the men. Many employers had resorted to bringing in “a half dozen or so of the prettiest girls” to combat the antagonism of the men. But after the war, when more men became available, the praise turned to scorn as women in the plants were accused of causing “morals problems.” Employers, may in fact have been sincerely concerned about the effect of the “sex problem” on production. However, their hiring criteria during the war years and tolerance of any sexual problems at that time may have fostered the criticisms which arose when more men returned to the workforce. One writer, for example, asserted that the idea of loose sex was sweeping the country and that “[m]any of [the women workers] have become confused as to whether they are at work in order to get a man or do their jobs.”

After the war, with the end of government contracts and a return to a competitive market for consumer durables, presumably employers would retain and hire what they considered to be the most profitable workforce. But in a survey of 304 war plants in New York State in late 1944, the State Department of Labor found that 91 of the plants employing 40% of the women planned to replace women with men, in whole or to a considerable extent, even where the women had proven their ability during the war. Although most executives reported that seniority was the controlling factor, the

128. 48 N.L.R.B. 1202, 14 L.R.R.M. (BNA) 869 (1943), enforced, 144 F.2d 88 (2d Cir. 1944).
131. See Bethlehem Steel Co., 7 Lab. Arb. (BNA) 163, 167 (1947) (Killingworth, Arb.).
132. E. Hawes, *Hurry Up Please It's Time* 46 (1946). Hawes, a former fashion designer and author of several fashion books such as *Fashion Is Spinach* (1938) and *Why Is a Dress* (1942) is cited several times in this article, appearing as a former factory worker in her book *Why Women Cry* (1943) and union organizer and socialist in *Hurry Up Please*.
133. E. Hawes, *Why Women Cry or Wrenches With Wrenches* 42 (1943).
135. Id.
future of women in industry could not have been very promising if the Women's Bureau could be encouraged by its finding that “more than a fifth” of 300 war production plants recently visited by Women's Bureau agents “showed a definitely favorable attitude toward employment of women in the post-war period.”

Employers were probably less likely than their employees to object to wives or other women working outside the home (as long as their own wives remained at home!). Opposition to women’s employment was strongest among working class and rural men. Why, then, would employers-capitalists have wanted to get rid of women _qua_ women if not out of business necessity? Greed is arguably more compelling than notions about a “woman's place,” even in 1945. Moreover, employers who continued to employ women in traditional women’s jobs could not resort to the “woman’s place” argument.

After the war, when employers released women who were in fact efficient workers, they perhaps believed that the women somehow distracted the men and thereby lowered production. The men may have resented women intruding in men’s territory, may have been uncomfortable working alongside the women, or may have been participants in the “morals problem”—or so the employers believed. One observer noted:

> Military experience has deprived a whole generation of young men of some years of informal education in family life, and has in addition twisted attitudes toward sex and the family in strange patterns. We must therefore expect a period of widespread confusion and trouble in family relations. Personnel experts are well aware of the effects of such matters on labor efficiency.

In short, in view of the legitimate and less-than-legitimate reasons why men failed to welcome women’s continued presence in the workforce, it would be too simplistic to assume that the sole reason employers discriminated against women after the war was personal prejudice or moral righteousness.

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136. Women's Bureau, U.S. Dep't of Labor, Special Bull. No. 18, _A Preview to Women Workers in Transition From War to Peace_ 15 (1944) [hereinafter cited as _A Preview to Women Workers_].

137. One writer, however, alleged that “in the United States that good old family unit looms large in the eyes of many an employer—so large that he discharges women at the first sign of a cutback in war orders.” Mezerik, _Getting Rid of the Women_, 175 _ATL. MONTHLY_ 79, 81 (June 1945).


139. Waller, _The Veteran's Attitudes_, 238 _ANNALS_ 174, 178 (1945).
C. Unions

Fear of competition was the major reason that unions opposed the hiring of women for men's jobs. Before the war, some unions negotiated closed shop agreements prohibiting the employment of women without union consent.140 Most unions agreed to the hiring of women and relaxation of job standards only as a wartime measure.141 When union members realized that they were being given preference for upgrading and promotion and that their security was being protected, they became much less defensive toward the women.142

By October 1944, over three million women were union members, as compared to 800,000 before the war.143 In 1943, the American Civil Liberties Union found that twenty-five national unions still excluded women,144 but by May 1947, only one national union had reinstated its formal barriers against women.145 Nevertheless, women were under-represented on administrative and other union committees, and few women sat on national union boards.146 Furthermore, as women were discharged or laid off from the plants at the end of the war, women on union staffs were also released.

The men's attitude toward their new co-workers never improved beyond mere tolerance. One former factory worker alleged that "95% of men in the Middle West (and maybe in the U.S.A.) believe [that] woman's place is in the home and they don't mean maybe."147 But the same writer found that, "many women are still a headache to their bosses and fellow-workers because they are so personal in all their relationships. They cry, they fuss, they bicker among themselves. This behavior disappears over a period, but it is a slow process."148 In response to such sentiments another writer maintained that "[such] statement[s] are beyond adequate proof . . . . It is the

140. E. STRAUB, supra note 112, at 194.
141. F. HARBISON, SENIORITY PROBLEMS DURING DEMOBILIZATION AND RECONVERSION 23 (1944).
142. WOMANPOWER, supra note 13, at 152-53.
143. Women's Bureau, U.S. Dep't of Labor, Union Series Pamphlet No. 5, Women's Stake in Unions (1946).
144. J. SEIDMAN, UNION RIGHTS AND UNION DUTIES 192 (1943).
146. See C. DANKERT, CONTEMPORARY UNIONISM IN THE UNITED STATES 192-95 (1948). "Even such a progressive union as the I.L.G.W.U., with approximately 75 percent of its membership made up of women, at the present time has not a single woman on its executive board of twenty-three members." Id. at 193.
147. HURRY UP PLEASE, supra note 132, at 34. (emphasis in original).
output and not the person's individuality that counts.\textsuperscript{149}

The women were admittedly not very supportive union members. A 1943 Fortune poll indicated that 44% of working women preferred no union,\textsuperscript{150} and many women who early in the war saw their jobs as merely temporary opposed paying union dues.\textsuperscript{151} Married women found little time to attend union meetings because of home responsibilities. Many women did not comprehend the collective bargaining process or the contract provisions,\textsuperscript{152} and women often waited months or years before filing complaints, partly because unions frequently disregarded women's grievances or concealed information about grievance procedures.\textsuperscript{153}

Some other objections by union members to the hiring of women were more valid. Craftsmen saw their profession threatened when jobs were broken down to component duties to accommodate women. Seniority principles were endangered when women were hired for higher paying jobs because they could not perform the heavier work on the lower paying jobs of the progression lines.\textsuperscript{154}

Some unions fought for and won explicit provisions in collective bargaining contracts which prohibited sex discrimination.\textsuperscript{155} Such clauses, however, should not have been necessary. A collective bargaining contract implicitly protects all workers equally except where it is otherwise stated. In the great majority of the published cases where women won their sex discrimination grievances, the collective bargaining agreement did not contain an anti-sex discrimination clause. The most important factor in whether a woman won or lost her challenge may have been the willingness of the union to press her grievance.

Equal pay for women was demanded by unions who feared that

\begin{itemize}
\item \textsuperscript{149} Stoddard, \textit{No Women Being Hired}, 26 CANADIAN FORUM 58 (June 1946).
\item \textsuperscript{150} Fortune, August 12, 1943 at 10.
\item \textsuperscript{151} See Mezerik, infra note 137, at 79.
\item \textsuperscript{152} See Says Unions Fail to Absorb Women, N.Y. Times, February 1, 1944, at 24, col. 2.
\item \textsuperscript{153} See Gabin, \textit{Women Workers in the UAW in the Post World War II Period} 1945-54, 21 LAB. HIST. 18 (1980); E. Straub, supra note 60, at 112. It is uncertain how many of the women knew of the state protective laws or how well the women understood seniority provisions. There are conflicting claims as to how "surprised" women were when the mass layoffs came. See Miller, \textit{What's Become of Rosie the Riveter?} N.Y. Times, May 5, 1946, Section 6 (Magazine), at 47 (women not surprised); Contra, Tobias and Anderson, \textit{Whatever Happened to Rosie the Riveter}, Ms. 90, 93 (June 1973), reprinted in L. Kerber, \textit{Women's America} (1982).
\item \textsuperscript{154} See Brown, supra note 129, at 80-82.
\item \textsuperscript{155} See, e.g., Luckenbach Steamship Co., 6 Lab. Arb. (BNA) 98 (1946) (Kerr, Arb.).
\end{itemize}
employers would use women after the war to lower men's wages. Union leaders openly declared that they favored high wages for women in order to maintain a high level for veterans. Thus it is not surprising that although the War Labor Board generously awarded women equal pay for comparable work in traditional men's jobs, the equal pay principle was held to be inapplicable to traditional women's jobs. One woman union organizer asserted, "I never had a single meeting where the women said they got equal pay—that is, all of them, on all jobs. In unorganized plants I doubt if any of them got equal pay."

At the beginning of the war, separate seniority lists for men and women were common because most jobs were sex-typed. By the middle of the war, most unions and the Women's Bureau were arguing for single seniority lists. They reasoned that a single list was fairest to all workers even where it might work against women. Unions favored single seniority lists because with separate lists for men and women, returning veterans would not be able to bump off women with less seniority who had been assigned to traditional men's jobs. Many union leaders were also concerned that any deviation from straight seniority might open the way for discrimination by allowing management greater freedom in selecting workers to be reemployed.

