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ADDRESS SCHEDULED FOR DELIVERY BY ELMER F. ANDREWS, ADMINISTRATOR
WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR
Before The
BROOKINGS INSTITUTION, WASHINGTON, D. C.
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It is axiomatic that any fundamental law which strikes directly at long accepted practices creates its own peculiar problems. Certainly the Fair Labor Standards Act falls within the category of fundamental legislation. By establishing minimum wage rates and maximum standard workweeks, it strikes directly at the exploitation of labor, a practice long accepted by a minority of employers.

Consequently, we may expect to encounter those problems which always result from any effort to change social or economic customs by legislation. Curiously enough, however, the most urgent problems confronting those of us who are charged with the Act's administration arise from causes other than the impact of new law on old custom.

So far, those problems have been mechanical in the main, rather than economic administrative or legal. For example, the Wage and Hour Division as yet can muster only thirty-one workers in the field. It is estimated that about 11,000,000 employees are covered by the Act. We have received approximately 3,000 complaints of violation. The magnitude of the problem can be realized when it is remembered that each of those complaints might require several investigations or inspections of a company's records. Fortunately, however, that is not going to be necessary in so many cases.

Of course, the problem of an adequate staff is one which all newly created governmental agencies face. It is one that only time and future appropriations by Congress can solve completely. It was necessary to organize the Wage and Hour Division to satisfy first the demands of urgency. It was necessary to trim the

organization to fit the limitations imposed by a modest available appropriation of $350,000. We have enjoyed the full and helpful cooperation of the Civil Service Commission and of the Department of Labor. Nevertheless, completion of an adequate staff necessarily must await qualification of a sufficiently large and sufficiently trained personnel.

Inconvenient as is our lack of a sufficient staff, the handicap it imposes upon our operations might be exaggerated. It is a handicap we intend to take in stride. We do not intend to let it become on our part an excuse for lax administration or enforcement of the Law. We do not intend to let it become on the part of employers an excuse for non-compliance with the Law.

We have already formulated a policy which, in a measure, compensates for some of this shortage of personnel. As one example, many of the complaints of violation coming from employees are being satisfactorily adjusted by correspondenc

As another example, we are rapidly developing plans for cooperation between the Wage and Hour Division and State labor departments (which have adequate staff working under sufficiently high standards in making investigations and inspections

One of our other most pressing problems at the outset of the Act's effectiveness had neither an economic nor a legal foundation. It was, and is, the problem of conveying specific dependable information about the Act direct to persons affected. Off hand, one might have been pardoned for assuming this demand would be satisfied fully by the thousands of letters sent out by our legal staff in answer to questions from employers about every conceivable phase of the Act; or by the thousands of words about the Act appearing in public print or circulated by our own leaflets and pamphlets.

However, I recently visited a large number of the big centers of population in the West. Many of the meetings I attended, most of them sponsored by Chambers of Commerce, were the largest ever held by the organizations. They were the largest because they were thronged with employers who wanted to know about specifi

applications of the Fair Labor Standards Act. Scarcely a mail reaches Washington that doesn't bring a request from some group of business men for the personal appearance of an official of the Wage and Hour Division to explain the Act.

This demand for information about the Act is reassuring. It does not mean that the Act is too complicated for comprehension. It shows that employers are trying to cooperate—trying to avoid unintentional violations. It indicates that they do not intend to try to use ignorance of the law as an excuse for non-compliance.

Just as every fundamental law creates its own peculiar problems, every fundamental law sooner or later is required to stand a trial by fire. We are confident that the Law will stand the test of litigation. That belief seems general even among those who may be opposed to the principle of fixing wages and hours by legislation. Nevertheless, early confirmation of the Act's constitutionality would create a healthful atmosphere.

The mention of court action suggests another category of problems inherent in any law — the need for interpretations of its various provisions which will "stick."

The authority of the Administrator under the Act with respect to making interpretations is strictly limited to a few clearly designated determinations. Other interpretations must rest with the courts. Thus while the Supreme Court determines the Constitutionality of the Act, it might likewise clarify some of the sections of the Law about which there have been the most questions; for instance, the sections defining the coverage under the Act. Perhaps you will pardon interpolation here of some legislative history which will make the question of coverage more intelligible.

As you are probably aware, the Act was not passed in haste. Few bills were ever considered with such deliberation. The measure was debated for almost three full sessions of Congress. During this period, the proposed legislation assumed many forms.

The Bill as originally passed by the Senate proposed to establish an independent commission which would have general powers to fix minimum wages and maximum hours of employment in accordance with certain enumerated guides, such as cost of living and value of services. While the commission could not establish a wage in excess of 40 cents an hour or a workweek of less than 40 hours, it had complete freedom within these limits.

