

For Release on Delivery
Approximately 2:15 P. M.
July 31, 1939

R-362

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

ADDRESS SCHEDULED FOR DELIVERY BY ELMER F. ANDREWS,
ADMINISTRATOR, WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR,
Before The
SIXTH ANNUAL CONVENTION OF THE AMERICAN NEWSPAPER GUILD,
SAN FRANCISCO, CALIFORNIA, JULY 31, 1939, AT 2:15 P. M.

LABOR, IT'S YOUR LAW!

Please substitute the following for the first two paragraphs of
Page 8:

Indeed, this may shortly prove to be true in the case of the Wage and Hour Law. Forces that opposed the enactment of this measure have organized a powerful group to deprive some two million of the most sweated workers in this country of the benefits of the Act. Even the President's vigorous condemnation of their proposed amendments may not hold this dime-an-hour bloc in check. Their amputating amendments--and believe me, the amputations they propose are major--will be on the floor of the House this week.

Even if the attack fails this session, it will certainly be renewed during the next session beginning in January unless the dime-an-hour bloc, when it gets home, finds that the principle of decent pay for decent hours of work has become so firmly entrenched in the conscience of the nation that no man will dare challenge it.

Pick up:

And now that I am off the air,

(1633)

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LABOR, IT'S YOUR LAW!

A little less than a year ago I closed my desk in Albany, where I had been Industrial Commissioner for the State of New York, packed my bag and went to Washington to become Administrator of the new Wage and Hour Division in the United States Department of Labor.

This last day of July is close enough to the first anniversary of that (for me) historic journey to warrant a backward glance at the progress made in the last year in putting a floor under wages and a ceiling over hours, and at some of the difficulties we have encountered.

I had followed the debates in Congress before the Fair Labor Standards Act was passed. I was familiar with the arguments advanced in behalf of such a minimum wage law, and with the arguments that had been urged against it. I knew who the advocates of low wages were and, in a general way, I knew the interests for which they were the spokesmen, though not in every case, of course, was the connection between the spokesmen and the interests revealed to public gaze.

Though handicapped by a limited appropriation, we began the work of building an agency which we hoped would be competent to administer and enforce the law when it should go into effect on the 24th of October. I shall not go into details here concerning this work of planning and organization in a field in which there were few precedents. But when we had done

all we could do in the brief time and with the limited funds available, we met that October 24th with considerable anxiety as to whether we had planned wisely and well, and as to what would be the reaction of the country to the application of a law affecting 11,000,000 workers employed in hundreds of thousands of establishments and in scores or hundreds of industries.

The great day came. And we were surprised, as you must have been, at some of the glaring headlines announcing that thousand of workers had lost their jobs because their employers simply couldn't afford to pay them 25 cents for an hour's work.

We felt a good deal easier after we had checked up on those figures. We found that most of the layoffs were seasonal, that they occurred every year about the same time. Some of them were due to plant closings for the repair of machinery or for inventories. They would have occurred if there hadn't been a Wage and Hour law. And on the other side of the picture, there were instances in which employment actually had increased due to the maximum hours provisions of the law. But by the time the unadorned facts could be dug out several days had gone by, the Wage and Hour law had ceased for the moment to be a story, and the correction for error was just naturally buried back on page 26 among the classified ads.

I am not blaming anybody for that. The speed with which the news must be gathered and printed makes inevitable a certain amount of that sort of thing. But the fact remains that the effect was to create the impression among thousands of American citizens that the Wage and Hour law had over-reached itself, that it was actually going to be a detriment to labor by closing factories and creating more unemployment. First impressions often become fixed, and certain interests have done their best to

capitalize upon them in this case, either to advocate the outright repeal of the Fair Labor Standards Act--as the United States Chamber of Commerce has done--or to emasculate it by restrictive amendments, which has been the technique attempted during the present session of Congress.

What do these people, who are trying to wreck the Act, really want? Their past history certainly does not suggest that they are motivated by unmixed altruism. They aren't trying to wreck the law merely because of unwavering addiction to some abstract but outworn economic theory. They are practical people, and what they really want is the right to pay their workers something less than 25 cents an hour, something less than \$11 for a 44-hour week, the wage and hour standards for this year.

