

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, D. C.

WAGE-HOUR PUBLIC HEARINGS CALLED TO CONSIDER
DEFINITIONS OF EXECUTIVE AND ADMINISTRATIVE
EMPLOYEES OF WHOLESALERS

A public hearing on petitions to re-define the terms "bona fide executive, administrative, professional," and "outside salesman" capacity, as applied to the wholesale distributive trades, in relation to the exemption of this type of employee from the wage and hour provisions of the Fair Labor Standards Act, will be held in Washington, D. C., April 10, Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, announced today. (The Notice of Hearing is published in the Federal Register March 19, 1940.)

The hearing will start at 10 a.m. in the Hall of Nations Room, Washington Hotel, under Harold Stein of the Wage and Hour staff, who has been designated by Colonel Fleming as presiding officer. Notices of intention to appear must be filed with the Wage and Hour Division by April 3. Written statements, in lieu of personal appearances, may also be filed within that time.

Until recently the Wage and Hour Division had not received any formal application for such exemptions and hearing. The hearing now ordered is in response to the first petitions that were presented. They were granted promptly, which disposes of all pending petitions, and the only ones which have been sent to the Division requesting amendment and hearing in connection with Section 13 (a)(1) of the Act.

The recent petitions which resulted in the present order for hearing were filed by: the Council of National Wholesale Associations and other parties (suggesting the April 10 date, which the Division set); the American Retail Federation; the Southern States Industrial Council. The first takes in all the

wholesale distributive trades. The second is particularly concerned with the problem of assistant buyers who buy for wholesale chain stores. The third is interested in various types of employees in many different industries, and is expected to present testimony on behalf of southern wholesalers.

The hearing is confined to the wholesale distributive trades because those are the only interests which have petitioned for amendments and hearing on the definitions in question. Whether there will be similar hearings in the future, applicable to other industries, depends primarily upon whether those interests request such action and show reasonable cause therefor.

Section 13 (a)(1) of the Fair Labor Standards Act exempts from the minimum wage and maximum hour provisions . . . "any employee employed in a bona fide executive, administrative, professional or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by the Administrator.) . . ."

As soon as the Wage and Hour Division was created its executives began to pave the way for prompt promulgation of the definitions required. In October, 1938, before the Act became effective, Wage and Hour staff members held conferences in Washington with representative leaders in various industries and labor organizations, all of whom discussed the subject thoroughly. There was substantial agreement on all the definitions worked out at the conference, and unanimous approval of the definitions of executive and administrative employees in particular. These definitions were then issued by the Wage and Hour Division as Part 541 of the Division Regulations, and were published in the Federal Register, October 20, 1938.

Among the representatives of industry and of labor who participated in this conference were: V. P. Ahearn, Executive Secretary, National Sand & Gravel Association, Washington, D. C.; I. R. Andrews, Personnel Manager, Mail Order Division, Sears Roebuck and Company, Chicago; C. W. Bergquist, Superintendent of

Public Relations, Western Electric Company, Inc., Chicago; C. S. Ching, Division of Industrial and Public Relations, United States Rubber Company, New York; W. J. Cronin, Automobile Manufacturers Association, General Motors Building, Detroit; Herman Fakler, Millers' National Federation, Washington, D. C.; George John Kelday, International Harvester Co., Chicago; A. L. Kress, National Electrical Manufacturers Association, New York; Newbold Noyes, Publisher, and Sam Kauffman, Assistant Business Manager, The Evening Star, Washington, D. C.; A. D. Whiteside, President, Dun and Bradstreet, Inc., New York; Roy A. Cheney, Underwear Institute, New York; and John Howland, Philadelphia Storage Battery Company, Philadelphia, Pa.

Labor representatives included: Robert Watt, American Federation of Labor; John Abt, Amalgamated Clothing Workers (C. I. O.); Jonathan Eddy, Newspaper Guild (C. I. O.); and William C. Hushing, Legislative Representative of the A. F. of L.

Regulations, Part 541, approved and published after the conference of Wage and Hour officials and these representatives of industry and labor, provide that any person wishing a revision of any of the terms of the regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. It was further provided that the Administrator, if he believes, upon inspection of the petition, that a reasonable cause for amendment is set forth, will either schedule a hearing, with due notice to interested parties, or otherwise afford them an opportunity for presenting their views, either in support of or opposition to the proposed changes. This clause also stated that in determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

After the regulations were published no petitions for changes were received from any representative groups -- and none ever were filed until the three recent ones which resulted promptly in an order for the April 10 hearing. From time to time some dissatisfaction with the regulations was indicated by various

groups, but none of them definitely requested amendments and hearing. However, of late it began to appear that some business groups might actually request a hearing. With that possibility in mind Colonel Fleming conferred with members of his staff and interested groups and decided that the previously stated policy was the one that should be followed -- to hold separate hearings for various industries when, as and if any representative group said it desired a hearing and offered concrete proposals. It was felt that one general hearing, attempting to cover all industry, would not permit adequate consideration of the special problems of different units of industry.

The April 10 hearing is not confined to the three groups of petitioners who recently requested it. It is limited to the wholesale distributive trades, since their representatives are the only petitioners. Any persons or groups wishing to propose or oppose any change in Part 541 of the Regulations with respect to its definitions which affect the employees of wholesale distributive trades -- will also be heard. It is required, however, that they file not later than April 3 a notice of intention to appear. The notice must contain either a statement of opposition to changes, or an actual draft of proposed changes. All notices, drafts petitions and statements in lieu of personal appearance which are filed in connection with the notice of hearing may be examined by any interested person at Room 313, 939 D Street, N. W., Washington, D. C.

As used in the notice of hearing, the term wholesale distributive trades includes the following: wholesale merchants, including limited function as well as full service wholesalers, jobbers, voluntary group wholesalers, exporters, importers, industrial distributors, cash and carry and mail order wholesalers, retail-cooperative warehouses, manufacturers' sales branches and offices, with and without stocks, chain store warehouses and buying offices, commission merchants, brokers, export and import agents, sales and purchasing agents, and manufacturers' agents; and other related types of wholesalers. (3720)