

BEFORE THE UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

WASHINGTON, D. C.

In the matter of :
 APPLICATION :
 of :
 THE NATIONAL ASSOCIATION OF SHIRT :
 AND PAJAMA MANUFACTURERS INC., :
 ET AL. : FINDINGS AND DETERMINATION
 To employ learners under Section : OF THE
 14 at wages lower than the : PRESIDING OFFICER
 minimum wage applicable under :
 Section 6 of the Fair Labor :
 Standards Act of 1938 : May 20, 1939.
 :

The National Association of Shirt and Pajama Manufacturers, Inc., and sundry other parties in the apparel industry made application under Section 14 of the Fair Labor Standards Act of 1938 and regulations (Part 522 - regulations applicable to the employment of learners pursuant to Section 14 of the Fair Labor Standards Act of 1938 - Title 29, Labor, Chapter 5, - Wage and Hour Division) for permission to employ learners at wages less than the applicable minimum wage of 25¢ specified in Section 6 of the Act for the first year of its operation. The Administrator gave notice of a public hearing to be held at the Raleigh Hotel, Washington, D. C., at 10 o'clock A. M., December 5, 1938, and designated the undersigned Presiding Officer to conduct the hearing and to determine -

- "(a) what if any occupation or occupations in the apparel industry require a learning period, and
- (b) whether it is necessary in order to prevent curtailment of opportunities of employment, to provide for the employment of persons in occupations requiring a learning period at wage rates lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938, and
- (c) if such necessity is found to exist, at what wages lower than the minimum wage applicable under Section 6, such employment of learners shall be permitted and with what limitations as to time, number, proportion and length of service."

The industry was defined in the notice of public hearing as follows: "The term 'apparel industry' includes men's, women's, infants', and children's apparel and accessories excepting gloves, boots and shoes, millinery, knitted wear and hosiery."

Pursuant to Regulations and published Notice, the hearing convened December 5th, continued during the 6th, 7th, and 8th, 1938, and reconvened at the request of the industry on January 16th and 17th, 1939. The National Association of Shirt and Pajama Manufacturers, the National Association of House Dress Manufacturers, Inc., the United Infants' and Children's Wear Association, the International Association of Garment Manufacturers, the Southern Garment Manufacturers' Association and sundry other parties made appearances and submitted briefs as petitioners under Section 14. Mr. H. C. Hoffman, Chairman of the Mississippi Industrial Commission, appeared in behalf of applications of manufacturers in that State.^{1/}

^{1/} Rec. pp. 11, 69, 144, 203, 359, 451, 490, 529, 536, 569, 609, 611, 620.

ERRATA

The following mistakes were made in numbering
the pages:

The number 3 was omitted

Page 27 is numbered 277

Page 32 is numbered 322

Representatives of important industrial associations testified or submitted written briefs and telegrams in opposition to the granting of the applications presented by the petitioners. These included the National Dress Manufacturers' Association 1/, the Clothing Manufacturers' Association of the United States of America, the New York Clothing Manufacturers, the Philadelphia Clothing Manufacturers' Exchange, the Baltimore Clothing Manufacturers' Association, the Chicago Clothing Manufacturers' Association, the Greater New York Clothing Contractors' Association, the Rochester Clothiers' Exchange 2/, the New Jersey Washable Dress Contractors' Association and the National Coat and Suit Industry Recovery Board 3/.

Appearances were made and briefs submitted in opposition to the petitions by spokesmen for the International Ladies' Garment Workers' Union, the American Federation of Labor, the Amalgamated Clothing Workers and the United Garment Workers of America. 4/

Communications including ~~letters~~, briefs and statistical data for and against the applications were submitted by other interested parties who were unable to attend the hearings and at their request these were made part of the record.

The chief products manufactured by the industry groups that applied for permission to employ learners at less than the minimum are: work shirts, work pants and overalls, dress shirts, infants' and children's wear, women's and misses' wash dresses, men's and boys' cotton clothing, pajamas, athletic underwear, aprons and uniforms, artificial flowers and feathers.

1/ Telegram dated December 7, 1938.

2/ The 7 preceding associations, stated to represent firms manufacturing 80% of the production of men's clothing and employing 125,000 workers, recommended that learners be paid at a rate of not less than 25¢ an hour. Counsel entered appearance - Rec. p.9.

3/ Rec. pp. 81, 108, 513.

4/ Rec. pp. 247, 646, 660, 808.

The industry associations opposing learners' subminimum rates for their own group, or for any branch of the apparel industry, have as the bulk of their production, women's and misses' dresses, generally silk, rayon and wool, and men's and boys' clothing.

The Apparel Industry

The apparel industry as defined for the administration of the Fair Labor Standards Act employs more than 500,000 workers.

The present minimum wage provided by the Act is 25 cents an hour, but wage rates and earnings vary considerably among the subindustry groups and there are high and low wage plants in each group. In general the method of payment is the piece rate system, though some factories pay on a time basis, and consequently wide variations occur between the earnings of individuals in the same plant. As a rule low wage rates characterize those branches of the industry which do not operate under trade union agreements. The hourly wage rates established by union agreements in other branches of the industry are among the higher rates in the manufacturing industries. There is competition between the products of several branches of the industry, including competition between products made under high and low wage rates.

In most of these industry groups a comparatively small capital investment is required. Plants operate with low overhead and under severe competition, which result in a constant pressure upon labor costs. Where uncontrolled this pressure has resulted in very low wage levels.