Although the Women's Bureau found in 1945 that women and men had the same seniority rights in 80% of collective bargaining contracts, the National Women's Trade Union League reported in the same year that industrial women had little if any real seniority protection and indicted both employers and union contracts. In most cases the War Labor Board held that single seniority lists were

156. HURRY UP PLEASE, supra note 132 at 219. New York State Industrial Commissioner Corsi asserted in 1945 that the passage of the Equal Pay Law by the State Legislature removed the temptation present at the end of World War I, to retain women as a source of cheap labor. See Plan Post War Cut in Women's Jobs, N.Y. Times, February 5, 1945 at 12, col. 1.


159. HURRY UP PLEASE, supra note 132, at 219.

160. See Women's Bureau, U.S. Dept' of Labor, Union Series Pamphlet No. 1 Seniority Status of Women in Unions in War Plants (1945) [hereinafter cited as Seniority Status of Women].

161. F. HARBISON, supra note 141, at 18.

162. Seniority Status of Women, supra note 160.

163. Mezerik, supra note 137, at 80.
Separate seniority lists could, however, be used to women's disadvantage. For instance, in Proctor and Gamble Manufacturing Co., the San Francisco Regional War Labor Board allowed separate seniority lists but further held that in future reductions, no male employed on July 1, 1941 would be laid off while any woman thereafter hired was retained.

Regardless of seniority rights, male union members expected that the women would return home after the war. When the women did not leave voluntarily and male union members' own jobs were threatened, evidence suggests that the men looked after themselves at the expense of the women. Because most UAW contracts included clauses prohibiting sex discrimination, the United Auto Workers (UAW) was considered one of the most progressive unions. However, one researcher found that UAW members did not support women workers after the war:

Evidence of the role the local unions played in supressing grievances and appeals suggests, however, that the number of documented cases of rank-and-file discrimination is only the tip of the iceberg . . . [B]oth married and single women were subject to verbal harassment and intimidation by fellow workers, stewards, and local union officers. Tactics of this sort were used both to coerce women into leaving their jobs and to prevent them from filing grievances against management for sexual discrimination.

In one situation, a woman was discharged when she married. Although 70 of the 1100 union members were women, the union membership voted not to recognize her complaint as a grievance.

Foremen in the auto industry were also antagonistic. One observer found that "[a]lthough the top management of industry is not adverse to keeping women in the plants (the more so considering the fact that women are still lower paid), the lower management [foremen] are violent on the subject of getting women out." On the other hand, one writer, who studied a manufacturing plant in Chicago which was not organized by UAW, found that, although the foremen expressed strong views about the place of women in home

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165. 19 War Lab. Rep. 208 (San Francisco Regional Board 1944).
168. Hawes, supra note 148, at 17.
life and emphatically stated that they preferred employing men after the war, they also indicated that they wanted to keep those women who could perform equal (not merely comparable) work. It is doubtful, however, that such foremen could have overridden the objections of the rank-and-file, whose hostility was more in line with public opinion.

V. PROTECTIVE LABOR LAWS

A. An Introduction to Protective Labor Laws and the Role of the Women's Bureau

In the 1940's, state laws which restricted the employment of women included those which regulated maximum hours, night work, excessive weight lifting, minimum wage, lunch and rest periods, seating, and plant facilities, as well as maternity laws, and laws prohibiting women from engaging in certain occupations. Most of the laws, particularly those regulating maximum hours and night work, had been passed years or decades earlier when terrible working conditions for both men and women had led the public to believe that at least the weaker sex should be given some legal protection. Evidence suggests that the impetus behind the introduction of some of the legislation came from union men who believed that the laws could be used to keep women out of certain occupations. But most of the legislators presumably voted for the laws because of their protective attitudes toward women.

Support for the Equal Rights Amendment (ERA) rose during the war years. The ERA was endorsed in 1944 by both majority party platforms. In July 1946, the ERA reached a vote in the Senate for the first time. By 1947, President Truman and thirty state governors had embraced the amendment. However, not all those who favored the amendment assumed that protective labor laws would

169. Fleming, supra note 115, at 419.
172. Id. at 35-37, 247-49.
173. Legislators have generally not been accused of voting for the protective labor laws in order to favor union men.
174. See, e.g., Tentative Legislative Program 1944-45, 23 INDEP. WOMAN 78 (March, 1944).
necessarily be nullified,\(^\text{176}\) and in 1950 the Senate passed a bill which would have explicitly allowed protective state laws to co-exist with the ERA.\(^\text{177}\) Moreover, unions and a "much larger and increasing number of women in industry" continued to support the protective laws.\(^\text{178}\)

The debate over whether the laws benefited or hindered women's employment continued into the war years. Studies on the effects of the protective labor laws are inconclusive. In 1928 the Women's Bureau published a major review which concluded that the influence of the laws on women's employment was minimal,\(^\text{179}\) but the objectiveness of that study is questionable.\(^\text{180}\) Another analyst found impressive evidence which indicated that protective labor laws actually worked to the disadvantage of women, citing a study which concluded that if not for protective legislation, "2 to 5 per cent" more women would be employed.\(^\text{181}\)

Both before and during the war, the Women's Bureau was the most vigorous and convincing advocate of protective legislation. This is not surprising because the Bureau was mandated by Congress "to formulate standards and policies to promote the welfare of wage-earning women, improve their working conditions, increase their efficiency and advance their opportunities for profitable employment."\(^\text{182}\) As an advisory agency within the Labor Department, however, the Bureau played only a small part in the development of federal policy and none in its enforcement.\(^\text{183}\) Some critics regarded the Bureau as useless and ineffectual,\(^\text{184}\) especially with respect to

\(^{176}\) Id.

\(^{177}\) See B. Babcock, supra note 171, at 131. See also Note, Discrimination Because of Sex, 2 Stan. L. Rev. 691, 718-30.

\(^{178}\) Burton, supra note 175, at 11.

\(^{179}\) See Women's Bureau, U.S. Dep't of Labor, Bull. No. 65, The Effects of Labor Legislation on the Employment Opportunities of Women (1928) [hereinafter cited as The Effects of Labor Legislation]. The 493 page completed study ended up using almost the entire staff and nearly the whole appropriation of the Women's Bureau for two years. See M. Anderson, supra note 92, at 168-70.

\(^{180}\) See B. Babcock, supra note 171, at 251-52. An original committee appointed to advise researchers regarding the general policies to be followed in the investigation included Alice Paul, Doris Stevens, and Maud Younger of the Woman's Party. Reformists on the committee quit when they could not put up with the Woman's Party's antics. Their walk-out made the front page of the Washington Post. See M. Anderson, supra note 92, at 168-70.

\(^{181}\) W. Chafe, supra note 122, at 125. Two to five percent is arguably not "impressive."

\(^{182}\) See Women's Bureau, U.S. Dep't of Labor, leaflet, "The Women's Bureau: Its Purpose and Function" (1946).


\(^{184}\) See, e.g., Labor-Federal Security Appropriation Bill, 1945: Hearings on Women's
advancing women’s employment opportunities.

As an agency which annually had to battle for meager appropriations, the Women’s Bureau could justify its existence only by taking a conservative stance regarding the “woman’s place.”

When the war began, Mary Anderson, Director of the Women’s Bureau from 1920 to 1944 and a veteran of the Progressive Movement, advised employers not to hire women if it appeared that their employment would have a disrupting effect in their homes. In 1946 the Bureau, defending the continuing need for protective laws, declared “[t]he urgent need to safeguard the health of women workers and thus protect the welfare of the race, is today just as valid a consideration . . . as almost 70 years ago.” Although the Women’s Bureau was sympathetic toward women who assumed double duties as housewives-workers, the agency never questioned that housekeeping was the exclusive province of women. Ironically, it was the War Department who advised that veterans assume more household responsibilities.

Perhaps more significant than the Bureau’s championing of protective laws was their encouragement of job segregation by sex. By stressing that women were particularly able to perform those jobs requiring “certain peculiarly feminine qualifications [that is] painstaking work requiring great patience [and] finger dexterity [, and that] [w]omen adapt themselves readily to repetitive jobs requiring constant alertness if not skill, strong fingers and tireless wrists, with no flagging,” the Bureau suggested that women were best suited for the least desirable jobs.

