UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

July 3, 1942

76

Legal Field Letter

No. 76

Attached Opinions

Copies of recent opinions on subjects indicated below are furnished herewith for your information and proper notation in the Opinion Manual.

MEMORANDA

| Date | From | To | Subject |
|---|---|---|---|
| 3-16-42 | Charles H. Livengood, Jr. (EGL) | Frederick J. Glasgow | Melvin & Shaw<br>Harrington, Delaware<br>File No. 7-70178<br>(Applicability of Section 13(a)(10) where employees, including those of independent contractor, engaged in exempt operations, exceed 10 in number)<br>(p. 112, par. (d)) |
| 3-16-42 | Charles H. Livengood, Jr. (JEO'G) | Arthur E. Reyman | (Applicability of jewelry wage order to manufacture of plastic ornaments and buttons.)<br>(p. 199, par. C; p. 256, par. R) |
| 3-16-42 | Charles H. Livengood, Jr. (JEO'G) | Vernon C. Stoneman | (Application of jewelry wage order to manufacture of optical frames)<br>(p. 199, par. C; p. 256, par. R) |
| 3-19-42 | Charles H. Livengood, Jr. (EJG) | Samuel P. McChesney | John McClung<br>Des Moines, Iowa<br>File No. 14-1203<br>(Applicability of carpet and rug wage order to firm "cutting, sewing, binding, and sizing" carpets)<br>(p. 199, par. C; p. 256, par. R) |
| 3-27-42 | Charles H. Livengood, Jr. (FUR) | George A. Downing | (Application of retail exemption to sales by building material dealer)<br>(p. 188, par. (d)) |



(10737)

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Legal Field Letter
No. 76

MEMORANDA

| Date | From | To | Subject |
|---|---|---|---|
| 3-30-42 | Charles H. Livengood, Jr. (CHL) | Arthur E. Reyman | Garment Center Truck Owners Association (Application of Section 13(b)(1)) (p. 115, par. 2; p. 237, par. (g)) |
| 3-31-42 | Charles H. Livengood, Jr. (KM) | Frank J. Delany | Industrial Gloves Company Danville, Illinois (Wage orders applicable to manufacture of asbestos shirts, trousers and shoes) (p. 199, par. C; p. 256, par. R) |
| 3-31-42 | Charles H. Livengood, Jr. (EJG) | Jerome A. Cooper | Birmingham Awning & Tent Works Birmingham, Alabama (Applicability of luggage and leather goods wage order to manufacture of luggage covers) (p. 199, par. C; p. 256, par. R) |
| 4-16-42 | Charles H. Livengood, Jr. | Frank J. Delany | Monarch Matrix & Stereotype Co. 732 Federal Street Chicago, Illinois (Applicability of converted paper products wage order to manufacture of matrices and stereotypes) (p. 199, par. C; p. 256, par. R) |
| 4-16-42 | Charles H. Livengood, Jr. (KM) | Llewellyn B. Duke | J. R. Coffee Bookbinding Co. Houston, Texas File No. 42-50,758 (Applicability of converted paper products wage order to company engaged in binding books, pamphlets and commercial forms) (p. 199, par. C; p. 256, par. R) |

(10737)

MEMORANDA

| Date | From | To | Subject |
|---|---|---|---|
| 4-17-42 | Charles H. Livengood, Jr. (LW) | Arthur E. Reyman | George C. Cochran Co., Inc. Trenton, New Jersey (Whether construction of road paralleling existing road, connected by island, is covered by the Act) (p. 9, par. 16; p. 175, par. (d)) |
| 4-20-42 | Charles H. Livengood, Jr. (JEO'G) | Vernon C. Stoneman | The Industrial Jewel Co., Inc. 253 Riverview Avenue Waltham, Massachusetts (Applicability of jewelry wage order to manufacture of jewel bearings for airplane instruments) (p. 199, par. C) |
| 5-1-42 | Warner W. Gardner (EB) | Miss Beatrice McConnell | (Application of child labor provisions of Act to minor hauling gravel to explosives plant) (p. 18, par. D) |
| 5-1-42 | Warner W. Gardner (EB) | Miss Beatrice McConnell | (Application of child labor provisions of Act to farm work) (p. 18, par. D) |
| 5-18-42 | Warner W. Gardner | Miss Beatrice McConnell | (Application of Section 12(a) of Act to employment of messengers in telegraph offices) (p. 18, par. D; p. 101, par BB) |
| 5-22-42 | Warner W. Gardner (EB) | Miss Beatrice McConnell | (Applicability of child labor provisions of Act to workers employed on farm owned and operated by a cannery) (p. 18, par. D) |
| 6-8-42 | Warner W. Gardner (EB) | Miss Dorothy M. Williams | Foss Launch and Tug Co. Seattle, Washington File No. 46-475 (Whether Section 12(a) of Act applies in absence of a change in form or nature of goods handled by minors) (p. 101, par. BB) |

## LETTERS

| Date | To | Subject |
|---|---|---|
| 3-5-42 | Mr. Dick B. Antaranian<br>6513 - 20th Avenue<br>Kenosha, Wisconsin (EJG) | (Whether extra compensation for "late shift" work is part of the regular rate of pay) (p. 241, par. B; p. 261, par. BB) |
| 3-6-42 | Mr. Stephen F. Dunn<br>Furniture Manufacturers Assn.<br>214 Lyon Street, Northwest<br>Grand Rapids, Michigan (FUR) | (Whether time spent by employee, injured at work, who goes immediately to an outside physician for medical treatment, is hours worked. Whether subsequent visits to company physician constitute hours worked) (p. 258, par. P; p. 173, par. (1)) |
| 3-28-42 | Mr. Thomas Quinn Beasley, President<br>National Council on Business Mail, Inc.<br>Second National Bank Building<br>Washington, D. C. (KM) | (Applicability of converted paper products wage order to manufacture and printing of loose-leaf and blank books, tablets and pads, printed forms, stationery, etc.) (p. 199, par. C) |
| 4-3-42 | George J. Beldock, Esquire<br>205 West 34th Street<br>New York, New York (KM) | (Applicability of woolen wage order to balling and labelling of woolen yarns) (p. 199, par. C) |
| 4-6-42 | Mr. R. L. Noble<br>R. E. Noble Engraving Company<br>200 Hudson Street<br>New York, New York (KM) | (Application of converted paper products wage order to manufacture and engraving of stationery) (p. 199, par. C) |
| 4-8-42 | Sol A. Liebman, Esquire<br>165 Broadway<br>New York, New York (KM) | (Meaning of "basic component" as used in converted paper products definition) (p. 199, par. C) |
| 4-14-42 | Mr. Thomas W. Fry, President<br>Fry-Fulton Lumber Company<br>148 Carroll Street<br>St. Louis, Missouri (EJG) | (Application of lumber and timber products wage order to air drying operations) (p. 199, par. C) |

Arthur E. Reyman
Regional Attorney
New York, New York

March 16, 1942

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

SOL:JEO'G:FB

Request for information as to the application of the jewelry industry wage order to manufacturers of plastic ornaments and buttons

Reference is made to your memorandum of November 3, 1941, in which you inquire concerning the possible application of the jewelry wage order to a manufacturer of costume jewelry, buttons and related ornaments from plastic materials by plastic products manufacturing processes.

It appears that you have some doubt about the applicability of the wage order to the manufacture of articles enumerated in your request for an opinion because the manufacturers in question use plastic products manufacturing processes and manufacture also a miscellaneous line of plastic objects clearly not subject to the wage order.