Evidence submitted at the hearing indicates that the various groups of the apparel industries have many similar manufacturing, labor, and marketing problems. Typical manufacturing processes involve the cutting of materials, stitching, finishing, examining, pressing and shipping. Most divisions of the industry requesting learner certificates and rates below the minimum wage provided in Section 6 of the Act have sectionalized and

and subdivided their work to a high degree. Differences in operations, however, are found in some divisions of the industry and result from the various types of garment made, materials used, prices, the degree to which the style element is involved and other factors.

In general the industry is small scale, although there are some large plants employing up to 2,500 workers. The industry is widely distributed among large and medium sized cities and small towns. The great majority of machine operators and hand workers in the industry are women and girls. A large percentage of the workers are interchangeable among the industry groups. 1/

In some branches of the apparel industry periods of full production are short and large numbers of experienced workers are hired for comparatively brief periods. These workers are none the less experienced even if not permanently attached to a payroll. In other branches, the products of which are less styled, production and employment are much more regular. 2/

Some branches of the industry are being decentralized and are expanding into new areas. This trend is expressed both in the local development of new plants and in the migration of established plants. The lure of lower wages in nonindustrialized rural areas and small towns has stimulated this movement. Evidence was presented that average wages in the states where the new plants are located in the industries represented by the petitioners are sometimes as much as 30% or more below those prevailing in areas where new plants are not commonly being established. Among the reasons for higher wage rates in settled industrial areas is the more general prevalence of union scales in plants in these areas. 3/

1/ Rec. pp. 14, 67, 364, 366f, 379, 518f.

2/ Rec. pp. 44f, 261, Exh.C-3, p.2.

3/ Exh.B-1,p.3f, Rec. pp. 54, 720, 786f, 815f.

In many migratory plants overhead cost has been kept at a low figure by subsidies of one kind and another. Substantial evidence indicated that municipalities and local business groups in many of ~~the~~ newly industrialized localities, seeking a means of giving employment to available workers or endeavoring to develop a more balanced local economy, have provided factory sites, buildings and equipment without cost to employers. Tax exemptions and reduced electric power rates are other inducements held out to manufacturers to locate in these communities. No infrequently deductions from the wages of the workers of 50¢ to \$1.00 a week have been made to create funds with which to pay the debt due to the establishment of these plants, furnished free to the employers. 1/

Many of these migratory concerns are prosperous enterprises which have abandoned old plants that had adequate forces of skilled, experienced workers who were left unemployed by the migration. The old community has been left to suffer the consequences of increased unemployment. The new community has been exploited by the public cost of the new plant, loss of taxes and an insufficient wage income for workers. While any wages brought into the community may seem to have immediate value, the advantage is temporary in relation to the public cost. 2/ These are collateral factors to be considered in the total competitive situation in any branch of the industry when a firm requests a further advantage in the form of a reduction of a statutory minimum wage. For the existence of all or most of these special privileges may give employers an unfair competitive advantage over those paying higher wage rates, and a powerful pressure is created to equalize labor costs by lowering the higher wage rates. The ultimate effect is to shrink total payrolls and national markets and to perpetuate unemployment.

1/ Rec. pp. 502, 721, 770f, 814f.

2/ Rec. pp.496, 497, 769, 772.

This migratory movement is not confined to any particular section of the country. It is found throughout the East, Mid-west and South and may be expected to continue so long as sub-standard wage rates can be maintained.^{1/} It is fraught with important social consequences. The wage rates which have resulted in many communities are those the Act is designed to abolish.

On the other hand it is evident that not all decentralization or migration is of this type. The trend of expansion in a developing industry has led to decentralization on normal competitive terms. Employers have migrated to new areas in an effort to reduce costs and develop new markets. New plants have been established in response to regional needs. And there is no gain-saying that there are initial competitive disadvantages in areas with an undeveloped labor supply and greater remoteness from principal markets.

Much of the evidence dealt with the availability of a skilled labor supply in relation to the wide and changing distribution of the industry. With some exceptions there is a marked difference in the available labor supply between the older and larger industrial areas and newly industrialized localities or isolated one-plant towns. In many of the larger or older industrialized areas where various types of apparel plants are located, high production periods are offset by lessened labor demands at the same time in related industry branches where production has fallen off and a surplus pool of skilled labor is nearly always available; in small towns and in the newly industrialized localities, experienced workers may be needed at such times. There was some evidence that certain manufacturers are faced with the necessity of training a considerable number of learners in the absence of a skilled labor supply for an expansion program. ^{2/}

^{1/} Rec. p. 814.

^{2/} Exh. B-1, p.4, Rec. pp.70, 71, 280f, 368, 385f, 432f, 514f, 542, 543, 663f, 667f, 752f, 757f, 775f.

Work in the typical factory in the apparel industry is divided by departments. The percentage of the total workers employed in the several departments in a typical plant in the shirt industry furnished for the record is approximately as follows: 1/

Cutting	5%
Stitching	67%
Cleaning and Trimming	7%
Laundry and Pressing	17%
Boxing	2%
Shipping	2%

While these department percentages vary somewhat, of course, in the different groups, such an occupational distribution is generally representative of the industry. The degree of skill involved varies greatly from the simple unskilled work of floor and bundle girls to skilled hand pressing on expensive garments and the various processes of the cutting department. In the stitching operations a worker in one industry group may perform one small repetitive task for years on one part of a garment in the sectionalized system prevailing, while in another group the worker makes an entire garment. In sectionalized work again there is some range between simple and more difficult operations.

