

PROBLEMS UNDER WAGE-HOUR ACT OF FEDERAL CONTRACT WORKERS

Employees of contractors engaged in carrying the mails on "star" routes or between post offices, stations, railroad depots, steamboat landings and other similar mail handling points for contractors must be paid in accordance with the wage and hour provisions of the Fair Labor Standards Act, the Post Office Department was advised today by Administrator Elmer F. Andrews of the Wage and Hour Division, U. S. Department of Labor.

Postmaster General James A. Farley had inquired as to the status of these employees who, while they handle the United States mails, are actually employed by contractors. Acting on the advice of the office of General Counsel Calvert Magruder, Mr. Andrews told the Post Office Department that "there is no reasonable basis for assuming that the employees of the contractors will be deemed by the courts to be employees of the United States and, therefore, not covered by the Act by reason of the exclusion of the United States from the term 'employer' as defined in Section 3(d) of the Act."

Postmaster General Farley had inquired as to the status of employees of contractors to be engaged under contemplated contracts for the carrying of the mails between post offices, stations, railroad depots, steamboat landings and other mail handling points within cities in Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa and Missouri.

The question on the "star" routes pertained to Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas and Oklahoma, for which advertisements inviting proposals are pending. This "star" route service, he explained, is maintained primarily for the mail supply of post offices not supplied by other means of transportation, and is also utilized for providing supplemental mail supplies and box delivery, and collection service similar to that provided by rural carriers. A number of "star" routes, he pointed out, run across state lines.

Under Section 3(d) of the Act "employer" does not include the United States or any State or political subdivision of a State and their employees are, therefore, exempt from the wage and hour provisions of the Act. Where work is performed for the Government under contract, however, the contractor is the employer and the requirements of the law must be met.

Mr. Andrews pointed out that he has no power under the statute to make conclusive ruling on these questions, but that he was being guided by the advice of the office of the General Counsel that employees of "star" route contractors and others engaged in transportation of the mails will likely be held by the courts to be engaged in interstate commerce and, therefore, covered by the Act.

Many other problems have been submitted to the Wage and Hour Division in connection with projects sponsored by Federal and State Governments.

In reply to an inquiry from the United States Treasury Accounts office at Watertown, South Dakota, as to whether workmen on the huge carving of the heads of Washington, Jefferson, Lincoln and Theodore Roosevelt on the 700

foot high granite face of Mount Rushmore at the Mount Rushmore National Memorial are covered by the Act, the General Counsel's office stated that, while Government employees on the project are exempt under Section 3(d), employees of contractors working on the Memorial are not exempt under this section but probably are not covered because of the local character of their work. This inquiry originated with Lincoln Borglum, the works superintendent at Mount Rushmore.

When the International Longshoremen's Association sought to obtain the benefits of the Act for its members working on the Federal barge lines, it was informed that the Inland Waterways Corporation, which is a corporation wholly owned and controlled by the Federal Government, with the Secretary of War as the sole incorporator, could not be regarded as an "employer" subject to the Act, and the employees were, therefore, exempt.

Post office substitute clerks, through the National Federation of Post Office Clerks, sought to obtain the benefits of the Wage and Hour Law, reporting that the Comptroller-General in May, 1938, had told them in effect that they were not regular employees of the Government and were, therefore, not entitled to the usual benefits of a vacation with pay, sick leave, or to the privileges enjoyed by Government employees. The Federation was informed, however, by the General Counsel's office, that because these workers are paid with Government funds and are under Civil Service, they are exempt from the Act because the Federal Government is not included in the term "employer".

The advice contained in these letters indicates the opinion of the General Counsel, which guides the Administrator on these matters, and it does not preclude court action by employees who seek to obtain the benefits of the Act.

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