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185. Id.
186. Although the Women’s Bureau approach was far from radical in 1942, Mary Anderson was questioned under oath by the Federal Bureau of Investigation. She stoutly denied any affiliation with the Communist Party. See Sealand, supra note 183, at 182.
187. See M. ANDERSON, supra note 92.
188. See Women War Work May Enlist 6,000,000, N.Y. Times, March 5, 1942, at 19, col. 1.
189. State Labor Laws, supra note 170, at 3. Also, “Most mothers prefer to remain at home to look after their children. In this time of crisis there is no finer contribution such women can make.” Statement by Mary Anderson on March 4, 1942. File “U.S. Labor Force (Female)—Supply and Demand”, National Archives, Container 1536, Record Group 86.
190. See, e.g., State Labor Laws, supra note 170, at 142.
191. “Sharing of housework by men is a suggested solution which we may be sure Pvt. Con would heartily dislike. Yet there seems to be no unanswerable reason why men could not share in almost every task about the house.” War Department Education Manual, EM-31, GI Roundtable Series. Do You Want Your Wife to Work After the War? (June 1944).
192. 88 CONG. REC. A1214 (statement of Mary Anderson).
193. See E. Straub, supra note 60, at 182.
Because the Women's Bureau played such a small role in federal policy-making, it was hoped that the Women's Advisory Council (WAC) of the War Manpower Commission would see that women found and kept high paying skilled jobs. However, the WAC did not have a vote on the Commission, and in any case, the vote might not have been exercised in promotion of women worker’s best interests. Margaret Hickey, who chaired the WAC, and who was described in her press biography as “more feminine than ‘feminist,’”194 asserted in 1945, “Women are able to make their best contribution when they bring to their tasks the essentially feminine qualities of mind and spirit, qualities that will be greatly needed to heal the hurt and damage of the war years.”195

B. Protective Labor Laws—Relaxation and Reinstatement

Some states, before the war, had already provided that labor laws could be relaxed in certain emergencies.196 Other states enacted laws during the war which allowed the same or else specifically permitted the protective laws to be relaxed during World War II.197 A few states suspended particular labor laws for the duration of the war, but most states instead gave the governor or state labor officials the power to grant exemptions to individual employers upon an inspection of the employers’ needs.198 Although some statutes initially applied only to war industries, subsequent legislation authorized relaxation of labor standards in essential civilian industries also.199

After Pearl Harbor, President Roosevelt appealed for 24-hour, 7-day a week war production.200 On December 11, 1941, the War and Navy Departments telegraphed all state governors to urge that hour laws be lifted.201 New York State’s response demonstrates the states’ willingness to comply. Governor Lehman, labor representatives, and majority and minority leaders in the legislature convened and agreed on December 12 to give Labor Commissioner Frieda Miller (the future head of the Women’s Bureau) the power to sus-

194. See Women in the Civilian Labor Force, supra note 110, at 218.
195. Id. at 218-19.
196. See State Labor Laws, supra note 170, at 31-36.
197. Id.
198. Id.
201. Id.
pend application of the state labor laws in special circumstances. Governor Lehman signed the War Emergency Dispensation Act on January 27, 1942, after it had unanimously passed both the State Assembly and Senate without debate. Some labor unions endorsed the legislation because it would aid in war production; others opposed it on the ground that it gave the commissioner excessive discretionary power. AFL and CIO representatives were assured, however, that the state exemptions from the labor laws would only be temporary.

Sometimes the operation of one protective labor law had to be coordinated with the easing of another. In New Jersey, the law permitting the governor to suspend night work laws included a proviso that employers could take advantage of this law as long as they complied with other labor laws. Many employers had continued to refuse to hire women for night work until the state legislature enacted another law which would permit the governor to suspend the half-hour lunch requirement for women.

Dispensations were rarely refused. In California, 89% of the applications for permits for relaxation of hours were granted in 1943. Similarly, in New York, 1323 out of 1457 (91%) of the requests were granted through October 1943 with only 26 appeals.

At the end of the war, dispensations were withdrawn and the old labor laws were restored as promised. There is no indication that legislatures and state officials reinstated the former laws with the intent of forcing women out of the workforce. Indeed, the Women's Bureau complained that some exemptions were not withdrawn soon enough. The vast majority of the pre-war protective labor laws remained intact at the end of the war.

State agencies responsible for enforcing the protective laws were often understaffed and underbudgeted, and the laws were generally

202. Id.
204. N.Y. Herald Tribune, Jan. 30, 1942, at 9, col. 2.
207. See Wartime Relaxation of California's Woman and Child Labor Laws in 1943, 59 MONTHLY LAB. REV. 121 (1944) [hereinafter cited as Wartime Relaxation].
not strictly or widely enforced,\textsuperscript{211} although when New York's dispensation program ended, state officials declared that the statutes would be "scrupulously enforced."\textsuperscript{212} Because state officials usually investigated only upon complaint,\textsuperscript{213} and the employers were liable for violations, it was the unions who protested and reported violations, often out of self-interest on the part of the male members.

The National Manpower Council found that "in the less tight labor market of the late 1940's, the protective laws were more strictly enforced, but not nearly as rigidly as before the war."\textsuperscript{214} One researcher, however, asserted that after the war, the laws "were enforced (often for the first time) to remove women from competition from men. They were turned upside down and applied to keep women out of jobs, rather than to protect them on the job."\textsuperscript{215} Another researcher noted that "feminist critics of protective labor laws have argued simultaneously that these laws contributed to and sustained occupational segregation in the labor force and were largely unenforced."\textsuperscript{216} The issue of enforcement, however, is hardly relevant to the question of how the laws were used immediately after World War II. Before the war, employers did not have to apply the laws against women; they simply did not hire women. After the war, employers did not need to have the laws enforced; they simply discharged women and cited the reinstated laws as defenses.

C. Prohibited Occupations

Prohibited occupations laws were the most openly discriminatory in that they absolutely forbade the employment of women in designated occupations. These included working in core rooms, mines and bars.\textsuperscript{217} Only a comparatively small number of women were denied jobs because of these laws, but bans against the employment of women bartenders are worth examining in some detail. Many such laws were passed immediately after the war, and some evidence indicates that, unlike other protective laws, much of the motivation be-

\begin{itemize}
\item \textsuperscript{211} B. Babcock, \textit{supra} note 171, at 280.
\item \textsuperscript{212} \textit{State War Council Voids Many Orders}, N.Y. Times Sept. 21, 1945, at 15, col. 3.
\item \textsuperscript{214} \textit{WOMANPOWER}, \textit{supra} note 13, at 335.
\item \textsuperscript{215} Hill & Stansell, \textit{Protection of Women Workers and the Courts: A Legal Case History}, 5 \textit{FEMINIST STUDIES} 247, 260 (Summer 1979).
\item \textsuperscript{217} \textit{See State Labor Laws, supra} note 170, at 58-59.
\end{itemize}
hind the introduction of the new bartending laws was purely discriminatory.

The Women’s Bureau reported in December 1944 that five states outlawed the employment of women in connection with the manufacture or sale of intoxicating liquors or on premises where such beverages were sold.\(^{218}\) In 1946, the General Executive Board of the Bartenders International Union resolved that women bartenders who had been hired during the war had to be dismissed.\(^{219}\) By 1949, a union official could boast that seventeen states had some form of law prohibiting the employment of women behind the bar.\(^{220}\)

In a 1944 War Labor Board case, *Sunken Gardens Restaurant*,\(^{221}\) the bartenders union requested contract clauses barring discrimination on the basis of race or sex, and requiring union consent before any management changes in personnel. Specifically, management would be prohibited from: 1) changing from male to female employees and vice versa and 2) changing from white to black employees and vice versa without union approval. The union maintained that the basis for the second clause was to protect black workers who had been gradually squeezed out of their jobs by whites.\(^{222}\) The Regional Board rejected the second clause as discriminatory. There were no blacks working at Sunken Gardens, so the clause was exclusionary, not protective. The Board admonished the union for characterizing such a clause as protective and warned “we should certainly guard against the War Labor Board action being so perverted.”\(^{223}\)

Four years later, the Bartenders Union won a resounding victory in the United States Supreme Court. In *Goesaert v. Cleary*,\(^{224}\)

\(218.\) *Id.* at 59.

\(219.\) B. BABCOCK, *supra* note 171, at 280.

\(220.\) *Id.* Although Maryland’s bartending statute applied to both men and women under age 21, the archaic state liquor licensing statute read: “no license to trade or to sell spiritous or fermented liquors shall be issued by any clerk of a court to a feme covert, or to any person under the age of twenty-one years, without the special order of a judge of said court; and no judge shall give such special order . . . unless upon the recommendation of at least ten respectable freeholder residents of the ward or district wherein said license would be operative; and whenever any license shall be issued . . . the said feme covert or person under the age of twenty-one years shall be responsible for all contracts made in the prosecution of such business under such license and shall be liable to be sued therefore in any of the courts of this State . . . .” *Md. Code Ann. Art. 56, Section 30* (1951). *See* E. Fisch & M. Schwartz, *State Laws on the Employment of Women* (1953).


\(222.\) *Id.* at 106. Prior to this action, most restaurant employees were black. However, the blacks were being pushed out of their jobs by whites. In Sunken Gardens, for example, there were no blacks employed there at the time of this action. *Id.*

\(223.\) *Id.*

\(224.\) 335 U.S. 464 (1948).
the only protective labor law case to reach the Court in the World War II era, the Court rejected an equal protection challenge to a Michigan law which prohibited the employment of women bartenders unless they were wives or daughters of male owners of liquor establishments. Not only did the Court uphold the law as reasonably based on the legislature's concern about "moral and social problems," but the Court also added that, "since the line they have drawn is not without a basis in reason, we cannot give ear to the suggestion that the real impulse behind this legislation was an unchivalrous desire of male bartenders to try to monopolize the calling."

