For Release Morning Papers,
Tuesday, May 16, 1939

R-286

BEFORE THE UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

WASHINGTON, D. C.

In the Matter of Proposed Amendment of Section 536.2 (Area of Production) of Regulations issued under the Fair Labor Standards Act of 1938: Sugar	Findings and Determination of the Presiding Officer May 9, 1939

The Association of Sugar Producers of Puerto Rico having filed a petition, dated February 1, 1939, with the Administrator for an amendment of Section 536.2 of regulations issued by the Administrator under authority of Section 13(a)(10) of the Fair Labor Standards Act of 1938 - Title 29, Labor, Chapter V, - Wage and Hour Division, the Administrator gave notice of a public hearing to be held on March 23, 1939, at 10 o'clock A. M. in the U. S. Department of Labor, Washington, D. C. By subsequent notice the hearing was postponed to March 29, 1939, at the same hour and place. The undersigned was designated Presiding Officer to preside at and conduct the said hearing and to make a determination of all matters set forth in the Notice of Hearing.

Pursuant to such notice and authority the undersigned convened the hearing at the time and place designated and an opportunity was afforded to all who appeared to present testimony and other evidence

and to question witnesses. Appearances were entered by interested parties. Briefs were allowed and one brief was filed subsequent to the hearing.

The scope of the hearing was stated in the notice thereof as follows:

> "What, if any amendment should be made of Section 536.2 of the regulations issued under the Fair Labor Standards Act of 1938 with respect to the processing of sugar cane into sugar (but not the refining of sugar), orinto syrup, or into molasses."

The petitioner proposed in its original application that Section 536.2 "Area of Production" be amended to read as follows:1/

> "With respect to sugar cane and its products if he is engaged in the processing of sugar cane into raw sugar (but not refined sugar), sugar syrup or molasses, from sugar cane produced on nearby farms or in transportation, handling or storage in connection with such processing."

Thereafter, the petitioner amended the original application by the addition of the following sentence:2/

> "The term 'nearby farms', as used herein, shall comprise and include farms cultivated by a particular sugarmill for its own account, and in addition all farms of farmers who may make arrangements with such mill for grinding the cane during the season."

It will be noted that neither the petition nor the notice of hearing excluded from consideration sugar cane processing in Hawaii, Louisiana and Florida. The record of evidence relates only to Puerto Rico. To the extent to which the operations of processing

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1/ Record p. 63.
2/ Record p. 13.

sugar cane into raw sugar, syrup, and molasses, are the same wherever performed, this Determination will apply equally to each of the above mentioned sugar regions.

The Administrator's authority to define the term "Area of Production" under Section 13(a)(10) of the Act is limited in that a definition is relevant only with respect to the operations specified. Therefore, unless the employees in question are engaged in "handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural-state, or canning of agricultural or horticultural commodities for market or in making cheese or butter, or other dairy products," the Administrator has no occasion to issue a definition of "Area of Production". It is also clear that these terms of Section 13(a)(10) are specific, not general. Therefore, prior to any consideration of an appropriate definition of "Area of Production" there must be a factual determination of the nature of the operations involved.

The processing of sugar cane into sugar is clearly summarized by one of the petitioner's expert witnesses as follows: The cane is received in a hopper, weighed, and carried by a conveyor to the crushers. It then goes through a series of rollers which grind the cane and thereby extract the juice. The juice is conveyed to tanks where it is boiled and purified by mechanical means. It is then evaporated and finally the sugar crystals are separated from the molasses by centrifugal action. The crystals comprise the raw

sugar, as it is called. The molasses is a commercial by-product. The bagasse, the fibrous part of the cane, is used as fuel by the mills. The remaining by-product, filter press cake, apparently has no commercial value. This whole process of producing raw sugar is a mechanical extractive process.3/

The trade term for the process is "grinding". The trade term for the establishment is "mill".