The fact that the manufacturer also produces articles not covered by the wage order would not, in our opinion, defeat the application of the wage order to those articles which would otherwise be included within the definition of the industry. Further, the application of the jewelry wage order does not depend upon the use of a particular manufacturing process by the manufacturer.

You will note that the wage order defines the industry as including "the manufacturing, processing or assembling, wholly or partially from any material, of jewelry, commonly or commercially so known. Jewelry as used herein includes * * * articles of ornament or adornment designed to be worn on apparel or carried on or about the person." When we consider the numerous and diverse articles covered by the definition of this industry, we realize readily that several different manufacturing processes must be used to produce them.

You inquire specifically about the application of the wage order to the following operations:

1. Costume Jewelry

Pins, clips, earrings, bracelets, necklaces and similar items of costume jewelry are produced by plastic products manufacturing processes from plastic materials. Items in this category are sold to jobbers and distributors of jewelry products:

2. Buttons and Related Ornaments

Buttons and similar or related ornaments, including "pin-ons", "sew-ons", and "clips" are produced for sale to manufacturers



(10737)

Mr. Frederick J. Glasgow
Associate Examining Analyst
Field Operations Branch

SOL:EGL:HH

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

March 16, 1942

Melvin & Shaw
Harrington, Delaware
File 7-70178

In Mr. Libert's memorandum of October 17, 1941, he inquires about the applicability of the section 13(a)(10) exemption to the employees of the subject firm who engage in the packing of cantaloupes.

It appears from the attached inspection file that, in addition to the five employees of the subject company who pack the fruit, from 9 to 12 employees of an independent contractor work in the packing house, nailing lids onto packed crates and labeling and otherwise preparing the crates for shipment.

The inspector states that this contractor moves his employees from one packing plant to another and performs for a certain sum per crate these lidding, labeling, and shipping operations for various packers. Since the employees of the contractor are not employees of the subject firm, the inspector believes that they come within the scope of the section 13(a)(10) exemption.

As you know, section 13(a)(10) provides a complete exemption for employees employed within the "area of production" and engaged in handling, packing, or preparing in their raw or natural state of agricultural commodities for market. Section 536.2(a) of Regulations, Part 536 states that an employee shall be regarded as employed within the "area of production" if "he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed ten."

Thus, in determining whether the "area of production" requirement is satisfied, all of the employees who work in the establishment and engage in the described operations, regardless of who their employer may be, must be counted. Since the employees of the independent contractor in question work in the same packing plant as the employees of the subject firm, and since they engaged in "handling," "packing," or "preparing in their raw or natural state" of agricultural commodities for market, they must be counted together with the employees of the subject firm, and since that number is greater than 10, the "area of production" requirement is not satisfied. Consequently, neither the employees of the subject firm nor those of the contractor come within the section 13(a)(10) exemption. Of course, if during any workweek the number of employees is less than 10, the exemption is applicable, provided that the general vicinity requirement of the regulations is satisfied.

Attachment
(File)



(10737)

Arthur E. Reyman
Regional Attorney
New York, New York

March 16, 1942

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

SOL:JEO'G:FB

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Mr. Frederick J. Glasgow
Associate Examining Analyst
Field Operations Branch

SOL:EGL:HH

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

March 16, 1942

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Attachment
(File)



(10737)

Arthur E. Reyman
Regional Attorney
New York, New York

March 16, 1942

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

SOL:JEO:G:FB

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The fact that the manufacturer also produces articles not covered by the wage order would not, in our opinion, defeat the application of the wage order to those articles which would otherwise be included within the definition of the industry. Further, the application of the jewelry wage order does not depend upon the use of a particular manufacturing process by the manufacturer.

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Buttons and similar or related ornaments, including "pin-ons", "sew-ons", and "clips" are produced for sale to manufacturers

and jobbers of apparel products, for use in ornamenting finished dresses, shoes, millinery, coats and suits, handbags, etc. In many cases buttons are produced in sets with matching pins or clips. Plastic processes are used and the materials involved are for the most part plastics.

Items in both categories described above are occasionally produced with incidental parts, such as centers or edgings, of metal, wood or glass, but the plastic materials and the plastic processes are still predominant in such cases.

It is our opinion that the wage order applies to all of the items listed under the heading "Costume Jewelry."

With respect to the items listed under the heading "Buttons and Related Ornaments," it is our opinion that the wage order applies to the "pin-ons", "sew-ons", "clips", "pins" and similar or related ornaments produced for use in ornamenting various articles of apparel.

It is our opinion, however, that the wage order does not ordinarily apply to the manufacture of buttons. However, you state that in many cases the buttons are produced in sets with matching pins or clips. Even under these circumstances it is our opinion that the wage order does not apply to the production of buttons, provided they are produced in sets of two or more and are intended for permanent attachment to wearing apparel. If the buttons are of an unusual character, or are intended for an unusual use, we would like an opportunity to examine the various sets before expressing a final opinion. Of course, you know that a committee is about to be appointed for the button industry.

C O P Y

Vernon C. Stoneman
Regional Attorney
Boston, Massachusetts

March 16, 1942

SOL:JEO'G:FB

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

Application of Jewelry Wage Order to Manufacturers of Optical Frames

Reference is made to your memorandum of January 12, 1942, in which you state that you are in receipt of numerous inquiries as to the applicability of the jewelry wage order to employees engaged in the manufacture of optical frames and eyeglass cases made from metal and various plastics.

If the optical frames to which you refer are of the usual type to which eyeglasses are affixed, it is our opinion that the said wage order is not applicable. However, if they are of the type used in connection with lorgnettes or may be said to be designed as articles of ornamentation or adornment, we would want a fuller description of the articles before rendering a final opinion.

Likewise, if the eyeglass cases are of the ordinary type and could not therefore be considered jewelry, it is our opinion that the wage order is not applicable. However, if the eyeglass cases are made from leather or some other composition, you should consider the possible application of some other wage order such as the wage order in the leather goods industry or the converted paper products industry. Further, cases may be made from or embellished with precious metals or precious, semi-precious, synthetic or imitation stones. Under such circumstances we would want a more detailed description of the eyeglass cases before rendering a final opinion.

COPY

Samuel P. McChesney
Regional Attorney
Kansas City, Missouri

March 19, 1942

SOL:EJG:HH

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

John McClung
Des Moines, Iowa
File No. 14-1203

This will reply to your memorandum of February 24 in which you inquired concerning the applicability of the carpet and rug industry wage order to the employees of the subject who "are engaged in cutting, sewing, binding and sizing carpets" for a wholesale and retail distributor, who receives orders for the carpets primarily from furniture dealers and then furnishes the subject firm with the carpeting necessary to fill the orders and specifications and diagrams to which they must conform. Carpeting is furnished by the distributor "both in narrow widths for sewing and in broadloom widths for cutting and binding." You further state: "The subject does not manufacture carpeting; it fits and adapts carpeting to individual room measurements."

The operations of the subject company, as described, in our opinion appear to be subject to the wage order which is defined in section 522.4(b) to include the "finishing or processing of rugs or carpets." The cutting, sewing, binding, and sizing of carpets involve the finishing and processing of carpeting within the meaning of the wage order.

102594

George A. Downing
Regional Attorney
Atlanta, Georgia

March 27, 1942

SOL:FUR:MPJ

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

Application of Retail Exemption to
Sales by Building Material Dealer

The Solicitor has referred to this office your memorandum of March 9, 1942, with which you enclosed the attached letter addressed to you by Ben F. Johnson, Jr. of Sutherland, Tuttle and Brennan. Inasmuch as Mr. Johnson's letter is addressed to you, we believe that the reply would be appropriately made over your signature.

