U. S. DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

Washington, D. C.

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Not to be used in any manner before that time.

INTERIM REPORT

of the

ADMINISTRATOR

of the

WAGE AND HOUR DIVISION

For the Period

August 15 to December 31, 1938

U. S. DEPARTMENT OF LABOR
Washington

January, 1939

Wage and hour division.

WAGE AND HOUR DIVISION

\$ \$ \$

Elmer F. Andrews, *Administrator*

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LETTER OF TRANSMITTAL

Wage and Hour Division
U. S. Department of Labor
Washington, D. C.
January 14, 1939

To the President of the United States:

To the Congress of the United States:

The Administrator of the Wage and Hour Division is directed by Section 4(d) of the Fair Labor Standards Act to submit annually in January a report to the Congress. This Division was not in operation during the fiscal year ended June 30, 1938, but in order to report to the Congress on the administration of the Act prior to January, 1940, I have the honor to submit this informal interim report for the period August 15 to December 31, 1938.

Respectfully submitted,

ELMER F. ANDREWS
Administrator

"The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

"It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power."

FINDING AND DECLARATION OF POLICY,
Section 2 of the Fair Labor Standards Act

"The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenceless against the denial of a living wage is not only detrimental to their health and well-being but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met."

CHIEF JUSTICE HUGHES, in the opinion in
West Coast Hotel Co. vs. Parrish 300 U.S.399

"Every man has a right to life; and this means that he has also a right to make a comfortable living. He may by sloth or crime decline to exercise that right; but it may not be denied him. We have no actual famine or dearth; our industrial and agricultural mechanism can produce enough and to spare. Our government, formal and informal, political and economic, owes to everyone an avenue to possess himself of a portion of that plenty sufficient for his needs, through his own work."

FRANKLIN DELANO ROOSEVELT, at the Commonwealth
Club, San Francisco, California, September 23, 1932.

FOREWORD

The first several months of the life of a new administrative agency are normally devoted to the task of building up a staff and working organization, but for the Wage and Hour Division the immediate administrative responsibilities were so pressing that it has been necessary to undertake these responsibilities and the organizational tasks simultaneously. The effective date of minimum wage and maximum hour sections of the Fair Labor Standards Act - October 24, 1938 - was only a few days more than two months after the Administrator took up his official duties in Washington, and in this period it was necessary to plan an organization, recruit a skeleton staff, issue the regulations required by the statute, and provide general interpretations of the Act as well as specific replies to tens of thousands of inquiries from employers and employees. It may be said here that the unstinting cooperation and assistance of the several bureaus of the Labor Department and of other Government agencies, and the willingness of employers and labor organizations to provide the staff of the Division with the benefit of their experience in many difficult technical problems, have been of invaluable aid to the Division during these first four and one-half months.

The Fair Labor Standards Act has three major objectives: to establish a reasonable minimum level of wages, a maximum for hours

of work, and a standard for child labor for employees engaged in interstate commerce and in the production of goods for commerce. This is not the place for a review of the origins of the Act nor its legislative history, but as the agency charged with its administration, the Wage and Hour Division has had reason to be grateful for the way in which previous experience with similar legislation was used by the Congress in drafting this Act. The combination of a statutory basic minimum wage of 25 cents per hour (30 cents after October 23, 1939) with provisions for raising this minimum industry by industry on the recommendation of committees representing employers, employees, and the public, ensures the maintenance of substantially equivalent competitive standards while advancing as rapidly as is consistent with thoughtful and careful action toward the objective of the Congress - a universal minimum wage of 40 cents per hour for employment covered by the Act.

It is hardly conceivable that any statute affecting millions of employees and hundreds of thousands of employers in a country as large as ours could be put into effect without problems arising, both for the administrative agency and for employers. A considerable number of such problems has arisen; some of them are well on the way to solution, and others are still being studied. But the experience of this Division has been that employers, employees, and the public approve of the purposes of the Act, agree that it is well designed

to accomplish these purposes: and wish to see it become within the shortest possible time an integral part of the economic structure of this country. This was confirmed during an inspection trip of approximately 8,000 miles made by the Administrator over the Thanksgiving holiday and the week thereafter on which he stopped in more than a dozen major cities from coast to coast, and discussed the Fair Labor Standards Act with thousands of employers and employees. Employers and employees expressed their approval of the Act: and appeared willing to give and take, to go to some trouble to make this law work, and to forego temporary personal advantage for the welfare of their industries and communities and of the nation.

The fact that the objectives of the statute are generally accepted by the American public places a real responsibility upon the Wage and Hour Division to see that the Act is observed. Without compliance the purposes of the statute are merely pious wishes; and indeed the law may work real hardship on employers who comply if certain of their competitors do not. Compliance has been the rule thus far: this has been the "honeymoon" period of the Act. But the immediate and continuing responsibility of the Wage and Hour Division must be to see that observance is as close to 100% as it is humanly possible to make it.

CONTENTS

CONTENTS

APPENDICES

CONTENTS

1. SCOPE AND COVERAGE OF THE ACT

What employees are protected by the wage and hour provisions of the Fair Labor Standards Act? This is the question which has been put to the Wage and Hour Division by thousands of employers and employees, and an answer to it is basic to the administration of the Act. Closely related to it is the further question: How many employees are covered and how many have had, or will have, their wages raised or their hours of work shortened by the several provisions of the Act?

The Division has attempted to furnish replies to these questions as rapidly and as completely as a small staff, a limited budget and the provisions of the statute would permit.

A. THE SCOPE OF THE ACT IN TERMS OF INTERSTATE COMMERCE:

The question as to what types of employees are covered by the Act is primarily a legal one, and therefore, to be of maximum assistance to employers, the Division has published a series of Interpretative Bulletins prepared by its General Counsel dealing with this matter. The following selections from the Bulletins indicate the general line which the Division has followed:

The statute does not confer upon the Administrator any general power to issue rulings including industries within the coverage of the act, or excluding them. At one stage of the legislative history, a draft of the act provided that the Administrator should hold a succession of hearings with reference to the various industries, after which hearings, if the facts warranted, he was required to issue an order declaring the industry to be an industry affecting interstate commerce; and by virtue of

such order the particular industry was to come within the application of the act. No such provision was included in the bill as it finally passed. Under the act, employments are included or excluded by the terms of the statute itself as interpreted by the courts, and not by the force of any administrative action. Interpretations announced by the Administrator, except in certain specific instances where the statute directs the Administrator to make various regulations, definitions, and classification, serve, therefore, to indicate merely the construction of the law which will guide the Administrator in the performance of his administrative duties, unless and until he is directed otherwise by authoritative ruling of the courts.

Under sections 6 and 7 the wage and hour provisions are applicable to employees "engaged in commerce or in the production of goods for commerce." "Commerce" is defined as trade, commerce, transportation, transmission, or communication among the several States, or from any State to any place outside thereof--or roughly, "interstate commerce." In the preliminary declaration of policy in section 2, Congress recited that it sought to remedy certain evils, namely, "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers," which Congress found "(1) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce." From this declared policy of Congress it is evident that, apart from certain specific exemptions enumerated

later in the statute, Congress intended the widest possible application of its regulatory power over interstate commerce; and the Administrator, in interpreting the statute for the purpose of performing his administrative duties, should properly lean toward a broad interpretation of the key words, "engaged in commerce or in the production of goods for commerce."

It is noted that the coverage as described in sections 6 and 7 does not deal in a blanket way with industries as a whole. Thus, in section 6, it is provided that every employer shall pay the statutory minimum wage to "each of his employees who is engaged in commerce or in the production of goods for commerce." It thus becomes an individual matter as to the nature of the employment of the particular employee. Some employers in a given industry may not be subject to the act at all; other employers in the industry may be subject to the act in respect to some of their employees, and not others; still other employers in the industry may be subject to the act in respect to all their employees, except those specifically exempted by the later provisions of section 13 (a).

Employees in Interstate Commerce

The first category of workers included, those "engaged in (interstate) commerce," applies, typically but not exclusively, to employees in the telephone, telegraph, radio, and transportation industries, since these industries serve as the actual instrumentalities and channels of interstate commerce. Employees who are an essential part of the stream of interstate commerce are also included in the phrase "engaged in commerce", for example, employees of a warehouse whose storage facilities are used in the interstate distribution of goods.

Employees Engaged in the Production of Goods for Interstate Commerce

The second category of workers included, those engaged "in the

production of goods for (interstate) commerce," applies, typically but not exclusively, to that large group of employees engaged in manufacturing, processing, or distributing plants, a part of whose goods moves in commerce out of the State in which the plant is located. This is not limited merely to employees who are engaged in actual physical work on the product itself, because by express definition in section 3 (j) an employee is deemed to have been engaged "in the production of goods, if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State." Therefore the benefits of the statute are extended to such employees as maintenance workers, watchmen, clerks, stenographers, messengers, all of whom must be considered as engaged in processes or occupations "necessary to the production" of the goods. Enterprises cannot operate without such employees. If they were not doing work "necessary to the production" of the goods they would not be on the pay roll. Significantly, it is provided in section 15 (b) that "proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within 90 days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods." Hence, except for the special categories of employees within the exemptions of section 13, all the employees, in a place of employment where goods shipped or sold in interstate commerce were produced are included in the coverage, unless the employer maintains the burden of establishing, as to particular employees, that their functions are so definitely segregated that they do not contribute to the production of the goods for interstate commerce as these terms are broadly

defined in the act.

The act does not cover plants where the employees work on raw materials derived from within the State and where none of the product of the plant moves in interstate commerce. This is true, even though the product so manufactured and sold locally comes in competition with similar products which have been manufactured elsewhere and have been moved in interstate commerce. Provisions designed to include such local industries appeared in various drafts of the bill, but were stricken out and not included in the bill as it finally passed.

Place of Employment and Basis of Payment

Since the act contains no prescription as to the place where the employee must work, it is evident that employees otherwise coming within the terms of the act are entitled to its benefits whether they perform their work at home, in the factory, or elsewhere.

The act is not limited to employees working on an hourly wage. The requirement of Section 6 as to minimum wages is that the employee must be paid at the rate of not less than 25 cents an hour (the rate is stepped up in succeeding years). This does not mean that employees cannot be paid on a piece-work basis after October 24; it merely means that whatever the basis on which the workers are paid, whether it be monthly, weekly, or on a piece-work basis, they must receive at least the equivalent of the minimum hourly rate. Rules and regulations to be prescribed by the Administrator will provide for the keeping of records in such form as to enable compensation on a piece-work basis to be translated into terms of an hourly rate.2/

Further Statement on the Production of Goods for Interstate Commerce

The wage and hour provisions of the act are applicable to

employees "engaged in (interstate) commerce or in the production of goods for (insterstate) commerce." Employees are engaged in the production of goods <u>for</u> commerce where the employer intends or hopes or has reason to believe that the goods or any unsegragated part of them will move in interstate commerce. If, however, the employer does not intend or hope or have reason to believe that the goods in production will move in interstate commerce, the fact that the goods ultimately do move in interstate commerce would not bring employees engaged in the production of these goods within the purview of the act. The facts at the time that the goods are being produced determine whether an employee is engaged in the production of goods for commerce and not any subsequent act of his employer or of some third party. Of course, the fact that the goods do move in interstate commerce is strong evidence that the employer intended, hoped, or had reason to believe that the goods would move in interstate commerce.

As indicated above, whether the employees are engaged "in the production of goods for (interstate) commerce" depends upon circumstances as they exist at the time the goods are being produced, not upon some subsequent event that may or may not be in the control of the producer.

2/ The foregoing are the first eight paragraphs of Interpretative Bulletin No. 1, first issued on October 12,1938. The Bulletin in full is attached to this report.

the producer. Thus, if a shirt manufacturer produces shirts to fill the order of a local retail store in the expectation that the shirts will be sold for consumption within the State of production, the manufacturer will not become retroactively subject to the act in respect to those goods, because the retailer subsequently goes bankrupt and its whole stock of merchandise, including the shirts, is bought up by an out-of-State merchant and removed to another state. On the other hand, if the shirt manufacturer produced the shirts to fill an out-of-State order, the rights of the employees under sections 6 and 7 of the act are not affected by the subsequent fact that a fire destroys the finished shirts before they are shipped out of the state.

Employees engaged in the production of goods that move out of the State of production are engaged "in the production of goods for commerce" even though the employer does not himself ship the goods across state lines. It is immaterial that the producer passes title to the purchaser within the state of production. If the goods are purchased by an out-of-state purchaser, f. o. b. the factory, and are taken by the purchaser out of the state, the employees in the factory are engaged in the production of goods for interstate commerce. The same is true if the producer sells his products within the state of production to a wholesaler or retailer who, in turn, sells them in interstate commerce.

There are other situations in which employees of an employer who does not ship his goods directly in interstate commerce may yet be engaged in the production of goods for commerce. This will be true where a producer sells goods to a further processor thereof within the state who, in turn, sells goods in interstate commerce, the first producer's goods being a part or ingredient of the second producer's goods. In this

connection attention is called to section 3 (i) which defines the term "goods" to include "any part or ingredient" of goods. Thus, if a manufacturer of buttons sells his product within the state to a manufacturer of shirts, the shirts being shipped in interstate commerce, the employees of the button manufacturer are engaged in the production of goods for commerce. And, if a lumber manufacturer sells his lumber locally to a furniture manufacturer who sells furniture in interstate commerce, the employees of the lumber manufacturer would likewise come within the scope of the act. 3/

Exemptions

Further questions of coverage came up in connection with the specific exemptions provided in various sections of the statute. The scope and applicability of most of these exemptions are set forth in the statute itself: if the facts of the particular case satisfy the terms of the section, an exemption is automatically available. The statute confers no authority upon the Administrator to extend or restrict the scope of these exemptions or even to impose legally binding interpretations as to their meaning. In order to inform employers as to the construction of the law which will guide the Administrator, however, the Division will also follow the practice of issuing Interpretative Bulletins on certain of these exemptions. 4/

In a few cases the statute confers authority upon the Administrator to define certain terms by regulation, but once defined these terms are similar to the statutory definitions discussed in the preceding paragraph:

3/ The foregoing four paragraphs are paragraphs 2 through 6 of Interpretative Bulletin No. 5, first issued on December 1, 1938. This Bulletin is attached to this report, in full.

if the facts of the particular case satisfy the terms of the regulations an exemption is available. The text of the regulations defining terms are attached to this report.

4/ These bulletins on sections of the Act conferring exemptions are attached to this report.

B. ECONOMIC COVERAGE OF THE ACT AND NUMBER OF EMPLOYEES AFFECTED

For effective administration, the Wage and Hour Division requires a knowledge of the number of employees covered in terms of regions, industries and enterprises. It has not been possible to undertake a special survey to answer the questions on coverage, but certain estimates have been prepared by the Economic Section of the Division to serve as approximations until more satisfactory inquiries can be made. These estimates are based on information obtained prior to the establishment of the Wage and Hour Division and not specifically intended to serve its needs. They do afford at least partial measures, which are subject to correction and will probably be enlarged as the necessary data are compiled in special surveys already under way.