In general, the petitioner claims exemption under the term "preparing in their raw or natural state, "4/ or more inclusively, under "handling, packing, storing or preparing in their raw or natural state."5/ The legislative history clearly indicates that the phrase "preparing in their raw or naturd state" applies only to operations in which no change is effected in the natural form of the farm product.6/ For example, using the illustration found

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3/ Record pp. 58-60.
4/ Record p. 65.
5/ Record p. 11.
6/ 181 Congressional Record pp. 7877-8:
"MR. BARKLEY. I suppose that any establishment dealing with apples as they come from the orchard is dealing with them in their raw state.
MR. SCHWELLENBACH. That is correct.
MR. BARKLEY. There are many things which may be made from apples - for instance, applesauce, which I presume is not included within the regulations of the bill. But if we provide for the exemption of plants which are dealing with apples as a raw material, we include practically all plants which deal with apples, because they deal with them only as raw materials. Is that true? (Continued on page 5)

in the legislative proceedings, the making of cider -- an extractive process -- is not included within the meaning of the term "preparing in their raw or natural state." It cannot be held that the processing of sugar cane into sugar is "preparing in their raw or natural state" for this is an extractive process of manufacture. Where Congress intended to grant an exemption to persons extracting raw sugar from sugarcane, it did so in express language. Thus Section 7(c) of the Act renders the hours provisions completely inapplicable to the employees of an "employer engaged in ... the processing of sugar beets, sugar beet molasses, sugarcane or maple sap into sugar (but not refined sugar) or into syrup." The absence of any comparable language in Section 13(a)(10) clearly indicates that no exemption for such processing was contemplated therein.

6/ (Continued)

MR. SCHWELLENBACH. No; I think the Senator is incorrect in that suggestion. The exemption applies when they deal with them in their raw or natural state. If they start making cider out of them, or start making apple sauce out of them, then they are processing and not dealing with them in their raw or natural state.

MR. BARKLEY. They are dealing with the apple in its raw state.

MR. SCHWELLENBACH. Not after they put it through the first grinder. It then ceases to be in the raw or natural state.

MR. BARKLEY. Somewhere between the apple and the cider this proposed law will take effect.

MR. SCHWELLENBACH. I do not think there would be any difficulty as to a construction of that kind, because once it gets to the point which the Senator from Kentucky describes, then it becomes processing, and there is no inclusion of processing in the amendment."

Most of the other terms in Section 13(a)(10), aside from "preparing in their raw or natural state," are so clearly specific in their application that their inapplicability to the grinding of sugar cane needs no comment. However, a word may be said about the other terms referred to by the petitioner, viz., "handling", "packing," and "storing". The term "handling" can be construed either broadly or in a limited fashion. Under some circumstances it might conceivably be construed as inclusive of an operation like the grinding of cane; but any such construction would necessarily also include all the processes described in specific terms in Section 13(a)(10) and would therefore render all the other terms meaningless and unnecessary. Such a construction must be inaccurate. Thus it cannot be held in the case at issue that processing of cane into sugar is "handling". In respect to "packing" and "storing", an expert witness testifying for the petitioner7/ stated that sugar cane is neither packed nor stored. It is true, on the other hand, that raw sugar, syrup and molasses are packed and stored, but it is thoroughly apparent that the "agricultural commodities" specified in Section 13(a)(10) are commodities as they come from the farm, not commodities after they have been processed. Under any other interpretation certain packing and storing operations would be exempt even though the preceding processing operations were not exempt -- a situation that was obviously not contemplated.

7/ Record p. 38.

Therefore raw sugar, syrup and molasses are not agricultural commodities within the meaning of Section 13(a)(10) of the Act, and the packing and storing thereof are not the "packing" and "storing" of "agricultural .....commodities". For the same reason the handling of raw sugar, syrup, and molasses is not the "handling" of "agricultural commodities".

DETERMINATION

On the basis of the whole record, I determine:

(a) that individuals engaged in the processing of sugar cane into raw sugar, syrup, and molasses are not engaged in any of the operations specified in Section 13(a)(10) of the Fair Labor Standards Act of 1938; and

(b) that the Administrator has no authority to define "Area of Production" upon the facts presented.

The application is therefore denied.

Merle L. Vincent
Presiding Officer