Heaven knows that \$11 a week is little enough in these times. At most it represents the absolute minimum that Congress considered essential to sustain life for an American family. Yet these enemies of the law don't want to pay 25 cents an hour; they don't want to pay time and a half for overtime; certainly they don't want to be forced to pay 30 cents an hour for a 42-hour week, which becomes the standard after the 24th of next October, if they can help it. What they want is that the taxpayers--you and I and the public in general--should be forced to make up the difference in the form of relief between the wretched wages they are willing to pay voluntarily and the minimum essential to sustain life. They want the public to pay their wage bills for them so that they will be free to cut the throats of their responsible competitors by underbidding them on a price basis. That's what they want, no matter how hard they try to gloss over their greed by high-falutin' talk about the American way, or the beauties of rugged individualism, or "the dastardly plot at Washington to impose autocratic regulations upon American business."

The issue is not thus simply one between labor and employers. The interests and the economic and social welfare of the entire nation are involved: farmers, workers, employers, professional persons, and all the rest. Are a large group of the American people--those whose wages are insufficient to hold body and soul together even on a bare minimum standard--to be supported in whole or in part by the contributions of the rest of the population? That state of affairs is unsound economically, socially, and morally. The Fair Labor Standards Act is not in itself the complete answer to the present problems of this nation, but it does embody a fundamental principle of American democracy: a man's work should pay enough to support him.

There is more than one way to wreck a law. In this case, the frank and honorable way would be to attack the law and work for its repeal. You might be able to respect an industrial pirate, however much you disagree with him, were he to take the position that it is nobody's business if he depresses the wages of his workers to the starvation level, that society has no right to hold him accountable for any of his acts. But you can have mighty little respect for those who, working behind the scenes to knife the Wage and Hour law, at the same time profess to be the friends of labor bent upon enslaving labor for labor's own good. That is the kind of opposition we have had in the last few months.

Still another danger is that enforcement may be crippled by inadequate funds. The enactment of social or labor legislation, however well conceived, is not enough. No law is of value until provision is made for its enforcement. It is relatively easy to enforce a law requiring the protection of factory machinery with safety appliances. A single trip through a factory will disclose to an inspector whether the law is being

complied with or not. To enforce the Fair Labor Standards Act is a far more difficult proposition. The inspector must study the payroll records. He must interview the workers, usually in their homes, since they fear dismissal or some other form of retaliation if seen talking to the government's representative. Frequently he must stand at the factory gate at night to check up on the overtime work. He is often called upon to educate employers and employees alike as to their responsibilities and rights under the law.

To date we have received approximately 19,000 complaints of violations and we have investigated a sizeable number of them. We are nibbling away at the remainder as rapidly as we can with limited personnel and inadequate funds. But until we are able to employ a sufficient number of trained men to make inspections on a regular and systematic basis, and not solely on the basis of complaints, we are likely to continue to lose ground. In the circumstances, continued operation on a shoe string will be almost as damaging as destructive amendments.

They tell you that the Wage and Hour law is driving business into bankruptcy and throwing workers onto the street. What are the facts? Shortly before I left Washington there came to my desk a report by the Secretary of Labor showing that the number of persons employed in non-agricultural industries in May of this year was 680,000 more than were employed in May of 1938, when there was no Fair Labor Standards Act. Payrolls increased in 38 States and declined in only ten--and two of the States with the greatest decline were Kentucky and West Virginia where the bituminous coal mines were closed in May of this year.

I do not say that this improvement in the employment situation, by which millions of extra dollars are finding their way into the hands

of the workers, is solely due to the Fair Labor Standards Act. I make no such claim. But, conversely, those who want to wreck the Act cannot successfully maintain that the law has had the contrary effect. The figures give them the lie. Whatever the reason may be, business and labor in general both are better off today than they were a year ago, and in addition tens of thousands of workers have taken a tangible step toward complete self-support and a decent standard of living. That is modest but real progress.