Summarized Estimates

The estimated figures for September, 1938 are:

1.	The number of employees covered by the Act.....	11,000,000
2.	The number receiving less than 25 cents per hour.....	300,000
3.	The number receiving less than 30 cents per hour.....	550,000
4.	The number receiving less than 40 cents per hour	1,418,000
5.	The number working more than 44 hours.....	1,384,000
6.	The number working more than 42 hours.....	1,751,000
7.	The number working more than 40 hours per week.....	2,184,000

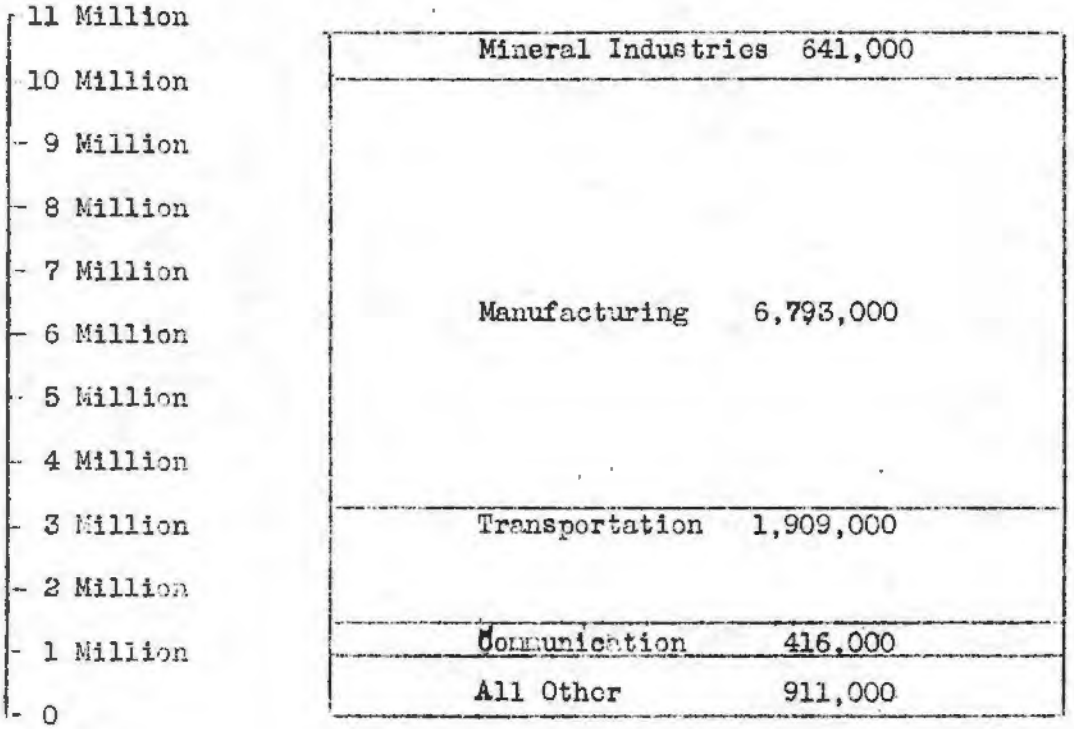
It should be noted that the less-than-25-cents-per-hour and the above-44-hour figures given here are the result of extremely conservative estimates. They are lower than figures originally given out by the Division, first, because the results of the detailed estimating methods were not available in October, 1938, and second, because it was later decided that the coverage of certain establishments by the Act was doubtful. It must be remembered that large numbers of employees engaged in occupations characterized by low hourly wages are not covered by the Fair Labor Standards Act. Of the 36.5 million gainful workers not self-employed, reported in the 1930 Census, more than 10 million were classified in retail trade, agriculture, and domestic and personal service. A large proportion of the employees in these groups would probably fall in the less-than-25¢ and less-than-30¢ per hour classes. It may be remarked, further, that nearly 7 million of the 11 million covered employees work in manufacturing enterprises, in many of which the hourly wage is well above the average for all gainful workers. More than 5 million of the covered employees are in industries paying an average wage of 65¢ or more per hour.

Total Coverage The estimate of total coverage, given by major industry groups in the table below, (See also Fig. 1), shows 10,670,000 employees subject to the Act in the United States and Puerto Rico. Recent data were not available for Hawaii and Alaska. This total does not include the employees (about 220,000) of manufacturing establishments with less than six wage earners per establishment. As

for the other estimates to be presented here, the estimate for coverage will probably be raised considerably with more accurate measurement. The approximate distribution of the employees covered, by States, is shown in Fig. 2. The tentative figure of nearly 11,000,000 is roughly one-third of the total number of supervised employees who worked for wages or salaries in the United States.

Figure I.

NUMBER OF EMPLOYEES COVERED BY THE FAIR LABOR STANDARDS ACT, BY MAJOR INDUSTRY GROUPS, September - 1938



Wages Prior to the Act

The Fair Labor Standards Act established a minimum hourly wage of 25 cents and time-and-a-half pay for hours worked in excess of 44 hours per week, effective October 24, 1938. Employees working at less than the stated minimum wage or working more than 44 hours and not receiving the prescribed penalty wage for overtime were, therefore, immediately affected by the provisions of the Act. The number of employees receiving less than 25 cents per hour in September, 1938, is estimated at more than 174,000 for the 48 States, and more than 216,000 for the United States and Puerto Rico. Some obvious sources of shortage, for which no accurate correction could be made on the basis of available data, are the following:

(a) The estimate does not include home workers. The Women's Bureau of the Department of Labor reports industrial goods made in 77,000 homes, based on data of the Census of 1930. A Women's Bureau study of home work in Texas showed an average of 1.5 home workers per family in which there was found to be some homework. If this average is applied to the 1930 figure for number of homes, the resulting number of workers is 116,000. Although the amount of home work done in the country as a whole may be highly variable, and although there may have been a marked downward trend in this type of work since 1930, there is no doubt that a large number of persons were so employed in September, 1938.

NUMBER OF EMPLOYEES COVERED BY THE FAIR LABOR STANDARDS ACT. BY STATES*

SEPTEMBER · 1938

IN THOUSANDS

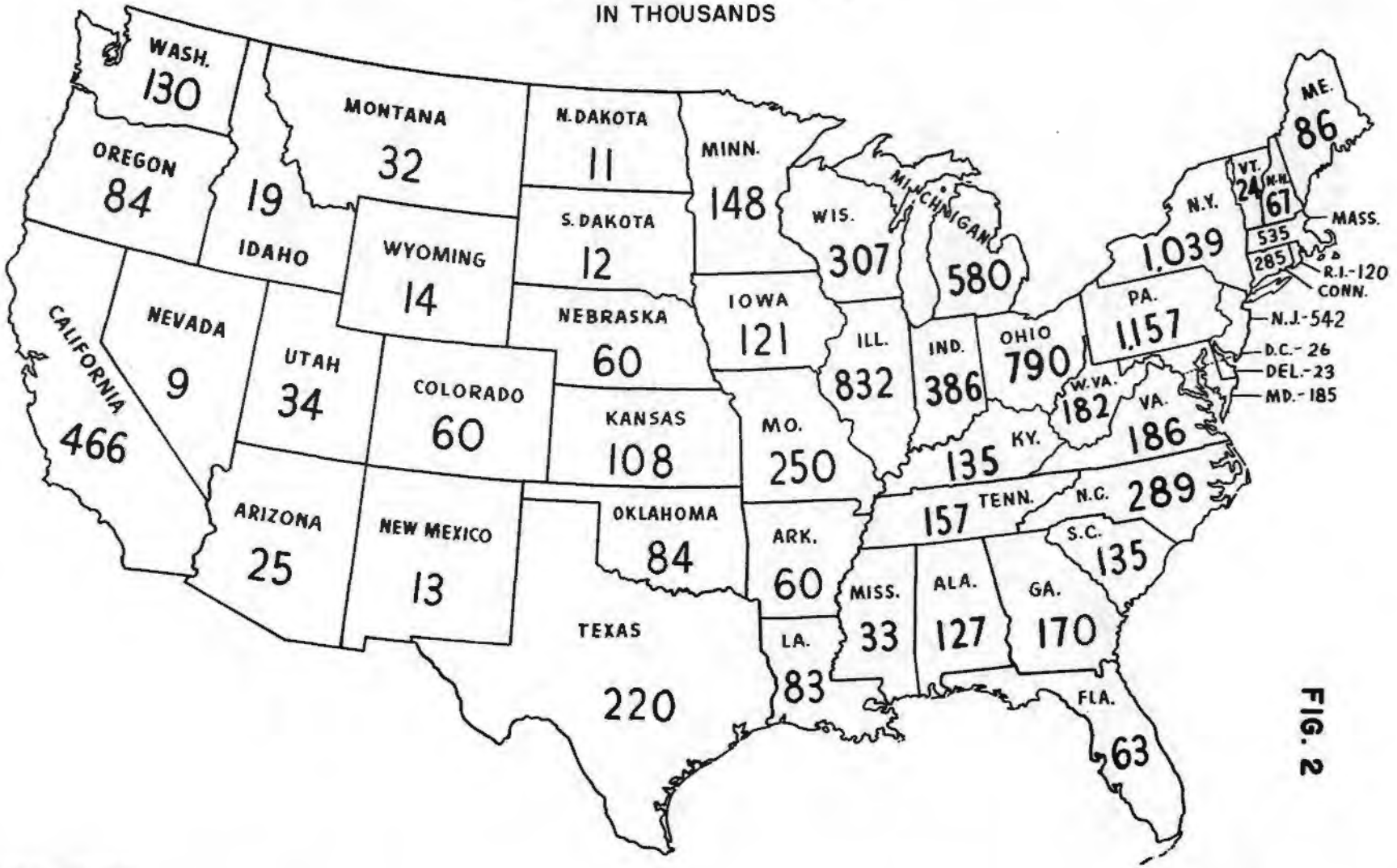


FIG. 2

I-14

* DOES NOT INCLUDE LONGSHOREMEN

Studies by the Women's Bureau and other agencies show that wages received for such work are generally very low, and a very large proportion of those doing home work just before the effective date of the 25 cent minimum wage were unquestionably earning less than that wage. The Actual number of low-wage employees probably exceeded 25,000. It may be noted, incidentally, that many of the additional home workers per household are children, whose employment is subject to control of the Children's Bureau under Section 12 of the Fair Labor Standards Act.

(b) It was not possible to estimate accurately the number of low-wage employees in some industries in which the wages tend to be clustered around several concentration points instead of being grouped closely around the general average. For example, the estimate may understate by as many as 20,000 or 30,000 the number of employees receiving less than 25 cents as common laborers in one or two industries alone, and by 40,000 or more for the entire coverage of the Act. The unfavorable conditions of business for several months preceding September increases the likelihood that the understatement was substantial.

(c) The estimates were developed largely from special surveys made by the Wages, Hour and Working Conditions Division of the Bureau of Labor Statistics and from figures reported regularly to that Bureau.

With reference to the latter, particularly, it must be noted that voluntary reporting to governmental agencies commonly introduces some bias in the data because those who make reports tend to be enterprises maintaining high standards in trade practices and labor relations. Statistical analysis based on such reported figures tends to understate the proportion of employees receiving very low wages.

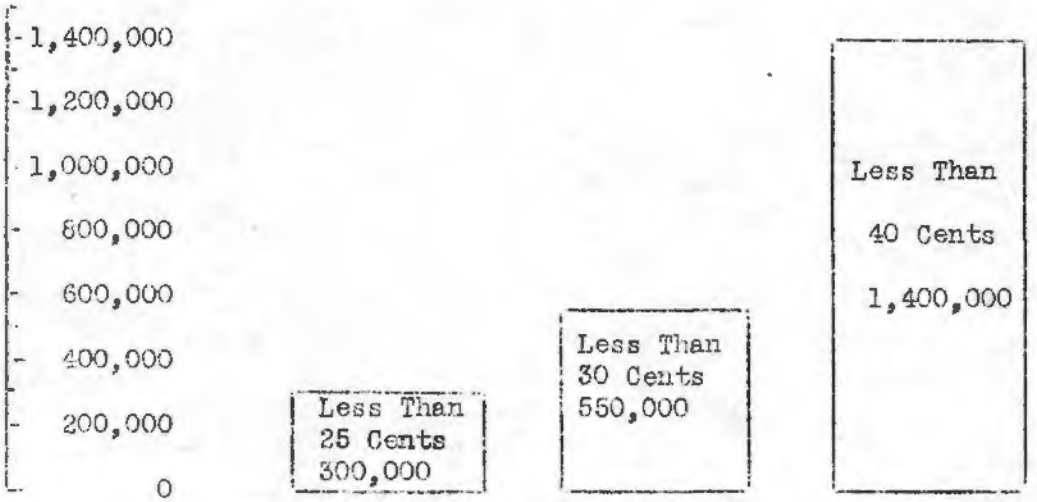
(d) Another statistical difficulty tending to reduce the estimate of the number of employees receiving less than 25 cents is the fact that the few low-wage employees in industries with high average wages are so small a proportion of the total in their respective industries that they may not be shown precisely in frequency distributions of wages. It was not possible with the data available to estimate accurately the number of employees receiving less than 25 cents per hour for any industry with an average wage of 65 cents or more. More than five million employees covered by the Act were attached to industries in this class. The estimate given above - 216,000 - does not include any employees in these industries. Nevertheless, it is quite likely that these industries employed 30,000 or more workers as general helpers and handymen and in other low-wage occupations.

(e) Accurate surveys may reveal considerable numbers of workers falling within the scope of the Act in enterprises omitted from the present estimates because the nature of the business done or the small number of wage earners per establishment introduced some uncertainty as to whether these enterprises should be included.

If a rough estimate of the number of employees coming under each of the groups mentioned in the above comments is included, the total would have to be raised by more than 100,000, making a roughly estimated total of more than 300,000 (See fig. 3) receiving less than 25 cents per hour.

Figure 3.

NUMBER OF EMPLOYEES COVERED BY THE FAIR LABOR STANDARDS ACT, RECEIVING LESS THAN 25, 30, AND 40 CENTS PER HOUR IN SEPTEMBER-1938



Because of the many difficulties involved in an estimate of the number of low paid workers covered by the Act, no attempt is made herein to present these figures for geographic areas or industry groups. Extensive and detailed additional study of the wage structure in individual industries and in specific areas is necessary before such estimates can be made with reasonable assurance of accuracy. The total given above must be regarded as a preliminary statement of the minimum number of employees whose wages were below 25 cents in the month preceding the effective date of the 25 cent minimum and who were, therefore, affected immediately by the wage provisions of the Act. It was not possible in the present account to extend the estimate reached for the United States as a whole-216,000-with equal soundness to the types of enterprises referred to in the remarks listed above or to sub-divide that estimate by region and by industry.

A general minimum wage of 40 cents per hour for employees covered is anticipated after seven years of operation of the Fair Labor Standards Act. A number of persons now receiving less than 40 cents may be affected in the near future by wage orders gradually increasing the minimum wage in the industries to which they are attached. The following table (See also Fig. 4) shows the estimated number of employees receiving less than 40 cents in September, 1938, by major industry groups.

