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Wage and Hour Division
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ADDRESS SCHEDULED FOR DELIVERY BY ELMER F. ANDREWS, ADMINISTRATOR, WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR, BEFORE THE EMORY UNIVERSITY LAW INSTITUTE, ATLANTA, GEORGIA, APRIL 14, 1939, ~~4:30~~ 8:30 P.M.

Ten years after the Mayflower landed at Plymouth Rock, the Massachusetts Bay Colony enacted a statute stipulating that "carpenters, joiners, bricklayers, sawyers and thatchers shall not take above two shillings a day." The wages of master mechanics and laborers also were regulated, and we find a notation that "if they have meate and drinks" the pay was to be proportionately less.

This was the first Fair Labor Standards Law enacted in America. It was written more than a century before the birth of James Watt, with whose invention of the steam engine we are accustomed to associate the beginning of the long series of radical adjustments characterizing the industrial revolution. In one way or another we have been attempting by legislation to exercise control of blind economic forces ever since.

This first statute, of course, was a Fair Labor Standards Act in reverse. The intention was not to win for workers a larger share in the fruits of industry, but to protect employers from the economic consequences of a shortage of skilled craftsmen. Many persons wanted houses built. The building trades were in a bull market. The community stepped in to say that wages were a matter of social concern.

This colonial experience may serve to allay the fears of those who think that wage and hour legislation is somehow an alien importation; that it is untried, revolutionary and an unwarranted interference with the working of laissez faire

economy. The truth seems to be that first one group and then another has invoked the power of the state to redress the balance of economic forces whenever it was felt that unrestricted competition was leading to undesirable consequences from its own standpoint.

Application of power to the production of goods in the following century and a half had the effect of transferring manufacturing processes from the inefficient home to the more efficient factory. The pleasant music of the spinning wheel, the hum of the hand loom, diminished in the land until, as the epigram has it, the modern housewife is fully implemented for her tasks if equipped with a can-opener.

I can imagine that these first factory employees accepted their altered status with a minimum of complaint. They had been farmers and housewives a little before, inured to the regimen of the 12- or 14-hour day. Eventually it dawned upon them, however, that their circumstances had undergone a very radical change indeed, and not necessarily for the better. Before they had been self-employers engaged in building their own independent careers. They were not cogs in machine production. None of them was indispensable, they had no bargaining power, they could be hired and fired at the will or whim of the employer. The discipline of the factory system sometimes could be irksome.

It is not surprising, therefore, to hear the first faint rumblings of discontent as early as 1822. That was the year in which a group of "journeymen, millwrights and machinists" met in Philadelphia and formally resolved that 10 hours of labor were enough for one day and that work ought to begin at 6 a.m. and end at 6 p.m., with an hour out for breakfast and another hour for dinner.

Within 10 years the protest had grown into something resembling a crusade. Agitation centered in the textile mills, which were the earliest large factories, and at a meeting of the Trades Union National Convention in Boston it was said of the mill owners: "They must be forced to shut their mills at a regular hour; there must be a certain time over which they shall not work; that all the inmates may have an opportunity to rest their weary limbs and to enjoy free and wholesome air."

Every attempt, however modest, to bring about a redistribution of economic power or privilege has met opposition. Our ancestors of a century ago were less "economics conscious" than we today, but they were much more sensitive to moral suasion. It is not surprising, therefore, to find opponents of restrictions upon working hours quoting Scripture in support of the status quo, and moving up to the line of battle the heavy artillery of the moral code. One New England citizen was roundly applauded when he asserted that the 10-hour day "would open a wide door for idleness and vice and, finally, commuting the present condition of the mechanical classes -- made happy and prosperous by frugal, orderly, temperate, and ancient habits -- for that degraded state by which in other countries many of these classes are obliged to leave their homes, bringing with them their feelings and habits and a spirit of discontent and insubordination to which our native mechanics have hitherto been stranger." The sentence, as it has come down to us, in a little awkward, but you get the idea. And it is interesting to note here an early example of a lamentable American tendency to tar with the stick of "alien influence" or "foreign importation" a suggested departure from well-worn economic paths.