I have just crossed the continent from the Atlantic to the Pacific with stops in some of the larger cities. The country looks good. I have not noticed or heard of any evidences of ruin even remotely traceable to the Fair Labor Standards Act. The only evidence of decay I encountered was in the minds of those citizens, fortunately small in number, who still insist that it is "natural" and "right" for a few to pocket the lion's share of our national wealth though millions of men and women and children are trampled under foot in the process. We must go further than we have yet gone if all who are willing and able to work are to have work, if our economic health is to be permanently restored.

I am speaking to representatives of organized newspaper men and women of the nation gathered here. Beyond these walls I hope my voice is being heard at this moment in the homes of millions across the continent. To workers I want to say that the Fair Labor Standards Act, in a special way, is your law. You first saw the need for it and brought the rest of the nation to appreciate that need too. That has happened so often in the realm of social legislation that we all are familiar with the pattern. Workmen's compensation, protection for women and children in industry, and social security were all first proposed by labor, but the conscience of the rest of the population finally was enlisted in the fight against

the shortsighted opponents of these measures. Today they are all integral parts of our economic structure, appreciated and praised by everyone. In fighting so many years for this Wage and Hour law, organized labor was not asking for something which would immediately benefit only those within its own ranks, but for the protection of all workers and especially those least able to defend and protect themselves. It supplements and follows the aid that in all fairness has been given the farmers in the last seven years.

The Wage and Hour law is on the statute books because you willed it there. The United States Chamber of Commerce didn't want it. No clamor for its enactment floated down to Congress from the citadels of big business and high finance. No organized employers came to Washington demanding this law--though I am happy to say that the more enlightened employers are now supporting it. You cannot drowse now in any confident assumption that industrial justice has been made secure for all time to come by the scratching of a pen on paper. Whether the law stays on the books or not, it will soon cease to have meaning unless you are prepared to fight for it. That is a job no one can do for you; you must do it for yourselves.

To all Americans I wish to say that the Fair Labor Standards Act is now going through a phase which is experienced by every piece of social legislation. We could have predicted in advance this second attack after the passage of the law. It always occurs. In most cases the attack fails and therein lies progress. In some cases, however, the attack has succeeded because adverse interests worked quietly and quickly before the public was aware of what was happening.

For the moment the schemes of those who want to wreck the Act have been upset by the President's condemnation of the "dime-an-hour" amendments. But these schemes are not yet dead; they are being revived in slightly different form and will be put forward again--if not during the remaining days of this session of Congress, then during the next session beginning in January. The ball has been punted out from behind the goal posts, but next January may see it on the five-yard line.

I think you may have to expect that these attacks will be periodically renewed for some years to come, or until, at last, the principle of decent pay for decent hours of work becomes so firmly entrenched in the conscience of the nation that no man will dare to challenge it.

And now that I am off the air, let me speak more directly to you as representatives of the organized editorial and office workers of American newspapers. How does the law affect you?

That newspapers generally are engaged in interstate commerce, or the production of goods for interstate commerce, and therefore are subject to the wage and hour provisions, has not been seriously questioned. Congress certainly thought they were under the law or it would not have considered it necessary to make a special exception of small country weekly and semi-weekly papers.

It has been argued by some, however, that editorial employees are professional workers, and therefore are exempt from the benefits of the Act under Section 13 (a) (1), which excludes any "employee employed in a bona fide executive, administrative, professional, or local retailing

capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator)."

If Congress had thought that these reporters, copy readers and other editorial employees were professionals it could very easily have excluded them. It did not do that. It left to the Administrator the responsibility of defining "professional." We wrestled with that problem, which wasn't as easy as it may seem, and after taking counsel with representatives of both employees and employers we evolved a definition which, we believe, is soundly based in law and in fact.

The regulation states that the term "employee employed in a bona fide professional capacity" means any employee who is customarily and regularly employed in work predominantly intellectual and varied in character as opposed to routine, mental, manual, mechanical, or physical work, AND requiring the consistent exercise of discretion and judgment both as to the manner and time of performance, as opposed to work subject to active direction and supervision, AND of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, AND based upon educational training in a specially organized body of knowledge as distinguished from a general academic education and from training in the performance of routine mental, manual, mechanical, or physical processes in accordance with a previously indicated or standardized formula, plan or procedure, AND who does no substantial amount of work of the same nature as that performed by non-exempt employes of the employer.

