

For immediate release,  
Thursday, March 2, 1939.

R-203

BEFORE THE UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

WASHINGTON, D. C.

In the matter of

APPLICATIONS

OF

NORTHEASTERN LUMBER MANUFACTURERS  
ASSOCIATION, TIMBER PRODUCERS  
ASSOCIATION OF MINNESOTA, AND SUNDRY  
OTHER PARTIES

For exemption of the lumber industry  
as a seasonal industry pursuant to  
Section 7 (b) (3) of the Fair Labor  
Standards Act of 1938 and Part 526  
as amended of regulations issued  
thereunder.

FINDINGS AND DETERMINATION

OF THE

PRESIDING OFFICER

February 25, 1939

The Northeastern Lumber Manufacturers Association, the Timber Producers Association of Minnesota and sundry other parties having made application under Section 7 (b) (3) of the Fair Labor Standards Act of 1938 and regulations (Part 526 as amended, applicable to industries of a seasonal nature pursuant to Section 7 (b) (3) of the Fair Labor Standards Act of 1938 - Title 29, Labor, Chapter 5, - Wage and Hour Division) issued by the Administrator thereunder, for partial exemption from the maximum hours provisions of the Act by classification as an industry of a seasonal nature, the Administrator gave notice of a

public hearing to be held at the Hotel Willard, Washington, D. C., at 10 o'clock a. m. January 16, 1939, and designated the undersigned as Presiding Officer to conduct the said hearing and to determine--

"whether or not the lumber industry as defined herein or any branch thereof is of a seasonal nature within the meaning of Section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 52C of regulations issued thereunder."

"As used in this notice the term 'lumber industry' means the cutting, sawing, hauling and stacking of logs."

Pursuant to the notice the undersigned convened the hearing and an opportunity was afforded to all who appeared to present testimony and to question witnesses through the Presiding Officer. Appearances were entered for and against the applications. Pursuant to permission, briefs and additional statements were filed subsequent to the hearing by applicants and protestants. From the record thus made it appears that:

I.

General Description of the Branches of  
the Lumber Industry Considered Herein

The applications considered herein refer to the lumber industry as carried on in certain portions of the States of Maine, New Hampshire, Vermont, New York, Pennsylvania, Michigan, Wisconsin and Minnesota. The exact extent of the regions under consideration is noted on maps furnished by the applicants. The applications also refer separately to the operation of pulpwood peeling. No applications for other geographical branches of the industry were presented for consideration at the hearing and it

was stated, without objection, that no findings on other geographical branches would be made at the present time. It may be noted that employment and production in the branch of the industry considered herein represent only a small proportion of the total employment and production in the whole industry.

In the Northern branch (i.e. within the geographical limits set forth above) of the lumber industry, much of the hardwood, softwood and roughwood is cut between the first cool weather and the first deep snow-- roughly between October 1st and January 1st. It is considered by some operators to be inadvisable to start cutting earlier because the felled timber when left on the ground is subject to some deterioration from insect infestation and stain during warm weather;<sup>1/</sup> and also to be impractical to cut timber after the heavy snows have fallen, because of the difficulty and danger in the operation itself and because of the loss in stumps. In spite of these considerations, timber adjacent to hard surfaced roads and otherwise accessible is frequently cut in the late summer and other periods of the year.<sup>2/</sup>

In most parts of the United States felled timber is removed to the sawmills or pulp mills soon after cutting, but in the northern regions the removal occurs largely during the dead of winter. The

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<sup>1/</sup> See statement (Exhibit 6) filed by the applicants from the United States Forestry Service which indicates that the insect damage during one summer is not very serious.

<sup>2/</sup> There is much evidence to show that the conventional dates are frequently not observed in practice. Cutting and hauling of "summer logs" begins in September. Also as set forth in an Exhibit filed by the International Woodworkers of America, C.I.O., "hot logging" is on the increase as a year round operation. See also Exhibit 7 in which reference is made to "the building of railroad in the summer and some considerable amount of logging in the summer time, which perhaps might make our total effort during the year be interpreted as continuous."

topography of Northern New England, New York and the Northern Lake States, and of the Pennsylvania mountains is such that teams and trucks cannot reach most of the felled timber except between January 1 and April 1 when snow and ice roads can be utilized. Only during these months can logs be easily transported around the mountains, and over lakes, swamps and muskeg bogs to the mills, unless the timber is felled close to a highway or railway. Frequently the removal operations occur in two steps. First the logs are hauled by team, truck, tractor, or sled or sent down log slides, to a hard surfaced highway, railroad, stream or lake. The next step is the further removal of the logs to the mill which may be done overland or by water. When it is done by water, the drive is dependent on water conditions and usually takes place between April 1 and May 31, but may continue into the summer. The driving of logs by water is confined almost entirely to New England and New York. Furthermore, in general, no hardwood is water driven, because of its tendency to sink.