Conceivably, if the facts warranted, a wage could have been fixed at 5 or 10 cents an hour. All wage and hour standards were to be dependent upon administrative action. No standards were written into the bill itself.

What is more significant from the standpoint of considering the question of coverage to which I referred — the Bill provided that an order of the commission establishing minimum wages and maximum hours should show on its face the employees to whom it was applicable.

This proposed grant of broad discretionary powers to a governmental agency was subjected to persistent and powerful attack. Critics asserted that such a provision would give an independent administrative agency life-and-death power over industry. There was a demand that Congress itself establish a floor for wages and a ceiling for hours. The House acquiesced to those demands. It amended the Bill to establish rigid minimum wage rates graduated over a period of three years from 25 cents an hour to 40 cents an hour. It fixed a ceiling for hours of employment during a workweek at 44, which over a term of two years would be reduced to 40.

The House and Senate conferees devised the present Act in drafting a compromise bill. They placed administration of the Act under a single Administrator rather than a commission or board. They followed the philosophy of the House bill in fixing hour standards by statute. They adopted in part the philosophies of both bills in fixing by statute minimum wage standards which would be self-executing, and at the same time, could be improved, within definite limits, by administrative action.

To make wage and hour standards operative, independent of administrative action, it became necessary to write into the statute language defining the employees intended to be covered by the Act. So Congress said the Act shall apply to employees engaged in commerce or in the production of goods for commerce. Upon those critical words rests determination as to whether the Act applies to any employee or group of employees.

The question is: What employees are engaged in commerce or in the production of goods for commerce? The Wage and Hour Division is receiving thousands of inquiries from employees and employers who want to know the answer to that question.

What reply can we make? The Administrator was given no power to determine the application of the Act by regulation or otherwise. Only the courts can determine what constitutes coverage under the language of the statute. It cannot be extended or contracted by administrative interpretation.

This does not mean that we shall not interpret the statute for the purposes of administration. This already has been done in several interpretative bulletins issued by the Wage and Hour Division. But it must be borne in mind that these interpretations are wholly advisory. They merely serve to indicate to the employer the construction of the law which will guide the Administrator until he may be directed otherwise by Congress or by the courts. It will not prevent an employee who disagrees with us from challenging our opinion by bringing suit against his employer for wages he believes to be due him.

Another difference of opinion which might be clarified by court action hinges on the question of hours. This controversy, if it is a controversy, seems rather strange in view of the statute's moderate hour provision. The Act does not even satisfy the perennial demand of labor — the 8-hour day. The Act does not tell the employer what hours in any day he may work his men. It simply says that during seven consecutive days he shall not work his employees more than 44 hours without paying them time and a half for overtime. In fact, the overtime provision is where the rub comes in. There has been much talk about ways and means of an employer

working his men more than 44 hours without paying them any more than they were paid prior to the effective date of the Act.

A week before the Act went into effect, an employer wired the Wage and Hour Administration that he was reducing the hourly wage of every worker in his place from president to office boy to 25 cents an hour. He said he intended to pay 37½ cents for time worked in excess of the statutory 44 hours a week. He also stated he was guaranteeing to each worker a weekly stipend not less than the amount paid prior to October 24. He sought for this scheme the legal blessing of our general counsel. But the regular hourly rate upon which overtime compensation would be based in such a case would be determined by dividing the employee's weekly pay by the number of hours regularly worked.

Take another example. An employer pays 50 cents an hour for a customary workweek of 44 hours. In anticipation of a peak period of 2 or 3 weeks' duration during which he would be obliged to pay time and one-half for overtime, he reduces the hourly rate which he later restores after the rush has subsided. This, too, is a clear violation of the Law. The regular rate of pay is the customary rate of 50 cents per hour, rather than any lesser amount announced for certain weeks of overtime employment in order to circumvent the hour provisions of the Act.

The case about which the opinion of our general counsel has been sought most frequently is this:

An employer worked his employees 50 hours a week at an hourly rate well in excess of the statutory requirements. He wanted to continue his 50-hour week after the Act went into effect. So, before October 24, he reduced the hourly rate of pay so that the 50 hours, with 6 hours of it computed at time and a half for overtime, would maintain the employees' earnings unchanged. If the reduced rate is still above the statutory minimum, is the employer in compliance with the Act?