In practically all branches of the apparel industry the types of machines used are the same. The greatest proportion of machines are single lock-stitch, power-driven sewing machines. Those manufacturers who have petitioned for the employment of learners at less than the minimum wage have almost universally requested an abatement for work on these machines. Other types of "special" machines are customarily operated by workers already trained to operate the regular machines. There was general agreement that the skill of using sewing machines is readily transferable from one sectionalized operation to another, and from one branch of the industry to another. 2/

1/ Rec. p.373f.

2/ Rec. pp. 67, 196, 519, 693.

Arguments at Public Hearing on a Sub-minimum Learners' Rate

The applicants' arguments for special learners' rates can in general be summarized as follows: If the same piece rates are paid learners as are paid experienced workers the cost per unit of output is at least as great to the employer, regardless of the lower earnings of the worker. An employer should be able to employ inexperienced workers at sub-minimum rates because he is subject to the expense of providing extra supervision for these workers. He may have the expense of spoilage as well. Beginners may or may not adjust themselves to the work; and if kept on, they require varying periods of time before they earn the minimum rate. It was argued that beginners should be paid at regular piece rates and therefore receive pay for what they produce at these piece rates, whether below or above the minimum. Few of the groups, however, took this position completely, the majority recognizing that since the level of piece rates varies widely from one plant to another a limit should be set by regulation to the length of the learning period. 1/ Three groups proposed a degree of control of the level of piece rates as a condition of granting certificates. 2/ The majority recognized the need for a fixed guarantee of earnings in the training period. 3/ The argument was made that the employer and worker should share the cost of training. It was further argued by some applicants that a sub-minimum rate was necessary to prevent too much disturbance of the existing wage structure. 4/

1/ See table, pg. 12, applicants B, C, D, E, F, & G.

2/ See table, pg. 12, applicants A, B, & D.

3/ See table, pg. 12, applicants A, C, E, F, & G.

4/ Rec. pp. 70 and 71.

The principal applicants submitted the following recommendations to govern the employment of learners in the industry: 1/

Name of Applicant	Learning Period	Wages or Per Cent of Minimum Rate to be Paid	Percentage Ratio of Learners to Total Employees
A		50% of the minimum, with additional earnings at regular piece rates. Piece rates must be high enough to guarantee experienced workers a wage above the minimum.	
B	12 weeks	Earnings at regular piece rates if rates enable 70% of total number of employees to earn the minimum. 70% of minimum for week work	10%
C	24 weeks	18¢ for 12 weeks 20¢ for 12 weeks	
D	3 months	Earnings at regular piece rates if rates enable 80% of total number of employees to earn the minimum.	
E	12 weeks 24 weeks for 10 operations	60, 80, 90% for 4-week intervals, with additional earnings at regular piece rates. .60% for 4 weeks 80% for 12 weeks 90% for 10 weeks	15%, and for expansion 1 learner for each machine added beginning with the 11th machine.
F	12 weeks	A guaranteed per cent (unstated) with additional earnings at regular piece rates.	
G	12 weeks	50, 66 2/3, 80% for 4 week intervals	10%
H	On the basis of the individual employer's needs and the facts in the case. Learners to be paid at regular piece rates.		

- 1/ A-National Association of House Dress Manufacturers - Rec. pp. 16f, 36f.
 B-United Infants' and Children's Wear Association - Rec. p.155.
 C-Artificial Flower and Feather Industry Group - Rec. pp. 206f.
 D-Needle Trades Association of Maryland - Rec. p. 453.
 E-Southern Garment Manufacturers' Association - B-1, p. 12.
 F-International Association of Garment Manufacturers - Brief C-3.
 G-The Shirt Institute, Inc. - Brief p.5.
 H-National Association of Shirt and Pajama Manufacturers - Rec. pp.408,447.

The opponents of subminimum rates for learners generally argued as follows: The possible reduction in the wage bill in employing learners at a subminimum rate is unlikely to be the determining factor for or against expansion of a plant's working force or maintenance of an adequate force. If any minimum is to be guaranteed, or even if the learner is to be paid only what she makes at piece rates, the saving is unlikely to be large enough to be decisive when management otherwise sees an advantage in expanding production.1/ Regarding the ordinary replacement of workers who have quit, the cost of breaking in the very small proportion of learners is an unimportant factor in the face of the regular demand for the products of the firm. Therefore the denial of a lower rate for learners cannot result in curtailment of opportunities for employment.2/ The initial minimum hourly rate of 25¢ is low in relation to generally prevailing wage rates in the industry; the establishment of a lower rate will endanger a fair basis of competition. It is the responsibility of management to pay the cost of developing and maintaining its labor as well as all other costs, such as rent, equipment, selling etc.3/ It was also argued that widespread unemployment exists in the industry and in small communities as well as in large industrial centers.4/ Competition exists between products manufactured by some groups in the industry with low wage levels and those manufactured by groups at the highest levels and will be intensified by rates below 25¢ an hour.5/ Special rates for learners are subject to abuse by unscrupulous employers in respect to the frequent lay-offs in this industry and the high rate of labor turnover. Such rates will result in the replacement of experienced by inexperienced workers at lower wages and will endanger the standards established by the Act.6/

1/ Rec. pp. 717f, 727f, 825

2/ Rec. p. 824

3/ Rec. pp. 619, 818f

4/ Pp. 280-288, 303, 514f, 662-668, 669-670, 735-736, 752, 757-759, 763, 766
775-777 - Ex. B #1 pp. 3 & 4

5/ Pp. 74, 114, 137f, 674, 695, 754, 765, 824

6/ P. 515f

BASIS OF FINDINGS

Congress in setting the minimum rates of the Act took into account the following factors: (1) the earnings a worker needs to maintain the minimum standard of living necessary for health, efficiency and general well-being; (2) the level of wage rates consistent with fair competition. After due deliberation an initial hourly rate of 25¢ was set with provision for its increase to 40¢ "as rapidly as practicable.....without substantially curtailing employment or earning power."