The inquirer raises questions concerning the retail character of certain sales of lumber. We are in substantial agreement with most of the views you expressed in your memorandum and sincerely appreciate your giving us the benefit of your opinion rather than merely transmitting the letter.

Mr. Johnson inquires whether a sale of lumber for individual homes for renting purposes should be considered retail. As you know, we have taken the position that sales of lumber to private individuals, to contractors purchasing on behalf of private individuals, and to business users purchasing quantities not materially in excess of those purchased by private individuals are retail sales. On the other hand sales of lumber for resale purposes, including sales for purposes of speculative building, are not retail sales. In the case of sales of lumber to be used in the construction of houses or larger units which are intended to be rented, the sale of lumber should be considered as a sale to a business user, rather than as a sale for purposes of speculative building. In other words, if an individual builds a house or a larger unit intending to rent the dwelling place, the sale to such an individual (or corporate purchaser) or to a contractor purchasing on behalf of such an individual should be considered in the same way as any other sale for a business purpose, and will be retail if the quantity involved is not materially greater than the quantity involved in sales to private persons, or contractors purchasing on their behalf. This result seems to follow from the first sentence of paragraph 56 of Interpretative Bulletin No. 6.

Of course, if the house or multiple dwelling unit were being constructed for speculative purposes, the sale to the speculative builder would be considered a sale for resale purposes and would not be retail regardless of the quantity involved.

Mr. Johnson's questions concerning discounts may be answered by stating that in the case of building materials, we believe that the quantity involved determines whether a sale to a business user is a retail sale; we do not, as you will note from bulletin 6, include the price test. Selling lumber to be used in the construction of a duplex, part or all of which is to be rented, should be considered as selling for a business use, and the retail or nonretail character of the sale depends on the quantity involved.

Mr. Johnson's lengthy discussion of sales under F.H.A. home financing seems to present the case of sales being made by a lumber dealer to a speculative builder who may have sold the house in question before the delivery of all the lumber.



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This matter is dealt with on page 26 of Legal Field Letter No. 39. As you will note, we took the position there that the facts at the time the contract of sale was entered into determine the nature of the sale rather than the facts existing at the time of the delivery of the goods. The sales in such cases would be considered sales for speculative--resale--purposes. If the builder, or the "business user" for whom the house is being built, intends to rent rather than to sell the completed dwelling, the quantity test should be applied.

In cases in which the dealer himself acts as contractor, it would seem that he is engaged in two separate businesses, namely, that of lumber dealer and that of building contractor. The exemption provided by section 13(a)(2) is limited to retail and service establishments and does not include building construction contractors. Assuming that there is segregation between the contracting and lumber dealing businesses (and your memorandum so indicates), we believe that material transferred by the yard to the contracting end of the business should be considered in determining whether 75 percent of the yard's sales are at retail.

The analogy you draw to the automobile parts and service departments is a close one, but the rule in that case, permitting the disregarding of transfers from the service to the parts department, was adopted for administrative purposes and is subject to some doubt as a matter of strict legal interpretation. One reason for adopting it was the general prevalence of such conditions in an ordinary small garage. The lumber dealer-contractor combination is, we believe, much less common to the retail lumber business than separate parts and service departments are in a garage. Furthermore, in the case of the garage we have an ultimate sale of the part from the service department to the consumer; in the case of the lumber dealer we do not consider that the contractor sells to the home builder (see footnote 19 of Interpretative Bulletin No. 6) -- and therefore, it seems proper to consider that the dealer does sell to the contractor (himself). This is true particularly since the dealer probably also sells to other contractors, whereas a garage parts department generally serves only its own service department and, if it also serves other dealers, is nonexempt (under the last sentence of paragraph 41 of Interpretative Bulletin No. 6). The lumber dealer's transfers to the contracting end of his business would thus be subject to the tests prescribed in paragraphs 52 through 58 of Interpretative Bulletin No. 6.

TO: Arthur E. Reyman
Regional Attorney
New York, New York

SOL:CHL:LJ:
March 30, 1942

FROM: Charles H. Livengood, Jr.
Chief, Wage-Hour Section

SUBJECT: Garment Center Truck Owners Association: Application of Section 13(b)(1).

Pursuant to your request of March 27, we have reviewed your proposed letter to Mr. Herbert A. Lien, counsel for the Garment Center Truck Owners Association. The Association is composed of contract carriers, as the latter term is used in the Motor Carrier Act of 1935, who serve manufacturers of ladies' garments in New York City by delivering finished goods to railroad terminals, pierheads, chain store warehouses, and other distributing centers. The question to which your letter is directed is whether foremen, truck drivers, "loader-helpers," and "messenger-pushers," are within the exemptions provided by Sections 13(a)(1) and 13(b)(1) of the Fair Labor Standards Act.

We are in general agreement with your analysis of the problem. However, for reasons indicated below, I believe you could be even more definite in indicating that the Division would probably regard most of theeemployees in question as nonexempt.

Your memorandum indicates, and I shall assume, that the Interstate Commerce Commission has undertaken to regulate the motor carriers who are members of the Association and that during every week the employees in question perform work in connection with transportation across state lines, deliveries to and from railheads, or other transportation deemed by the Interstate Commerce Commission to be within its jurisdiction under the Motor Carrier Act. If there were workweeks in which certain employees did not participate in such transportation (or did so only for purposes of evasion), they would, of course, be outside the 13(b)(1) exemption for such workweeks.

Foremen. There appears to be no claim that these employees perform functions so intimately related with loading, or other activities involving safety of operation, as to be affected by Section 13 (b)(1). Nor is it feasible to express an opinion on the applicability of Section 13(a)(1)--particularly in the absence of even an ex parte statement of the material facts. You have properly referred Mr. Lien to Regulations, Part 541, Section 541.1 ("executive") and Section 541.2 ("administrative").

Messenger-pushers. It is indicated that these employees are paid time and a half (on the basis of their straight hourly rate) for hours in excess of 40 per week, so that the question of their exemption under Section 13(b)(1) is academic. Moreover, no serious claim is made that they are so exempt although from time to time they are called upon to assist in loading. The greater part of their duties in every workweek consists of hand-truck deliveries--obviously unrelated to the safety of operation of the employer's motor vehicles.

Loader-helpers. The file which you submitted leaves the impression that any distinction between the work of the employees so characterized and that of the messenger-pushers must be largely one of degree-depending upon the proportion of time spent in nonexempt actvities, such as hand-truck deliveries and the proportion spent in connection with motor vehicle operations. Although Mr. Lien has described the duties of the loader-helpers at great length, he has omitted mention of the facts which must be determinative of exemption under Section 13(b)(1). He states that a majority of their time is devoted to the "loader-helper operation" which he describes. However, he not only fails to indicate just what occupies the remaining minority of their time; but he has also included in his description of the "loader-helper operation" certain actvities which in my opinion are not loading nor helping for purposes of determining the scope of the overtime exemption for "loaders" and "helpers."