Pulpwood is handled either as peeled pulpwood or as roughwood, i. e. logs with the bark on. The northern mills use the peeled wood to a large extent. Roughwood is handled like other softwood, and requires no special consideration here. On the other hand, when peeled pulpwood is required by the pulp mills, the peeling is largely done by hand in the woods. The trees are cut and bark removed between May 15 and August 15. At this time of the year the sap is high, so that the bark is removable by hand. Hand peeling of pulpwood is not practical at other times of the year. After the logs are peeled, they are cut into short lengths and piled. Most of them are not brought down to the pulp mills until the regular hauling or driving season.

Fulpwood peeling is carried on in New England, New York, Pennsylvania, Maryland, Virginia, North Carolina, Tennessee, Minnesota, Michigan and Wisconsin. A little is done in Ohio and one mill in the State of Washington uses peeled wood. Its limitation to these states is solely due to the nature of the process used by the mills. The peeling itself could be carried on wherever there are trees suitable for pulpwood.

Saw mill operations in the northern branch of the industry are of two types. Some mills usually operate only for part of the year:- hardwood sawing starts with the first logs brought down in December or January and ends in July or August, since there may be some deterioration of logs after the hot weather sets in; softwood sawing usually takes place, in the Northeast, from May to October.<sup>3/</sup> Other mills, using logs cut and hauled all year, operate without a break. Continuous or intermittent operation is characteristic of the portable saw mills, which are moved from one site to another in order to operate on timber wherever and whenever it is accessible, but many larger mills also obtain supplies of timber and operate throughout the year.<sup>4/</sup>

In addition to these woods operations employing the largest number of men, there are other subsidiary operations, necessary to production, including road cutting,<sup>5/</sup> maintenance of logging railroads, camp building, brush burning and hauling of supplies, which occur either continuously or intermittently throughout the year. Thus in

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<sup>3/</sup> Charts filed by the applicants show April-October, May-November, and June-October operating periods. One witness testified that his mill began operations in October.

<sup>4/</sup> No consideration need be given to pulp mills, since no application was filed on their behalf, but it may be noted that pulp mills normally operate all year round.

<sup>5/</sup> One witness referred to road work as "a most important integral part of an operation." See Transcript of Hearing, P. 61.

every month of the year one or more of the major or minor operations is in a state of activity, and the series of operations constitutes an unbroken chain of production.<sup>6/</sup>

II

Employment, Labor Supply and Hours

There has been serious unemployment in the lumber industry for some years. Apparently, the situation in the Northern branch is similar to that in the industry as a whole, wherein the Bureau of Labor Statistics index of employment for the lumber and saw mill industry was only 50.9 for 1938, (1923-5 --100), and 62.1 for 1937. Some statements were made about the difficulty of obtaining skilled pulpwood peelers, but otherwise it was admitted that there are many unemployed workers available.

In former years long and uncertain hours seem to have been characteristic of both logging and sawmill operations, but recently, particularly where collective bargaining agreements are in existence, regular and comparatively short hours have become customary. Thus one union has an agreement with the Timber Producers Association of Minnesota, covering more than 5000 union workers employed by 145 companies, calling for an eight hour day, a six day week, time and one third for the first hour overtime, and time and one-half thereafter.<sup>7/</sup> Other union contracts in the Lake States provide for shorter hours and more drastic overtime penalties. Precise information on the hours of work was not furnished by the applicants but there are indications that a regular

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<sup>6/</sup> See statement of representative of pulpwood producers regarding order of production. See Transcript of Hearing P.54

<sup>7/</sup> This agreement is described in the A. F. of L. brief.

work week of about 48 hours is not uncommon.<sup>8/</sup>

The shift from cutting to hauling, hauling to driving, etc., does not appear to be accompanied by any serious fluctuation in total employment. In the four Northeastern states, for example, the Census of Manufacturers for 1935 shows an average employment in the lumber and timber products industry of 6591, a maximum employment of 7250 in February and a minimum of 6074 in September. No breakdown between logging and sawmill operations is available in the record.

In connection with the apparently comparatively steady volume of employment in logging and sawmill operations, it may be noted that logging is largely a planned industry. Each year plans are made for the whole year's operations, so that the supply of materials and necessary man hours of employment are predetermined for each operation.<sup>9/</sup> Unforeseen orders are generally small, and the fixed schedule can be adhered to with only minor variations.

### III.

#### Definition of the Northern Branch of the Lumber Industry

In the general description of the "lumber industry" no attempt has been made to define the industry other than to indicate its geographical limits. The definition in the Notice of Hearing was tentative and as indicated by the Presiding Officer at the hearing, is not controlling. Furthermore, the witnesses, while requesting either three or four fourteen week exemption periods, were undecided about the proper definition. Finally, Section 3 (h) of the Act permits

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<sup>8/</sup> See Transcript of Hearing, PP. 35, 41, 95, 112, 97, 126

<sup>9/</sup> See Transcript of hearing, PP. 67, 68, 91, 98, 99

a wide variety of possible definitions of the term "industry", but it is clearly the duty of the Administrator to adopt the definition that is best suited to the factual situation and that will best tend to effectuate the purposes of the Act.