D. Night Work

At the beginning of the war, approximately one-third of the states barred women from night work. The prohibited hours were typically between 10 p.m. and 6 a.m. Although the Women's Bureau had concluded in 1928 that night work laws somewhat restricted women's employment, the Bureau favored the laws on the ground that the evils of night work were overwhelming. Prior to World War I, it was believed that the inferiority of daytime sleep was particularly harmful to women in view of their lesser strength and child-bearing function. Reformists were also concerned about the moral implications of night work for women, and the inevitable neglect of domestic duties. Later, in the 1940's, critics of night work for women focused on women's fatigue from doing housework by day and factory work by night and the possibility of annoyance or criminal assault at night.

By the end of World War II, the Women's Bureau recognized that, "[q]uestions [were] being raised concerning existing legal re-

225. Id. at 466.
226. Id. at 467.
228. See The Effects of Labor Legislation, supra note 179, at 47.
230. Id. at 3. For example, Justice Brandeis asserted, "[n]ight work inevitably destroys the family life which is essential for the welfare of the Nation. Women who work at night and try to make up sleep by day, must inevitably neglect domestic duties. They are deprived of the benefits of family intercourse and of all opportunities for recreation. This must necessarily react disastrously upon the community as well as upon the individual. For the deterioration of any large portion of the population inevitably lowers the entire community, physically, mentally, and morally." Id. at 4.
231. Id. at 4.
232. Id. at 3.
strictions on night work for women, many of which arise out of problems relating to reconversion and postwar adjustments, but the Bureau continued to support the laws. In June 1946, the Bureau relented and recommended a review of night work laws. Yet in early 1948, when Pennsylvania repealed its night work law and raised the maximum hour laws from 8 hours a day and 44 hours a week to 10 and 48 respectively, the Women's Bureau disclaimed the changes as setbacks.

In February 1942, California unions opposed the employment of women on night shifts because there were still unemployed men available, perhaps because, in January 1942 state authorities had "tacitly" agreed to relax the night work law requiring the payment of time and a half. But in one year, 1943, California granted 330 permits for night work affecting 32,136 women.

In a New York survey of war plants employing 232,498 workers, 70,273 of whom were women, companies employing 14,357 of the women had been granted night work dispensations. An overwhelming majority of the New York employers who were questioned believed that night work for women was a "necessary evil" in the emergency of war. Sixty percent of the employers reported lower hourly production and higher absenteeism on the night shifts. Employers preferred hiring women for day shifts because "women were too tired and sleepy to devote their full energies to the job because of their household responsibilities during the day."

One hundred eighteen of the 304 New York establishments surveyed used multiple shifts. In the nineteen plants which used rotating shifts, employers would have been able to justify releasing women after the war when night work laws were reinstated. In the ninety-nine plants with fixed shifts, women hired specifically for the night shift may not have been able to bump junior employees off the day shifts at the end of the war when night work laws were reactivated. Night shifts in New York may also have been similar to

235. See Women's Bureau Conference, supra note 209, at 31.
238. See Wartime Relaxation, supra note 207.
239. Hours and Night Work of Women in New York War Plants, 61 MONTHLY LAB. REV. 507, 509 (1945) [hereinafter cited as Hours and Night].
240. Id. at 509.
241. Id.
those in the automobile industry, where most contracts stipulated that wartime shifts were purely temporary.\textsuperscript{242}

In \textit{Kane v. Egan},\textsuperscript{243} the only published court decision during the war period involving a state night work law, a waitress \textit{and} her employer challenged the Connecticut law. The court upheld the state law as a non-arbitrary, reasonable exercise of the state’s police power, aimed at “safeguarding the health of womankind.”\textsuperscript{244}

When night work laws were reinstated after the war, employers successfully argued that the laws required that women employees be discharged. In \textit{Pittsburgh Corning Corp.},\textsuperscript{245} the arbitrator held that the employer’s defense that state laws prohibited the employment of women beyond certain hours was adequate in itself to justify discharging \textit{all} the women in the plant. This case presents a textbook example of the range of defenses available to employers who discharged women en masse after the war and so it will be discussed at length.

First, the company argued that it had tried to accommodate the women, but state laws demanded that the women be discharged. In May 1943, the Pennsylvania Department of Labor had granted the company’s request for a temporary exemption from the state laws to permit round-the-clock (including night work) employment of women for a 48-hour week (state law limited women to 44 hours). A later request for extensions was granted. When the company wrote to the Department of Labor, asking if it was possible to continue employing women in peacetime on a wartime basis, the company was notified that no variation of the laws would be permitted after the end of the six-month postwar readjustment period. Consequently, on February 18, 1946, the company permanently laid-off all female employees. The arbitrator agreed with the employer that the 48-hour week and night work were necessary for normal efficiency and that hiring women on a two-shift basis, thereby avoiding a conflict with state law, would disrupt normal plant operations.\textsuperscript{246}

Second, the employer sought to establish that he had intended to hire the women for temporary work only and that the women were well aware of his postwar plans. Contracts between the United States Employment Service agent and the Pennsylvania Department of Labor, submitted in evidence in the case, made it clear that the

\begin{itemize}
\item \textsuperscript{242} E. Straub, \textit{supra} note 60, at 340.
\item \textsuperscript{243} 7 Wage & Hour Cas. (BNA) 213 (Conn. Super. Ct., Hartford Cty. 1947).
\item \textsuperscript{244} \textit{Id.} at 216.
\item \textsuperscript{245} 3 Lab. Arb. (BNA) 364 (1946) (Lillibridge, Arb.).
\item \textsuperscript{246} \textit{Id.} at 365-66.
\end{itemize}
employment of female workers was only for the wartime emergency period. The employment director testified that he had been instructed by the plant manager before the war never to employ women. The director also alleged that when some of the girls asked if their employment was on a temporary basis, he had replied in the affirmative, and that he presumed the others also understood that their employment was on this basis. The arbitrator agreed that because the policy of the company from 1928 had been opposed to the employment of women, the policy must have been understood by the residents in the community where the plant was located.247

Third, the company tried to show that the women were inefficient, and that it was the management's prerogative to evaluate their efficiency and to take appropriate action. A foreman testified that when women were transferred to heavier work, it was necessary to employ men to do part of the heavy work for the women (even though Pennsylvania had no weight-lifting law), and that fewer employees were required after the women were discharged. The collective bargaining contract stipulated that the question of physical fitness and competency to perform efficiently the available work was a factor to be considered in the application of seniority rights; furthermore, the agreement provided that the company was responsible, as recognized by the union, for the management and operation of the plant.248

E. Maximum Hours

By December 1944, 43 states and the District of Columbia had some combination of maximum hour laws for women.249 Twenty-four states and the District of Columbia set 8 hours a day and/or 48 hours a week or less in one or more industries as the maximum.250 Ten states set a maximum 9-hour day and/or 50- or 54-hour week.251 Ten more states set either 10 hours or more a day, or 54 hours or more a week as their maximum.252

In October 1943, it was reported that in New York there was a trend away from long hours and toward three shifts.253 A survey of 304 war plants in New York State in late 1944 revealed that 70% of

247. Id. at 366-67.
248. Id.
250. Id.
251. Id. at 53.
252. Id.
253. See Labor Dispensations, supra note 208.
the women workers worked at or less than the legal peacetime maximum of 48 hours a week, and that fewer than 20% worked the full number of hours for which the employers had requested dispensations. Thus, if there had been no change in the schedules, 30% of the women would have had to have been laid off when the 48-hour peacetime maximum was restored.

On the national level, in April 1946, Mary Anderson, in response to an article denouncing protective laws as a "form of job insurance for men," asserted that the average hours in manufacturing was only 41.3, and that out of 154 branches of industry, only 7 had hours over 48. These figures, however, do not reveal how many women may have been laid off immediately after the laws were reinstated and before hours were lowered.

The extent to which dispensations were underutilized during wartime production suggests that employers were reluctant to allow women to work long hours, regardless of the legal limit. Although only 30% of the women in the New York State survey worked over the peacetime maximum, dispensations had been granted to companies employing 90% of the women. Numerous employers in the study claimed that weekly schedules in excess of 48 hours adversely affected the hourly production rate, the quality of work, regular attendance, turn-over, and the accident rate. Most employers agreed that normal production demands could be satisfied with 48 hours or less. Many employers stated that their scheduled hours had already been reduced, and most companies were planning reversion to shorter hours at the earliest possible date. The Women's Bureau inferred that one reason why employers could not lengthen scheduled hours much beyond 48 hours a week was because women with household responsibilities were unwilling to work longer hours for any extended period, even during wartime.

One researcher concluded that, "While there is no evidence to suggest that these laws [maximum hour and night work] were used systematically to restrict the employment opportunities of women, there were many instances in which these laws were used explicitly

254. See Hours and Night, supra note 239, at 507-08.
257. See Hours and Night, supra note 239, at 507.
258. Id. at 508.
to discriminate against women." The scarcity of published legal cases documenting employers' use of maximum hour and night work laws as defenses to charges of discriminatory dismissals of women is not indicative of the extent to which these laws may have been used. In most instances, it would have been a simple factual matter to show that the continued employment of women beyond certain hours was illegal; therefore women's grievances could easily be resolved long before the arbitration stage. Consequently, a firm conclusion cannot be reached based on documented cases, although some evidence of employers' hours after the war suggests that most employers could not rely on the maximum hour and night work laws as defenses against charges of sex discrimination.

F. Weight-Lifting, Inefficiency, and Other Employer Defenses

Although there were few cases relying on hours limitations, a relatively large number of other cases did reach arbitration. Complicated fact analysis is required for substantiating claims of inefficiency, lack of skill, physical inability, and the hiring of women on only a temporary basis. This analysis explains why such cases reached arbitration.

