

FLSA-586

October 1, 1975

This is in reply to your letter of July 9, 1975, which gives additional information to assist in determining whether the craftspeople who produce goods for *** should be treated under the Fair Labor Standards Act as employees of these firms or as independent contractors. We have also considered the information received by our Charleston Area Office and the factors discussed in the meeting between *** and *** ,Assistant Administrator of the Wage and Hour Division.

A determination as to the existence of an employment relationship is dependent upon all the facts in each individual situation. The Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the Fair Labor Standards Act. The Court has held that it is the total activity or situation which controls. Among the elements which the Supreme Court considered significant are six factors listed on pages 2 and 3 of the enclosed pamphlet, Employment Relationship.

In the application of the Fair Labor Standards Act an employee, as distinguished from a person who is engaged in a business of his own, is one who follows the usual path of an employee and is dependent on the business which he serves. The employer employee relationship under the Act is tested according to the Court by "economic reality" rather than "technical concepts"; it is not determined by the common law standards relating to master and servant.

There is extensive case law dealing with the economic relationship between a worker and a marketing medium which almost without exception holds that the home workers are the employees of the distributor of the raw materials. We call your attention to the recent case of Mednick v. Albert Enterprises, Inc., et al. (5th Cir., 1975) 22 Wage Hour Cases 166, 508 F. 2d 297 in which the court in dealing with the economic realities test, delved deeply into the question and held that the determination of whether an individual is protected by the Fair Labor Standards Act may be bottomed in great part on a finding of whether that individual is "dependent upon finding employment in the business of others ... (one of) those who themselves are least able in good times to make provision for their needs when old age and unemployment may cut off their earnings". Basically, then those employees involved in the instant matter are undoubtedly within the characteristic of individuals discussed by the Fifth Circuit, especially so in view of the fact that they were the recipients of OEO funding and funding through the Cooperative Business Development Program of the state of West Virginia, all in an attempt to economically provide for the well being of these employees.

Other cases dealing with the relationship between a worker and marketing medium in which the worker was held to be an employee include McComb v. Homeworkers Handicraft Cooperative, 176 F. 2d 633 (C.A. 4, cert. denied 338 U.S. 900; Walling v.

American Needlecrafts, 139 F. 2d 60 (C.A. 6)) and Goldberg v. Whitaker House Cooperative , 366 U.S. 28.

On the basis of the facts in this matter, there can be no question, in our opinion, that the craftspeople are employees of the Marketing Media,*** , rather than independent contractors. For example, the marketing medium furnishes practically all the necessary materials except insignificant findings. The opportunity for profit and loss appears minimal under the predetermined fee for each garment produced and the production deadlines set by the marketing medium. The services rendered by the craftspeople are an integral part of the marketing medium's business and are under the full control of the marketing medium so that no initiative, judgment, or foresight in open market competition is required for the success of the craft producers. The craftspeople follow the usual path of an employee and must be paid in compliance with the Act's minimum wage and overtime pay requirements.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division