TABLE 1

NUMBER OF EMPLOYEES COVERED BY THE FAIR LABOR STANDARDS ACT, 1/ AVERAGE HOURLY EARNINGS, AND NUMBER RECEIVING LESS THAN 40¢ PER HOUR, BY INDUSTRY GROUP, SEPTEMBER 1938 1/

Industry Group	Total Number of Employees covered (thousands)	Average hourly Earnings 2/	Number of Employees Receiving less Than 40¢ (thousands)
Manufacturing			
Iron and Steel	652	75.3	29
Machinery	657	72.1	28
Transportation Equipment	351	89.7	1
Nonferrous Metal Products	169	68.1	15
Lumber and Allied Products	440	52.6	111
Stone, Clay and Glass	150	63.2	16
Textiles and Their Products			
Fabrics	901	46.2	373
Wearing Apparl:	551	53.9	146
Leather	242	52.4	64
Food and Kindred Products	678	57.6	163
Tobacco	91	45.8	36
Paper Printing	406	76.5	31
Chemicals and Allied Products	280	74.4	28
Rubber:	102	75.8	8
Not Otherwise Classified			
Durable	595	70.8	27
Nondurable	478	57.7	84
Non Manufacturing	3,886	68.1 2/	216
Total, Excluding Puerto Rico	10,629		1,376
Total, Including Puerto Rico	10,670		1,418

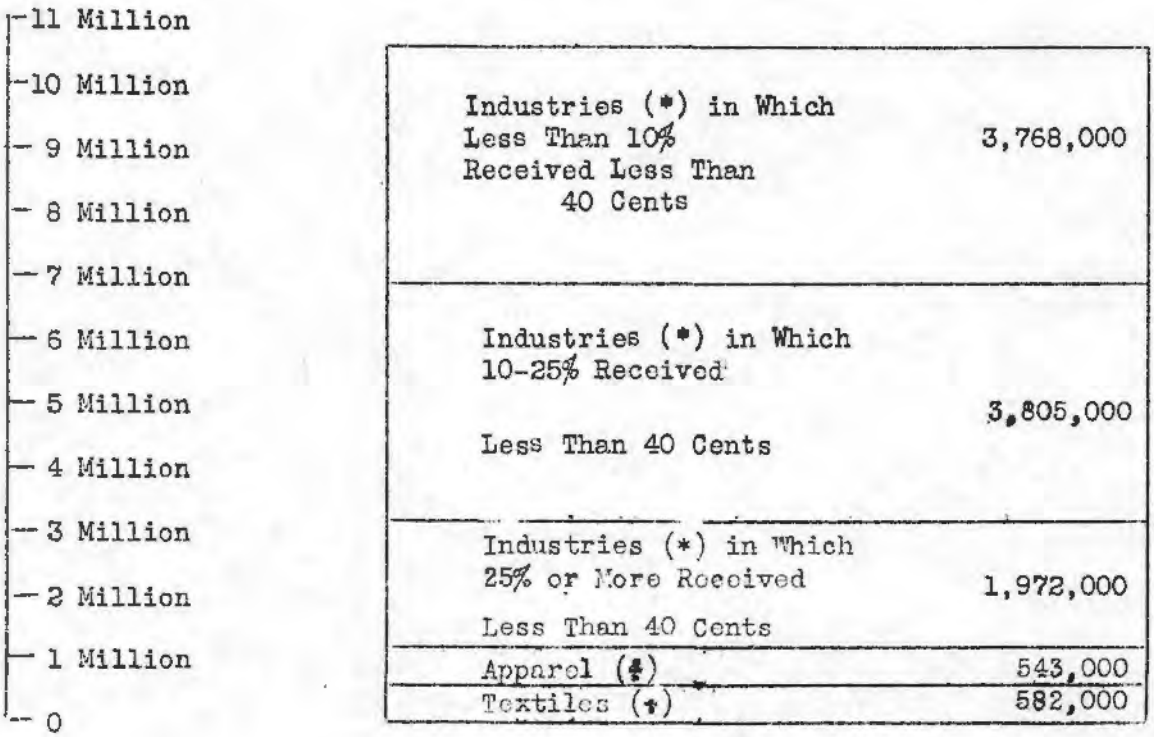
1/ Estimates by Economic Section, Wage and Hour Division

2/ Data, from Employment and Payrolls, Sept.1938, Bureau of Labor Statistics, pp.10-13

There estimates are on somewhat firmer ground than the corresponding figures for employees receiving less than 25 cents. Understatements or errors characterizing the latter are, of course, involved in the attempt to count the number getting less than 40 cents, but their proportionate influence is greatly reduced in the larger totals.

FIGURE 4

Employees Covered by Industry Committees and Distribution of all Other Employees Covered by the Fair Labor Standards Act by Industry Percentage Receiving Less than 40 cents per hour in September, 1938



Excluding Employees Covered By the Textile and Apparel Industry Committees.

+ Under Apparel Committee, as of November 1938: 512,000, Under Textile Committee, as of November 1938: 600,000. The figures for these two Industries Differ From Those Shown in the Tables in this Section; The Figures in this Chart are Based on Definitions of Industry Committée Coverage.

Hours Prior to the Act

In September, 1938, there were 1,380,000 employees working more than 44 hours per week. It is highly likely that the application of the overtime provision will result in the employment of substantial number of workers in enterprises which would have to pay the penalty rate if they did not increase the number of workers.

A still larger number of employees - 1,750,000 - worked more than 42 hours during the month of September. The difference between the two estimates - those working over 44 hours and those working over 42 hours - suggests the number that are likely to be affected by the basic maximum for the second year of operation of the Act. Similarly, a substantially larger number of employees appear to be subject to a change in working conditions resulting from the Act at the end of two years, when the 40-hour maximum takes effect. The possibility of gradual adjustment of working shift during the two years before the effective date of the 40-hour maximum is likely to result in reducing the number of overtime hours worked when the overtime rate becomes effective. However, there will undoubtedly be situations in which an adjustment of shift will be impractical and in these instances the men already on the job may benefit accordingly. The following table shows the number of employees who worked more than 44, 42, and 40 hours per week in September, 1938, by major industry groups.

TABLE 2

AVERAGE NUMBER OF HOURS WORKED PER WEEK,
AND NUMBER WORKING MORE THAN 40, 42 and 44 HOURS
BY INDUSTRY GROUP, FOR EMPLOYEES COVERED BY THE FAIR LABOR
STANDARDS ACT, SEPTEMBER 1938 1/

Industry Group	Average Number of Hours Worked Per Week 2/	Number of Employees Working More Than		
		40 Hours (thousands)	42 Hours (thousands)	44 Hours (Thousands)
Manufacturing:				
Iron and Steel	33.0	86	64	50
Machinery	35.4	80	69	48
Transportation Equipment	36.4	55	92	32
Nonferrous Metal Products	37.8	41	29	23
Lumber and Allied Products	40.3	188	135	114
Stone, Clay and Glass	36.2	21	19	13
Textiles and Their Products				
Fabrics:	36.3	135	107	80
Wearing Apparel:	33.9	66	54	39
Leather	36.8	39	31	23
Food and Kindred Products	41.3	340	276	241
Tobacco	37.1	15	12	9
Paper and Printing	38.0	99	75	59
Chemicals and Allied Products	38.3	67	51	40
Rubber	35.9	17	13	10
Not Otherwise Classified				
Durable	36.0	78	65	46
Nondurable	37.5	87	66	53
Non-Manufacturing	37.2 1/	753	579	492
Total, Excluding Puerto Rico		2,167	1,737	1,372
Total, Including Puerto Rico		2,184	1,751	1,384

1/ Estimates by Economic Section,
Wage and Hour Division

2/ Data from Employment and Payrolls, Sept. 1938,
Bureau of Labor Statistics, pp.10-13.

It is to be expected that, as knowledge concerning the Fair Labor Standards Act is disseminated among employers and employees throughout the country, there will be many requests for clarification of questions of jurisdiction. The estimates presented in the foregoing paragraphs will, of course, be affected by changes in the coverage resulting from the consideration of individual problems so arising. Even more important perhaps, is the fact that September, 1938, represented a substantial drop from the level of industrial activity one year earlier, so that the number of employees falling within each of the categories. estimated, particularly with respect to overtime worked, was smaller than would have been the case if the rate of industrial operation had not declined.

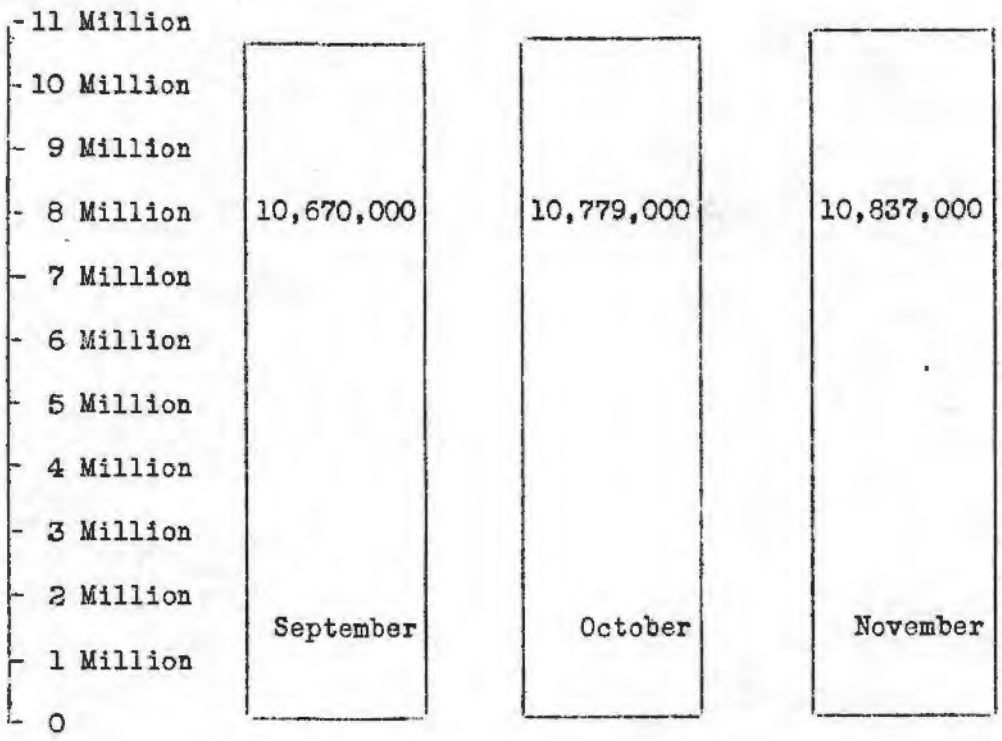
Economic Effects of the Act

It is still too early to attempt a thorough appraisal of the immediate effects of the Fair Labor Standards Act on those who were receiving less than 25 cents prior to October 24, 1938, and on those who were then working more than 44 hours per week. On the basis of some estimates furnished to the Wage and Hour Division early in November, it then appeared that some 30,000 to 50,000 employees had been laid off about October 24, the date when the wage and hour section of the Fair Labor Standards Act took effect. It is very difficult to determine how many lay-offs reported at that time followed rapid building up of inventories, how many were seasonal shut-downs or reductions, and how many were actually a consequence of the newly-established minimum wage. Many shutdowns were for only a few days or weeks. Such spot surveys as it has been feasible to conduct in December, 1938, have failed to produce evidence of wide-spread lay-offs.

total employment of employees covered by the Act (See Fig. 5) showed slightly more than the seasonal increase from September to November. It is important to note that a recovery in the

Figure 5.

NUMBER OF EMPLOYEES COVERED BY THE FAIR LABOR STANDARDS ACT, SEPT., OCT., AND NOV., 1938



EMPLOYMENT OF EMPLOYEES COVERED BY THE ACT INCREASED SLIGHTLY FROM SEPT. TO NOV. 1938. IF THE DATA WERE ADJUSTED FOR SEASONAL VARIATION, THE INCREASE WOULD BE LARGER THAN THAT SHOWN ABOVE.

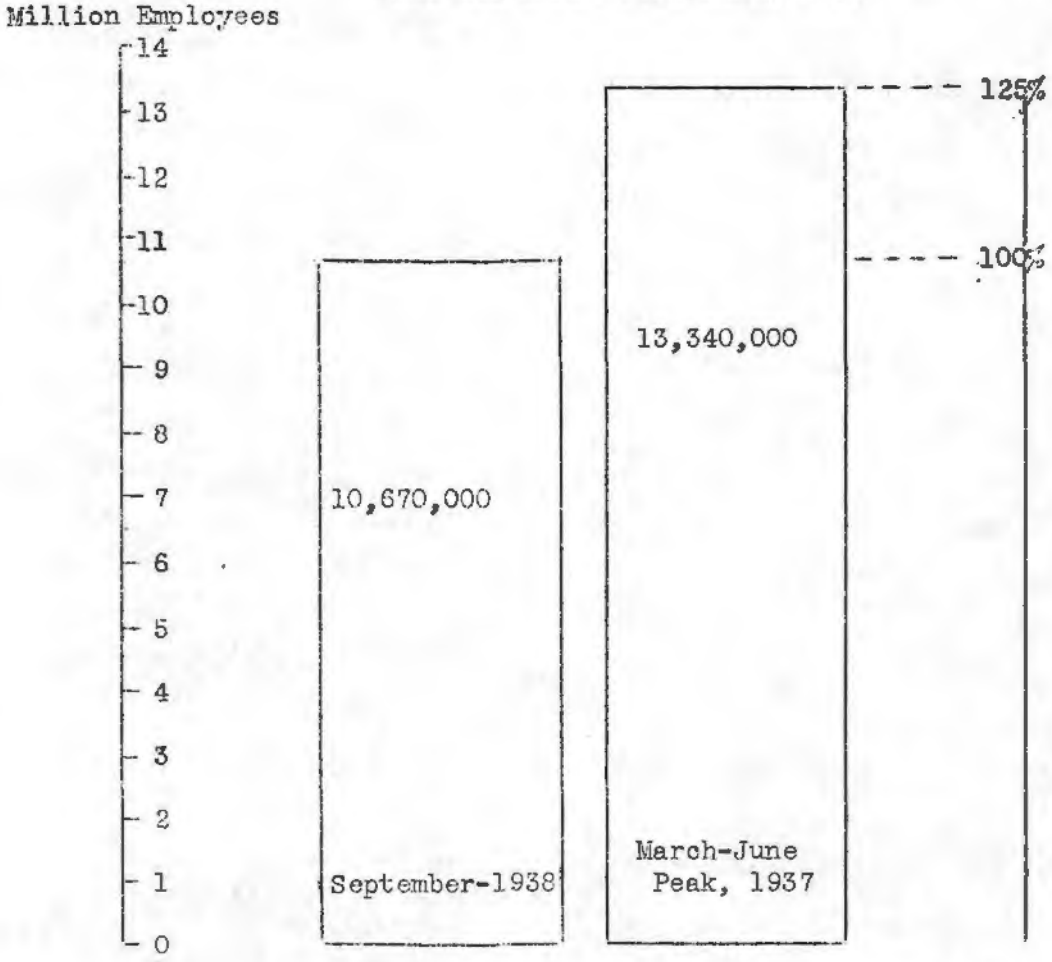
level of business activity and employment would ordinarily be accompanied by a much more pronounced increase in the number of employees working overtime.

This may be illustrated by the comparison of employment and overtime for September, 1938, and for the March-June, 1937 period of relatively high employment. In March-June 1937 the total employment of employees subsequently covered by the Fair Labor Standards Act was 25% more than the corresponding figure for September 1938; however, the number of employees working more than 42 hours per week in March-June 1937 was 112% above the number in September 1938. (See Fig. 6). With a comparable future recovery in business activity, the sharply increased overtime hours worked become potential jobs under the Act.

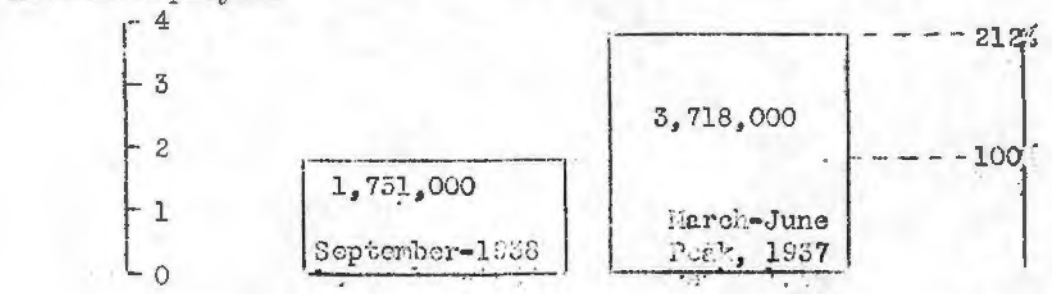
In a number of instances there have been reports that workers who had been receiving less than 25 cents had been laid off, and replaced by more efficient workers. There is no evidence to show that such replacements have resulted in a marked reduction of the number of wage earners covered by the Act. To the extent that the new workers are actually much more efficient than those laid off, it is to be expected that there will be some curtailment of the total number of man-hours worked. It is also possible that in some instances the difference in labor costs involved in raising the rate prior to the Act, to the 25-cent minimum, may be sufficient to stimulate mechanization of tasks suitable for machine operation but hitherto done by hand because of low wage rates. Such technological displacement of labor is less likely if there is an actual difference in the efficiency of workers procurable at 25 cents as compared with workers

Figure 6.