During the labor shortage, the Women's Bureau had encouraged employers to alter jobs to make them suitable for women's smaller frames and lesser muscular strength. The modified jobs required less skill and versatility. Because women on the average were not as strong or as big as most men, additional moving equipment was often needed, machines were adapted for women's use, and men were used to handle the heavier work. Hiring standards were relaxed as employers accepted applicants they normally would have rejected in peacetime.

Many industrial jobs require lifting of heavy weights, if only infrequently. In 1944, nine states regulated the maximum weight which women were permitted to lift. Three states imposed 25-pound limits which were applicable only to women in core rooms; Washington regulated lifting but the maximum was unspecified; and the rest of the state limits ranged from 25 to 35 pounds. Unlike

261. See Women's Bureau, U.S. Dep't of Labor, Special Bull. No. 12, Choosing Women for War-Industry Jobs (1943); Women's Bureau, U.S. Dep't of Labor, Special Bull. No. 14, When You Hire Women (1944).
262. See F. Harbison, supra note 141, at 13.
263. See State Labor Laws, supra note 170, at 57.
264. Id.
the laws of other states which fixed the maximum number of pounds as an absolute limit, Ohio's law prohibited women's employment in any job requiring "frequent or repeated" lifting of weights over twenty-five pounds.266 The Women's Bureau approved Ohio's law as the strictest and recommended that weight-lifting be regulated by code to meet the needs of individual industries and particular situations, rather than by statutes fixing the maximum weight.268

In 1942, one observer found that companies allowed women to lift, at the maximum from 15 to 50 pounds, and that most companies' maximum limits were well within the legal standards.267 Where a 15-pound limit was included in the labor agreement of one company, a personnel executive noted that the women were quick to question any new work which involved the lifting of anything approaching the limit.268

By and large, arbitrators found it easy to uphold the exclusion of women after the war based on the weight-lifting defense. In Chrysler Corp.,269 the arbitrator held that the employer did not have to recall women for jobs requiring the lifting of weights above the legal limit. The arbitrator, in Republic Steel Corp.,270 did not even discuss the employer's state law defense to charges of discriminatory dismissal of women employees, but instead held that it was the management's function to judge the relative skills of the employees. In U.S. Rubber Co.,271 the employer's only defense was the weight-lifting law. The arbitrator decided in favor of the employer, "since neither the collective bargaining agreement nor the law frowns upon the proposed termination."272 However, the arbitrator regretfully added, "my concern is only with the company's cold, legal rights under the collective bargaining agreement rather than any humanitarian consideration."273

Sometimes, notwithstanding the law, provisions in the collective bargaining agreement could lead to protection of women's jobs. In contrast to U.S. Rubber Co., the arbitrator in Ohio Steel Foundry

266. See State Labor Laws, supra note 170, at 17. The Women's Bureau advised that women should not lift 25 pounds or more, more than 15 times per hour. OWI News Release for June 28, 1943. File "U.S.—Mobilization Policies—1943—1", National Archives, Container 1537, Record Group 86.
267. See H. Baker, supra note 236, at 50-51.
268. Id. at 51.
269. 7 Lab. Arb. (BNA) 386 (1947) (Wolff, Arb.).
270. 1 Lab. Arb. (BNA) 244 (1945) (Platt, Arb.).
271. 3 Lab. Arb. (BNA) 555 (1946) (Cheny, Arb.).
272. Id. at 556-57.
273. Id.
Co., in which the collective bargaining agreement included a clause prohibiting sex discrimination, held against the company when it failed to recall two women. The employer's contention that the women were inefficient, unsuitable, and unemployable under state law was rejected by the arbitrator because, under the contract, skill and physical fitness were factors to be considered only in the case of new jobs and promotions. Furthermore, at the arbitration date, no state law had been invoked yet against the company for employing women.

When women were first hired, men resented the fact that many of the women were placed in the better jobs rather than having to serve time in the more demanding and less desirable jobs. But after the war, women paid a price for that privilege. For example, in Ford Motor Co., the arbitrator did not allow women to bump junior men in other occupational groups when the women could not bump junior men performing heavy jobs in the women's own occupational group because those jobs required lifting of weights beyond the state limit.

Often, employers, particularly those in states which did not have weight-lifting limits, claimed that women were unproductive and incapable of performing heavy job duties efficiently, if at all. In Manion Steel Barrel Co., Cudahy Packing Co., and New York Stock Exchange, arbitrators allowed employers to replace women with men when the employers showed that the women were clearly inefficient. In Sinclair Rubber Co., the arbitrator refused to require the employer to rearrange job duties so that women could be promoted to a job whose duties included the lifting of weights over the maximum permitted by state law. Other arbitrators, in General Cable Corp. and St. Louis Car Co., held that it was the management's prerogative to change job duties after the war, and the employers were allowed to discharge women who could not efficiently perform the new, heavier duties.

274. 5 Lab. Arb. (BNA) 12 (1946) (Hampton, Arb.).
275. Id.
276. Id.
277. See Brown, supra note 129, at 80-82.
278. 1 Lab. Arb. (BNA) 462 (1945) (Shulman, Arb.).
279. 6 Lab. Arb. (BNA) 164 (1947) (Wagner, Arb.).
280. 7 Lab. Arb. (BNA) 510 (1947) (Fisher, Arb.).
281. 7 Lab. Arb. (BNA) 602 (1947) (Scheiber, Arb.).
282. 1 Lab. Arb. (BNA) 288 (1946) (Gordner, Davis, & Mandell, Arbs.).
283. 7 Lab. Arb. (BNA) 691 (1947) (Klamon, Arb.).
284. 5 Lab. Arb. (BNA) 572 (1946) (Wardlaw, Arb.).
Not all arbitrators however, were unsympathetic toward wartime women workers. Arbitrators in Republic Steel Corp.\textsuperscript{286} and in Chrysler Corp.\textsuperscript{286} required the employers to give the women a chance to prove themselves on an individual rather than on a group basis. In Bethlehem Steel Co.\textsuperscript{287} and in A.S. Campbell Co., Inc.\textsuperscript{288} arbitrators held that women could not be replaced where the heavy lifting duties constituted only a small proportion of the total job responsibilities. In Presto Recording Corp.\textsuperscript{289} and Bethlehem Steel Co.,\textsuperscript{290} where it was shown that women had successfully performed disputed job duties in the past, arbitrators held in favor of the women. Moreover, in these two cases, the arbitrators declared that employers could not unilaterally reimpose prewar job duties which had not been required of the women in the past.\textsuperscript{291} In general, where employers argued inefficiency and heavy job duties, the cases are equally divided for and against women with no consistent rationale for the decisions.

Employers also contended that women had been hired only as temporary workers. One commentator, who favored awarding veterans superseniority rights, maintained that under most seniority rules employers had always been allowed to hire temporary employees. Employers would hire temporary workers during peak periods and lay them off soon-after. This policy had always been accepted by unions who disapproved of inflated seniority lists.\textsuperscript{292} The problem with his argument, however, is that unlike the wartime employment, peak periods in the past did not continue for years.

It is uncertain how many collective bargaining agreements contained clauses such as those in most auto industry contracts, which explicitly stipulated that wartime shifts were only temporary.\textsuperscript{293} It may be inferred, however, that many employers and unions had the foresight to include similar clauses because it would have been convenient for employers at the end of the war to discharge temporary employees and unions could protect their long-term members. Thus, many women may have been released at the end of the war because of such clauses.

\textsuperscript{285} 1 Lab. Arb. (BNA) 244 (1945) (Platt, Arb.).
\textsuperscript{286} 8 Lab. Arb. (BNA) 611 (1947) (Wolff, Arb.).
\textsuperscript{287} 7 Lab. Arb. (BNA) 163 (1947) (Killingsworth, Arb.).
\textsuperscript{288} 2 Lab. Arb. (BNA) 142 (1946) (Copelof, Arb.).
\textsuperscript{289} 3 Lab. Arb. (BNA) 672 (1946) (Kaplan, Arb.).
\textsuperscript{290} 6 Lab. Arb. (BNA) 28 (1946) (Selekman, Arb.).
\textsuperscript{291} \textit{Id.}
\textsuperscript{292} F. Harbison, \textit{supra} note 141, at 17.
\textsuperscript{293} E. Straub, \textit{supra} note 60, at 340.
Where there were no explicit contract clauses, some arbitrators found that women's status was temporary, but ruled for the employers only where they also successfully argued other defenses.\textsuperscript{294} For instance, in \textit{Bethlehem Steel Co.},\textsuperscript{295} the employer introduced evidence that not only was it common knowledge that the employment of women was for a limited period but, in addition, in some cases women had been specifically informed that their employment was merely temporary.\textsuperscript{296} Nevertheless, the arbitrator held that even though the company had clearly demonstrated its intent to hire women on a temporary basis only, the verbal agreements with the individual women were less favorable than was the collective bargaining agreement, and were therefore overridden by the written union contract.\textsuperscript{297}

The disparity in wages paid for jobs traditionally held by women as opposed to those traditionally held by men also protected some women from lay-offs. As one UAW representative noted, "[i]f you add up the total amount paid for all the simple jobs, you will usually find the total job, now performed by several women, is costing less in wages than it did when done by one man."\textsuperscript{298} After the war, employers did not release women who were working for women's wages. Employers instead attempted to discharge women who received men's wages in traditional men's jobs, and retain women who were earning women's wages.