Balked in their efforts to obtain voluntary restrictions upon working hours, labor unions turned to the State legislatures for relief. By the middle of the 19th century there were respectable skeptics here and there beginning to question whether or not our expanding economy was bringing only unmixed blessings. There were critics to proclaim that public authority must step in to iron out inequalities inherent in the system and to protect the lesser members of society from the strong. Accordingly, the struggle, little by little, was transferred to the political arena. Organized labor became a factor in politics. By the early 50's candidates for the Massachusetts General Court, for example, were being elected or rejected according to the position they assumed upon the 10-hour day.

Although the early demand for the 10-hour day covered all employed persons, it was not until it was restricted to "women and children in woolen, cotton, linen and all other incorporated companies" that physicians, ministers and leading citizens enlisted in the cause. It was 1874, however, before a 10-hour law for women and children was enacted. Several states took similar action within the next few years.

None of the disastrous effects that had been anticipated by the overly cautious seemed to ensue, and organized wage earners were heartened to press onward to new frontiers. And in the meantime, we were beginning to hear about technological unemployment. In 1889 Samuel Gompers, of the American Federation of Labor, declared that hundreds of thousands of wage earners had lost their jobs to machines and that the only hope for reinstatement lay in the reduction of working hours. Whether from economic motives, or pure humaritarianism, or a mixture of the two, the 10-hour day had become well nigh universal by 1890.

Yet no sooner had one gain been registered than another need for reform arose. The labor market was flooded with workmen from abroad who could be used to undercut the established standards. The western frontier was closing and mass production was bringing the sweat shop. Once more the demand arose for government to undertake regulation of hours of employment. Thanks largely to agitation emanating from Hull House in Chicago, the Illinois Legislature in 1893 enacted an 8-hour law for women and children employed in the manufacture of ready-made clothing -- the first legislation of its kind in the country. Manufacturing generally began to feel the effects of legislative efforts to shorten working hours. Cabinet makers obtained 54 - and 56-hour work-weeks in Maryland and Missouri. Pennsylvania machinists in manufacturing and repair shops were working 48 hours a week.

By 1896 eight states had passed 8-hour laws for employees on public works. City ordinances establishing the 8-hour day for public works within their jurisdictions also were beginning to appear.

The first state laws limiting the work day for adult men in private employment covered work in operating trains. The conclusive argument was that public safety demanded it. The need never was seriously questioned after Robert M. LaFollette, Sr., presented to the United States Senate the accident reports of the Interstate Commerce Commission for the period from 1901 to 1906, showing that on railroads requiring 15 or more hours of continuous service 93 persons had been killed and 281 injured. At about the same time a number of states regulated hours in street railway employment, and at a later period the same arguments were used to limit the hours of bus drivers.

While the regulation of work in hazardous occupations was not at first rationalized as a public safety measure, its desirability was generally recognized. The fixing of maximum limits upon workhours in mining, except in emergencies, was urged upon various state legislatures. Utah passed a law of this type in 1896 and the following year Montana followed suit. By 1921 fifteen states and Alaska had such legislation on their statute books.

From 1909 to the World War was a period of unprecedented labor activity. While union efforts could and did secure for the organized an increasing share in the rewards of industry, there still remained a multitude without the fold. For these only government could set the rules of the game.

Accordingly, in all parts of the country fresh demands were made upon state legislatures and in varying degree the legislators responded. Thirty-nine states passed regulatory legislation or modified existing legislation regarding hours of work for women. Almost half of the states which passed their first laws at this time began with an 8- or 9-hour maximum instead of 10 hours, still generally prevalent in other parts of the country.

The death of 145 workers, mostly young girls, in the New York Triangle Shirtwaist factory fire of 1911 was due to inadequate fire escapes, but the shock of the tragedy upon the public conscience was immediately reflected in the New York Legislature. The state's labor code was overhauled and three laws affecting women workers were enacted.

Meanwhile, in Great Britain and Australia governmental authority was being used to protect workers from low wages. These experiments were eagerly watched in the United States. Investigation had revealed shocking wage levels for women and minors throughout the country and, with the public generally aware of the social evils of such conditions, campaigns for minimum wage legislation were launched. In 1909 a bill was introduced in the Nebraska Legislature designed to set a 20-cent-an-hour minimum with 25 cents for overtime. A Federal bill, applying to employees in interstate commerce and setting a $9 weekly minimum, was introduced in Congress in 1913. In Massachusetts a study of women's wages in relation to the cost of living led to the enactment in that State of corrective legislation in 1912. In the following year 8 more States took a similar stand.

