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U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

QUESTIONS AND ANSWERS (NO. 7)

(IMPORTANT NOTE: Letters such as the accompanying were written in response to specific requests for information, and each answer has been made on the basis of the particular circumstances involved. They should not be construed as covering cases that might be regarded as similar.)

The New England Coal Dealers Association, with headquarters in Boston, asked about the application of the Fair Labor Standards Act to unloading coal. The General Counsel's Office replied:

"This is in reply to your letter in which you inquire whether or not employees engaged in unloading coal from cars on a railroad siding, or from vessels alongside a dock, are engaged in interstate commerce. You refer to the railroad siding as the 'retailers sidetrack' and to the dock as the 'dock of the consignee', and you have concluded that the employees are not engaged in interstate commerce in either case.

"It is our opinion that the coal in the cars on the siding or the coal in the vessels alongside the dock is still in interstate commerce and that employees engaged in unloading the coal from the cars or vessels are an essential part of the stream of interstate commerce and therefore are 'engaged in commerce', within the meaning of the Fair Labor Standards Act.

"I should like to call your attention to the exemption in Section 13(a)(2) applicable to 'any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce.' I enclose Interpretative Bulletin No. 6 which deals with this exemption.

"Your attention is particularly directed to Paragraphs 4 through 9 of this Bulletin. For your convenience, I also enclose a copy of the Act and a copy of our Regulations, Part 541, dealing with the exemption in Section 13(a)(1) that may be applicable to some of your employees."

Asked about exemptions applying to independent telephone companies, Administrator Elmer F. Andrews sent the following letter to the Chicago inquirer:

"This is in reference to your inquiries regarding the applicability of the exemption provided by Section 13(a)(2) of the Fair Labor Standards Act of 1938 to independent telephone companies.

"In drafting Interpretative Bulletin No. 6, to which you refer in your telegram of December 12, we carefully considered the information contained in your letters and in the numerous letters and briefs which we have received from other persons on this subject. At this point, I should like to quote a portion of the letter which the General Counsel of the Division recently wrote to the United States Independent Telephone Association:

"'You will note that this bulletin (Interpretative Bulletin No. 6) does not discuss the question of whether any or all employees of independent telephone companies are engaged in commerce or the production of goods for commerce within the meaning of Section 6 and 7 of the Act. For your information, however, I am enclosing one copy each of Interpretative Bulletin No. 1 and Interpretative Bulletin No. 5, which deal with the general coverage of Sections 6 and 7.

"'Many independent telephone exchanges apparently present unusual questions with respect to the computation of wages paid. Thus, on page 18 of the brief which you submitted to us, the following statement is made:

"As the record discloses, in the small independent exchanges, of which there are thousands, the common practice is to contract the operating services for a definite amount per month, frequently the contracting agent is a widowed woman sometimes with children to support. She is furnished with living quarters, heat, water and light and is required to give the switchboard whatever attention is needed."

'With respect to such employees, your attention is directed to Section 3(m) of the Act, Interpretative Bulletin No. 3 and regulations Part 531, copies of which are enclosed herewith.

'Moreover, page 18 of the brief continues:

"The telephone requirements of these small communities are largely confined to an hour or two in the morning, a similar period about noon and two or three hours in the evening. At other times during the day the calls are very infrequent. During the night no one is in direct attendance at the board, but an alarm bell calls the operator in the event of emergency calls. Often times in these small exchanges the

switchboard is located in a home in a community or sometimes in a local store where the operation of the board is incidental to other work."

'This office is presently studying the general question of what constitutes "hours worked" under various circumstances. In connection with this study, the problems raised in the case of independent telephone exchanges will be carefully considered.'"

A macaroni manufacturing company of Louisiana asked about the applicability of various phases of the Fair Labor Standards Act. Arthur L. Fletcher, Assistant Administrator in Charge of Cooperation and Enforcement, replied:

"(1) I can advise you that the Office of the General Counsel has said that it may well be a violation of law for an employer to spread the weekly salary of an employee which is greater than the minimum to take care of the overtime. For your further information on this subject, I am enclosing a copy of Interpretative Bulletin No. 4, and I direct your particular attention to page 6, example 2.

"(2) I can advise you that the girls packing macaroni in your plant may be paid either on a time basis or on a piece-work basis, but in either case each employee must be paid at a rate of not less than 25 cents per hour. This is true even though some workers may be slower than others.

"(3) I can advise you that where your employees do not work under supervision in your own establishment, you will have to trust them as to the time reports which they turn in upon which you base your records. Your experience should be able to tell you whether these reports are accurate.

"(4) I can advise you that the Fair Labor Standards Act does not provide a different minimum wage for skilled and unskilled labor. It merely provides that each employee engaged in the production of goods or engaged in commerce shall receive a wage of not less than 25 cents per hour for a workweek of 44 hours or less."

A Washington, D. C., correspondent asked about the effect of the Fair Labor Standards Act upon various employees of the petroleum industry. The General Counsel's Office replied:

"You ask how to calculate the hours worked for pumpers and other employees on stripper wells in the petroleum industry. We are presently engaged in an intensive study of the general question of hours worked. Any opinion expressed at this time is, therefore, tentative.

"You put the case of a pumper living on the premises of his employer whose only actual work is the oiling of the pump twice daily, but, who, in the event that the pump stops, must start it up again. This man does not need to stay on the property and can go into the town as much as he wants. He is, however, at all times subject to call when off the property.

"It is our opinion that an employee who makes his home at his employer's place of business is not necessarily working twenty-four hours a day because of that fact. If he is free to come and go as he likes, I do not believe that the fact that he is subject to call twenty-four hours a day, in the event of the stopping of the pump, would mean that he was on duty twenty-four hours a day within the meaning of the definition of hours worked in the Regulations, Part 516.4. Of course, any time actually worked and any time when he was required to be on the premises would constitute hours worked.

"In connection with your question on record-keeping, your attention is directed to Regulations, Part 516.2, which provides that 'no particular order or form is prescribed for these records, provided that the information required in section 516.1 is easily obtainable for inspection purposes'."