However, employers were often unsuccessful in keeping their low-paid women against the objections of male union members. For instance, in \textit{Emge & Sons},\textsuperscript{299} there was a plantwide seniority list and a contract barring sex discrimination. The arbitrator held that the employer was not entitled to recall women employees with less seniority than male employees for jobs which the employer alleged to have always been women's work. The arbitrator strictly interpreted the union contract and ruled that, if the company had intended to use women exclusively for jobs traditionally performed by women, there should have been a specific applicable provision in the collective bargaining agreement.\textsuperscript{300} Most arbitrators, however, did not ap-


\textsuperscript{295} 7 Lab. Arb. (BNA) 161 (1946) (Killingsworth, Arb.).

\textsuperscript{296} Id.

\textsuperscript{297} Id.

\textsuperscript{298} Hawes, \textit{supra} note 148, at 13.

\textsuperscript{299} 7 Lab. Arb. (BNA) 544 (1947) (Hampton, Arb.).

\textsuperscript{300} Id. at 546.
ply the same reasoning toward traditional men's jobs, although in *American Can Co.*,301 the arbitrator found that a traditional male job had been converted to a female job during the war and that it was therefore proper to keep the junior women on the job. Here, however, the conversion had been made before the union organized the plant and there had since been changes in mechanical operation, methods and machinery.302

Where employers did not raise state law defenses, the cases were equally divided for and against women and, more often than not, decided on a number of interlocking bases. No doubt employers in the cases where no state law was applicable would have argued state law if it was available. There is little or no compiled statistical data on how many women protested against discriminatory treatment, how many grievances by women were settled before arbitration, how many arbitrations were unreported, or the extent to which unions pressed women's grievances. No conclusive evidence exists as to the extent to which employers relied on state laws to justify dismissals of women workers after the war, and conjectures based on the documented cases alone as to the effects of protective labor laws on the employment of women immediately after World War II are unavoidably tentative.

VI. MARRIED WOMEN

During the Depression of the 1930's, it was widely believed that married women with working husbands should not have jobs which were suitable for unemployed men,303 but because most women worked in sex-typed jobs, it is doubtful that many women were "taking jobs away" from men. Prejudicial attitudes toward married women workers were probably responsible for Section 213 of the Economy Act of 1932,304 which provided that husbands and wives of federal employees were to be dismissed first and that preference for appointment in the classified civil service was to be given to persons other than husbands or wives of federal employees. When three times as many women as men were dismissed, however, pressure from women's groups forced the repeal of Section 213 in 1937.305

Discrimination against married women in public employment reached its peak in 1939 when 34 state legislatures considered bills

301. 3 Lab. Arb. (BNA) 564 (1946) (Scarborough, Arb.).
302. Id. at 565.
303. See Milkman, supra note 5, at 519.
305. See L. McMillin, The First Year 12 (1941).
limiting the employment rights of married women.\textsuperscript{306} Louisiana passed one such law, but it was soon repealed.\textsuperscript{307} In June 1939, the Massachusetts Supreme Court warned in an advisory opinion that a law limiting the public employment rights of married women would be an arbitrary and unconstitutional violation of equal protection.\textsuperscript{308}

Private employer rules and collective bargaining agreements prohibiting the employment of married women were common in the late 1930’s. In 1938, two state supreme courts held that women could not successfully challenge provisions regarding the rights of married women in agreements negotiated by their unions. In \textit{Brisbin v. Brotherhood of Railway Clerks},\textsuperscript{309} the Nebraska Supreme Court found that the case did not involve a question concerning the right of the plaintiff under the State or Federal Constitution to earn a living, nor was she deprived of a valuable property right, nor was there involved a question of due process of law. Finally, the court rejected her contention that the agreement was in restraint of marriage and against public policy.\textsuperscript{310} In the same year the Michigan Supreme Court, in \textit{Hartley v. Brotherhood of Railway and Steamship Clerks},\textsuperscript{311} held that the union was authorized to enter into an agreement affecting the interests of all its members irrespective of adverse results on individual (married women) members. As long as the agreement was made in the absence of bad faith, arbitrary action, or fraud directed at the plaintiff the agreement would be upheld. In 1953, the United States Supreme Court, in \textit{Ford Motor Co. v. Huffman},\textsuperscript{312} explicitly endorsed the Michigan court’s analysis.

The National Labor Relations Board allowed employers to discriminate against married women as long as there was no interference with or coercion against union activities. In \textit{Swift & Co.},\textsuperscript{313} the NLRB, in 1939, approved the discharge of a woman employee in view of the fact that her husband was employed, and supported the company’s decision that she could fare better without a job than two single female employees who had less seniority, but who had no other means of support. Similarly, in the same year, the NLRB, in

\textsuperscript{306} \textit{End Bars to Work, Women Are Urged}, N.Y. Times, Feb. 11, 1940, at 4, col. 5.
\textsuperscript{307} \textit{Legislation for Women—Then and Now}, 23 \textit{INDEPENDENT WOMAN} 212 (1944).
\textsuperscript{308} \textit{In re Opinion of the Justices}, 303 Mass. 631, 22 N.E.2d 49 (1939).
\textsuperscript{309} 134 Neb. 517, 279 N.W. 277 (1938).
\textsuperscript{310} \textit{Id.} at 526-27, 279 N.W. at 282-83.
\textsuperscript{311} 283 Mich. 201, 277 N.W. 885 (1938).
\textsuperscript{312} 345 U.S. 330, 338-39. The court sustained the validity of collective bargaining agreements where an employer gives seniority credit for pre-employment military service.
\textsuperscript{313} 11 N.L.R.B. 809, 4 L.R.R.M. (BNA) 35 (1939). The employer followed a policy of discharge or layoff of married women first.
Blanton Co.\textsuperscript{314} found that discharging married women was not discriminatory where the employer's decisions were based on the employees' economic needs. Where employer interference with union activities was discovered, however, in Marlin-Rockwell Corp.,\textsuperscript{315} Surprise Candy Co.,\textsuperscript{316} and Hawkeye Steel Products Co.,\textsuperscript{317} the NLRB decided that discharging an employee or failing to recall active union members on the pretext that they were married was discriminatory.

The number of married working women rose from 5,040,000 in 1940 to 7,545,000 in 1947, a 50\% increase.\textsuperscript{318} The large increase, however, was probably not a result of changed public attitudes toward married working women, but instead was due to the large national unemployment rate in 1940. The percentage of married women who worked outside the home only rose by 5\%, from 17\% in 1940 to 22\% in 1947.\textsuperscript{319} Because many single women already were working before the war, seventy-five percent of the new women workers during the war were married,\textsuperscript{320} and married women workers outnumbered single women workers for the first time.\textsuperscript{321}

Married women agreements and employer rules against the hiring of married women were suspended or repealed during the war as women were needed to relieve men entering the military. In addition, some employers asserted that married women were more dependable than their single counterparts.\textsuperscript{322}

The War Labor Board favored married women's employment rights in order to raise production. In 1944, the New York Regional War Labor Board, in Hygrade Products Co.,\textsuperscript{323} rejected the company's request for a change in the existing seniority clause to permit the discharge of married women on the basis of their efficiency.

\begin{footnotesize}
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\item[315.] 39 N.L.R.B. 501, 10 L.R.R.M. (BNA) 19 (1942).
\item[316.] 66 N.L.R.B. 1, 19 L.R.R.M. (BNA) 2197 (1946).
\item[318.] Women's Bureau Handbook, supra note 6, at 10. One writer has suggested that the married women who entered the workforce during the war were not committed housewives, but were "discouraged workers" who should have been included in the prewar employment statistics. See Quick, Rosie the Riveter: Myths and Realities, 9 Radical America 115 (1975).
\item[319.] Women's Bureau Handbook, supra note 6, at 10. The increase was also in large part due to the changing marital status of women in the population. Between 1940 and 1947, the percentage of single women in the population dropped from 27\% to 22\% and the percentage of married women rose from 60\% to 65\%. Id.
\item[320.] W. Chafe, supra note 122, at 145.
\item[321.] Women's Bureau Handbook, supra note 6, at 10.
\item[322.] See Equal Pay, supra note 130.
\item[323.] 19 War Lab. Rep. 180 (New York Regional Board 1944).
\end{itemize}
\end{footnotesize}
rather than their seniority. The Board suggested that the proposal would tend to break down the principle of seniority and open the way to disputes, friction, and charges of improper discrimination.324 However, the Board added that "the problem is of minor importance since many of the married women will undoubtedly stop work at the end of the war,"325 a suggestion, perhaps, that the Board might have reached a different decision if they were less confident that the women would leave after the war. Nor is it surprising, in light of the large number of women employed in telephone operations, that the National War Labor Board, in *Upstate Telephone Co.*,326 with the aid of an amicus statement submitted by the Women's Bureau in support of the union,327 upheld a National Telephone Commission's order, pursuant to the union's request, that the contract include a clause prohibiting discrimination against women because of their marital status.