It may be that a loader-helper performs duties which, although not strictly loading nor assisting truck operation, are nevertheless so integral a part of loading and helping as not to constitute nonexempt work--for example, sorting of goods in connection with loading or removal of goods directly from the truck in the course of its schedule run. Cf. footnote 6 on page 4 of Interpretative Bulletin No. 9. It is probably unnecessary to decide this question, however, particularly since such described functions as the following would in my opinion have to be included in computing the amount of nonexempt work done:

(a) Hand-truck transfers made on call and not as an immediate part of the loading of a motor truck by the employee;

(b) Unloading activities not incidental to assisting in the operation of a motor truck--such as those carried on after goods have been removed from the truck and it has proceeded to another stop with other helpers.

Chauffeurs. Upon the facts assumed, these drivers would clearly be exempt from the overtime requirements of the Act except for the question raised by their performance of duties other than driving. Your draft letter (page 5) indicates that they are frequently called upon to pick up packages from manufacturers and deliver these by hand-truck to customers or forwarding depots. As indicated above, such activities would appear to be nonexempt work.

Under these circumstances, about all we can do is to direct Mr. Lien's attention to what we consider the decisive principle. That is clearly stated in Interpretative Bulletin No. 9, Paragraph 5(c), which--as indicated by footnote 8--is applicable to drivers, loaders, and helpers of contract carriers. If nonexempt work exceeds 20 percent of the total number of hours worked by the employee during the week, the 13(b)(1) exemption does not apply.

For reasons stated in the paragraph mentioned, we do not agree with Mr. Lien's contention that the exemption is applicable so long as a substantial portion of the employee's work affects safety of operation in interstate transportation. This situation would be presented, of course, if the employee were exclusively a driver, or a loader, or a helper--even though a major portion of his work related to intrastate transportation. See footnote 10 on page 6 of Interpretative Bulletin No. 9.

Attachment

COPY

AIR MAIL
SPECIAL DELIVERY

Frank J. Delany
Acting Regional Attorney
Chicago, Illinois

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

Industrial Gloves Company
Danville, Illinois

Wage-Hour Section
165 West 46th Street
New York, New York

SOL:KM:MF

March 31, 1942

Your memorandum of March 23 refers to your memorandum of March 19 requesting an opinion concerning the applicability of the wage orders for the Single Pants, Shirts and Allied Garments Industry and the Shoe Manufacturing and Allied Industries. The subject concern manufactures an asbestos suit consisting of a slip-over shirt, trousers and a pair of shoes.

In our opinion, you are correct that the wage order for the Single Pants, Shirts and Allied Garments Industry applies to the manufacture of the asbestos shirt and trousers and that the wage order for the Shoe Manufacturing and Allied Industries applies to the manufacture of the asbestos shoes.

C O P Y

Jerome A. Cooper
Regional Attorney
Birmingham, Alabama

March 31, 1942

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

SOL:EJG:HH

Birmingham Awning & Tent Works
Birmingham, Alabama

This will reply to your memoranda of February 24 and March 10 requesting an opinion concerning the applicability of the luggage and leather goods industry wage order to the manufacture of luggage covers by the subject. "These luggage covers are manufactured from cloth or canvas and are so made as to completly cover the suit case or other luggage for which they are made. In the corners the covers are reinforced by a small cap made of leather."

The manufacture of the luggage covers and of the reinforced caps is subject to the definition contained in the luggage and leather goods industry wage order. The report of the Research and Statistics Branch for the industry, page 4, specifically lists luggage covers as included in the luggage group. You will note that the definition includes the manufacture of luggage from any material.

The employees employed in the manufacture of the leather caps for the luggage covers are entitled to the benefits of the wage order under section 588.4(b), as the caps are cut stock or parts for the luggage covers.

102595
103137

COPY

Regs. 598

Wage-Hour Section
165 West 46th Street
New York, New York

Frank J. Delany
Acting Regional Attorney
Chicago, Illinois

SOL:KM:MF

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

April 16, 1942

Monarch Matrix & Stereotype Co.
732 Federal Street
Chicago, Illinois

Your memorandum of February 25 relating to the applicability of the wage order for the Converted Paper Products Industry to the subject company has been referred to this office for reply. The Monarch Matrix & Stereotype Company is engaged in manufacturing matrices and stereotypes, of which you enclosed samples, consisting of large sheets of flong which are imprinted on a press.

It has heretofore been held that the manufacture of decalcomanias constitutes the manufacture of a graphic arts product rather than a converted paper product and that accordingly the wage order for the Converted Paper Products Industry does not apply to such articles. Since these matrices appear to function exclusively through the medium of graphic art, the same considerations which led to the above ruling indicate that the production of these items should also be regarded as outside the scope of the Converted Paper Products Industry. It is expected that an industry committee will be appointed at an early date for the recommending of minimum wage rates in the Graphic Arts Industry.

We are returning herewith the samples which you submitted with your memorandum.

Attachments (3)



(10737)

C O P Y

Regs. 598

Wage-Hour Section
165 West 46th Street
New York, New York

SOL:KM:MF

April 16, 1942

Llewellyn B. Duke
Regional Attorney
Dallas, Texas

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

Request for Opinion
J. R. Coffey Bookbinding Co.
Houston, Texas
File No. 42-50,758

Your memorandum of November 26 has been referred to this office for reply. You requested our opinion concerning the applicability of the wage order for the Converted Paper Products Industry to the J. R. Coffey Bookbinding Company of Houston, Texas, which is engaged in the binding of books, pamphlets and commercial forms.

It is our opinion that while the binding of books and pamphlets is outside the scope of the definition of the Converted Paper Products Industry, since these products are specifically excluded, the binding of commercial forms is included within the definition of the industry. The wage order for the Converted Paper Products Industry would, therefore, appear to be applicable to the employees of the subject concern. While the job printing exemption is applicable to printed forms under paragraph (d) of the definition, this exemption is not, in our opinion, applicable to the subject concern in view of the fact that this concern specializes in binding operations limited to only a few types of products. The concern cannot, therefore, be regarded as a job printing establishment within the terms of the definition.

Arthur E. Reyman
Regional Attorney
Newark, New Jersey

SOL:LW:SB

April 17, 1942

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

George C. Cochran Co., Inc.
Trenton, New Jersey

This is in reply to your memorandum of March 31, 1942, raising the question as to whether employees engaged in the construction of a road which paralleled a previously existing road connected by an island 4 to 6 feet wide between them are engaged in the original construction or in the reconstruction of an instrumentality of commerce. Although you do not specifically so state, we assume the two roadways together now constitute a four lane highway on which traffic on the "old" road flows in one direction and on the "new" road in the opposite direction. Under those circumstances, in my opinion, the employees engaged on the project which you have described were covered by the Act since they were engaged in the reconstruction of "an essential instrumentality of commerce" as that phrase is used in paragraph 13 of Interpretative Bulletin No. 5.

The "new" road and the "old" road in point of fact still constitute just one road. The same road still runs between Trenton and Bordentown, New Jersey; the "old" and "new" parts are closely parallel to each other, and in fact, are connected by a maintained island; they are used for identical purposes and by the identical traffic that would otherwise use just the "old" road. The construction of the "new" roadway would be pointless unless its purpose was directly to facilitate the movement of interstate commerce by precisely the same means employed in the previously existing road and almost at exactly the same location where such commerce had been and evidently still is moving. The "new" roadway is in such close physical proximity to the "old" roadway and performs such a closely related function in facilitating the movement of interstate commerce that in my opinion, both roadways must be regarded together as forming an integrated unit, a single four lane highway. Presumably the "new" roadway is given the same state or United States route number as is given the "old" roadway. Presumably, the two parts are shown on maps as constituting just one highway.