I will not attempt to give you a complete interpretation of Section 7, the hour provisions, or of Section 18, which provides that the Act shall not justify

any employer in reducing a wage paid by him which is in excess of the applicable minimum. It may be pointed out, however, (1) that it is not safe to assume that a section of an Act of Congress is meaningless, and (2) the attempt of the employer, in negotiations with his employees in reference to this proposed reduction in the rate of pay, to "justify" the reduction in the hourly rate by reference to the overtime provisions of Section 7 as the excuse for resorting to this device, might be considered a violation of Section 18.

Every employer who takes this chance is gambling at more than two to one, for the Act provides that a worker employed in violation of this Law may bring civil suit and, if judgment be given in his favor, may recover in damages double the amount due him plus court costs and attorneys' fees.

A great many legal questions have arisen since the Act became effective. But these are the major questions about which there has been any marked division of opinion. Of course, their determination is important, but the mere fact that opinions differ presents no final obstacle to smooth administration and enforcement of the Law.

If some employer seeks to place a different interpretation on the Law than that of our general counsel, the matter can be brought to court and settled once for all.

There is a possibility, of course, that these questions may never be involved in court action. That possibility suggests another fashion in which they may be determined. It is the duty of the Administrator to suggest to Congress any amendments which may be needed to make the Law more effective. Clear definition of these points by amendment might be asked. However, it is too early in the life of the Fair Labor Standards Act to have any definite views on amendments. As a matter of general principle, I believe sweeping changes in the Law would be unfortunate after industry has become adjusted to the Act's provisions.

A few moments ago in sketching the legislative history of the Act I mentione

that the statute was finally enacted with a provision whereby minimum wage standards could be altered, within definite limits, by administrative action. Congress states in the Act itself that this provision was included "with a view to carrying out the policy of this 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."

So it would seem that one of the most important problems facing the Administrator is the obligation to set in motion the train of action which will lead to rulings establishing the higher minimum wage rates without waiting for their automatic appearance as a result of the expiration of time.

The first step toward this end is the formation of Industry Committees. While anxious for speedy establishment of the 40-cent minimum wage, Congress was also anxious that no Government official, in his unrestrained discretion, should have authority to raise minimum wages by edict. So it provided that the Administrator should have no power at all in that direction until another important procedure has been followed. If he thinks the minimum wage for a given industry might be increased beyond that fixed by the self-executing provisions of the statute, he must first appoint and convene an industry committee composed of a number of disinterested persons representing the public, of whom one shall be designated as chairman, and a like number of persons representing employees in the industry, and a like number of persons representing employers.

The statute defines, in considerable detail, the economic factors which an Industry Committee must consider as the basis of recommending a minimum wage rate. If this committee, representing the three great interests involved, does not, after a requisite study, recommend an increase of the minimum wage in the industry, the Administrator cannot proceed to issue a wage order. The Administrator, representing the authority of the Government, is thus not empowered to act until, in the judgment of the Industry Committee, the economic conditions in the industry warrant an increase of the minimum wage.

Even if an Industry Committee recommends an increase of the minimum wage, still a further procedure is required by the statute.

The Administrator, before putting the recommendation into effect by a wage order, must hold a public hearing and give interested persons an opportunity to be heard, and must find that the industry committee's recommendations are made in accordance with law, are supported by the evidence produced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purpose of the statute.

The Conference Committee of the Senate and the House, reporting on these provisions of the statute said:

"This carefully devised procedure has a double advantage. It ensures on the one hand that no minimum wage rate will be put into effect by administrative action that has not been carefully worked out by a committee drawn principally from the industry itself, and on the other hand that no minimum wage rate will be put into effect by administrative action which has not been found by an administrative official of the Government, exercising an independent judgment on the evidence, and responsible to Congress for his acts, to be in accordance with the law."

I believe this brief discussion of Industry Committees and their functions will serve to emphasize their importance, and consequently, what care must be exercised in their formation.

Within the last few weeks numerous employer representatives have visited the Administrator's office or written pressing letters asking the appointment of Industry Committees for their industries and a higher wage scale for their employees. They wish to avoid delay in reaching the 40-40 goal, and they wish to be sure that all members of their industry will have the same standards.

However, careful administration of the Act demands that we proceed slowly, since many questions arise in connection with formation of the committee which must be carefully thought out. As one example, just what is an industry? Our definitions cannot be too broad, or we will find non-competitive groups under the jurisdiction of the same committee—if they are too narrow, competitors may find themselves operating under different wage orders. Then, there is the question of money with which to finance the work of these committees.

These, I believe, are the main problems which the Wage and Hour Division has encountered in the administration of the Fair Labor Standards Act during its brief history. And we are optimistic enough to feel that a great deal has been accomplished with very little friction and a minimum of displacements in industry.