But Congress also provided for the employment of learners at wage rates less than the minimum under special certificates to be issued by the Administrator, pursuant to his regulations, only to the extent necessary to prevent curtailment of opportunities for employment.

The question which concerns the Administrator obligated to uphold the minimum wage standard of the Act is how he is to determine that opportunity for employment will be in fact curtailed unless special certificates are issued. Obviously he can only do so upon investigation of particular situations.

The level of the minimum wage cannot be reconsidered by the Wage and Hour Administration. No authority has been granted to it by Congress to adjust that level below 25¢ in respect of any industry or any employer regardless of any special economic difficulties that might be urged. The intent of the Act in permitting special learners' rates in exceptional or emergency cases is evidently to safeguard employment by providing temporary relief to an employer facing exceptional difficulties in training a supply of skilled labor.

Congress recognized that expansion of industry is desirable and did

not wish to place obstacles in the way of its development. Congress therefore provided that when the Administrator finds that such opportunity of employment would be otherwise curtailed he shall issue special certificates for employment of learners at subminimum rates. Clearly the Act does not intend this provision to be used to deprive skilled workers of opportunity for employment or to afford unfair competitive advantage to any employer. Neither can it intend to undermine the principle of the minimum wage by allowing subminimum rates to be used to enable an employer to keep the wages of skilled workers at the minimum.

Unless an occupation requires a learning period, no Special Certificate can be issued. The minimum wage rate applies to unskilled labor in every establishment engaged in interstate commerce or in producing goods for commerce. Unskilled labor needs no learning period and must under any circumstances be paid the minimum from the start. A worker being trained for an occupation for which skill, dexterity and judgment must be learned may at the start produce nothing or little of value. If the occupation regularly yields more than the minimum to the trained worker, such occupations may justifiably be said to have a definite learning period.

It may be expected that learners in most industries will be considered at least as valuable an asset as the unskilled labor employed and will be paid at least the minimum rate. In fact certain skilled occupations pay beginners more than 25¢ or more than 40¢, so that while these workers are learners when first employed, no petition has been made to pay them less than the applicable minimum. There may be, however, in some industries particular groups of workers who attain some degree of skill, but are never paid relatively high wages, for whom applications for special learners' rates may be expected under the

Special requirements of Section 14. It is probable that during the period of adjustment toward a higher minimum wage level by the steps provided in the Act, some employers whose prevailing rates are most appreciably affected by higher minima may, in the absence of a trained labor supply, be able to show that opportunity for employment will be in fact curtailed unless they are permitted to employ learners at a subminimum rate.

In determining a wage guarantee for learners in the emergency of threatened curtailment of opportunity for employment it is clear that any temporary wage must reasonably related to the level of the minimum wage. It might be argued that more employment would ensue at 15¢ an hour than at 20¢, and even more at 10¢ than at 15¢ in a particular instance. The principle of the minimum wage; however, remains established, and the Administrator could not authorize a rate detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers or obstructive of fair methods of competition in commerce.

Learners in the Apparel Industry

The testimony and the argument in behalf of the applications from the apparel industry were chiefly directed to the need for subminimum rates for beginners in stitching operations. Workers employed as floor and bundle girls, stampers, turners, trimmers etc. were admitted to be of immediate value. Their work does not involve a period of particularly sub-normal performance and collateral additional costs in supervision, spoilage, etc. Machine pressers on inexpensive garments typically earn somewhat more than stitchers, while some types of handpressers are paid much more than the existing statutory minimum from the start. Workers in the cutting operations require a relatively long period of training but in view of the general wage level of this department

a fair competitive wage for such learners is more than the minimum rate in all circumstances. Normally, therefore, learners' rates in this industry would be restricted to stitchers, who constitute the largest occupational group and were the chief and in some cases the only concern of the petitioners. 1/

Learners' Rates

The protection of learners' wages, required of the Administrator by Section 14, involves the proportion of the minimum wage rate guaranteed and the length of the abatement period. Since this is largely a piece rate industry the minimum can be paid when it is earned, even in the first or second week. But piece rates are not necessarily valid in the light of the minimum rate established by the Act. In low-wage branches of the industry adjustments in piece rates are undoubtedly being made and will have to be made as the minimum wage is increased. In regulating learners' rates the Administrator must balance these factors in specifying the terms of employment.

In respect to the length of the learning period in this industry, the learner in the stitching department is started at one of the simpler operations. It was contended by those opposing subminimum rates for learners that the operator learns the essentials of her job and its performance in a few hours. After that she does not learn more or different tasks. If she is to attain satisfactory earnings she must, however, acquire speed. She learns primarily how to do her job 100, 200, or even 300 times an hour. 2/ There was general agreement that workers on the more skilled operations and on double-needle and other machines are frequently and can practically always be promoted from the less skilled operations. It was also evident that workers can

1/ Rec. pp. 34, 373f, 588f, 672f, 704f.
Exh. C-3, p. 2, Rec. 47, 76

2/ Rec. pp. 67f, 676-679

and do move readily from one operation to another and from one industry group to another. A person seeking employment in a particular branch of the industry for the first time is not necessarily a learner.