In the comparatively weaker case of the construction of a "new" bridge suspended a few feet above an existing bridge where the "new" structure at no place touched the "old" nor was in any way connected with it, the Division has taken the position that "it could not be reasonably argued . . . that there was a complete segregation -- physical or otherwise -- of the two structures." See Legal Field Letter 65, page 14. See also the overpass case discussed in Legal Field Letter 69, page 6.

COPY

Regs. 607

Vernon C. Stoneman
Regional Attorney
Boston, Massachusetts

April 30, 1942

SOL:JEO'G:DH

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

The Industrial Jewel Company, Inc.
253 Riverview Avenue
Waltham, Massachusetts

Reference is made to your memorandum of April 13, 1942 in which you inquire whether the wage order in the jewelry manufacturing industry is applicable to employees of the subject company, who are engaged in manufacturing jewel bearings for airplane instruments. You describe the operation involved as follows:

> Their work involves the placing of rough sapphires on a round steel block and pressing them into shellac. The flat side is then ground to the thickness of a certain jewel bearing whereupon it is turned to a specified diameter. After the final lathe pierces the jewel, the inside of it is polished.

We agree with you that the foregoing operation comes within the scope of section 607.5(b) of the wage order.



(10737)

COPY

MAY 1 1942

Miss Beatrice McConnell
Director, Industrial Division
Children's Bureau

SOL:EB:AMW

Warner W. Gardner
Solicitor of Labor

Application of Child Labor Provisions of Act to a Minor Hauling Gravel to an Explosives Plant

This is in reply to your memorandum of April 10, 1942, to which is attached an inquiry from Mr. Richard Carvell of the firm of Beck & Beck, Chestertown, Maryland. You request our opinion regarding the problem raised in Mr. Carvell's letter.

Mr. Carvell points out that one of his clients is engaged in the hauling of gravel from various places within the State of Maryland to the plant of Triumph Explosives, Inc., at Elkton, Maryland. He has in his employ a boy who is over 16 years of age (but under 18, we presume). Mr. Carvell inquires as to whether the boy is permitted, under the child labor provisions of the Fair Labor Standards Act, to drive a truck to the explosives plant for the purpose of unloading gravel.

Section 3(L)(2) of the Act defines as "oppressive child labor" a condition of employment under which an employee between the ages of 16 and 18 years is employed by an employer in any occupation which the Chief of the Children's Bureau shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being. Section 12(a) provides that no manufacturer or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment in which oppressive child labor is employed. We assume that the gravel hauled by the boy in this case becomes part or ingredient of explosives which leave the State.

Three questions are presented in this case:

1. Does the employment of the boy constitute "oppressive child labor" within the meaning of section 3(L)(2); 2. Assuming that it does, is such boy employed "in or about" an establishment in which goods are produced; 3. Is there a shipment or delivery for shipment in commerce in this case within the meaning of section 12(a).

1. It would seem clear that the employment of the minor in this case is "oppressive child labor" both under Hazardous



(10737)

Occupations Order No. 1 and Hazardous Occupations Order No. 2. According to Hazardous Occupations Order No. 1, all occupations in or about plants manufacturing explosives or articles containing explosive components are declared particularly hazardous for the employment of minors between 16 and 18 years of age. (Underscoring added.) Since the boy in this case unloads gravel at the explosives plant, he is working in or about the plant and therefore falls within the terms of the order.

Under Hazardous Occupations Order No. 2 the occupation of motor vehicle driver is declared particularly hazardous for the employment of minors between 16 and 18. Since the boy in this case is a truck driver, he also falls within the terms of this order.

2. We have already indicated our view to be that the boy in this case is employed "in or about" the explosives plant. It would likewise seem that he is employed in or about the gravel plant where he picks up the gravel. This would be true even though his employer does not operate the gravel plant but is merely in the trucking business.

3. The third question is whether we have in this case a delivery or shipment for delivery in commerce. As far as the explosives plant is concerned, we assume that it is shipping goods in commerce. With respect to the gravel plant, it is delivering goods for shipment in commerce if we assume that the gravel becomes part of the explosives that later leave the State. "Goods" is defined in section 3(i) of the Act as including any "part or ingredient" of goods. With respect to the boy's employer, whom we assume to be engaged in the trucking business, he, too, is delivering "goods" for shipment in commerce if the gravel becomes an ingredient of the explosives that later leave the State.

Our conclusions may be summarized as follows: The employment of the boy in this case constitutes oppressive child labor under section 3(L)(2). The boy is employed in or about an establishment in which goods are produced (either the explosives plant or the gravel plant). The explosives plant appears to be shipping goods in commerce and the boy's employer and the gravel company also appear to be shipping or delivering for shipment goods in commerce, if it may be assumed that the gravel becomes a part of the explosives that later leave the State. The gravel company and the boy's employer would be violating section 12(a) if the boy were permitted to haul gravel to the explosives plant. The explosives plant would be violating section 12(a) in shipping explosives in commerce both because the gravel delivered to it by the boy constitutes "hot goods" at the time it arrives and also for the independent reason that by permitting the boy to do any work in the explosives plant the goods produced in that plant thereby become hot goods.

COPY

May 1, 1942

Miss Beatrice McConnell
Director, Industrial Division
Children's Bureau

Warner W. Gardner
Solicitor of Labor

SOL:EB:AMS

Minors employed in Farm Work

This will reply to your memorandum of April 17, 1942, concerning the applicability of the child labor provisions of the Act to farm work. You state that the director of the Nebraska Employment Service has requested a statement in writing on the following questions:

1. When and at what operations may minors 14 and over work on a farm?

2. When schools are in session, what work may minors 16-18 perform?

3. When does farm work cease and processing or manufacturing begin?

You ask us to advise you particularly with respect to questions 2 and 3. As you point out, it is your understanding that one of the questions which the representative of the Employment Service had in mind in connection with question 2 was the application of Hazardous Occupations Order No. 2 to the operation of automobiles, trucks, or truck tractors on farms. Attached to your communication is a copy of a memorandum received from Miss Geach, Regional Child Labor Consultant, on this question and the answer prepared for her by Mr. Homan, Safety Engineer.

1. Section 13(c) of the Fair Labor Standards Act provides that the child labor provisions of the Act shall not apply with respect to any employee employed in agriculture while not legally required to attend school. In other words, the minimum age provisions of the Act apply to children employed in agriculture only during such periods as they are required by the school attendance law of the State to be in school. During such periods, the minimum age will be 16, not 14, since the employment of minors between 14 and 16 is only permitted if such employment is confined to periods which will not interfere with the minors' schooling.

2. We assume that this question is directed to a situation where sectio 13(c) is not applicable because the minors are legally required to attend school. The only question then is whether a "hazardous occupations" order is applicable to the employment of minors between 16 and 18 on a farm. As suggested by you, the only hazardous occupations order which may apply in this situation is Hazardous Occupations Order No. 2.

Hazardous Occupations Order No. 2 declares the occupations of motor vehicle driver and helper to be particularly hazardous for the employment of minors between 16 and 18 years of age. This order would be applicable to minors within these age limits working on a farm who engage in operations coming within

the scope of the order. The order would clearly apply, for instance, to minors engaged in driving a truck or other motor vehicle for the purpose of delivering farm products or other articles to a cannery or shipping point, or to minors whose work in connection with the transportation or delivery of such goods includes riding on a motor vehicle. It would also apply to any minor who was otherwise engaged in driving any automobile, truck, motorcycle, or other vehicle coming within the scope of the order.