EMPLOYMENT OF EMPLOYEES INCLUDED IN THE COVERAGE OF THE FAIR LABOR STANDARDS ACT, IN SEPTEMBER 1938 AND THE MARCH-JUNE PEAK, 1937



NUMBER OF EMPLOYEES INCLUDED IN THE COVERAGE OF THE FAIR LABOR STANDARDS ACT, WORKING MORE THAN 42 HOURS PER WEEK IN SEPTEMBER 1938 AND MARCH-JUNE PEAK, 1937



With Act - Coverage employment 25% above September-1938, the number of employees working more than 42 hours per week in the March-June peak, 1937, was 116% above the corresponding number in September-1938. With a comparable recovery in business activity, the sharply increased overtime hours worked become potential new jobs under the Act.

hitherto employed at less than 25 cents per hour. The long-time technological effects of the minimum wage may be expected to include some shifts from hand-labor on simple tasks to better-paid machine-tending jobs and some increased investment in machine installations. The more important consideration is the increased pay for employed wage-earners in the low-income groups.

In this connection, it may be noted that another point which has been mentioned in public discussion of the effects of the Fair Labor Standards Act is the increasing of wages of workers receiving 25 cents or above, when those receiving lower pay in the same establishments prior to the effective date of the Act are raised to the new minimum. Under highly stable industrial conditions there undoubtedly would be considerable pressure for maintenance of differentials existing prior to the establishment of the minimum. It would be difficult to say at the present time, without further study, which industries would be affected in this respect by a minimum wage as low as 25 cents. This consideration may become one of marked importance during the seven-year period within which it is expected that the minimum wage per hour will be raised to 40 cents.

For the present, the most noticeable immediate consequences of the Act have been adjustments in connection with the 25-cent minimum, and a tendency toward increased employment resulting from the over-time provision. While the spot reports from the field on jobs created fall far short of a statistical survey in completeness and numerical detail, they are nevertheless indicative of a highly significant movement.

II. PROGRESS REPORT OF THE WAGE AND HOUR DIVISION

The following summary of the work of the Wage and Hour Division from August 15 through December 31, 1938, touches upon only the major activities of the period. There are, of course, a myriad of administrative details in getting an organization set up and under way which are very important in practice, but have no place in a report of this kind. Even the description of some of the activities which follow may appear to be superfluous, but it was desired to furnish the President and the Congress a comprehensive account of the organization and functioning of the Division which might serve for purposes of reference during the coming year, and, in published form, facilitate the transaction of business with the Division on the part of interested persons.

The Fair Labor Standards Act of 1938 was approved by the President on June 25, 1938, and three weeks later Elmer F. Andrews, then the Industrial Commissioner of the State of New York, was appointed Administrator of the Wage and Hour Division. The Administrator assumed his office in Washington about the middle of August.

Organization Plan of the Division

Headquarters Organization

The first responsibility of the Administrator was to select and appoint a few key officials and to work out a plan of administrative organization. The statute conferred upon the Administrator two major continuing functions, the enforcement of the Wage and Hour provisions of the Act, and the issuing of wage orders upon the recommendations of industry

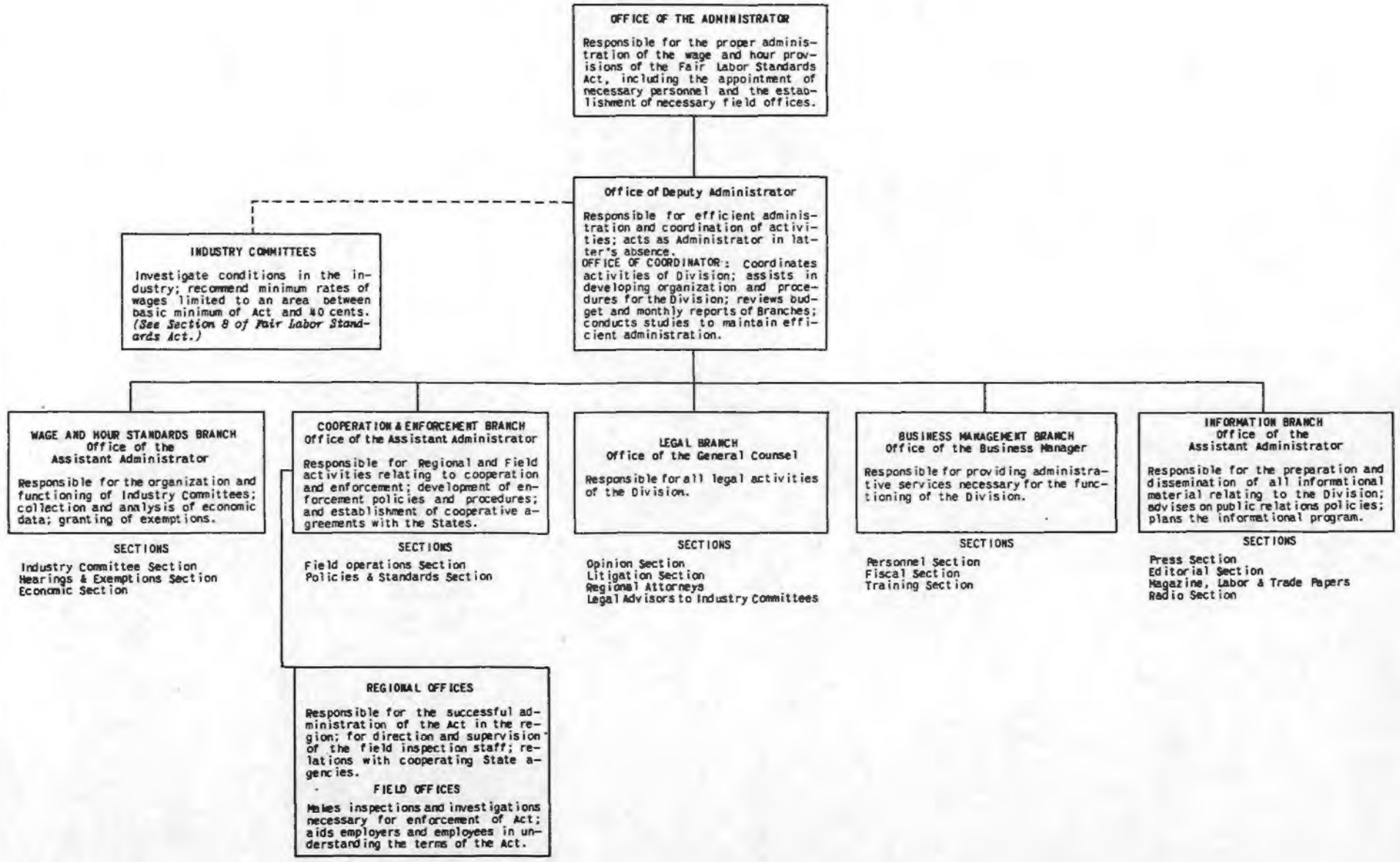
committees; and, therefore, the organization plan of the Division was built around these two functions. In addition to the two branches set up to handle these functions - Cooperation and Enforcement, and Wage and Hour Standards - three other branches were established: A Legal Branch, Business Management Branch, and an Information Branch. An additional responsibility of the Administrator, the issuing of regulations in connection with a limited number of provisions of the statute, has aspects which involve the work of more than one of these branches.

The executive staff which heads these major organization units is as follows, with their immediately previous position:

Deputy Administrator:	Paul Sifton, Director, Division of Placement and Unemployment Insurance, New York State Department of Labor
General Counsel:	Calvert Magruder, Professor of Law and Vice Dean, Harvard Law School
Assistant Administrator in charge of Cooperation and Enforcement:	Arthur L. Fletcher, Commissioner of Labor , State of North Carolina
Assistant Administrator in charge of Wage and Hour Standards:	Ralph J. Watkins, Director, Bureau of Business Research, University of Pittsburgh
Assistant Administrator in charge of Information:	Harold D. Jacobs, Managing Editor, Santa Barbara (Calif.) News-Press
Business Manager:	Harold L. Dotterer, Assistant Business manager, U. S. Social Security Board

Figure 7

TENTATIVE ORGANIZATION CHART OF WAGE AND HOUR DIVISION (DECEMBER, 1938)



Field Organization

Because the funds available to the Division for the fiscal year ending June 30, 1938, were not sufficient to permit recruitment of more than a skeleton staff of inspectors, development of plans for a field organization has not progressed to the same extent as those for the headquarters office. A comprehensive survey of the field organizations of other Federal agencies engaged in similar activities, and a study of the distribution of workers covered by the Act, transportation facilities, and other relevant factors, has been undertaken, however, with a view toward drawing up a comprehensive plan in the near future. Meanwhile, the Division has operated under a temporary arrangement in which the continental United States is divided into four areas: the Northeast, with headquarters in Boston; the Southeast, with headquarters in Washington; the Middle West, with headquarters in Chicago; and the Far West, with headquarters in San Francisco. A territorial office in Puerto Rico has also been established. With the expansion of its field staff, these temporary area offices will be replaced by a larger number of regional offices. Under each regional office a number of local offices will be established, but the precise number of these will be dependent upon the extent to which State labor departments make arrangements to cooperate with the Division in taking over inspection activities. 5/

5/ The question of cooperative arrangements with States for inspection work under the authority of Section 11(b) of the Act, is discussed at greater length under the heading of Cooperation and Enforcement below.

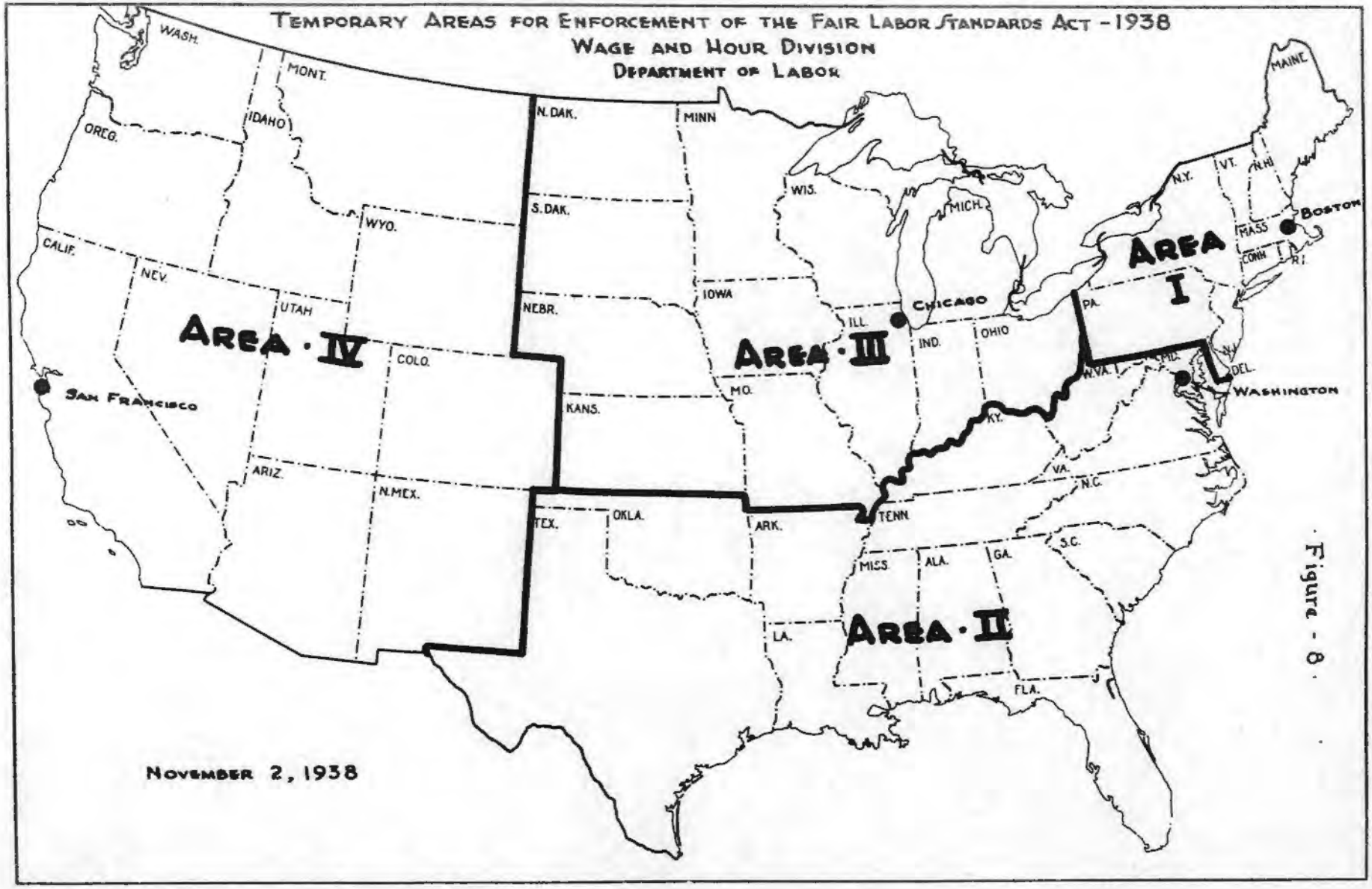

TEMPORARY AREAS FOR ENFORCEMENT OF THE FAIR LABOR STANDARDS ACT - 1938
WAGE AND HOUR DIVISION
DEPARTMENT OF LABOR
WASH.
MONT.
IDAHO
OREG.
WYO.
CALIF.
NEV.
UTAH
COLO.
ARIZ.
N.MEX.
N.DAK.
MINN
S.DAK.
NEBR.
IOWA
KANS.
MO.
OKLA.
TEX.
ARK.
LA.
WIS.
MICH.
ILL.
IND.
OHIO
KY.
TENN
MISS.
ALA.
GA.
FLA.
S.C.
N.C.
VA.
W.VA.
PA.
N.Y.
MAINE
VT.
N.H.
MASS
CONN
R.I.
N.J.
DEL.
MD.
AREA IV
AREA III
AREA II
AREA I
SAN FRANCISCO
CHICAGO
BOSTON
WASHINGTON
NOVEMBER 2, 1938

Figure - 8.

Preparation of Regulations Required by the Statute and Interpretative Bulletins

Regulations

While in general the Fair Labor Standards Act does not delegate to the Administrator a large amount of administrative discretion, the statute does call for a limited number of regulations defining certain terms and outlining certain procedures. It was essential that these regulations be published to guide employers covered by the Act prior to the effective date of the statute, October 24, 1938. The most important regulations required by the statute were as follows:

1. Procedure for the operation of industry committees. (Section 5(c).)
2. Records required of employers. (Section 11(c).)
3. Procedure for the issuance of special certificates for learners, apprentices, messengers and handicapped workers. (Section 14).
4. Definition of the term "seasonal industry". (Section 7(b)(3).)
5. Definition of the reasonable cost of board and lodging. Section 3(m).)
6. Definition of employee engaged in an executive, administrative, professional or local retailing capacity. (Section 13(a) (1).)
7. Definition of the area of production. (Sections 7(c) and 13(a) (10).)