On the question of acquiring speed there was evidence intended to show that individuals accustomed to farm life have more difficulty than persons living in metropolitan districts. With perhaps some exceptions, proof of this contention was not impressive, certainly not conclusive. 1/

The weight of the testimony indicated that in stitching operations learners customarily attain adequate speed within a training period of from six to eight weeks. Evidence submitted showed that at prevailing piece rates before the Act became effective some learners earned representative wages within three or four weeks and a substantial number were at or near the average after eight weeks' experience. 2/ It may be expected that these industries which pay piece rates will adjust those rates upward as the higher statutory provision or an industry committee recommendation takes effect. The length of the learning period need not therefore be affected by later changes in the minimum wage rate.

In the light, then, of the terms asked by the industry, the progress in learning, and the obligation upon management to pay learners at a rate reasonably related to the minimum standard of living, a fair determination of terms for the employment of learners in this industry appears to be a guarantee of 75% of the minimum for a period of 8 weeks. 3/

The plan of progressive guarantees for this industry recommended by some of the applicants is not adopted because of the difficulty of enforcing varying rates over what must be a relatively short learning period.

1/ Rec. pp. 75, 685 (2nd of 2 pages so numbered)

2/ Rec. pp. 33, 72, 85, 96, 110, 406, 588, 689.

3/ Rec. pp. 71, 85, 100, 125, 151, 166, 206, 322, 424, 702.

Learners and Possible Curtailment of Employment

The learner problem in this industry is largely confined to the newer enterprise or to an expansion program. 1/ In cases where new plants are to be opened or plant capacity increased, and an experienced labor supply is absent, the cost of training may be found a determining factor in deciding upon such an expansion.

The burden of cost of training learners is related to the number of learners to be trained in proportion to the total number of workers. When beginners are employed to replace turnover it appears evident from the record and the relatively minor cost involved that subject to exceptional conditions, work opportunities in this industry could not be curtailed by denial of learner certificates. When workers are employed one by one or only a few at a time, for a brief learning period at the low statutory rate of 25¢, the cost of replacement in a working staff can be assumed by an employer without undue burden.

However, if the employment at the wage established pursuant to the FLSA of 1938 of learners will so increase his cost of production that the employer would be so unreasonably burdened by hiring the additional inexperienced employees to replace plant labor turnover as to make probable resultant curtailment of opportunities for employment, an individual plant may be able to justify an exemption for learners.

Even with respect to expansion the increased cost to management of the learners' acquisition of customary skill and speed is only a small fraction of labor cost and a smaller fraction of the total cost of operation. A witness introduced the following illustration bearing upon the cost of the learning period in the industry. To make such an example valid, broad terms were

1/ Rec. pp. 46, 76f

assumed: a proportionately large number of learners; a 12-week learning period; the lowest initial wage guarantee suggested by any industry group; and new workers so inexperienced as not to earn more than the low guarantee throughout the training period. The rate assumed for experienced workers was $37\frac{1}{2}\phi$ an hour, approximately the average hourly earnings for both shirt and work clothing workers as ascertained by the Bureau of Labor Statistics of the Department of Labor.

A hypothetical case (designated A), figured with 50 learners at the legal minimum was compared with another case (designated B) where 50 learners were paid $12\frac{1}{2}\phi$ an hour (50%) for six 40 hour weeks, and then for six more weeks at $18\text{-}3/4$ cents an hour (75%). For the balance of the 48 week year, the assumption is that these newer workers earn \$12 a week. In tabular form the labor cost is developed as follows:

	<u>"A" at 25¢</u> <u>Minimum</u>		<u>"B" At Reduc-</u> <u>ed Minimum</u>
100 old workers @ \$15 for 48-week yr.	\$72,000	Same	\$72,000
50 new workers for six 40-hour wks. @ 25¢	3,000	@ $12\frac{1}{2}\phi$	1,500
50 new workers for six 40-hour wks. @ 25¢	3,000	@ $18\text{-}3/4\phi$	2,230
50 new workers for 36 remaining wks. @ \$12.00	<u>21,600</u>	Same	<u>21,600</u>
	99,600		97,350

This difference of \$2,250 is 2.25% of the labor cost in the example. The witness continued: "Considering the case at its worst, that no one of the 50 workers earned above the \$5. or \$7.50 minimum, if the labor cost is 24% of the total cost, the additional cost is about one-half of 1% of the wholesale value of the product." This presentation and the conclusions drawn were not subsequently disputed and may be taken as throwing some light on the general situation in the industry. 1/

In general there can be only two main reasons for an expansion program. The first is opportunity to meet an expanding market demand and the second the belief that a given concern has a good chance to obtain a larger share of the existing market. In any event expansion of plant or production or employment takes place on the prospect of increasing business, or at least at no increased overhead unit cost. The element of training an adequate labor force at the minimum wage which is part of the cost of such expansion would hardly be deterring in the face of this prospect. 1/

For individual plants cases may exist in which the employment at the wage established pursuant to the FLSA of 1938 of learners will so increase the cost of production that a reasonable employer would not ordinarily hire the additional inexperienced employees.

If allowances, however, are permitted to individual plants in the event that the cost of training learners is found to be a determining factor in respect to such expansion, the proposal made by the Southern Cotton Garment Association appeared practical in relating the number of learners' certificate granted to the number of new machines added. 2/

The foregoing description of the industry and of the work involving a learning problem is in general applicable to all the types of apparel products. In the following sections the peculiarities of some of the main subdivisions are briefly discussed. These groupings are selective and serve the purpose of reviewing the applications of important portions of the industry. The products manufactured are frequently produced by factories which also manufacture allied products, included in the applications, and it is not to be thought that the remarks made under the following subdivisions apply exclusive

1/ Rec. pp. 549,728

2/ Rec. p. 535 - Exh. B-1, p. 12

to these subdivisions. They do, however, apply definitely under the conditions of production or employment in those groups as disclosed by the record.