Hazardous Occupations Order No. 2 would not, in our opinion, cover the operation of a tractor on a farm. The definition of the term "motor vehicle" in the order includes "truck tractors." However, it is pointed out in the memorandum from Mr. Homan to Miss Geach that the term "truck tractor" is commonly used to describe the motive-power unit for a semi-trailer used for transportation, and does not refer to tractors used on a farm for purposes of cultivating the soil. Tractors of the latter type would also not come within the scope of the general definition of the term "motor vehicle" in Order No. 2. This definition includes vehicles "prepared or driven by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails." Since a farm tractor is not designed for use as a means of transportation, work in connection with the operation of such a tractor would not be covered by Hazardous Occupations Order No. 2.

3. The question as to the delimitation of farm work from processing or manufacturing operations would seem to be answered by paragraphs 1 through 13 of the enclosed copy of Interpretative Bulletin No. 14, issued by the Administrator of the Wage and Hour Division. In these paragraphs the Administrator has indicated his views as to what activities constitute "agriculture" within the meaning of section 3(f) of the Act. Any activity not included in "agriculture" as that term has been interpreted would not be within the exemption provided by section 13(c).

Attachment (1)

COPY

Miss Beatrice McConnell, Director
Industrial Division
Children's Bureau

Warner W. Gardner
Solicitor of Labor

May 18, 1942

Application of Section 12(a) of the Fair Labor Standards Act to the transmission of telegraphic messages

We have considered the question of the applicability of section 12(a) of the Fair Labor Standards Act to the employment of messengers in telegraph offices. In that connection we have examined the material prepared by Miss Sheinfeld on the economic background of the telegraph industry which you submitted to us in your memoranda of April 15 and 16. For convenience of reference we quote section 12(a):

> "***no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed***"

As we have indicated to you in the past it is our opinion that intelligence transmitted by means of other waves is "goods" within the meaning of the Act. The case of telegraph messages would be even clearer since they are more tangible than communications transmitted by radio. It is also our view that the preparation and transmission of telegraph messages, particularly since they are reduced to tangible form constitutes "production" within the meaning of the Child Labor Provisions of the Act.

There remains only the further question whether the transmission of the telegraphic message constitutes a shipment of goods in commerce within the meaning of section 12(a). We believe it does. The sending of telegraphic messages appears closely analogous to the transportation of tangible goods and might even come within the judicial decisions in other fields interpreting the terms "ship" and "shipment." Telegraphic messages are reduced to tangible printed form at their destination and physically delivered in that form to the sendee. The telegraph company transmits the message to a definite addressee at a precise location and in accordance with schedule charges paid to the telegraph company. In this situation, the position of the telegraph company is strongly similar to that of a common carrier holding out its services to the public, and the relation of the sender and sendee are in their functional aspects little different from those of a consignor and a consignee of a specific shipment of tangible goods.

It is our conclusions, therefore, that the employment of messengers in and about telegraph offices which send messages across State lines is within the prohibition of section 12(a).



(10737)

COPY

Miss Beatrice McConnell
Director, Industrial Division
Children's Bureau

Warner W. Gardner
Solicitor of Labor

SOL:EB:GHS
May 22, 1942

Applicability of child labor provisions of act to workers employed on farm owned and operated by a cannery

This will reply to your memorandum of May 6, 1942 attaching copies of two letters in which questions are raised with respect to the applicability of the child labor provisions of the Fair Labor Standards Act to workers employed on an asparagus farm. You request our opinion concerning the problems presented in these letters.

Both letters raise the question as to whether the employment of minors in the cutting of asparagus on a farm which is owned and operated by a cannery constitutes "oppressive child labor" under the act. We have been informed that the term "cutting asparagus" quite generally refers to the operations by which the asparagus is harvested, and Mr. Bremer's letter makes it clear that he is using the term in this sense.

Section 13(c) provides an exemption from the child labor provisions of the act for any employee employed in agriculture while not legally required to attend school. The cutting of asparagus would appear to be an employment in agriculture within the meaning of this provision, since the term "agriculture" is defined in section 3(f) to include the harvesting of an agricultural commodity. The fact that the farm on which the minors are employed is owned and operated by a cannery engaged in canning the produce raised on the farm would not render the section 13(c) exemption inapplicable to minors engaged in cutting asparagus during periods in which they are not legally required to attend school. Thus, for instance, children employed in such operations in the early morning hours before school begins would be within the scope of the exemption.

The result would, of course, be the same if the asparagus was harvested by farmers through the employment of minors and was then sent to the cannery.

The attached letters also raise a question concerning the applicability of the Walsh-Healey Public Contracts Act to these minors. That act applies to contracts awarded by Government agencies for supplies, equipment, articles, and materials in excess of $10,000. The letters indicate that much of the asparagus pack canned by the plant here involved is sold to the United States. In view of the fact that the cannery owns and operates the farms on which the asparagus is grown, it is my opinion that contracts awarded to them would be exempt from the provisions of the Public Contracts Act by virtue of section 9 which provides " * * * nor shall this Act apply * * * to agricultural or farm products processed for first sale by the original producers."

The letters attached to your memorandum are returned herewith.

Attachments (2)



(10,737)

COPY

Miss Dorothy M. Williams
Regional Attorney
San Francisco, California

JUN 8 1942

SOL:EB:ET

Warner W. Gardner
Solicitor of Labor

Request for Opinion on Child Labor
Foss Launch and Tug Company
Seattle, Washington
File No. 46-475

This will reply to your memorandum of May 22, 1942, in which you ask us to confirm an opinion given by you concerning the applicability of the child labor provisions of the act to the employees of the subject company.

It appears from your memorandum that the subject company is not engaged in the production of goods for commerce, but only in transporting goods by tugboat and barge between points in Puget Sound Waters on the one hand and Alaska and Oregon on the other. The company's tugboats tow barges loaded with bulk oil, lumber, sand and gravel, and other products.

You state that certain minors 15 and 16 years of age are employed at the company's head office at Seattle, Washington. Two of the minors are employed as part-time clerks in the store department, while another minor works as a part-time telephone operator and clerk. The "store department" appears to be a part of the main office where the supplies necessary to the tugboat business are kept.

You have given the opinion that the child labor provisions of the act are not applicable to the employees in question. Assuming that no oppressive child labor has been employed with respect to the goods prior to the time when they come into the possession of the subject company, we concur with you in the opinion that section 12(a) of the act is not applicable to the operations of the company.

Section 12(a) provides:

" * * * no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed * * * ."

Section 3(j) defines "produced" as follows:

"'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purpose of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, trans-

porting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

In a recent memorandum to Miss Lenroot, Chief of the Children's Bureau, on the subject "Applicability of the Child Labor Provisions," we took the position that the term "produced" as used in section 3(j) requires something more than touching, moving, or passing along in cases where there is nothing else done in the establishment. Thus, we stated that an employee "who handles goods in the course of production by moving them from one assembly line to another is engaged in producing goods, but an employee at another establishment who unloads the finished goods from a freight car and places them on a truck is not necessarily so engaged." This memorandum, after comparing the legislative history of the wage and hour provisions with that of the child labor provisions, concludes that child labor coverage is narrower than wage and hour coverage. The opinion is expressed that as a prerequisite to the application of section 12(c) the employees in the establishment in question must perform or be associated with the performance of some operation on the goods which in some manner changes their nature or form; that is to say, it is not sufficient that the establishment merely moves or stores the goods as a separate venture.

This reasoning appears clearly applicable in the present situation and hence, it is our opinion that section 12(a), under the circumstances, does not apply to the operations of the subject company.