Today 48 states, the District of Columbia, Alaska, Hawaii, and Puerto Rico have on their statute books some sort of hours limitations for women and children and most of them for male workers in certain industries, such as mining and transportation. Twenty-five states, Puerto Rico and the District of Columbia have legislated minimum wages for women and children.

To review the history of state action in the field of wages and hours is to report progress, but even a cursory study of the statutes reveals an inherent weakness in this piecemeal approach to the problem. There is little uniformity in the laws. Standards are set up by one state -- it sometimes appears almost deliberately -- undercutting the standards of some other state and yielding an apparent immediate competitive advantage to its own manufacturers. We have long been familiar

with the phenomenon of the runaway factory, always on the move from state to state seeking exploitable labor and freedom from restrictions, usually with the local Chamber of Commerce offering a free factory site, and the City Council promising a moratorium on taxes.

As early as 1880 New England textile manufacturers were complaining of the difficulty of competing with manufacturers in other states who were not subject to the restrictions imposed upon them. Fifty years ago, when a bill was pending in the Ohio Legislature to raise from 12 to 14 the working age in factories, the Steubenville correspondent of a Pittsburgh newspaper wrote that the inevitable effect would be the loss of manufacturing to Ohio. The factories would move over into Pennsylvania or other states. Buttressing this economic argument, the correspondent felt that child labor in itself could sometimes be a good thing.

The measure, he wrote, "Was doubtless very properly conceived in the interest of education. Its originators had in mind the evil effects produced upon health, mind and morals which confinement and long hours in tenement tobacco houses and the like have upon youth of that age. Such abuses are easily seen; but it often happens that a well-meant but ill-guided effort to remedy them creates others and overlooks exceptions.

"The conditions and circumstances attendant upon glass house labor are very different. The turns are short. The glass house boys are exceptionally active and healthy. The places they work in are large and well-ventilated. In a very large proportion of cases they are the sons and support of widowed mothers."

It is interesting to note that every attempt made within a century to ameliorate working conditions has met such objections as these. The objectives of the proposed remedy are excellent. Or they are well-meant but ill-guided. In the particular instance, however, the remedy suggested doesn't fit the circumstances. Exceptions should be noted. Business "can't take it." The remedy is worse than the evils complained of. And underlying much of this sort of rationalization is a conviction, running back to the days of Poor Richard, at least, that hard work at long hours is a good in itself, and that starvation wages are better than none at all.

The states have had their opportunity to crush out the evils of labor exploitation. Some of them have done their best. Many have done a good deal less than that. Those who intrigued and conspired to defeat regulation by the States have only themselves to blame if they now have to reckon with regulation on a national scale by the Federal government itself.

Criticism of the economic order which had brought on, or at least had failed to avert, the depression, was implicit in the National Industrial Recovery Act of 1933. The declaration of policy began: "A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist."

Somehow, artificial obstructions had been erected against the free flow of commerce. It was the declared policy to "remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof."

Many persons had begun seriously to question the ancient doctrine that competition in itself invariably leads to socially-desirable results. The Act sought "to provide for the general welfare by promoting the organization of industry for the purpose of co-operative action among trade groups."

Labor and capital, pulling in opposite directions, may have been in part responsible for our troubles. All right; the Act sought to "induce and maintain united action of labor and management under adequate government sanctions and supervision."

Unfair competitive practices were injurious to the common good. The Act sought to eliminate them.

It was an intolerable paradox that factories should stand idle while workers sought vainly for jobs. The Act hoped "to promote the fullest possible utilization of the present productive capacity of industry."

It was absurd that manufacturers should curtail production at a time when so many were in want. The Act responded to such criticism by seeking "to avoid undue restriction of production (except as may be temporarily required.)"