Although the time available before the effective date of the statute was limited, the Division made every attempt to confer with representatives of employers and employees in drafting these regulations. Whenever possible, drafts of the regulations were submitted to conferences and committees designated by the Business Advisory Counsel of the Department of Commerce,

employer organizations, technical associations and labor unions; and the testing of these drafts against the diverse problems of the many industries represented in these meetings was extremely helpful in working out the final product. All of the regulations were issued and published in the Federal Register before October 24.

Although these regulations were carefully drafted in consultation with the groups affected, the Division was well aware there might be situations and problems which were not cnntemplated at the time of drafting; and, therefore, each regulation issued by the Division contains a final section which gives interested persons an opportunity to petition for amendment of the regulations.

The very small number of petitions for amending the regulations which had been submitted by December 31, 1938, is an indication that on the whole the regulations issued by the Division have been realistic and practical 6/ However, it is hoped that persons wishing a revision of any of these regulations will submit their petitions at the earliest possible date in order that any necessary changes may be made now rather than later.

Interpretative Bulletins

Aside from the limited and narrowly confined authority to make definitions of afew terms by regulations, the statute does not give the Administrator power to make authoritative rulings upon other questions which

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6/ An account of the hearings held or scheduled on petitions to amend the regulations of the Division, most of them dealing with the regulation defining "area of production", appears in the section on Hearings and Exemptions below.

may arise under the law. In answer to inquiries from individual employers asking whether their businesses were within the scope of the Act, it has been necessary to stipulate that the opinion of the Administrator on such questions is not binding and that these matters would have to await final determination by the courts.

Nevertheless, the Wage and Hour Division has been of the opinion that effective and consistent administration of the statute would be greatly assisted by an expression of the construction of the law which would guide the Administrator in the performance of his duties. To this end, Interpretative Bulletins on the coverage of the Act and other questions of general interest have been prepared by the General Counsel of the Division and made public. The first group of these bulletins was issued prior to October 24, and a total of six had been published by the end ofthe year. Others will be released from time to time as long as the need for them continues.7/

Information for Employees and the Public

At the same time that the Division's legal staff was preparing and issuing regulations and interpretative bulletins for the guidance of employers affected by the statute, steps were taken to meet the equally great obligations of the Division to inform employees of their rights under the Act. Especially during August and September, the Division received thousands of letters a week

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7/ The complete text of Interpretative Bulletins issued prior to January 1, 1939 are attached to this report.

from employees requesting information, and in response to these questions a very large number of copies of the statute itself was distributed. In order to meet the need for a brief and yet comprehensive description of the principal provisions of the law, one of the first tasks undertaken by the skeleton staff of the Division was the preparation of a pamphlet entitled, "A Ceiling for Hours, a Floor for Wages, and a Break for Children: An Explanation of the Fair Labor Standards Act of 1938."

This pamphlet was released on October 10, and in the following months almost 500 thousand copies were mailed out from the Government Printing Office and from the Division in response to the requests from individuals, employer organizations, and labor unions. Through the cooperation of the United States Employment Service, it was possible to provide an additional system of distribution which made this explanation of the Act available to every covered worker who wished to have the information. State employment services affiliated with the United States Employment Service agreed to make available a supply of these pamphlets at each of their local offices, where employers and employees and other interested persons could come in to get a copy. In this manner some 4,500, 000 copies of this first pamphlet were distributed in the course of a few weeks.

It is anticipated that during January, 1939, the Division will issue a second pamphlet which will incorporate material not available when the first one was prepared during the month of September. In addition to this direct method of supplying information on the Act and its

administration, the Division has, of course, furnished information to the press and answered some thousands of individual letters. Some indication of the wide-spread public interest in the Act is the volume of correspondence which the Division has received. As of December 31, 1938, more than 100,000 individual letters had been received and answered. More than seven thousand interested persons have requested that their names be placed on a mailing list to receive announcements made by the Division.

Organizations of employers and employees, the daily and periodical press, and the radio broadcasting and newsreel companies, have by their own efforts aided the Division materially in achieving wide public understanding of the Act within a very short space of time. A number of trade associations and State associations of manufacturers reprinted and distributed the regulations and interpretative bulletins of the Division to their members; and similarly labor organizations have prepared and distributed pamphlets on the Act. Several radio broadcasts have been made by the Administrator and members of the staff; and through the cooperation of the National Emergency Council over sixty fifteen minute programs in dialogue, question and answer form, have been given on local stations by local officials in various parts of the country. The press of other duties foreclosed the possibility of accepting the hundreds of invitations for speeches on the Act before organizations of all kinds, but the Administrator and his staff have been able to make about fifty such appearances.

Industry Committees

The appointment and servicing of industry committees is, of course, one of the most important responsibilities of the Administrator. Section 8 of the Act reads in part as follows:

> "With a view to carrying out the policy of the Act by reaching, as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, the Administrator shall from time to time convene the industry committee for each such industry, and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers engaged in commerce or in the production of goods for commerce in such industry or classifications therein."

Industry Committee No. 1: Textile Industry

The first regulation prepared and published by the Division was one setting forth the procedure to be followed by Industry Committees (September 22, 1938). But the establishment of the first industry committee was undertaken at a much earlier date. Immediately after the Administrator's arrival in Washington, in response to many requests that a committee be established, preliminary conferences of employers and employees were begun, looking towards the appointment of an industry committee for the textile industry at the earliest possible date. On September 13, Industry Committee No. 1 for the textile industry was appointed, consisting of twenty-one members, seven each representing the public, employers, and employees, with Donald Nelson of Chicago, as Chairman.

The first meeting of the full Committee took place on October 11 and three sub-committees were appointed at this time to

investigate certain technical problems having to do with the precise delimitation of the scope of the committee and the exploration of the available data on wages and other conditions in the industry. Sub-Committee A was directed to recommend a line of demarcation between the manufacture of textile products from cotton, silk, rayon and other fibres, and the manufacture of textiles from wool. Sub-Committee B was directed to study and recommend a limit to the jurisdiction of the textile committee with regard to the further processing of certain textile products, such as the manufacture of certain types of garments in textile mills. Sub-Committee C was set up to canvass existing statistical material having a bearing on the wage problem in the textile industry and to recommend, if necessary, the collection of such other material as might be required to provide an adequate factual basis for the work of the Committee.

These sub-committees held a number of meetings and conferences during the months of October and November and conferred with the economic staff of the Division in the preparation of their report and recommendations to the full committee. Perhaps the most important of these conferences was that which was conducted by Sub-Committee B on November 1 through 3, at which time more than one hundred persons representing various groups in the textile industry either appeared in person to present their views or submitted written briefs and evidence.

The full textile committee met once more on December 14,15,16, and 17 in Washington to hear the reports of its sub-committees, and to hear evidence as to wage recommendations presented by interested individuals and organizations.

At that time the full committee unanimously accepted the reports of its sub-committees A and B and recommended to the Administrator as follows:

1. That a wool textile industry committee be appointed by the Administrator as soon as practicable with a jurisdiction covering wool and mixtures of wool with such percentage of cotton, silk and synthetic fibres "as to require similar and simultaneous treatment and to avoid conferring competitive advantage and to secure reasonable related minimum wages within the establishment." In order that this wool committee might consider certain common problems together with the Textile Committee, such as resolving the line of demarcation between the two committees, it was further recommended that certain public members of Industry Committee No. 1 be designated to serve on the Wool Industry Committee as well and that the two committees have the same chairman.

2. That the further processing of textile fabrics other than knit fabrics which are commonly conducted in textile mills be added to the jurisdiction of Industry Committee No. 1, and that certain other processes be removed from the jurisdiction of that committee as originally designated by the Administrator.

The Administrator accepted these recommendations of the Textile Industry Committee in full and incorporated them in a revision of the definition of the textile industry by administrative order. The principal change from the original definition of the textile industry which had appeared in an administrative order published on September 13, 1938, was the exclusion of knitted fabrics

from the jurisdiction of Industry Committee No. 1 and the extension of the jurisdiction of the Committee to include certain processing of textile fabrics other than knitted fabrics which are commonly conducted in textile mills.9/ It is estimated that more than 600,000 employees are covered by this revised definition.

Wool Industry Committee

The appointment of the wool industry committee had not yet been announced by December 31 but it was anticipated that the appointment of this committee would be made immediately after the first of the year. In view of the fact that certain technical problems of marking out jurisdiction between the manufacture of wool textiles and other textile products had already been thoroughly canvassed by Industry Committee No. 1 in cooperation with the manufacturers of wool textiles, it is believed that the wool industry committee will be able to complete its deliberations and make a wage recommendation at approximately the same time as a wage recommendation is made by the textile industry committee. Prior to the adjournment of the last full session of Industry Committee No. 1 on December 17, the Chairman of that committee was authorized to appoint a sub-committee to consider and prepare a recommendation for a minimum wage in the textile industry.

Industry Committee No. 2: Apparel Industry

Although the small staff of the Wage and Hour Division has been a decidely limiting factor in the appointment and servicing of

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9/ The original and revised definition of the textile industry appears in Appendix A of this report.

industry committees, conferences looking toward the appointment of an industry committee or committees for the apparel field were scheduled at an early date.

In planning the Apparel Industry Committee and in defining its jurisdiction, the Administrator was guided by the experience of the apparel industry under the National Industrial Recovery Act.

The wearing apparel field under NRA included some twenty-one codes, whose basic minimum wage rates all lay within the 30¢ to 40¢ areas. The spread in wages between different codes was increased, however, by the adoption of classified occupational wages above the minima in certain instances.

NRA experience indicated that narrow definitions of industry groups by product seldom,if ever, succeeded in drawing exact dividing lines between individual manufacturers or general groups of manufacturers, who produce identical or essentially similar articles which compete directly in the market, even though the manufacturers of these articles may classify themselves in different general groupings of industry. The reasons for this are that the sewing machine equipment of an apparel manufacturer, and the more or less common levels of skill necessary to operate this equipment, make it possible for a manufacturer to change his product seasonally or in response to style changes. A manufacturer's freedom of choice is relatively unlimited in determining the exact nature of work to be performed or of articles to be produced.

Narrow product definitions in the apparel industry under NRA caused endless confusion, and there is a long and complex record of

alleged competitive disadvantages created by differences in the wage standards between codes. It was evident that, for the purpose of the present law, the apparel industry required definition on the broadest possible basis to avoid serious administrative difficulty and legal weakness in resulting wage orders.

With these considerations in mind, the Administrator invited large groups of apparel manufacturers to confer with him during the week of October 17 on the specific questions: (a) how many committees should be appointed to cover the apparel field, (b) what definition or definitions should be adopted to establish the limits of committee jurisdiction.

With the exception of certain representatives of the work clothing and other cotton garment branches of the industry, it was the opinion of the groups consulted that one committee, with the broadest possible jurisdiction, would provide the most satisfactory method of treating the problem.

Under NRA no more serious or apparently insoluble overlapping problems existed in the apparel field than those which arose in connection with the cotton garment code, which included work clothing. In spite of the wishes of these branches of the industry to be separated from the apparel committee, it was impossible to justify such a separation or to draft definitions which would give legal strength to wage orders resulting from separate committee coverage.

In the plan of committee organization finally adopted, consideration was given to the fact that the branches of the industry in which lower wage levels prevail will be more directly affected by the

minimum wage rates created through the action of the committee than those branches in which higher wages prevail. Even though the high wage groups constitute the majority of the industry as a whole, somewhat disproportionate representation was provided for the low wage groups in order to assure proper representation for all levels of wage interest in view of the particular problems involved in the selection of this committee.

The final definition of the Apparel Industry Committee's jurisdiction is as follows:

> "As used in this order, the term 'apparel industry" means: The manufacture of all apparel, apparel furnishings and accessories made by the cut, sew, or embroidery processes, except: knitted outerwear, knitted underwear, hosiery, men's fur felt, wool felt, straw and silk hats and bodies, ladies' and children's millinery, furs, and boots and shoes."

Knitted outerwear and underwear were omitted because of their close relationship to textile mill processes, and because definitions of knitted outerwear and underwear can be drawn without causing any substantial overlapping with plants engaged in the production of other articles. The other omissions were made because the manufacturing processes involved are essentially different from those utilized in the apparel industry, and because no confusion or overlapping difficulties will arise in defining these industries separately.

The appointment of Industry Committee #2 - Apparel Industry, was announced on December 22, 1938, with Louis E. Kirstein of Boston as Chairman. Mr. Kirstein had been a public member of Industry Committee

No. 1, but resigned from that committee in order to take over the larger responsibility of acting as Chairman of Industry Committee No. 2. This committee consists of 48 members, 16 each representing the public, employees and employers in the industry, a considerably larger group than will be necessary for most committees because of the number of sub-groups which go to make up the industry. It is estimated that at the present time more than 500,000 employees are engaged in processes included in the jurisdiction of this committee.

Further Industry Committees

The appointment of additional industry committees will proceed as rapidly as the budget of the Division and the selection of staff adequately to service these committees will permit. Requests for the appointment of committees have been received from more than 100 industry classifications and it is anticipated that as many as 15 committees may be appointed during the first half of 1939.

Cooperation and Enforcement

Policy of the Division on Enforcement

As has already been noted, one of the two major operating functions of the Wage and Hour Division is the enforcement of the wage and hour provisions of the Act. The experience with State minimum wage laws for women and children, and the experience of other countries, such as Great Britain and Australia, with more comprehensive minimum wage statutes, has conclusively demonstrated that this type of legislation is socially productive only when it is consistently and strictly enforced. Especially

for the conscientious and complying employer is the violation of the law by unscrupulous competitors a severe competitive burden. The very wide measure of support which the Fair Labor Standards Act has received from employers to date has been predicated upon their belief that the Fair Labor Standards Act will be conscientiously enforced.

While no actual legal action against violators had been taken by the Division by December 31, 1938, several hundred reported violations had been investigated and in some cases employers who had been violating the law because they were not informed as to its provisions have agreed to pay back the wages due their employees. In other cases which have been investigated there was no evidence of violation or the employer was not covered by the Statute. Legal action against deliberate and flagrant violators will be initiated promptly as cases of this type are discovered and investigated.

Cooperation with State Labor Departments.

The name Cooperation and Enforcement Branch, which has been given to the compliance unit of the Wage and Hour Division, is indicative of the twofold nature of the enforcement task. Although the word cooperation is indicative of the desire of the Division to cooperate with employers and to avoid even the slightest appearance of an undiscriminating policy of "cracking down" on unintentional and deliberate violators alike, in an operating sense the term cooperation applies to the arrange-

ments which will be concluded with State departments of labor for making inspections under the Fair Labor Standards Act. With a view toward eliminating, insofar as that is possible and consistent with good administration, the duplication of inspections under similar State labor laws and the Fair Labor Standards Act, the Act provides in Section 11 (b) that the Wage and Hour Division may conclude arrangements with State Departments of labor to undertake inspections for this Division on a reimbursable basis. The Division intends to conclude affiliation agreements for the performance of this work with State departments of labor as rapidly as these State Departments are in a position to undertake the functions. However, it is recognized that the building up of a trained inspection staff cannot be undertaken overnight in many States, and meanwhile the Wage and Hour Division has the responsibility for seeing that the statute is enforced until such time as States may be in a position gradually to take over these functions. That is where the word enforcement in the title of the Cooperation and Enforcement Branch is applicable.

Inspection Staff of the Wage and Hour Division

The Division has already built up a staff of trained inspectors numbering 44 as of December 31, many of whom have been in the field since the first week of November. This staff will be augmented as rapidly as is consistent with the necessity for careful selections of these men through

Civil Service procedures. 10/ During the past month a large portion of the work of inspectors of this Division has naturally consisted of service to employers in acquainting them with the provisions of the statute and interpretations of certain difficult and technical questions. Although this type of activity may be expected to continue during a greater part of the coming year, and the Division is very eager that this service be available to employers who wish to make use of it, an increasingly large part of the work of the Division's inspection and field staff will necessarily have to do with the periodic examination of payrolls of employers and the investigations of complaints and reported violations.