Married women agreements did not return after the war, although the Women's Bureau found that some employers had deliberately hired wives of former workers and men already working so that the women would be easier to remove after the war.328 In 1945, the Women's Bureau found married women clauses in only 2 of 92 union contracts examined.329 Reinstated employee rules, on the other hand, were probably much more common because the employer could, in his discretion, discharge married women from traditional men's jobs with little objection from the men, while not applying the rule to traditional women's jobs.330

**VII. POSTWAR CONCLUSION**

**A. Concluding Remarks on Courts and Arbitrators**

So few cases reached federal and state courts that it is difficult to gauge judicial attitudes toward women workers during the World

324. *Id.* at 182.
325. *Id.*
327. See *Statement to the National War Labor Board in Support of Unions' Request to Abolish Discrimination Against Married Women*. National Archives, Container 1362, Record Group 86.
War II period. With respect to protective labor laws during the war period, one author inferred that, "A . . . contributing factor to this judicial passivity may have been that courts were simply not presented with enough cases to force them to take women's claims seriously." If the response of administrative courts and arbitrators is any indication of the judicial mood during the 1940's, an increase in opportunities to decide questions of women's employment rights would probably not have resulted in more equal employment rights for women.

The National Labor Relations Board was solely concerned with employer coercion or interference with union activities. The Board did not acquire jurisdiction over discriminatory labor practices by unions until 1947, when the Labor Management Relations Act (Taft-Hartley) was passed. Under the LMRA, many of the unions' discriminatory tactics toward women workers immediately after the war would have been illegal.

The tripartite War Labor Board, composed of management, union and public representatives, generally supported women's employment rights. In order to minimize labor disputes and maximize war production, the Board had favored equal pay for women in traditional men's jobs, sex-neutral seniority lists and collective bargaining provisions barring sex discrimination. But it is unclear what direction the Board would have taken after the war if it had not been disbanded shortly after the end of hostilities. According to one analyst, "apart from the inherent 'rule of reason' and the congressional dictate in the War Labor Disputes Act to provide 'terms and conditions customarily found in collective bargaining agreements' the Board had only its official conscience to guide it." After the war, it was conceivable, at least by short-sighted thinkers, that discriminating against women in employment might minimize labor disputes and maximize production.

The Board did not necessarily support women's employment rights out of a sense of inherent fairness, as is evidenced by its refusal to apply the equal pay principle to traditional women's jobs. And, when anti-discrimination clauses might lead to disputes rather than minimize them, the Board withheld its support. Thus, in Luckenbach S.S. Co., 6 Lab. Arb. (BNA) 98 (1946) (Kerr, Arb.).

332. Id. at 110.
333. 61 Stat. 136 (1947) (closed shop also outlawed).
335. Luckenbach S.S. Co., 6 Lab. Arb. (BNA) 98 (1946) (Kerr, Arb.).
the arbitrator granted the union’s request for an anti-sex discrimination clause and stated that “this type of clause was frequently granted by the National War Labor Board. Such a clause is common in many waterfront contracts, as well as in many other industries.” However, a year earlier, when a local of the same international union had requested a similar clause, the War Labor Board, in Waterfront Employers Association, had rejected the clause because, “here and there some woman would assert physical adequacy and open the path of dispute.”

Arbitrators were less concerned with equity than with strict contract interpretation. They usually did not treat women employees as individuals, but as a class whose generally lesser versatility and physical strength constituted disabilities which the law could take into account. As one critic of arbitrators who decided sex discrimination cases concluded, “arbitrators, in general, in this field, perhaps more than in others, are reluctant to administer public policy.” It should, of course, be remembered that public policy in the World War II period did not favor women’s employment.

B. Postwar Effects of Selective Service Act, Veterans Preference Act and Reinstatement of Protective Labor Laws

It would have made little difference to women workers after the war if there had been no Section 8 of the Selective Service Act mandating the reemployment of veterans. Even after the Act was passed in 1940 most unions insisted on contract clauses protecting the seniority and reemployment rights of men entering the military. And where union contracts did not include such clauses or where women workers had no contracts at all, public opinion seemed sufficient in itself to force employers to rehire male veterans, if not the same men who had been employed by the companies before the war.

The Veterans Preference Act of 1944 was not an extraordinary piece of legislation, in that it merely gave legislative sanction, and broadened and strengthened to some extent, already existing veter-
The operation of the Act does not appear to have been the major reason for the exit of 700,000 women from the federal labor force after the war. Temporary wartime appointments and assignments of women to war agencies and sex-typed jobs were likely responsible for most of the post-war decrease in the female federal workforce.

The effect on women's employment after the war of the reinstatement of protective labor laws was probably not as great as the celebrated cases might suggest. Employers successfully argued other issues such as business necessity, efficiency, and management perogative where state law did not apply. In general, women were more likely to win cases involving few women employees, rather than cases involving a large number of women, where any slight difference in the performance between men and women could become significant in the long run. In those cases where state laws were used to justify the dismissal of women, the employers never intended to keep the women on the job after the war. It was well known that the wartime relaxation of the protective labor laws was only temporary, and if employers had been uncertain as to the restoration of the prewar statutes, those who used state laws as defenses to discriminatory discharges would presumably have covered themselves earlier in other ways.

C. Role of Government

The conservative attitude of the United States Government, that women were merely temporary replacements for men during wartime, did not change during the war. The Office of War Information propaganda campaigns have already been described earlier in this article. In order to increase war production, the Lanham Act provided for child-care facilities for working mothers during the war, but the funds covered only a small minority of the working mothers with young children. Many private employers also established child-care facilities, but these and federally-funded programs were discontinued after the war.

The War Production Board expressed concern for women work-

344. See 90 CONG. REC. 3502-03 (1944).
345. See A Preview to Women Workers, supra note 136, at 6.
347. Id. at 68.
ers in the postwar era as early as February 1942, and the Women's Bureau and women labor leaders were well aware that following World War I, many women had been forced out of men's jobs. The potential problem was magnified after World War II by the great number of returning veterans (over 13 million) and the large increase (6 million) in the number of employed women. Furthermore, the employed workforce at the end of the war was swollen with men who had been unemployed when the war began, as from January 1942 to July 1945, the unemployment figures had fallen from 4.5 million to 950,000, a 79% decline.

"Full employment" became a major topic of discussion in 1945, but as one observer put it, "9 times out of 10, [it meant] full employment for males." For many Americans, full employment meant full employment for men at wages sufficient to support their families so that the wives would not have to work, or as Margaret Mead patronizingly declared in 1944, "with full employment stabilized in an integrated world economy, men would be able to give their wives a choice [whether to work or not]."

In 1945, there was extensive congressional and public debate over the Murray-Patman Full Employment Bill. Most Americans favored the bill, but others warned that it was the first step toward socialism. There seemed to be little objection to the bill's declaration of policy, i.e., "to assure the existence at all times of sufficient employment opportunities to enable all Americans who have finished their schooling and who do not have full-time housekeeping responsibilities freely to exercise this right." The bill easily passed the Senate by a margin of 71-10 in September 1945, but was never approved by the House. Consequently, the government never had a comprehensive plan to provide full employment after the war. Discussion of full employment died as veterans soon found jobs, and the return of the depression, predicted by many employers and govern-

348. See Thelma McKelvey, Report to the House Committee Investigating National Defense Migration, WOMEN IN WAR PRODUCTION (Feb. 4, 1942) (statement from Labor Division, War Production Board). National Archives, Container 1536, Record Group 86.
349. See A Preview to Women Workers, supra note 136, at 6.
350. G. Kammerer, supra note 97, at 25.
351. Mezerik, supra note 137, at 83.
352. See Thompson, The Stake of Women in Full Employment, 61 LADIES HOME J. 6 (April 1944); A Preview to Women Workers, supra note 136, at 3.
357. 91 Cong. Rec. 9153 (1945).
ment economists, did not come to pass.

Several bills were introduced in Congress in 1945 to establish a permanent Fair Employment Practices Commission, which would have had the power to investigate discriminatory employment practices based on race, creed, color, national origin, or ancestry. Several Southern congressmen agreed that if the bill seemed ready to receive House approval, they would move to amend it in such a fashion that it would never be passed by the House, by including it in a ban on employment discrimination based on sex. However, the unamended bills never came to a vote in Congress. Unemployment laws especially discriminated against married women. Some state laws prohibited payment of unemployment benefits to women who left their work because of marriage, family responsibilities, or pregnancy. These state laws were not patently objectionable as long as women willingly left their jobs. Other states, however, presumptively denied benefits to women who were unemployed and pregnant. A few states even disqualified married women who were laid off because of reinstated employer rules against hiring married women. Unlike men, married women, in general, had to prove affirmatively that they were actively seeking work and not simply resuming household duties, but employers and employment agencies made little effort to find work for laid-off women. For example, interviewers who spoke with 381 of 425 persons dismissed at one plant found that only 7 of the 95 women, as compared to 115 of the 286 men, had been referred to other jobs.


360. However, New York passed a statute in 1945 making it unlawful for employers or unions to refuse employment or membership because of race, creed, color, or national origin. See F. Peterson, supra note 21, at 90. In 1944, one senator proposed that a postwar federal statute outlaw employment for married women unless jobs should be left after all men and single women were employed. Bixler, supra note 359, at 369.

361. Women’s Bureau, U.S. Dept. of Labor, Union Series Pamphlet No. 4, Unemployment Compensation: How It Works for Working Women (1945). The pamphlet does not detail the specific provisions of each state although it named about half of the states as having some kind of discriminatory law. See also Palmer, Women in the Post War Labor Market, 104 Forum 130, 134 (October 1945); E. Straub, supra note 60, at 344.