March 5, 1942

SOL:EJG:DH

Mr. Dick B. Antaranian
6513 - 20th Avenue
Kenosha, Wisconsin

Dear Mr. Antaranian:

This will reply to your letter of February 25 in which you inquired concerning the proper method of computing overtime pay under the Fair Labor Standards Act of 1938 under a contract providing pay at time and one-half for overtime over 8 hours per day or 40 hours per week, and that night work shall be compensated for at 5 cents per hour above the rate for daytime work, when the employee works hours in excess of 8 hours during a day and in excess of 40 hours during the week, and some of the work is performed at night.

The provision requiring time and one-half for hours worked in excess of 8 per day or 40 per week is a provision for extra compensation for overtime work, so payment of extra compensation (additional one-half time) thereunder need not be considered in determining the straight time pay as a basis for computing the regular rate on which overtime must be paid. See paragraphs 13 and 69 of the enclosed Interpretative Bulletin No. 4.

The contract provides, however, for the payment of two different straight time or regular rates of pay; one for day work and one for night work. The extra 5 cents per hour for night work is intended, not as overtime compensation, but as an incentive or inducement for employees to work at night. Since the day and night work of the employee is compensated for at two different regular rates of pay, computation of overtime should conform with the method outlined in paragraph 14 of the enclosed bulletin, the second method suggested in your letter.

Very truly yours,

For the Solicitor

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

Enclosure



(10737)

March 6, 1942

In reply refer to:
SOL:FUR:YS

Mr. Stephen F. Dunn
Furniture Manufacturers Association
214 Lyon Street, N.W.
Grand Rapids, Michigan

Dear Mr. Dunn:

This will reply to your letter of February 23 inquiring as to the applicability of the Fair Labor Standards Act of 1938 to employees injured during working hours who go immediately to a physician other than the company physician. You also inquire as to the applicability of the Act in the case of an employee who, after being injured at work, makes several subsequent visits to the company physician during working hours for purposes of having the injury treated.

You will appreciate that these problems are of a type concerning which we have no authority to issue binding regulations. We can merely express to you our best opinion of the view the courts are apt to take. Such opinions are not, of course, binding on the courts, but they will guide us in our enforcement policy until directed otherwise by an authoritative judicial expression.

The particular problems which you put cannot readily be answered in the abstract since the particular circumstances of each case may well alter the result. In general, however, it is our opinion that when an employee is injured at work and, no company doctor being available, goes immediately to an outside physician or some other source for medical treatment, the time spent in undergoing such treatment should be considered as part of the employee's working day. However, it is believed that a different result would obtain if a company doctor were available, and the employee nevertheless elected to go elsewhere for treatment.

Subsequent visits to a company doctor outside working hours would not be considered hours worked. Whether subsequent visits during working hours should be considered hours worked depends on many factors. If, for example, an employee was absent from work for several days and on those days went to see the doctor, the time spent at the doctor's would not be considered hours worked merely because the occasion of the visit happened to fall during what would otherwise be working hours for the employee. If, on the other hand, the employee is at work and leaves his task for the purpose of consulting the company physician and obtaining treatment for an injury previously sustained at work, we believe that the time spent should be considered hours worked.

Very truly yours,

For the Solicitor

Charles H. Livengood, Jr.
Chief, Wage-Hour Section



(10737)

165 West 46th Street
New York, New York

March 28, 1942

In reply refer to:
SOL:KM:MF

Mr. Thomas Quinn Beasley, President
National Council on Business Mail Inc.
Second National Bank Building
Washington, D. C.

Dear Mr. Beasley:

Your letter of August 9, 1941, submitted for a written opinion a question concerning the application of the Converted Paper Products Industry wage order. You desired to know whether any part of the operations of a printing plant which is engaged in the manufacture and printing of loose-leaf and blank books, tablets and pads, index cards, tags and labels, printed forms, stationery and the like are subject to the wage order. You are aware, I am sure, of the troublesome problems that have attended efforts to establish lines of demarcation between the Converted Paper Products and Graphic Arts Industries. You were good enough to supply us with some information on this matter. We were obliged also, however, to obtain additional data. This required some time and, together with conferences and deliberation occasioned the delay in answering your letter. It is now possible, however, to reply definitely to your inquiry.

The definition of the Converted Paper Products Industry excludes from the operation of the wage order products which function exclusively through the medium of graphic art. It also excludes, as explained in a prior release, R-1575, the printing and all other operations incidental thereto normally carried on by the job printer when such printing is applied by a job printing establishment to certain enumerated items, such as printed forms of all kinds, including sales slips and books, bank pass books, checks, manifold forms, calendars, greeting and announcement cards, etc.

Labels are not among the products to which this exemption applies. If a particular type of label is covered by the definition of the Converted Paper Products Industry, the 40 cent minimum wage rate applicable to the tags and labels applies without regard to where such manufacture is carried on or where such label is printed.

It is recognized that labels in many cases require the application of elaborate printing processes. In such cases there is very little doubt that the product is properly classifiable as a graphic arts product. Such labels are not within the coverage of the wage order for the Converted Paper Products Industry with respect to either the manufacture or the printing of such labels. Other more simple types of labels are clearly within the scope of the wage order. It will be necessary, therefore, in individual cases where doubt exists that samples or descriptions of the labels be submitted in order that definitive rulings as to the coverage of the Converted Paper Products Industry wage order may be rendered.

I hope that this will give you the information you wish. In accordance with your request, I am sending you an extra carbon of this letter.

Very truly yours,

L. Metcalfe Walling
Administrator

Enclosure
266402

-30-

(10737)

In reply refer to:
SOL:KM:MF

April 3, 1942

George J. Beldock, Esquire
205 West 34th Street
New York, New York

Re: Bernhard Ulmann Co., Inc.

Dear Mr. Beldock:

We have had occasion to consider the problem presented by the balling and labeling of woolen yarns at some length. As we understand it, the Bernhard Ulmann Co., Inc. buys woolen yarn in skeins. It attaches labels to some of these skeins and packages them and sells them in that form. These operations are not, in our opinion, covered by the woolen wage order. The company, however, also takes some of the yarn, puts it on cones and rolls it into balls of varying weight. These balls are then labeled and sold to department stores and specialty shops for use in the art needlework trade.

Investigation of the problem presented by these latter operations discloses that a considerable volume of the balling of woolen yarn is done by woolen manufacturing establishments in their plants, as well as by wholesalers and distributors, and that the woolen yarns thus handled by manufacturers and wholesalers are in competition. In these circumstances, it is our opinion that the balling and labeling operations are subject to the woolen wage order and that, therefore, the workers engaged in such operations will have to be paid a minimum wage of at least 40 cents an hour with time and one-half their regular rates of pay for overtime. All workers performing any operations covered by the woolen wage order will have to be paid the applicable minimum regardless of the type of establishment by which they are employed.

If in any workweek employees are entitled to be paid the minimum wage prescribed in a wage order for any part thereof, they must be paid at such rate for the entire week unless the time they are so occupied can be segregated from the time spent on work carrying a lower rate established by another wage order or by section 6 of the Fair Labor Standards Act, or unless records of such time worked may be kept in accordance with the record-keeping regulations of the Wage and Hour Division. A copy of these regulations, Part 516, is enclosed.

Very truly yours,

For the Solicitor

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

Enclosures (2)



(10737)

COPY.