Goods were not being consumed because of the absence of purchasing power. The act hoped "to increase consumption of industrial and agricultural products by increasing purchasing power." It sought "to reduce and relieve unemployment to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

Here was a shotgun prescription, but it did seek to deal with what many considered to be major defects of the economic system in line with criticisms of long standing. The act was an enabling measure granting power to the President to "grasp our sorry scheme of things entire and mold it closer to the heart's desire;" and, whatever may have been the defects in operation, it is significant that the same criticisms still persisted up to 1938, three years

after NRA had been swept away -- and still persist.

The Fair Labor Standards Act grapples with many of the same criticisms, but it is far more modest in its objectives.

"The Congress hereby finds," it begins, "that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers, causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several states; burdens commerce and the free flow of goods in commerce; constitutes an unfair method of competition in commerce; leads to labor disputes burdening and obstructing commerce; and interferes with the orderly and fair marketing of goods in commerce.

No delegation of powers to the President, and only a very limited and circumspect delegation of powers to the Administrator charged with the enforcement of the Act. No attempt here to promote the reorganization of industry. Nothing is attempted beyond the effort to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers," although with these removed it was assumed that other beneficial results would follow. But it is noted that the criticisms are not abated and Congress once more declares its belief that "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers" burdens commerce, leads to unfair methods of competition, stimulates labor disputes and interferes with the orderly and fair marketing of goods. These are the evils it seeks indirectly to remove.

The methods by which Congress sought to eradicate the evils also are modest. After providing for many exceptions, Congress established 25 cents an hour as the minimum wage to be paid employees of employers engaged in interstate commerce, or in the production of goods for interstate commerce. It established 44 hours as the maximum workweek beyond which the penalty of overtime pay at time and a half is imposed. It decreed that gradually, over a period of years, but as rapidly as economically feasible, the minimum wage should rise to 40 cents an hour and the maximum workweek should shrink to 40 hours. It believed that certain industries could attain these ultimate objectives more quickly than others and instructed the Administrator to make available opportunities to representatives of employers, employees and the public to agree upon higher wage rates--though in no case more than 40 cents an hour--the controlling consideration being that (having due regard to economic and competitive conditions) the rates recommended shall not substantially curtail employment in the industry. The Administrator may give these recommendations the effect of law by issuing wage orders, but only after hearings and administrative review. If in his judgment the recommended wage is inconsistent with the objectives of the Act, he may refer the recommendation back to the Industry Committee for further consideration, or he may create another committee to restudy the problem.

The Administrator is required to furnish the Industry Committee with technical and clerical assistance and he and the Committee, as well as the Chie of the Children's Bureau, who is charged with the enforcement of the child labo provisions of the Act, may compel the attendance of witnesses and the productio of evidential books, papers and documents.

The Administrator may issue certificates of exemption for the employment

of learners, apprentices, messengers and handicapped workers at less than the minimum wage rates in order to prevent curtailment of opportunities for employment. He may make findings that certain industries are seasonal, and he may delimit the "area of production." But the Administrator is given no specific authority to interpret the law. It remains for the courts to say what is and what is not interstate commerce, but we have chosen to indicate in interpretative bulletins for the guidance of employers our conception of the coverage intended. These bulletins are meant to be helpful, but naturally we cannot guarantee that they will be upheld by the courts.

Any person aggrieved by a wage order may obtain a review of such order in a circuit court of appeals or in the United States Court of Appeals for the District of Columbia. The Administrator must file in the courts a transcript of the record upon which the wage order was entered. The court shall have exclusive jurisdiction to affirm, modify or set aside the wage order in whole or in part, so far as it applies to the petitioner. But the review of the court must be limited to questions of law, and findings of fact by the Administrator, "when supported by substantial evidence," shall be conclusive. As yet no wage order has been issued, although three Industry Committees have made wage recommendations, and, of course, no aggrieved person has yet appeared to invoke this process of judicial review.

One interesting provision of the Act makes the employer who violates the wage and hour provisions liable to the employee or employees affected for the amount of their unpaid minimum wages, or their unpaid overtime, and in addition an equal amount as liquidated damages. This provision has been and will continue to be a powerful incentive to compliance on the part of employers.

The Administrator is directed by statute to recommend further legislation in connection with the matters covered by the Act as he may find advisable. The proposed amendments now pending in Congress (H. R. 5435) were worked out in collaboration between the Wage and Hour Division and the House Committee on Labor, and are based upon actual day by day experience in administration and enforcement over the last five and a half months. In our opinion, adoption of the amendments will not weaken the Act in any essential particular, but, on the contrary, will greatly improve administration, provide needed flexibility, assist in enforcement, and remove a substantial number of annoyances and hardships which the Administrator is at present powerless to avoid.