Complaints and Reported Violations

As of December 31, 1938, 5294 complaints of violations of the statute had been received by the Wage and Hour Division, either directly at its Washington office or through field representatives of the Division. To facilitate the filing of these complaints by employees who believe that they have a legitimate grievance under the Act, or by others, standard complaint forms have been prepared and distributed on which the details of each alleged violation may be recorded. In order to build up a consistent policy from the very start and also to a lesser degree because of the lack of an adequate field staff, the policy of the Division has been to analyze and act upon these complaints in the Washington office. As

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10/ The Civil Service Commission will announce shortly after the first of January, 1939, an examination for inspectors for this Division which will insure the selection of field staff with the requisite training and experience on the basis of an open, nation-wide competition.

would be expected, this analysis of complaints indicates that in a large number of cases the employers complained against are not covered by the provisions of the Fair Labor Standards Act, i.e., they are not engaged in interstate commerce or in the production of goods for interstate commerce, or they fall within one of the several specific exemptions granted by the Act. In a large number of other cases the information supplied is not sufficient to permit even a preliminary determination as to whether or not a violation has occurred. In this latter type of case the Division, of course, attempts to secure the additional information necessary for such determination.

Of the complaints thus far received and analyzed, some 40% seem on their face to indicate a violation by employers who are covered by the Act. Another group of about 27% do not contain enough information on which to make even a preliminary determination. 17% of the complaints received indicate that the employer is not covered by the Act or that no violation has occurred. The remaining 16% are in a borderline category in which unsettled questions of coverage or other legal determinations have yet to be made.

As has already been mentioned, this first group of complaints, in which a violation seems clear, if the facts alleged are true, is forwarded to our field staff for investigation on the spot and after further information has been secured and no settlement has been reached between the employer and the field agent, the case is turned over to the litigation section of the Legal Branch of the Division for appropriate legal action in cooperation with the Department of Justice.

Thus, to date, settlements have been accepted in the course of the enforcement procedure in order that employers might not be brought into court for unintentional violations, but the Division has made it clear that it will not permit deliberate advantage to be taken of this policy. Consistently to permit intentional violators to make amends when their actions were discovered would place a premium on non-compliance.

Regular Payroll Inspections

During this early period of operation, the enforcement activities of the Division will be based, to a very large extent, on the following up of complaints. In order that this process may be as effective as possible in securing observance of the Act, the Division sincerely hopes that both employers and employees in the industries covered by the Act will cooperate with the Division by reporting violations which come to their attention. The investigations of complaints will always continue to be an important activity of the Cooperation and Enforcement Branch, but the emphasis will be shifted as rapidly as the recruitment of trained staff permits to the more systematic practice of regular payroll inspections of the records of covered employers.

The Division has already received requests from trade associations representing certain industries that this practice of regular payroll inspections be inaugurated as soon as possible in order that employers

themselves may be assured that they are operating in conformity with the law. Although the Division has made every effort to distribute information on the Act as widely as possible, it may frequently happen than an employer is not acquainted with certain provisions of the statute which could easily be explained during the course of a visit by an inspector. The goal of the Division in this respect is an annual inspection of the payrolls of each covered employer, a goal which may not be reached in the course of the first year or two of operation, but a goal which should be achieved in fairness to both the employers and employees covered by the Act.

In this connection, it may be appropriate to mention that an agreement has been reached between the Children's Bureau of the U. S. Department of Labor, which is responsible for the enforcement and administration of the child labor provision of the Fair Labor Standards Act, and the Wage and Hour Division, that the regular payroll inspections made by the staff of the Division will include inspections for child labor violations. Therefore, in States with which an affiliation agreement has been signed, when an inspector appears in a plant to make inspections under the Fair Labor Standards Act, whether he be a State inspector working under a cooperative agreement between the State Labor Department and the Division, or whether he be a direct representative of the Wage and Hour Division, the employer may be assured that no other

inspector will appear to go over his payroll records in connection with another provision of the statute or the provision of a similar state statute on wages and hours and child labor.

To return briefly to the subject of cooperation, it should be mentioned that machinery has already been placed in motion for the conclusion of agreements between the State labor departments and the Wage and Hour Division to make possible the gradual transfer of the inspection functions under the Act to the States. The Fifth National Conference on Labor Legislation, which met in Washington on November 14-16, 1938, and was attended by representatives of practically all the State departments of labor, furnished an opportunity for the discussion of such arrangements. One entire day of the Conference was devoted to this matter, at which time the Wage and Hour Division presented a draft of certain standards of administrative performance and organization which would form the basis for affiliation agreements between the State departments and the Division, beginning with the fiscal year starting July 1, 1939.

At the conclusion of the three-day session, the Conference unanimously adopted a resolution supporting a list of fundamental standards of administration as the basis of cooperation between the State departments of labor and the Wage and Hour Division.11/ Prior

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11/ "Reports of Committees and Resolutions Adopted by the Fifth National Conference on Labor Legislation", Bulletin 25-A, Division of Labor Standards, U. S. Department of Labor, Washington, 1938, pp. 15-18.

to the conclusion of cooperative arrangements under formal affiliation agreements during the next fiscal year, the Conference further recommended in the same resolution that the following immediate program be inaugurated by the State departments of labor to assist the Wage and Hour Division in the performance of its duties:

(1) Reporting to the Wage and Hour Division on situations that appear to be in violation of the wage or hour provisions.

(2) Providing the Wage and Hour Division with a list of low paying industries and establishments in the State.

(3) Distributing to interested parties official rulings and interpretations which are sent out from the Washington Office of the Wage and Hour Division.

(4) Referring complaints to the Wage and Hour Division on official complaint forms.

(5) Referring requests for interpretations of the Act to the Wage and Hour Division.

This type of assistance has already proven of great value to this Division and to employers and employees.

Hearings and Exemptions

In planning the functional organization of the Division, a special section in the Wage and Hour Standards Branch was set up for

the holding of hearings on a variety of questions which arise under the Act so that these specialized functions might be concentrated in the hands of officers especially qualified by experience and temperament for this exacting type of work. Hearings are specifically required in the statute on the wage recommendations of industry committees, and in one or two other connections. As has already been mentioned, the administrative discretion permitted under the statute is extremely limited. But wherever that discretion appears, the Division has attempted in all cases in which it is feasible, to establish a procedure calling for a factual determination by the process of holding a hearing prior to the issuance of regulations or orders.

The circumstances in which hearings have been held or will be held by the Division are as follows:

(1) Hearings on messengers and learners by industry under Section 14 of the Act. This section confers upon the Administrator the responsibility of issuing special certificates permitting the employment of messengers employed exclusively in the delivery of letters and messages, learners, apprentices, and handicapped workers at wages less than the minimum wage required by the Act, to the extent that such lower wages are necessary to prevent the curtailment of opportunities for employment. Procedures were set up by regulations 12/ in October for the issuance of these special certificates on the facts

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12/ Regulations, Party 521 and Part 524, which are attached to this report.

presented in each individual application for a special certificate for an apprentice or handicapped worker. A decision on each application in terms of certain accepted standards was possible for these two classes of workers. 13/

13/ The action taken on special certificates for apprentices and workers whose earning capacity is impaired by age or physical or mental deficiency can be briefly summarized. On October 19, regulations (Part 521 and 524) were published, setting forth the procedure for making joint applications by employers and employees for such certificates, Shortly thereafter official forms calling for certain specific information were issued. Because of the limited time available for filing such applications, the Division also issued a temporary regulation which would serve as a special certificate until February 1, 1939, to permit the continuation of the employment of handicapped workers and apprentices, at a wage rate of not less than 17-1/2 cents per hour (75% of the minimum then in general effect) in the case of handicapped workers, and a wage rate not less than that specified in the indenture agreement in the case of apprentices. It was further provided in this temporary regulation that temporary certificates would expire December 1, 1938 on cases in which the formal application had not been made by that date.

As of December 31, 1938, a total of 3410 formal applications for special certificates for handicapped workers had been received from 974 employers. Of the 365 applications on which action had been taken, 189 were denied, and 74 special certificates were issued. Action will be completed on the remainder well before the termination of the temporary certificates on January 30, 1939. It should be mentioned in this connection that the large percentage of denied applications at this time merely reflects the attempt of certain employers to receive blanket exemptions for large numbers of employees who are not handicapped at all in the meaning of the statute.

With respect to apprentices, 804 formal applications for special certificates had been received by the close of the year. Misapprehension about the nature of apprenticeship was even more widespread, as indicated by the fact that not a single special certificate to employ an apprentice at less than 25 cents has been issued. Bona fide apprentices working under an apprenticeship agreement or contract of indenture have been employed almost entirely in highly skilled occupations in which the beginning wage has been well above 25 cents per hour. The applications received by the Division have been submitted erroneously for employees who are really learners or beginners in occupations in which no genuine apprenticeship under signed contracts have existed.

In cases of messengers and learners, however, a factual determination in the light of the conditions existing in each industry was necessary. The question of whether opportunities for employment would be curtailed could not be answered in a vacuum but required the ascertainment of certain facts regarding each industry, such as the prevailing practice with regard to learners, the wages paid to learners in the past, the extent of employment and unemployment in the industry, and other facts of related nature.

Telegraph Messengers

The first such hearing under Section 14 was held in New York on October 20 on the applications of the Western Union, Postal Telegraph and other companies to employ messengers at Wages lower than the general minimum specified in the statute. The presiding officer at this hearing was Dr. William Leiserson, Chairman of the National Mediation Board, who was specially designated by the Administrator to sit in this case. Dr. Leiserson's report and findings were issued on November 12. Dr. Leiserson found that the applicants had not proven that it was necessary, in order to prevent curtailment of opportunities for employment, to provide for the employment of messengers of the applicant companies at wages lower than the minimum wage and also found that the Administrator is not authorized by Section 14 of the Act to issue certificates for the employment at wages lower than the minimum of the messengers employed by the applicant companies. Accordingly, the applications were denied.

On November 14 notice was given of the opportunity for interested parties to file with the Administrator petitions for a review of the findings of Doctor Leiserson. The applicants filed such petitions and two Postal bondholders' committees also petitioned for a review of the findings. The Administrator granted the petitions and set December 19 as the date for a public hearing before the Administrator himself for the presentation of oral argument and briefs in support of and in opposition to the petitions for review. As of December 31, 1938, the Administrator's decision had not been handed down but it was anticipated it would be forthcoming shortly after the first of the year.

Learners

Prior to the close of the year, three hearings were held on petitions to employ learners at less than the minimum rate. The first of these was a hearing before Merle D. Vincent, Chief of the Hearings and Exemptions Section of the Division, on the application of employers and employer associations in the textile industry to employ learners in that industry at less than the minimum rate. After two days of this hearing, during which employers and labor organizations presented briefs and other factual

evidence, the hearing was adjourned at the request of the applicants, which request was joined in by the labor organizations represented at the hearing, in order to permit employers and labor in the industry to confer. Subsequently, on December 13, the Cotton Textile Institute on behalf of most of the applicants, requested the Administrator to permit them to withdraw their petitions to employ learners at that time, with the understanding that this withdrawal would not prejudice their rights to submit another petition after the increase of the statutory minimum wage under the Act to 30 cents per hour on October 24, 1939. This request to withdraw their petition was granted by the Administrator. The withdrawal of the petition made by the Cotton Textile Institute and other petitioners did not apply, however, to certain textile operations, among them narrow fabrics, bed spreads, and throwing, and the decision on learners in these branches of the textile industry will soon be announced by the Division.

Three other hearings on petitions to employ learners were held during December, for knit goods, the apparel trades, and the mechanized pecan shelling industry. The findings of fact and decisions on these hearings will be issued soon. Several other hearings on learners have either been definitely scheduled or planned for the month of January, 1939.

(2) Hearings on petitions for amendments of the regulations of the Wage and Hour Division.

Mention has already been made of the provision in each of the regulations issued by the Administrator which gives interested parties an opportunity to petition for the amendment of the regulations. Hearings on these petitions may be expected during the first year to form a considerable part of the work of the Hearings and Exemptions Section. Two such hearings, one on the dry edible bean industry and one on the Puerto Rican tobacco stripping industry were held on November 14 and December 10 respectively on petitions to amend the regulations of the Division defining the term "area of production" as used in two sections of the statute. A further hearing on petitions to amend these regulations with respect to the fresh fruit and vegetable industry has been scheduled for January 9, 1939.

Under Sections 7(c) and 13(a) (10) of the Act, exemptions obtain with respect to certain specifically described operations on agricultural and horticultural commodities, provided that these operations take place within the "area of production" as defined by the Administrator. The

Administrator was thus faced with the problem of drawing up, within a very brief period prior to the effective date of the law on October 24, 1938, a definition which would carry out the general objectives of the statute and be neither so narrow as to be no exemption at all nor so broad as to nullify the statute over a very large area. A generalized definition was issued, but the possibility of later consideration of specific problems and individual circumstances was left open. In the decision after the hearing on the dry edible bean industry which was released on December 22, the definition of area of production for that particular industry was extended beyond the limit previously set to include processing at the first point of concentration of the product, and the regulations have been so changed. A decision has not yet been issued on the Puerto Rican tobacco stripping industry but it is possible that in this and other industries appropriate changes may be made based upon the evidence submitted at hearings.

(3) Hearings on Seasonal Industries.

Another type of hearing to be held by the Division will be under Section 7(b) (3) of the Act which provides a 14-week exemption from the hours provisions alone up to 12 hours a day and 56 hours a week for industries found by the Administrator to be of a seasonal nature. Several such hearings may be held during the first two months of 1939.

(4) Wage Order and Other Hearings.

There will, of course, be hearings on the wage orders proposed by the Administrator based upon the recommendation of industry committees

and perhaps on a variety of other matters which requires the bringing together of factual information on a particularproblem or on a particular industry from the employers and employees who are best acquainted with such matters. An example of this is a hearing scheduled for January 4, 1939 to consider a proposal to set up special and additional requirements of record-keeping for employers of industrial homeworkers and to discuss the entire problem of industrial homework under the Fair Labor Standards Act. It is hoped that this hearing may provide a factual basis upon which to devise measures for meeting a problem which has been a very serious one in the administration of all labor legislation.

Economic Analysis and Research

The activities of the Economic Section of the Wage and Hour Standards Branch during the period under consideration do not lend themselves to running description in a report of this kind. Almost every problem of the Division has its economic aspects, and a mere listing of the services performed by the Economic Section for other branches of the organization would run into many pages. All that can be done here is to indicate briefly the way in which the Economic Section has rendered service during this initial period.

The Division has been particularly desirous of coordinating the economic and legal analysis which is so important to proper administration of the statute. For example, during the stage at which regulations were being drafted and interpretative bulletins prepared, the Economic Section assisted very materially in bringing together a vast

amount of statistical and other factual data for very many industries, against which the practicality of suggestions and proposals could be tested. This aspect of the work of the Economic Section will continue to be of great importance in the preparation of material issued by the Division; and more particularly in the development of reports showing economic and social backgrounds and implications of specific cases of violations which come up for litigation. The whole concept of interstate commerce is intimately bound up with the way in which modern large-scale business enterprises actually operate in a complex and inter-related economy.