Work Shirts

The following trade associations with membership in diversified lines of cotton apparel made or supported applications for learners' rates available to all members of the work shirt branch of the industry: The National Work Shirt Manufacturers' Association of New York City, The Shirt Institute, Inc., The Needle Trades Association of Maryland, The Southern Garment Manufacturers' Association, and The International Association of Garment Manufacturers. In addition many manufacturers who were not able to attend the public hearing wrote letters containing various suggestions regarding the establishment of learners' rates below the minimum.

On the other hand the trade associations and the unions previously noted as appearing in opposition opposed this application as well as all others in the apparel industry.

The work shirt branch is a low-paid industry group. A considerable part of its production was stated to occur in the smaller towns and rural areas. It operates generally on piece rates. While there is reason to believe that the obligation to pay a minimum wage has required a readjustment of piece rates in many plants and while there is no convincing proof that there would be curtailment of employment in this branch if a rate less than the minimum were not set for learners, a number of firms have applied for certificates and have alleged that they would be obliged to curtail employment if such certificates are not issued. It would be impossible to prejudge all such cases, depending as they do upon the special circumstances of the labor market in each locality, the piece rates paid and managerial efficiency.

In order to satisfy the requirements of Section 14 there must be

proof that there would be a curtailment of employment to authorize the Administrator to issue special certificates for the employment of learners. Such proof must necessarily be made on each application in order to determine the need, the availability of experienced labor and the effect on employment if certificates are granted or denied.

Work Pants and Overalls

Application was made for a subminimum rate for learners to apply to all manufacturers of work pants and overalls by the Southern Garment Manufacturers' Association whose membership was stated to consist of 90% of the plants engaged in the manufacture of cotton garments in the South, by the International Association of Garment Manufacturers, and by the Needle Trades Association of Maryland. Work pants and overalls are not seriously influenced by style; the product is comparatively standardized and the operations are divided into simple parts for "streamline production" to an increasing degree. A substantial part of the production is in small towns.

This industry group, of course, like all others engaged in interstate commerce must make such adjustments as are called for by the Fair Labor Standards Act. As prevailing wage rates have been low, such adjustments may be somewhat more difficult in the lower paid or inefficient plants. The added cost upon management may become serious in individual instances in new industrial areas and in the beginning stages of plant expansion.

In the individual cases in which employment will be curtailed if the employer is not permitted to pay rates to learners less than the minimum rate established by the law, the claims of the employer should be passed upon individually, with consideration of the possible consequences of a subminimum learner rate upon curtailment of opportunity for employment not only in this plant but also among available skilled workers, as well as the competitive effects of such reduced wage rate upon other plants in the industry.

Dress Shirts

The following trade associations made application or appeared on behalf of a subminimum rate for learners to be generally available to all employers in the dress shirt division of the industry: The International Association of Garment Manufacturers, which stated that it represents about 2,000 cotton garment factories in 41 states; The National Association of Shirt and Pajama Manufacturers, whose members employ 45,000 to 60,000 workers; The Needle Trades Association of Maryland; The Shirt Institute, Inc. of New York City; and the Southern Garment Manufacturers' Association.

The production of dress shirts, like work shirts, pants and overalls, is also a highly repetitive manufacturing process. It is relatively free from serious style problems and management is able to subdivide the work operations into simple elements. A substantial proportion of this production is done in small towns and for high and medium as well as low price lines.

While this branch of the industry failed to show that there is a general need by employers of a learners' rate, the evidence suggests, that in view of the widespread dispersion of the industry there may be factories in which expansion of production or employment would be limited unless aided by a lower learner rate. If there are such factories the facts in each case should be passed upon by taking into account not only the circumstances of the particular factory but also the possible effects on higher existing wage structures, competitive effects and the possible consequences respecting curtailment of work opportunity elsewhere.

Infants' and Children's Wear

This division made application for subminimum learners' rates for the entire group through the United Infants' and Children's Wear Association, stating that it represented 353 of the 405 firms in this production. The group makes a very wide line of products for infants and children up to 16 years of age. It employs about 100,000 workers, a substantial number of whom are homeworkers, and produces annually goods valued at 175 million dollars. 1/

Its main centers are New York, New Jersey, Pennsylvania, Connecticut, Texas, Puerto Rico and the Philippine Islands. Some sewing and finishing operations, such as embroidering, are done in the home. 2/

The industry claims more than a normal need for learners, especially in shops outside of New York City, because the bulk of its manufacture requires a less skilled type of operator than is essential to the more elaborate production of adult wearing apparel. It states that it pays lower wage rates, and therefore constantly loses its more experienced workers to other branches of the industry. This reason was given also for the tendency of the industry to seek non-industrialized areas. The industry is expanding, but it argues that the nature of the demand for children's wear requires the maintenance of low prices to hold its market. The existence of a large volume of homeworkers in this industry group complicates its wage structure. The price level now has to contend with at least a minimum wage foundation possibly to result in higher costs

1/ Rec. pp. 144f.
2/ Rec. p. 148

and some loss of sales; but the search for better jobs in related industry groups by workers employed in infants' and children's wear will continue to draw them off from plants making these products and require the more or less continuous breaking in of new workers. 1/ Nevertheless the industry must adjust itself to the provisions of the Fair Labor Standards Act. Where it can be clearly shown, however, that experienced workers are not available and that to pay the minimum wage to employees entering the industry for the first time would curtail expansion, a finding of fact should be made in the individual case and a certificate granted upon satisfactory proof.

