

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

MWHS

Coverage of a Tire Recapping Operation under the Fair Labor Standards Act

21 AC 407.4
21 BJ 301.212
21 BJ 971.6

This is in further reply to your letter of January 8, 1970, concerning the application of the Fair Labor Standards Act to a client engaged in the business of recapping automobile, truck, and construction equipment tires.

The information you have provided indicates that the firm is located in the State [REDACTED] and its sales are made to retail tire companies located within the same State. The firm has no way of knowing the ultimate user of the tires. The annual dollar volume of the recapping operation is less than \$250,000. In addition, all the corporate shares of the recapping operation are wholly owned by a person who owns two retail tire stores which are also located within the State. [REDACTED] It is your opinion that the recapping workers are not covered under the Fair Labor Standards Act because they are involved in essentially local sales and that if any of the recapped tires are eventually shipped out of the State or used on vehicles moving in interstate commerce, the recapping operation is too far removed from such transactions to be brought within the term "engaged in commerce or in the production of goods for commerce."

Employees of any organization are individually covered under the act if they regularly order, receive, handle, or pay for materials or supplies from outside the State, communicate across State lines by telephone, telegraph or the mails, cross State lines in the performance of their duties, or keep records of such interstate transactions. In addition, the Wage and Hour and Public Contracts Divisions have consistently held that employees engaged in the recapping or repairing of tires, and employees in any closely related process or occupation directly essential to such production, are individually covered by the act where the employer intends, hopes or has reason to believe

that the goods, or any part of them, will move in interstate commerce or will be used in the movement of goods or persons in interstate commerce, such as by an interstate trucking concern or bus company. The recapping of tires for earth moving equipment is also individually covered where the equipment is used for the construction, repair, or extension of instrumentalities of commerce, such as streets and highways.

In addition to the traditional coverage of employees on the basis of their individual engagement in or producing goods for interstate commerce, the Fair Labor Standards Act also provides for coverage on an enterprise basis, as defined in sections 3(r) and 3(s) of the act. The fact that the activities of the recapping operation and the two retail stores concerned consist primarily of providing complete tire service, together with the fact that a single individual appears to own outright or have controlling interest in all the companies, indicate that these are "related activities performed through common control". Thus, if the combined annual dollar volume of the three establishments exceeds \$250,000 they may comprise a single enterprise.

If you have additional questions in this or any other matter concerning the application of the Fair Labor Standards Act, you may find it more convenient to get in touch with our Area Office at 702 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222. We have persons there who will be pleased to offer every assistance possible.

Sincerely,

Robert D. Moran
Administrator

W. L. Robertson
Deputy Administrator

2 Enclosures