A start has already been made on the collection of certain basic information on the wage structure of industries in interstate commerce which is essential to the proper administration of the Act. Statistics already existing, designed of course for other purposes, did not furnish the type of information required by the Division. A very serious gap in existing statistics was the lack of data on the total number of employees covered by the Act, and on the number who were receiving less than the 25, 30 and 40 cents an hour prior to the effective date of the statute. Similar lacunae existed with regard to the number of employees who were working for hours longer than 44, 42 and 40 hours per week. By scraping together every available bit of data and by making use of very refined statistical techniques, it was possible to prepare the estimates on these points which appear in Part IB of this report. They are as reliable as economic and statistical science

can make them on the basis of the raw material which is available, and so far as the overall figure for the nation as a whole is concerned more exact surveys would probably not show much change. However, the estimates cannot be broken down to give these facts by regions, industries, or occupations; and such a breakdown is, of course, absolutely essential not only to the effective enforcement of the statute but also to the performance of the functions placed upon the industry committees under Section 8 of the Act.

The Division has been particularly fortunate in being able to work closely with the Bureau of Labor Statistics; and that Bureau has been very cooperative in agreeing to undertake for the Division certain studies for which its experienced staff and functioning machinery for undertaking large-scale studies is particularly appropriate. Among such studies being undertaken with the cooperation of the Bureau of Labor Statistics is a comprehensive survey of wage rates which existed prior to the effective date of the Fair Labor Standards Act, and a study of the cost of living which will be refined enough to serve the purposes of industry committees, who are required to consider this factor in making recommendations for wage rates.

The economic staff of the Division has, of course, worked closely with Industry Committee No. 7 on some of the complex and technical problems of defining jurisdiction, and in the preparation and interpretation of economic data on wages and hours, employment, living costs, production costs, transportation costs, foreign trade, consumer demand

and other such relevant factors. Similar services will be performed for the Apparel Industry Committee and each subsequent committee which is appointed. A similar function is performed for the Hearings and Exemptions Section of the Division in a more limited sphere of considering the economic effects of various proposals with regard to the employment of learners in each industry, to the determination of the seasonal nature of certain industries, and to other matters handled by this Section.

Work of the Legal Branch

Like the Economic Section, the work of the Legal Branch of the Division has been so basic and so widely ramified that it is difficult to single out specific activities for description. The work of the General Counsel and his staff in the preparation of regulations and interpretative bulletins has already been discussed in an earlier section of this report. This type of careful legal analysis will continue to be of primary importance during the next year or two because the Federal regulation of wages and hours is, of course, a new and relatively uncharted field of the law. Precedents established in connection with similar state legislation and other Federal labor legislation such as the Social Security Act and the Walsh-Healey Public Contracts Act are often helpful and must be taken into consideration, but in each case adaptations and modifications are necessary in terms of the particular provisions and the exact language of this statute.

The Branch has given and will continue to furnish legal advice to the industry committees and to the Hearings and Exemptions Section of this Division. In terms of the volume of work to be done,

however, the most important activities of this Branch for the period immediately ahead will be the preparation of cases for legal action, and the actual litigation involved in these cases.

Business Management

Because the problems involved are not unique to the Wage and Hour Division, but are similar if not identical to those encountered by any new agency in getting under way, the work of the Business Management Branch need not be described in any great detail. It suffices to say that during the period just passed and the months immediately ahead, the problems of finding office space in Washington and in the field, securing of supplies and equipment, and in general building up a smoothly functioning organization from the technical and managerial point of view will continue to be of great importance.

Financial Report

It may be appropriate here to give a summary of the financial position of the Division as of the close of the year 1938. The appropriation for the administration of the Act for the fiscal year was $400,000 of which the Children's Bureau was allotted $50,000 by the Secretary of Labor, leaving $350,000 to the Wage and Hour Division. Because this amount was recognized by the Bureau of the Budget to be insufficient for the proper administration of the Act for the entire fiscal year, that agency authorized 14/ the expenditure of the entire amount by January 30, 1939, and agreed to support the request of the Division for a deficiency appropriation to finance operations during the remaining five months

14/ Under the authority of Treasury Regulation No. 494, Revision No. 5, dated June 3, 1938.

of the fiscal year ending June 30, 1939.

The following table presents the obligations incurred by the Division through December 31, 1938, and the amount which will be spent during January, 1939, including the salaries of present personnel and personnel to be engaged during the month. It should be pointed out in connection with these figures that they do not accurately reflect the total obligations incurred during the period because a great deal of equipment and furniture and field space has been borrowed temporarily from other Federal departments and agencies. For certain other services, including statistical surveys by the Bureau of Labor Statistics, reimbursement to the extent of approximately $150,000 will have to be made before the close of the fiscal year:

Figure 9

STATEMENT OF EXPENDITURE AND COMMITMENTS
FOR THE PERIOD AUGUST 1, 1938 TO JANUARY 31, 1939

OBJECT	ENCUMBRANCES TO DEC.31,1938	ADDITIONAL COMMITMENTS	TOTAL FOR THE PERIOD
Personal Services	$ 110,472.16	(2)$ 79,535.06	$ 190,007.22
Supplies and Materials	10,587.85	3,083.85	13,671.70
Communications Service	1,312.00	1,000.00	2,312.00
Travel Expenses	21,507.19	6,036.00	27,543.19
Transportation of things	4,623.30	500.00	5,123.30
Printing and Binding	26,588.61	2,880.00	29,468.70
Rents	(1) 37,290.00	---	37,290.00
Special and Miscellaneous	1,849.66	4,878.55	6,728.21
Equipment	23,771.98	14.083.70	37,855.68
Transfer to Children's Bureau		50,000.00	50,000.00
Total	$238,002.75	$161,997.25	$400,000.00

(1) Total space contracted for to June 30, 1939.
(2) Salaries through January 31, 1939, including present personnel and Industry Committee Members.

Personnel

The total personnel on the payroll of the Division on December 31, 1938, was 256, of which 164 were on permanent appointment and 92, largely clerical and stenographic staff, on temporary appointment. These temporary employees will be replaced by permanent personnel as rapidly as the Division and the Civil Service Commission can make the necessary arrangements. In addition some 88 employees were serving on temporary detail from other Federal departments and agencies. The Civil Service Commission has been very cooperative in the preparation of examinations to meet the needs of the Division in a new field of Federal legislation; and a number of these examinations will be announced during the next few months.

Figure 10

PERSONNEL OF THE WAGE AND HOUR DIVISION
(December 31, 1938)

	Departmental	Field	Total
Permanent	139	25	164
Temporary	66	26	92
Total	205	51	
	Total, Wage and Hour Division		256

III. ADMINISTRATIVE PROGRAM FOR 1939

During the coming year the Wage and Hour Division will continue and extend the administrative program which has been formulated and initiated during the last three months of 1938. In this program the principal objectives will be

(1) to insure compliance with the minimum wage and maximum hour standards now in effect, and

(2) to appoint, and to provide with the necessary economic, statistical and legal services, committees for as many industries as circumstances may permit.

The achievement of both these objectives is dependent in considerable measure upon the building up of an effective administrative organization and the selection and training of a competent staff, and the perfecting of this basic foundation will proceed hand in hand with the development of the operating functions of the Division.

Enforcement:

The examination for several grades of inspector in the Division, which is to be announced by the Civil Service Commission in January, 1939, will make it possible to augment the present field staff of 44 by appointments from civil service registers; and prior to the creation of these registers, trained payroll examiners and experienced labor inspectors with civil service status may be secured by transfer from other departments. As the growth of the field staff justifies the expansion of the Division's field organization, the present temporary plan of four area offices will be transformed into permanent system of regional and field

offices. Regional offices will serve the dual purpose of supervising the work of the inspectors of the Division in a group of States and of maintaining relationships with and providing technical services to cooperating State departments of labor.

It is expected that the first group of these formal cooperative or affiliation agreements with State departments of labor will go into effect on July 1, 1939; and that the number of such agreements will progressively increase during the next few years. With the passage of an increasing number of State minimum wage and maximum hour laws to supplement the Federal Act in the field of intrastate commerce, this intermeshing and coordination of inspection functions may be expected to develop more rapidly; and the full value of this arrangement will become increasingly apparent. For perhaps the first time in the history of recent Federal social and labor legislation a systematic plan of administrative coordination will have been put into operation from the very start. As this Federal-State system grows, a larger and larger share of the inspection budget will be devoted to reimbursements to State labor departments for services performed by their employees. These State inspectors, while not technically classified as Federal civil service employees, will be selected and trained under a merit system with equivalent standards, in accordance with the terms of the formal affiliation agreements between the State labor departments and the Wage and Hour Division.

Industry Committees and Wage Orders

The formation of the industry committees required by the statute will go forward as rapidly as a competent staff can be secured to furnish

the committees with the necessary services. Because of the serious responsibilities placed upon these committees in recommending increases in minimum wage rates which will have statutory effect on the issuance of a wage order by the Administrator, and because the statute requires the committees to investigate and consider a number of complex economic factors in making such recommendations, it has been the policy of the Division to proceed with this activity in the most careful and thorough fashion. Care and thoroughness are particularly important during the first period because the methods of operation of the first two or three committees will tend to set a procedural pattern which will be followed by subsequent committees. In view of the design of the statute itself, soundness can well take precedence over haste, because the basic statutory minimum wage will automatically rise to 30 cents per hour on October 24, 1939.

Priority of Appointment of Industry Committees

Through conferences with employers and labor in many industries and the utilization of existing statistical and economic data, the Division has been able to work out the general outlines of a policy for determining which industries should be given priority in the appointment of industry committees. The provisions of the Act itself largely determine what this policy must be: the statutory minimum wage for all industries is 25 cents per hour now and will increase automatically to 30 cents on October 24, 1939, and the Act provides that no wage order shall set a wage above 40 cents per hour. Thus, for all practical purposes, industry committees must operate within the 10 cent range between 30 and 40 cents per hour.

Priority in the formation of committees has been and will be given to those industries in which there is evidence that, in recent years, under the Walsh-Healey Public Contracts Act, in the NRA, or in collective bargaining agreements, minimum wage levels have been established in this zone between 30 and 40 cents per hour. There is a considerable number of industries in which average wage rates are far above 40 cents, but a small portion of the workers receive less than this amount. This group of industries may well be deferred in favor of those in which the benefits of the Act can be extended to larger groups of employees.

In still a third group of industries wage levels may have been so low prior to October 24, 1938 that the adjustment to the basic minimum levels may be all that can reasonably be expected for the present. In such cases there would seem to be no immediate desirability of raising wages above the basic statutory standard by means of the industry committee process. With respect to a large group of industries engaged in the processing of agricultural commodities, the appointment of industry committees will be deferred until certain questions in connection with the "area of production" for those commodities have been clarified after hearings, or possibly by amendments with respect to those provisions of the Act.

Close relationships between industries, either competitive or otherwise, make it desirable to cover as large a group of related manufacturing processes in one committee as possible, or failing that, to appoint the several separate committees about the same time. Thus Industry Committee No. 1, covering most textile products except wool

and knitting, recommended the early appointment of a wool committee for joint consideration of certain problems and the submission of a wage recommendation at approximately the same time. Similarly, following the appointment of Industry Committee No. 2 for the apparel trades, it is contemplated that other committees will soon be formed for such related fields as millinery and lampshades. The interchangeability of workers in similar crafts and occupations in related industries requires that wage levels for such workers be coordinated.

Preliminary Surveys of Industries

The general policy of giving priority to a certain group of industries in the appointment of committees has been sketched above, but more detailed surveys are required before any particular committee is projected. These surveys are designed to serve the following purposes:

1. to obtain a general outline of the nature of the industry;
2. to develop a tentative plan of organization of the Committee and allocation of representation, which serves as a basis for discussion with representatives of employers and labor in the industry; and
3. to assemble data on interested and representative organizations or individuals to be consulted (trade associations, labor organizations, individuals).

Each such preliminary survey includes an analysis of definitions of the industry and all related groups in the field used by the N. R. A., the Bureau of the Census, and the Division of Public Contracts under the Walsh-Healey Act; an analysis of the problems of overlapping classifica-

tions and conflicting jurisdiction encountered under the N.R.A. and in census-taking; and an analysis the factors involved in the formulation of a definition, such as the processes, products, crafts, occupations, and skills, and previous minimum wage determinations. This preliminary analysis leads to a tentative draft of the definition and scope of the industry for which a committee has been planned.

Having made this preliminary determination of the boundaries of the industry, an investigation is made of factors in the industry affecting wage scales in order that a tentative formula for employer representation may be drafted. This formula, like the tentative definition of the industry, is not considered final, but is subject to revision in the light of information developed later in conferences with employers. In the same fashion information is sought on labor organizations in the industry, from which a formula for labor representation on the committee can be prepared. The preliminary survey ends with the compilation of extensive list of interested parties (trade associations, labor organizations, and individuals) who will be consulted at one stage or another on the formation of the industry committee or during the hearings and other activities of the committee itself.

Such preliminary surveys have already been completed for a wool committee and they are in various stages for committees on the hat, millinery, hosiery, boot and shoe, portable lamp and shade, paper, and furniture industries. Others will be undertaken as rapidly as the selection of experienced industrial experts and trained economists through civil service procedures will permit.

IV ADMINISTRATIVE PROBLEMS

Section 4(d) of the Fair Labor Standards Act places upon the Administrator of the Wage and Hour Division the responsibility of making recommendations to Congress with respect to problems arising in the administration of the statute. This responsibility will be borne in mind during the remaining six months of this fiscal year, as it has been during these three months of operation, and in the Administrator's annual report for the fiscal year ending June 30, 1939, such recommendations will be made. Although the experience of the Division to date has not extended over a long enough period to furnish sufficient basis for the formation of a considered judgment on certain problems which have already arisen, it may not be out of place here to mention briefly certain questions which have been encountered in the administrative work of the Division or have been raised by interested persons.

Area of Production

The matter of definition of the "area of production" has already been touched upon, but it may be appropriate here to set forth in fuller detail the nature of the problems involved. The statement issued by the Administrator on December 22, in connection with the amendment of the definition for the operation of hand-picking dry edible beans, is applicable to other industries as well:

> Sections 7(c) and 13(a)(10) of the Fair Labor Standards Act require the Administrator to define 'area of production' for the purposes of making certain wage and hour exemptions operative.
>
> "The legislative history of these provisions indicates that Congress intended to exempt from the hour, or from both the wage and hour requirements of the Act, certain operations in connection with the movement and preparation of agricultural commodities for market which are performed near the farm.

"It is clear from the language of the Act that the operations described in Sections 7(c) and 13(a)(10) were not to be exempt as such, but only when they are performed in the 'area of production'. The Administrator was given the duty and power to determine when such operations were within the area of production and when they were without.

"In exercising this power, the Administrator sought to draw the line so as to cause as little disturbance in the competitive positions of employers similarly situated as possible, pending opportunity for more thorough investigation. Hence, the exemption was confined to operations performed on the farm in connection with products grown on the farm or in establishments employing not more than seven workers handling commodities grown in the vicinity. Investigations made with the limited funds and personnel available in the short period before the effective date of the Act indicated that, as applied to agricultural commodities and processes generally, the definition issued would cause less serious economic dislocation than any other, except possibly a definition which would exempt the operations in question wherever performed. The blanket exemption would obviously have been contrary to the statute and the intent of Congress. Where blanket exemptions were intended, they were unequivocally provided for in the Act.

"The suggestion has been made that areas of production should have been mapped for each of the several agricultural and horticultural commodities. This procedure would have involved the mapping of producing regions and locations of processing establishments for more than 100 individual commodities, as to many of which area lines cannot be practically drawn. Not only would such a procedure lead to discrimination against plants on the borderlines of areas, but its feasibility is questionable in view of the time and great cost required for carrying it out.

"While the present exemption does not exempt all the employers believed by some to be entitled to it, the Administrator feels that the burden of abiding by the wage and hour provisions of the Act would, in most instances, be less injurious than the disturbances in the competitive relationships of employers similarly situated that would result from a broader definition. The Administrator does not feel that, in the absence of an express mandate from Congress, the issuance of a broader general definition would be justified in view of the serious consequences that would attend such a definition as to many industries."