Cotton Wash Dresses

In the women's wash dress division of the apparel industry the main petitioner was The National Association of House Dress Manufacturers, Inc. which stated that its 45 member firms employ approximately 75,000 workers in the peak season. 2/

The wash dress division was by no means in full agreement in its attitude toward the need for a subminimum learners' rate. Such a rate was opposed by the New Jersey Washable Dress Contractors' Association representing 43 contract shops employing between 5,000 and 6,000 employees; 3/ the Popular Priced Dress Manufacturers, Inc. 4/; and an individual house dress manufacturer in the South, the Saul-Klenberg Company, Atlanta, Georgia, employing 350 workers 5/. The National Dress Manufacturers'

1/ Rec. pp. 149, 152, 161, 164
2/ Rec. p. 11.
3/ Rec. pp. 81, 108.
4/ Telegram dated December 8, 1938.
5/ Telegram dated October 27, 1938.

Association with a membership of over 300 employing 40,000 workers which stated that its production partially overlaps that of the wash dress division also registered opposition to the application 1/. The International Ladies' Garment Workers' Union opposed the establishment of a ~~sub~~minimum rate 2/.

The wash dress group is in competition with another branch of the industry producing silk wool and rayon dresses which pays a substantially higher level of wages. But whereas production of the latter is concentrated to a large extent in a few metropolitan centers, the production of cotton dresses is more widely dispersed and is frequently located in smaller towns. An important part of the wash dress production, however, is in the hands of large and old established houses in communities where there is a surplus of experienced operatives. Owing to change in style trends, the market for its production is expanding and the industry appears to be one which could readily hold its own with any reasonable increase in labor cost.

It cannot be said, however, that there may not be factories in this division where the need of training inexperienced help at the minimum rate would not cause curtailment of opportunities for employment. Such firms should have an opportunity to make application.

1/ Telegram dated December 7, 1938.
2/ Rec. p. 247

Industry Groups Opposing Sub-minimum Learners' Rates

In respect to certain branches of the apparel industry no application for learners' rates was made by the associations concerned and the only evidence or memoranda offered was in opposition to granting any subminimum rate during a learning period.

The groups which made no application and opposed the granting of any subminimum rate were:

1. Women's Silk, Rayon and Wool Dresses, Coats and Suits; represented by the National Dress Manufacturers' Association employing about 40,000 workers and the National Coat and Suit Industry Recovery Board, employing 45,000 to 55,000 workers.

2. Men's Clothing; represented by the following associations, representing firms manufacturing 80% of the production, and employing 125,000 workers:

The Clothing Manufacturers' Association.
New York Clothing Manufacturers' Exchange.
Philadelphia Clothing Manufacturers' Association, Incorporated.
Baltimore Clothing Manufacturers' Association.
Chicago Clothing Manufacturers' Association.
Greater New York Clothing Contractors' Association.
Rochester Clothiers' Exchange.

Individual applications for special certificates, however, have been received by the Administrator from employers in some of these groups of the industry. Therefore, there must be an opportunity for such firms to present facts bearing upon the curtailment of opportunity for employment where the labor market is restricted or undeveloped. But in view of the testimony presented by these industry groups the presumption is strong that a subminimum learner rate should be considered unnecessary if not positively harmful for the expansion of employment in these groups.

Miscellaneous Apparel and Accessory Groups

In addition to the formal applications made by the foregoing main branches, informal applications have been made by groups and employers manufacturing divers other apparel products and accessory products which have been classified as part of this industry under the definition adopted by the Wage and Hour Division, used by the Industry Committee, and included in the notice of hearing on applications for the employment of learners at a subminimum rate. 1/

While no testimony was presented at the hearing which presented facts specifically relating to these groups, in general the applications request subminimum rates for work performed on single lockstitch power-driven sewing machines and subdivided to the degree that the operator has relatively few skills to learn. The industry groups to which these applicants belong appear to share most of the characteristics and problems of the groups which testified. However in the case of some products falling into these groups different work processes are involved.

Such evidence as appeared in the record does not permit a determination that a subminimum rate is needed in any of these groups, or that a learner period should be fixed different from the terms which are herein being recommended for the main petitioners. Applications should be received from such groups or from individual firms in these groups which are included in the definition of the apparel industry.

1/ The definition used in the notice of this hearing is in substance the same as that now in use by the Industry Committee: "The manufacture of all apparel, apparel furnishings and accessories made by the cutting, sewing, or embroidery processes, except: knitted outerwear, knitted underwear, hosiery, men's fur felt, wool felt, straw and silk hats, and bodies, ladies' and children's millinery, furs, and boots and shoes." The one important change in the definition is that "gloves", now included, were excluded in the definition used in the notice of hearing.

The only accessory group classified in this industry but differing somewhat in the work processes involved which made an appearance was the group producing artificial flowers and feathers. A representative of 28 manufacturers in New York City stated that there was "almost 75% of labor turn-over in their respective factories"^{1/} It was pointed out by the International Ladies' Garment Workers' Union that it has contracts with 63 manufacturers and that in these contracts the minimum wage is \$13.00. ^{2/}

The industry appears to have two special problems -- competition with imported flowers and the recent elimination of homework in the industry by the State of New York ^{3/}. While experienced help is available in New York City, where most of the industry is located, the regulations permitting application by individual factories should be extended to those who can prove that learners must be employed for expansion and at rates less than the minimum if employment is not to be curtailed.