It is proposed to provide for special industry committees to fix minimum wages in Puerto Rico and the Virgin Islands without regard to the wage minima fixed in the statute. That procedure should assure a fair wage in the Islands while protecting the industries of the mainland.

It is proposed to provide uniform hour exemptions -- up to 12 hours a day and 56 a week -- for enumerated operations in connection with the movement and preparation of agricultural commodities, whether or not engaged within the area of production. In many cases the perishability and seasonality of farm products requires a flexibility in hours which this provision would furnish. This would moderate, if not entirely eliminate, possible hardships. At the same time the exemption for employees engaged in the ginning of cotton would be extended so that they would be exempted from both the wage and hour provisions, whether or not employed within the area of production.

Another amendment would authorize the Administrator to make regulations necessary to carry out the provisions of the Act, including special authority

with respect to industrial homework and voluntary constant wage plans consistent with the time and a half penalty provisions for overtime work. Employers who comply with the regulations of the Administrator would be given civil and criminal immunity.

It is suggested to exempt from the wage and hour provisions all employees receiving a guaranteed monthly salary of $200 or more. One of the major complaints of both employees and employers has resulted from the application of the overtime provisions to these higher salaried workers whose duties require flexibility in working time.

It is further intended to exempt from both wage and hour provisions switchboard operators employed in public telephone exchanges with less than 350 stations. Frequently the rural exchange is in the home of the operator and she spends only part of her working time attending to the switchboard. Application of the Act to such persons threatens to curtail telephone service in rural areas.

Another amendment authorizes the Administrator to release goods produced in violation of the wage and hour standards from the prohibition against shipment or sale in interstate commerce where it is found that the person or persons having the goods acquired them without knowledge of the violation. This protects the innocent purchasers of so-called "hot goods" but otherwise continues in force the prohibition against shipment of goods produced in violation of the law.

Section 10 of the bill would amend Section 17 of the Act to authorize the bringing of civil suits to restrain violations in the district wherein the defendant is found, or of which he is an inhabitant, or in which he transacts business.

Experience to date encourages us to believe that we are going to encounter no insurmountable difficulty in enforcement. I do not hear anybody in 1939 attempting to justify low wages and excessive hours on moral or scriptural grounds. Few will contend today that all work and no play is good in itself, or that the mortifications of poverty constitute an essential discipline to prepare man for glory in the sweet bye and bye. For long hours and low wages we get apologies where we once got justifications. The mass of mankind, whose will must control in a democracy, have definitely turned their backs upon the old order and said that such things must not be again. King Canute commanding the tide to halt was no more pathetic than is the industrialist who today expects to sweep away the awakened conscience of the Nation to invoking incantations and crying old shibboleths.

It has taken a long time to achieve reportable results in the conquest of poverty, but no longer than it did to stamp out smallpox. And you don't often hear these days justifications of smallpox as an inescapable act of God, or apologies to the effect that because we always have had smallpox we must keep on having it, or that smallpox is a providential visitation to chasten man for his sins.

It is because I am so deeply convinced that the battle has been won in public opinion that I believe our principal task is going to be the policing of the marginal areas. Ir is the irresponsible operator, and especially the fugitive from state regulation, who has been causing our major headaches.

We expect success, then, for these reasons: That the American people support this law, which merely carries out their demands for decent labor standards as first expressed many years ago in the state legislatures and finally in Congress. That the vast majority of business men want it. They want more buying power in the country and they want it diffused. Industry for the most part is on a mass production basis. It knows that it can't keep on selling automobiles and washing machines and home furnishings unless the mass of the people have the means to buy. Enlightened employers long ago would have made effective even higher minimum wages than are contemplated in the law if their marginal competitors had permitted them to do it. The law, by curbing the chiseler, permits industry to do what it wants to do and knows should be done.

I never have represented the Fair Labor Standards Act to be a panacea for all our industrial ills. But I am certain that if it fails for any reason the people will demand, and probably get, a much more drastic measure hereafter.

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