To a certain extent logging (including all operations incident to the cutting of logs and delivery to the mills) and mill operations are part of an integrated industrial scheme. Saw mills (and pulp mills) own and rent timber lands, and much of the logging is carried on under their control or supervision, but fundamentally logging is an extractive process relying primarily on individual effort and on hand labor, whereas saw mill (and pulp mill) operation is a characteristic manufacturing process relying primarily on machinery and involving repetitive operations. The facts logically call for one industry classification for logging and another for milling. Furthermore, although the record is not entirely free from ambiguity, it appears that lumber mills and pulp mills are so different in function and character that the manufacture of lumber and the manufacture of wood pulp are likewise to be classed as two different industries, or different branches of the industry.

The question remains as to the validity of classifying the major operations of cutting, hauling, driving, and peeling as separate industries of a seasonal nature. Although the applicants requested a finding that each of three or four operations within the industry is an industry of a seasonal nature,<sup>10/</sup> they failed to sustain the burden of establishing that each of such operations constitutes an industry within the meaning of Section 526.2 of the Regulations. It was freely admitted that these operations are merely steps in getting the timber from the woods to the mills (or other consumers). It was also apparent

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<sup>10/</sup> See Transcript of Hearing, PP. 15, 47, 48, 65, 88, 109, 146



that these operations are largely carried on by or in behalf of a single group of employers, and to some extent, are performed by the same group of workers. Thus the industry is the logging industry and is a single integrated industry.

For the above reasons, the term "lumber industry" used in the Notice of Hearing is found to include two industries that require individual consideration herein:-(1) the logging industry and (2) the sawmill industry. The logging industry is hereby defined as the extraction and removal of timber including cutting, hauling, driving, peeling and auxiliary operations. The sawmill industry is hereby defined as the manufacture of wood products in sawmills, including all operations performed at the mill.

#### IV

##### Seasonality of the Northern Logging and Sawmill Industries

The materials extracted or handled by the Northern branch of the logging industry are not highly perishable, and are successively available for the successive processes of this branch of the industry throughout the year. The industry operates largely on an annual schedule and many employers are now habituated to a regular workweek of 48 or fewer hours. There is a plentiful supply of available labor. The various productive operations of the industry are continuous and overlapping, so that the industry does not cease production at any time. 11/

The materials handled or processed by the Northern branch of the sawmill industry are not highly perishable and are or can be made continuously available to this branch of the industry. The industry

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11/It may be noted that "production" is defined in Section 3 (j) of the Act to include "producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof."

operates largely on an annual schedule and many employers are habituated to a regular workweek of 48 or fewer hours. There is a plentiful supply of available labor. Some mills operate only at certain times of the year, but these operating periods are overlapping; and there are many mills that operate continuously. Thus the industry does not cease production at any time.

FINDINGS OF FACT

Upon the basis of the whole record I find that:

1. The "lumber industry" involved in the applications consists of (a) the Northern branch of the logging industry (including the peeling of the pulpwood); and (b) the Northern branch of the sawmill industry.
2. The Northern branches of the logging and sawmill industries include all logging and sawmill operations carried on in the northern portions of the states of Maine, Vermont, New Hampshire, New York, Pennsylvania, Michigan, Wisconsin and Minnesota, within the geographical limits specifically set forth on maps submitted by the applicants, and herein incorporated by reference.
3. The Northern branch of the logging industry includes, within the above described geographical limits, cutting, hauling, driving, peeling and auxiliary operations. Labor and material requirements for the industry are largely predetermined and the chain of operations, all essential to production, continues throughout the year.

The materials extracted or handled by the industry are not highly perishable. The industry has available a plentiful supply of labor, it is to some extent habituated to a regular workweek of 48 hours or less, and it may be characterized as an extractive industry.

4. Cutting, hauling, driving and peeling of logs are not separate industries but are integral parts of the logging industry.
5. The Northern branch of the logging industry engages in the handling, extracting, and processing of materials continuously throughout the year and does not at any time cease production (as the term "production" is used in regulations, Part 526, and defined in Section 3 (j) of the Act).
6. The Northern branch of the sawmill industry consists of the operation of sawmills within the above described geographical limits. Some of its constituent mills operate continuously, others operate for longer or shorter periods at varying times of the year, but there is no cessation of work by the industry at any time. Its materials are not highly perishable, it has available a plentiful supply of labor, it is to some extent habituated to a regular workweek of 48 hours or less, and it may be characterized as a manufacturing industry.
7. The Northern branch of the sawmill industry engages in the handling and processing of materials throughout

the year and does not at any time cease production (as the term "production" is used in regulation, Part 526, and defined in Section 3 (j) of the Act).

8. The record does not warrant a finding that the Northern branch of the logging industry is an industry of a seasonal nature within the meaning of Section 7(b) (3) of the Act and Part 526 of regulations issued thereunder; and
9. The record does not warrant a finding that the Northern branch of the sawmill industry is an industry of a seasonal nature within the meaning of Section 7 (b) (3) of the Act and Part 526 of regulations issued thereunder.

The applications are, therefore, denied.

*Harold Stein*

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Harold Stein,  
Presiding Officer

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