362. See Mezerik, supra note 137, at 82; E. Straub, supra note 60, at 344.

363. F. Miller and M. Ziegler, Chicago Area Labor Supply and Cut-Backs (June 19, 1945) (memo to Miss Manning, Miss Robinson, Miss Pidgeon), National Archives, Container 1536, Record Group 86.
D. Public Opinion and Veterans

After the war, the consensus was that everything possible should be done to assist the veterans' reintegration into the civilian workforce. An observer noted, "[i]f there are not jobs for women and soldiers, the soldiers will get them, and no one will want or dare to protest."364 Another contemporary alleged that "[t]he truest thing in the world is the loyalty of women and their desire to see the returning soldier with a job. No woman would oppose the returning soldier's right to his job."366 Lastly, one commentator wrote:368

Whether or not women retain their jobs at the war's close will, in large measure, depend upon forces unrelated to women's abilities or needs. The mood of the nation is to afford job security in the first instance to returning veterans and then to other men. The problems of unemployed women are seldom mentioned.

Although the Women's Bureau, women labor leaders, and working women were concerned about the problem of unemployed women after the war, they too shared the general public attitude toward returning veterans. Mary Anderson, for instance, asserted that, "[c]ertainly no one believes that women should be employed at the expense of ex-servicemen or be the cause of their selling apples on the street."367

E. Public Attitudes Toward Women Workers

Most working women wished to continue working after the war. A UAW Research Report indicated that 85% of the women workers, including 69% of the married women, planned to work after the war.368 Of those who had started in the factories during the two years before the study, 50% wished to continue shop work, 25% preferred other work, and 10% wanted "any type of work."369 In the same year, 1944, a survey of 175 women in New York revealed that only 34 (19%) did not expect to be part of the postwar labor force, but as for those who intended to continue, "[t]he general feeling was that the servicemen should have their jobs back, but 'we'll be looking for work elsewhere.'"370

364. Thompson, supra note 352, at 6.
365. Mezerik, supra note 137, at 80.
368. Women's Post-War Job Plans, 58 MONTHLY LAB. REV. 1030 (1940).
369. Id.
Frieda Miller, Director of the Women’s Bureau after Mary Anderson’s retirement in 1944, testified before a Congressional committee in June 1945 that she guessed that three to four million of the former housewives would drop out of the labor force.\textsuperscript{371} In 1946, the Women’s Bureau reported that 75% of wartime-employed women in ten war production areas expected to be part of the postwar workforce.\textsuperscript{372}

Although the raw postwar employment figures are relatively consistent with surveys of working women’s postwar plans, they do not reveal whether women were employed after the war in the jobs they preferred. Evidence suggests that after the immediate mass-lay-offs for retooling for peacetime production, the number of employed women gradually rose, but women often did not return to the jobs to which they were entitled,\textsuperscript{373} as employers found it easier to discriminate against women at the rehiring stage.\textsuperscript{374} Moreover, women were often forced to accept lower paying jobs because of discrimination in unemployment compensation.\textsuperscript{375} One researcher found that “the shift to the less remunerative types of work was accompanied by very little bitterness and discontent,”\textsuperscript{376} and that among Baltimore women shipyard workers, the former riveters for example, many found the old work “too hard” or “too nerve-wracking” and had little interest in pursuing it.\textsuperscript{377} The Women’s Bureau, on the other hand, found that women were reluctant to return to traditional women’s jobs.\textsuperscript{378}

Working women seemed to prefer outside employment to housekeeping. But a 1944 survey of women war workers found that although 79% of the women thought their jobs were more enjoyable than staying at home, 44% intended to return home after the war, and 70% confessed that they would give up their jobs willingly if


\textsuperscript{372} Women Workers in Ten War Production Areas, supra note 62, at 209. Fifty-nine percent of the married women workers also expected to continue.

\textsuperscript{373} See Tobias and Anderson, supra note 153; Women’s Bureau Conference, supra note 209, at 10.

\textsuperscript{374} See E. Straub, supra note 60, at 343.

\textsuperscript{375} See “Official Reports of Proceedings before the Women’s Bureau of the Department of Labor: Conference on Post War Adjustment of Women Workers” at 153-54, National Archives, Container 898, Record Group 86.

\textsuperscript{376} E. Straub, supra note 60, at 348-49.

\textsuperscript{377} Id. at 350. See Women’s Bureau, U.S. Dept of Labor, Baltimore Women War Workers in the Postwar Period (1948) (unpublished study, in Library of Congress).

\textsuperscript{378} See “Status of Women in the Postwar Working World”, File “Mobilization Policies—1945—1”, National Archives, Container 1537, Record Group 86.
they had to, in order to get married. "What explains this seeming inconsistency?" asked the researcher rhetorically, "jobs are more enjoyable, but homes are more important." On the other hand, in a 1946 Fortune poll of the public, only 27% of the men and 32% of the women believed that a woman with a full-time job had a more interesting time than a woman running a home.

Although it was generally believed that a man should not be refused a job for which he was qualified, "[t]o raise, in 1945, the issue of woman's right to work [was] sufficiently startling." One author remarked that, "[t]he Women's Bureau directed far more attention at woman's need to work than at her right to do so." Unfortunately, financial need could be satisfied by minimum wages for sex-segregated jobs, especially for married women, with no mention of legal rights or equal opportunity. Today, when women's legal and moral right to work is for the most part no longer at issue and women's financial need to work has resurfaced as a major issue, the Women's Bureau's conservative approach may arguably have been the most pragmatic, at least in the short-run, for working women in the 1940's, given the Zeitgeist of the postwar period.

"The heart of the problem, however, remains the fact that few women were really asking for more." It has been suggested that the women wartime workers never developed a "consciousness" as "workers," that they were never were allowed to forget that they were women filling in for the men. As one woman in 1945 put it, "Let's face it, a man's very life is his job; he feels it in his reason for being." A writer in 1945 hopefully concluded:

379. Giles, supra note 118, at 23.
380. See V. Oppenheimer, supra note 138, at 54.
381. Mezerik, supra note 137, at 43.
382. E. Straub, supra note 60, at 333.
383. Id. at 361; Hawes, supra note 148, at 42.
384. Trey, Women in the War Economy—World War II, 4 REV. OF RADICAL POL. ECON. 40 (July 1972). In 1947, a sociologist wrote that, "World War II, like World War I, strengthened individualistic and competitive attitudes in regard to women's sexual roles," and "gave to some middle-class women a chance to develop more independence in their family roles." Nottingham, supra note 3, at 673. Another theorist, on the other hand, argued that "It was not the 'independence' of working for capitalists which was valuable, but precisely the opposite—the understanding that they were working with others." Quick, Rosie the Riveter: Myths and Realities, 9 RADICAL AM. 115, 129 (July 1975). Regardless of the possibly conflicting motivations of middle-class and working-class women during the war, "[a]fter the war, the image of the competent assertive middle-class heroine largely disappeared as the glorification of domesticity conflicted with her independent adventurous spirit." M. Honey, supra note 63, at 151. "Of equal importance to the defeat of egalitarianism was the use of the family as the main symbol of democracy, peace, and the American Way of Life." Id. at 157.
So long as skilled women are willing to remain individualistic and look forward to the day when they depart from "gainful activity," employers will continue to pay women less for the same job and promote men. The starting point for change lies in altering the attitudes of the women themselves.  

It is doubtful, however, that working women could have achieved very much on their own. A survey of public polls conducted during the war years revealed that:

tolerance of female employment increased precisely to the extent that traditional definitions of sexual roles were removed or de-emphasized. When the salient issue was man's role as provider, or a mother's responsibility to rear children, opposition to married women working remained high. When neither issue was present, on the other hand, antagonism toward the employment of wives dropped substantially.

VIII. CONCLUSION

Postwar evidence indicates that there was little or no change in traditional attitudes regarding women's employment despite the women's wartime work experience. The war years were the heyday of pin-up girls and Miss America. The popular heroine of the period was not Rosie the Riviter but the housewife-mother. The operation of various laws affecting women's employment only reinforced conventional public opinion and behavior.

It was asserted in 1944 that "the American has raised women to an almost impossible eminence" and that "[t]he two real cults in America are those of the flag and of the woman." After the Great Depression, "[t]he war offered Americans the chance to vindicate their system. Americans wanted affirmation, not change." Under the circumstances, it is not surprising that women workers them-

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386. Warne, supra note 366, at 205.
387. W. Chafe, supra note 122, at 189-90. A more comprehensive description of the polls can be found in V. Oppenheimer, supra note 138, at 42-63.
388. E.g., two-thirds of the 1945 editions of the union weekly, The Brewery Worker, featured bathing beauty photos. On Miss America, see F. Deford, There She Is: The Life and Times of Miss America 153-60 (1971).
selves favored veterans preference in both public and private employ-
ment, and that protective labor laws were reinstated after the war
with little overt opposition. If one considers today's seemingly more
liberated America it is evident that women's legal freedom of choice
of occupation has been expanded and not-so-archaic notions about
women's place ridiculed. Unfortunately, substantial job segregation
and wage differential by sex still remains. Given this dichotomy, one
can imagine how it may have been much more difficult for both
women and men to overcome traditional attitudes toward women's
work in the post-war era.