165 West 46th Street APR 6 1942

In reply refer to:
SOL:KM:MF

Mr. R. L. Noble
R. E. Noble Engraving Company
200 Hudson Street
New York, New York

Dear Mr. Noble:

Your letter of March 19 inquires whether any wage order has been issued which would be applicable to your industry. You say that you are known technically as steel and copper plate engravers and that your business consists of manufacturing engraved stationery.

The Fair Labor Standards Act, of which I enclose a copy, provides that minimum wages of at least 30 cents per hour shall be paid to all employees who are engaged in commerce or in the production of goods for commerce, except in the case of industries for which a higher minimum has been established by a wage order. In the event such a wage order has been issued, employees in the industry as defined in the wage order are entitled to be paid at least the minimum wage rate prescribed therein.

A wage order has been issued for the Converted Paper Products Industry. I am enclosing a copy of this wage order. You will note from section 598.4 that it includes the manufacture of all products which have as a basic component pulp, paper, paper board or synthetic materials used in sheet form. Certain products are excluded from the coverage of the definition in paragraph (d). You will note, however, that "the production of * * * stationery * * * other than the printing thereof in a jot printing establishment * * * shall be included within the Converted Paper Products Industry as herein defined." I call your attention also to paragraph 19 of this same section which defines the stationery division of the Converted Paper Products Industry as including:

> "Boxed social stationery, envelopes, writing paper, announcement cards, and the like."

In my opnion, the manufacture, including the printing or engraving of stationery, is therefore included within the Converted Paper Products Industry and specifically within the stationery division thereof, and is subject to the minimum wage rate of 40 cents per hour applicable to this division under section 598.2, paragraph (a)19, unless the printing and engraving are carried on in a job printing establishment. In view of the fact that you appear to specialize in the manufacture of stationery, however, this exemption would not appear to be applicable to your operations.

In addition to being entitled to receive at least the minimum wage rates prescribed in the wage order for the Converted Paper Products Industry, such of your employees as are engaged in commerce or in the production of goods for commerce are entitled also to be paid time and one-half their regular rates of pay for all hours worked in excess of 40 in any workweek.

I trust that this will give you the information you wish. If, however, you have any further questions, do not hesitate to write to me.

Very truly yours,

L. Metcalfe Walling,
Administrator

Enclosures (2)
326-495



(10737)

COPY

Regs. 598

In reply refer to:
SOL:KM:MF

Sol A. Liebman, Esquire
165 Broadway
New York, New York

April 8, 1942

Dear Mr. Liebman:

Your letter of November 27, 1941 has been referred to this office for reply. I regret that, owing to the transfer of the offices of the Wage and Hour Division from Washington to New York and the large volume of correspondence we have been receiving, an earlier reply has not been possible.

In accordance with your request, I am enclosing a copy of the Findings and Opinion of the Administrator in the matter of the recommendations of Industry Committee No. 14 for the Converted Paper Products Industry. I am also enclosing copies of the Report and Recommendation filed by Industry Committee No. 14 on January 4, 1941 and the Report and Recommendation of Industry Committee No. 13 filed on July 23 1940. This also is in accordance with your request.

In connection with your question as to the meaning of the term "basic component" as used in the definition of the Converted Paper Products Industry, I do not believe that any precise meaning can be assigned to this term. The relative cost of the materials used in the manufacture of a particular product is not, in my opinion, a significant factor in determining whether any particular material used is or is not a basic component of the product. Thus, in the example you cite, the manufacture of a desk pad consisting of leather corners and back but with a paper board base it has been held that such a product is subject to the wage order for the Converted Paper Products Industry even though the cost of the paper board used is not a substantial part of the total cost of the finished product. The Converted Paper Products Industry covers a wide variety of different products. The criterion which is set forth in the Findings and Opinion of the Administrator in the matter of the recommendations of Industry Committee No. 14 for minimum wages in the Converted Paper Products Industry is whether the products have pulp, paper or paper board, or synthetic materials "as the element, or as one of the principal elements, which impart to them their special characteristics," (p. 6).

I trust that this will give you the information you wish.

Very truly yours,

For the Solicitor

Charles H. Livengood, Jr.
Chief, Wage-Hour Section

Enclosures (3)

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COPY

APR 14 1942

165 West 46th Street
New York, New York

SOL:EJG:DH

Mr. Thomas W. Fry, President
Fry-Fulton Lumber Company
148 Carroll Street
St. Louis, Missouri

Dear Mr. Fry:

This will reply to your letter of December 8, 1941, in which you apparently inquired concerning the applicability of the lumber and timber products industry wage order (requiring a 35 cent minimum) to your business and to that of the Pioneer Lumber Company, West Jackson, Mississippi. You already have copies of the wage order.

Your letter indicates that the applicability of the wage order to the business of the Pioneer Lumber Company has been taken up several times with members of the staffs of some of our regional and branch offices and that conflicting opinions have been given with reference to application of the wage order. The opinion herein stated is limited to the facts stated by you in your letter, and of course may not be applicable if the facts are at variance with these statements. On page 4 of your letter you quoted a letter written by the Pioneer Lumber Company, to the Jackson, Mississippi, branch office on November 25, 1941, stating the business operations of the Pioneer Company as follows:

> As explained in our conversation, we operate a wholesale yard and do not manufacture lumber, but buy it from different mills and ship it into Jackson, also it is trucked into Jackson, we simply unload it, pile it and let us air-dry on an average of around six months and the lumber is then shipped out to northern points.
>
> The lumber is green and rough when it is brought into our yard and after it is air-dried for a few months, we reship it in the same rough condition, except it is air-dried. We have no machinery on our yard for reworking, except a small cut-off and ripsaw, which is only used occasionally when the lumber deteriorates and has bad looking ends and I do not believe that the few occasional pieces that we do trim would exceed over 5% of the stock. We only use the trim-saw occasionally when we have a few pieces that need trimming have accumulated.
>
> We do not finance any mills, but simply buy the lumber from them and ship it into Jackson, pile it and hold it for a few months for air-drying, and then reship it to northern points.
>
> We believe we would be classed as an Independent Wholesaler and not subject to the 35¢ wage rate * * *.

With respect to your own operations, you stated on pages 5 and 6 of your letter:

> This office (The Fry-Fulton Lumber Co.) sells a product that the Pioneer Lumber Co., at Jackson, Miss., buys. The lumber is all specially cut lumber for implement work and we sell it to the large implement manufacturers of the United States and Canada.



(10737)

The lumber and timber products industry wage order (see section 610.4 thereof) includes "wood saw milling and surfacing; wood reworking, including but without limitation kiln or air drying, and the manufacture of planing mill products * * *." (Emphasis supplied.)

"The manufacture of any products covered under this definition shall be deemed to begin with the unloading of the raw material at the mill site."

Section 610.5 of the wage order states the scope of the definition as including "all occupations in the industry which are necessary to the production of products covered in the defintion including clerical, maintenance, shipping and selling occupations, provided, however, this definition does not cover clerical, maintenance, shipping and selling occupations when carried on in an establishment, the greater part of whose sales are of products not covered in the definition, or employees of an independent wholesaler * * *."

You will note that the manufacture of the products subject to the wage order begins with the handling of the materials at the mill site. It is my opinion that air drying operations such as those performed by the Pioneer Lumber Company, and all other manufacturing operations performed by either company, are subject to the lumber wage order. Your letterhead indicates that you cut all kinds of dimension stock to order.

Copies of this opinion are being sent to each of the branch and regional offices to which these problems have been referred.

If you have any further questions, feel free to call upon me at any time.

Sincerely yours,

L. Metcalfe Walling
Administrator

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