Hearings already scheduled on petitions for amendment of the "area of production" regulations may determine whether a clarifying amendment with regard to this phrase in the Act is required.

Industrial Homework

Any mention of this problem at the present time may be premature, but its implications are so serious and far-reaching for the effective maintenance of wage and hour standards in interstate industries that it deserves mention, however brief or inconclusive. The problem of industrial homework is a serious one in connection with all types of labor legislations, but it is particularly grave with respect to minimum wage and maximum hour laws. In fact it was this problem of industrial homework in the so-called "sweated trades" of Great Britain which was responsible for the passage of the original Trade Boards Act in 1909, which has been more or less the model upon which most American Legislation of this type has been based. It is significant that even in countries like France and Norway, which have no general minimum wage legislation, this problem of industrial homework has been so serious that special minimum wage statutes applying only to this type of production have been considered necessary.

Industrial homework is, of course, a serious threat to the operation of a minimum wage and maximum hours statute because the difficulties in enforcement in this area tend to make it an avenue of escape from effective enforcement of the law in factories. Reports have already come in to the Wage and Hour Division which indicate that in a number of

industries in which homework is possible and has been practiced in the past, the passage of the Fair Labor Standards Act has led to an increased use of this method of manufacture. The Division intends to take vigorous steps to insure that the provisions of the Act are enforced with respect to industrial homework, but it remains to be seen whether the Wage and Hour Division can succeed where so many State labor departments have failed. The primary difficulty is to get an accurate record of the hours worked by employees working on material in their homes. Employers under the Act and under the regulations of this Division have the responsibility for keeping accurate records of hours worked each day and each week, and no difficulties present themselves in the keeping of these records for employees employed in factories. For the homeworker, however, it is an entirely different story: the employer has no direct method of determining the number of hours worked by a particular homeworker or a family of homeworkers on a lot of goods because they do not perform their work under his immediate supervision.

Homeworkers may work in some cases from daybreak to dark and even through the night; in other cases they may pick up the work for an hour or two during the day in intervals between other household duties. Entire families, including young children, may work on material given to one member of the family. The only method the employer of homeworkers can devise for keeping a record of the hours they have worked is to accept the statement of the homeworkers themselves. Experience has shown, how-

ever, that, when such a method is followed, falsification of records is extremely widespread. Having no other source of income nor any organization among themselves, homeworkers are in a very weak bargaining position and they have consistently shown themselves unwilling to run the risk of the loss of their employment which may be involved in giving a true statement of the hours they have worked. All homework is, of course, done on a piecework basis - so much for a certain lot of goods - and where a minimum wage exists there is little doubt that the very existence of homework is a prima facie case that the statute is being evaded. All evidence on the subject points to the fact that work in the home is less effective and less efficient than the same work performed in a factory; and, therefore, that no employer who is required to pay 25 cents or 30 cents an hour can afford to have this work done in the home because it could be done at less cost in his own plant.

In general there have been two methods of approach to the problem of industrial homework; prohibition and regulation. The approach of prohibition, which is in use in several States and was practiced under several NRA codes, has its origin in the belief that the evils of homework are so great and the costs of regulating it successfully so large that its continuation cannot be socially or economically justified, except for aged and handicapped persons who cannot leave their homes to work in factories. This school of thought believes that even though an extensive and complicated system of piece rates can be devised to insure the payment of minimum rates of pay, that unduly long hours, child labor, unsanitary and

harmful health conditions, dangerous working conditions, and the avoidance of contributions for unemployment and old-age insurance and workmen's compensation contributions and consequently the removal of these social protections from this class of workers, cannot be prevented. They advocate, therefore, that homework be gradually prohibited for normal workers, industry by industry, after hearings and a carefully guarded legal procedure; and that the aged and physically handicapped be permitted to continue on special licenses or certificates.

The regulatory approach to industrial homework is the one which has been generally followed in European countries and which was tried in a number of codes under the N.I.R.A. The N.R.A. experience was not particularly successful in this regard. The essence of this method is to set piece rates for each of the many hundreds of individual operations in the homework industries after exhaustive tests with presumably normal workers, and to enforce the payment of these rates. This procedure is difficult to administer because operations change rapidly with styles, and is not foolproof by any means because it can be and is evaded by the making of secret rebates or kickbacks by the workers to the employer, the keeping of separate sets of books, and other devices of this kind. Under this method the issuance of special licenses to handicapped workers is, of course, unnecessary.

This is briefly the situation with regard to industrial homework. The facts are known, the experience with minimum wage laws for women over a period of twenty years is available, study after study has been made of the wages, hours, working conditions of homeworkers in a large number of industries. In these circumstances, it can be safely said even at the

present time with only three months of experience with the Fair Labor Standards Act that further legislation will be necessary with respect to industrial homework if the Fair Labor Standards Act is to function with complete effectiveness in industries in which homework is practiced. Such legislation is necessary to protect both employees and employers in factories operating in compliance with State and Federal labor and social legislation. In months to come the Wage and Hour Division will accumulate a great deal of experience with this problem in relation to the specific provisions of the Fair Labor Standards Act. The first step to be taken in this direction is a hearing which has been scheduled for January 4, 1939 on the question of requiring additional records for employers of industrial homework under the Act. In addition to this hearing each industry committee in which industrial homework plays an important part may wish to study the question and make a report to the Administrator upon it.

High-salaried Employees

Another problem on which sufficient evidence has not yet come to hand to permit a comprehensive discussion but which has been of great interest to employers throughout the country is the question of the application of the statute to certain high-salaried employees who receive, say, $400 a month or more. As the statute now stands, these persons are covered unless they fall within the definition of employees engaged in an executive, administrative, or professional capacity, in Section 13(a)(1). The Administrator was given power to define these terms; and they have been defined, after careful consideration and consultation with employers and employees,

in a manner which is consistent with common usage and with definitions of similar terms in State Legislation. It has been the contention of some employers, however, that certain employees who do not fall within these categories of administrative and executive or professional as defined are, nevertheless, paid rather high salaries and are engaged steadily in work which is of a very responsible nature. The minimum wage provisions of the Act do not, of course, affect these employees, but the provisions of Section 7 require that they be paid time and a half for hours over the maximum permitted, 44 hours this year, 42 hours next year and 40 hours thereafter.

This briefly is the nature of the problem presented. The number of such employees is not know nor is the extent to which the provisions of Section 7 of the Act may impose changes in the personnel policies and the administrative practices of business enterprises. The Wage and Hour Division has requested all companies interested in this matter to furnish a detailed description of the nature of their individual problems and suggestions for action which might be taken for meeting this general situation. After enough of this material has been submitted to bring into focus more clearly the situation which exists with respect to these employees under the Act at the present time, it may be possible to present a definite recommendation on this question. If any change in the statute is contemplated, all parties have agreed that any line of demarcation placing these high-salaried employees into a separate category for special treatment would have to be very carefully drawn in order not to diminish the protection which the Act now furnishes to the vast majority of clerical employees.

Final Determination of the Scope of the Statute.

This brief resume of some of the principal problems which the Wage and Hour Division has encountered would not be complete without some mention of the question of the final determination of the scope of the Act. It has already been pointed out that, unlike some statutes, the Fair Labor Standards Act is of the type in which the authoritative interpretation of various provisions from the very beginning lies with the courts. The Administrator has no power to make interpretative rulings which are binding in the absence of authoritative court decisions to the contrary.

This being the case, some uncertainty is inevitable with regard to certain matters, the most important of which is, of course, the question of what employees are covered by the Act. For the statute does not cover all the employees of employers engaged in interstate commerce, but only those employees who are "engaged in (interstate) commerce or the production of goods for (interstate)commerce." Tens of thousands of employers have written to the Division describing the nature of their business and requesting advice as to whether their employees were subject to the Act. The Administrator had two alternative courses:

(1) He might have acknowledged each letter with a statement that he had no power to answer this question, referring the employer

to his own lawyer; and reserved taking any action on this question until it was necessary to make a decision in connection with each violation which was reported; or

(2) He could follow the course which has actually been pursued, that of issuing Interpretative Bulletins and answering specific questions, pointing out the interpretation of the law which he was following, with the warning that the Administrator had no authority to issue any conclusive ruling, but that the matter was ultimately one for interpretation by the courts.

It is sincerely believed that the second alternative was the more practical and administratively sound course to follow; and that to have adopted a tortoise-like position of drawing into a non-committal shell would have caused far more uncertainty, and not unjustified resentment on the part of employers.

Nevertheless, the possibility exists that the interpretations which have been issued by the Administrator may be at variance with those later adopted by the courts, and employers who have sincerely believed that their employees are not covered may find that they have been unwittingly violating the Act and incurring a liability of unpaid minimum wages or unpaid overtime compensation. The number of such cases will hardly be large because the overwhelming majority of employees covered by the statute are employed by large companies who are clearly within the purview of the statute. Yet the fact that uncertainty does exist and will continue to exist for some time, in regard to this and similar questions cannot fail to be a somewhat distrubing element in the rapid adaptation of business to legislation which is otherwise generally accepted and supported by industry.

The Wage and Hour division does not feel that sufficient experience has been accumulated to justify the expression of a judgment or recommendation on this matter at the present time, but further experience may indicate the desirability of modifying the present statutory provisions in this regard.

Puerto Rico

With reference to the application of the Act to Puerto Rico (Section 3(c)) a large number of delegations representing various industries in the Island, particularly in the needlework industry in which homework has been the major method of production and wages have been extremely low, have petitioned the Administrator to grant exemptions or special treatment to Puerto Rico. The Administrator has consistently stated to these petitioners that he has no discretionary power under the statute to make exceptions or to modify the general provisions of the Act for any industry or area. The problems of Puerto Rico under the Act have principally to do with homework, and must be considered in connection with the whole question of homework which has been discussed above.

APPENDIX A

Industry Committee No. 1: Textile Industry

Membership

The membership of Industry Committee No. 1, appointed by an order of the Administrator on September 13, 1938 is as follows:

For the Public:

Donald Nelson, Chairman, Chicago, Ill.
Grace Abbott, Grand Island, Nebr.
P. O. Davis, Auburn, Ala.
E. L. Foshee, Sherman, Tex.
Louis Kirstein, Boston, Mass. *
George Fort Milton, Chattanooga, Tenn.
George W. Taylor, Philadelphia, Pa.

For the Employees:

Paul Christopher, Charlotte, N. C.
Francis P. Fenton, Boston, Mass.
Sidney Hillman, New York City, N. Y.
R. R. Lawrence, Atlanta, Ga.
Elizabeth Nord, Manchester, Conn.
Emil Rieve, Philadelphia, Pa.
H. A. Schrader, Washington, D. C.

For the Employers:

G. Edward Buxton, Providence, R. I.
Charles A. Cannon, Kannapolis, N. C.
Robert Chapman, Spartansburg, S. C.
John R. Cheatham, Griffin, Ga.
John Nickerson, New York City, N. Y.
Seabury Stanton, New Bedford, Mass. **
R. R. West, Danville, Va.

* Resigned to become Chairman of Industry Committee No. 2 and replaced by Fred Lazarus, Jr. of Columbus, Ohio.

**Resigned because of illness, and replaced by Allan Barrows of New Bedford, Massachusetts.

Original and Revised Definitions of the Textile Industry

The original definition of the Textile Industry in Administrative Order No. 1, issued on September 13, 1938 was as follows:

"(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fibre, or from mixtures of these fibres; except the chemical manufacturing of synthetic fibre and such related processing of yarn as is conducted in establishments manufacturing synthetic fibre;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibres enumerated in clause (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fibre or yarn;

(d) The manufacturing, bleaching, dyeing, or printing of knitted fabrics (other than hosiery or wool and wool mixed overcoatings and suitings) from any fibre or yarn;

(e) The manufacturing or finishing of braid, net or lace from any fibre or yarn;

(f) The manufacturing of cordage, rope or twine from any fibre."

The revised definition of the Textile Industry, as recommended by Industry Committee No. 1 and issued by the Administrator in Administrative Order No. 6 in December 19, 1938 is as follows:

"(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fibre, or from mixtures of these fibres; except the chemical manufacturing of synthetic fibre and such related processing of yarn as is conducted in establishments manufacturing synthetic fibre;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibres enumerated in clause(a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fibre or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers, dish-cloths, scrubbing cloths and wash-cloths, sheets and pillow cases; table-cloths, lunch-cloths and napkins; towels; and window-curtains;

(e) The manufacturing or finishing of braid, net or lace from any fibre or yarn;

(f) The manufacturing of cordage, rope or twine from any fibre."

APPENDIX B

Industry Committee No. 2: Apparel Industry

Membership

The membership of Industry Committee No. 2, appointed by order of the Administrator on December 19, 1938 is as follows:

For the Public:

Louis E. Kirstein, Chairman, Boston, Mass.
Delos Walker, Vice Chairman, New York City, N. Y.
Miss Charlotte Carr, Chicago, Ill.
Jonathan Daniels, Raleigh, N. C.
John P. Devaney, Minneapolis, Minn.
Miss Marion Dickerman, New York City, N. Y.
Harrold English, Los Angeles, Calif.
Herman Feldman, Hanover, N. H.
Louis B. Hopkins, Crawfordsville, Ind.
Neville Miller, Louisville, Ky.
Mark McCloskey, New York City, N. Y.
Harriss Newman, Wilmington, N. C.
Arthur J. Patton, New York City, N. Y.
Charles W. Pipkin, Baton Rouge, La.
Charles Ray, Goodyear, Conn.
Sumner H. Slichter, Boston, Mass.

For the Employees:

Morris Bialis, Chicago, Ill.
Hyman Blumberg, Baltimore, Md.
Joseph Catalanotti, New York City, N. Y.
David Dubinsky, New York City, N. Y.
Harry Greenberg, New York City, N. Y.
Sidney Hillman, New York City, N. Y.
Julius Hochman, New York City, N. Y.
Elizabeth M. Hogan, New York City, N. Y.
Sam Levin, Chicago, Ill.
Joseph P. McCurdy, Baltimore, Md.
Isidore Nagler, New York City, N. Y.
Meyer Perlstein, St. Louis, Mo.
Jacob S. Potofsky, New York City, N. Y.
Elias Reisberg, Harrisburg, Pa.
Frank Rosenblum, Chicago, Ill.
Nathan Sidd, Boston, Mass.

For the Employers:

Frank Coll, Alpena, Mich.
Oscar J. Groebl, San Francisco, Calif.
W. C. Harris, Winder, Ga.
S. L. Hoffman, New York City, N. Y.
Samuel W. Levitties, Philadelphia, Pa.
A. A. Lipshutz, Atlanta, Ga.
Nathan Schwartz, New York City, N. Y.
Jack Mintz, New York City, N. Y.
A. W. Patterson, Denison, Texas
Alexander Printz, Cleveland, Ohio
Raymond H. Reiss, Chicago, Ill.
Victor Riesenfeld, New York City, N. Y.
Herman Rosenblum, Louisville, Ky.*
Jesse Rosenfeld, New Orleans, La.
Louis E. Rosensweig, New York City, N. Y.
J. J. Wolkerstorfer, St. Paul, Minn.

Definition of the Apparel Industry.

The definition of the Apparel Industry in Administrative Order No. 7 issued on December 19, 1938 is as follows:

> "The manufacture of all apparel, apparel furnishings and accessories made by the cutting, sewing, or embroidery processes, except: knitted outerwear, knitted underwear, hosiery, men's fur felt, wool felt, straw and silk hats, and bodies, ladies' and children's millinery, furs, and boots and shoes."

*Resigned prior to time Committee started functioning, replaced by D. J. Gray of Ware Shoals, S. C.