You will notice that there are five conditions in the definition, and every one of them must be met before the employee can be classified as a professional.

How does the definition apply to newspaper workers? Without

taking up the application of each of these conditions to newspaper men, it seems to me that many, if not most, of the employees engaged in reporting and editorial work will not satisfy at least one or two of the conditions. Thus, the copyreader is under the constant supervision of the head of the desk, and the sports editor and other departmental heads generally are under the supervision of the managing editor.

Also, I do not believe the ordinary newspaper worker must meet the test of training in a specially organized body of knowledge as distinguished from a general academic education. We have searched the literature of journalism pretty carefully and we do not find much agreement, even among publishers and editors, on the value of training in a specially organized body of knowledge. Generally, editors emphasize the importance of a broad academic education. They do not appear to recognize the existence of a specially organized body of knowledge as a prerequisite to newspaper work, and even schools of journalism generally stress the necessity of general education. My impression is that the special skills and techniques required are learned on the job, rather than in professional schools, such as schools of law and of medicine.

It has been argued, however, that even conceding that newspaper men generally are not professionals according to any reasonable test, a great many of them may nevertheless be excluded from the benefits of the law on the ground that they are executives--such as city editors, assistant city editors, telegraph editors, sports editors, automobile editors, real estate editors, moving picture editors, and so on.

Well, we also have defined the term executive. We hold that "an employee employed in a bona fide executive capacity" means any employee whose primary duty is the management of the establishment, or a customarily recognized department thereof, in which he is employed, AND who customarily

and regularly directs the work of other employees therein, AND who has the authority to hire and fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, AND who customarily and regularly exercises discretionary powers, AND who does no substantial amount of work of the same nature as that performed by nonexempt employees of the employer, AND who is compensated for his services at not less than \$30 a week.

Here six conditions must be met. Types of editorial organization and distribution of authority vary considerably from city to city, and even from plant to plant in a given city. I am informed that in some instances the publisher alone does the hiring and firing. In others the editor does it. In some city rooms various department heads--the city editor, the Sunday editor, the sports editor, and so on--have unlimited control over certain members of the personnel. Yet, our information is to the effect that even most sports editors do a substantial amount of work of the same nature as their subordinates. Newspaper practise is so various that it would seem to be necessary to apply the rule in each individual case before it would be possible to determine whether any given employee is a bona fide executive within the meaning of the regulations.

The American Newspaper Guild, in negotiating collective bargaining contracts, has jealously, and wisely, it seems to me, sought to restrict the number of its members to be classified as executives and on that ground excluded from the benefits of the contract. Apparently Guildsmen suspect a tendency on the part of some newspaper proprietors to pay off in the form of titles, as well as in by-lines, in lieu of cash.

So far as I am aware, no case has arisen in the newspaper field specifically putting to the test our definitions either of professional

or of executive employees. But if there is any editorial or business office employee who is not receiving the benefits to which he feels he is entitled, in the form either of the minimum wage or time-and-a-half pay for overtime, we will entertain his complaint. And I can promise you that if any such complaint is filed we will handle it as expeditiously as possible, and will work at it just as faithfully and thoroughly as we would any complaint from any employee in any other industry.

By way of a final word, I think this is an appropriate place for me to express my appreciation to the working newspaper men and women of the country for the consideration and courtesy I have received at their hands. I do not flatter myself that such kindly treatment was merely intended for Elmer Andrews as a person. It was, rather, predicated upon a desire to report accurately and to interpret fairly to the newspaper readers of the country the work in which we are engaged. The Washington correspondents, with whom I naturally have come into fairly close contact, have been intelligent, sympathetic and helpful.

Generally, the newspapers and their editors and reporters have given abundant evidence that they are no less anxious than I am to make this law work to the end that we may have a more just industrial democracy, a better fed, a better clothed, a better housed America, and therefore a happier and a more peaceful America. In behalf of that one third of America which the President has characterized as the ill-fed, the ill-clothed, and the ill-housed, I thank you.

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