CONCLUSIONS

Upon the whole record of evidence, I make the following Findings of Fact with respect to the Apparel Industry:

I. With respect to the question "What if any occupation or occupations in the apparel industry require a learning period," a learning period has been shown to be applicable to stitching operations. The unskilled operations in the industry involve no period of training. Moreover the minimum rate established in the Act was designed to cover unskilled labor in all circumstances. The skilled occupations of cutting and pressing are paid at rates generally above the statutory

^{1/} Rec. p. 203
^{2/} Rec. pp. 254, 255.
^{3/} Rec. pp. 204, 210.

minimum. Training in the simple stitching operations at which a beginner is started includes a modicum of skill and involves chiefly a period of acquiring dexterity and speed. In a learning period in this occupation a learner is enabled to acquire dexterity and speed by means of which he can earn more than the minimum rate. A learning period for this occupation, therefore, may in special cases make a subminimum rate justifiable to prevent curtailment of opportunity for employment. Applications for learner rates in other occupations can be considered only in the light of the fairly general agreement at the hearing that machine operators were chiefly involved in the learner applications.

II. With respect to the question "Whether it is necessary in order to prevent curtailment of opportunities of employment to provide for the employment of persons in occupations requiring a learning period at wage rates lower than the minimum wage applicable under Section 6," the record makes evident that the applicants have failed to prove that a denial of their application for the employment of learners at a subminimum rate in any apparel group as a whole would cause curtailment of opportunities for employment. The applications as presented by industry groups are therefore denied.

It seems clear, however, that lest this industry denial result in curtailment of opportunity for employment in particular cases in these groups, provision must be made for considering individual applications. Each case must be separately decided in the light of the special circumstances surrounding it and the competitive effects upon the industry.

Certain general findings have been made which bear upon the consideration of individual cases.

1. Upon the record it must be found that failure to grant certificates at less than the minimum rate to replace normal labor turnover and for seasonal pick-up will not in general result in the curtailment of opportunities for employment. The typical plant in the industry finds experienced help available. This is true whether the turnover is due to normal and regular causes of change of job, illness, etc., or is accentuated by seasonal fluctuations. When a plant does have to replace workers who quit or are discharged with inexperienced workers, the process of replacement is a gradual one and as a rule the cost of training is a small fractional part of the total labor cost and a still lower percentage of the over-all cost of maintaining production to meet market demands. It cannot be said that such cost can seriously affect employment opportunities.

2. Excepting for the above limitations, special certificates authorizing the employment of learners for a limited period at rates below the minimum may be found necessary to prevent curtailment of employment.

a. When in the establishment of a new plant outside of settled industrial areas, where experienced help is not available, management is under the necessity of training a considerable body of inexperienced workers within a short period, and satisfactory proof is made that otherwise a curtailment of opportunities for employment will occur;

b. When an established plant is expanding by the installation of additional machine equipment, in localities where a supply of trained workers is not available, and such expansion will not otherwise occur; and

c. When experienced labor is not available to expand production and employment in an established factory in response to expanding market demand, and idle facilities are again to be brought into use, and when the facts also show that

employment will be curtailed unless special certificates are issued authorizing the employment of learners at rates less than the minimum. Such expansion is to be clearly distinguished from a rise in production or employment due to periodic fluctuations of market demand.

III. In regard to the question "If such necessity is found to exist, at what wages lower than the minimum applicable under Section 6, such employment of learners shall be permitted, and with what limitations as to time, number, proportion and length of services," the findings are that the following terms for special certificates for the employment of learners at less than the statutory minimum rate should be established:

1. A learner shall not include any person previously employed for more than 8 weeks in the aggregate during the preceding 3 years in the apparel industry. This limitation is essential to prevent the application of a subminimum wage in order to avoid payment of the minimum to workers who may have missed a season or two but who have had considerable recent experience in the industry.
2. The learning period shall be no more than 8 weeks for each worker. An employer receiving a special learners' certificate may utilize the conditions granted for a period of 12 weeks, provided no individual learner is paid less than the applicable minimum rate after he has completed in the aggregate 8 weeks of employment. New learners may be added or substituted within the 12 week period; but the certificate becomes null and void 12 weeks after issue. A new application must then be made by each applicant.

3. In order to determine whether an employee is in fact engaged in learning an operation and to prevent the payment of subminimum wages to employees who are no longer learners, learners must be paid the same piece rates paid workers already employed on similar work in the establishment. On this basis some learners will earn and be paid more than the minimum before the authorized learning period has expired.

4. In order to give learners the protection of the wage provisions of the Act in accordance with the terms of Section 14, a learner shall receive at least 75% of the applicable minimum rate.

5. Since special certificates will be issued only in accordance with the facts shown in individual cases and as a rule for expansion in the use of old and in the installation of new facilities which expand employment, the number of learners authorized in each case will depend upon the circumstances of such expansion.

If certificates are issued for a new plant to be established or for an old plant which is adding additional machine equipment, the number of learners authorized will presumably correspond to the number of machines to be put into operation, provided no part of the workers needed can be found among experienced operators. When machinery recently idle is to be brought into use and facts justify the issuance of special

certificates, the number of learners authorized will relate to the idle facilities which are again to be brought into production. In all cases the number of learners to be paid at subminimum rates will be definitely specified in the certificate.

IV. It is, therefore, recommended that Regulations be issued under which individual employers may make application for Special Certificates for the employment of learners at a wage rate less than the minimum wage provided in Section 6 of the Act. In order that the Administrator may be able to determine whether there will be a curtailment of opportunities for employment if such a certificate is not granted to any applicant, each employer should be required to make application on forms furnished by the Division which will elicit facts and reasons necessary for a decision upon the application in accordance with the Regulations.



Merle D. Vincent,
Presiding Officer