

an hour.<sup>45/</sup> While it is admitted that most occupations in the full-fashioned branch demand greater skill than those in the

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<sup>45/</sup> The Bureau of Labor Statistics of the U. S. Department of Labor made a field survey in September, 1938, of the wages then paid in the hosiery industry. The data collected by this survey is the basis of these average figures and of other estimates made by the Committee. This data was introduced into the record of this hearing as "Committee's Exhibits No. 1 and No. 2." No objections were taken to the accuracy of the data or the methods used in the survey.

The survey was based upon a representative sample of plants in the industry and covered approximately 25 percent of the total wage earners. Among the factors considered in selecting the sample were product, type of mill, geographical distribution, corporate affiliation, size of community, unionization and size of mill. No plants having less than 10 wage earners and all plants having over 1000 wage earners were included. However, in order to give the large plants the same weight in the sample as they have in the total industry, only a representative part of the wage earners from the large plants were covered. For an analysis of the sample taken of the full-fashioned branch, see pp. 12 and 15 of "Committee's Exhibit No. 2," and for an analysis of the sample taken of the seamless branch, see pp. 71 and 74 of the same exhibit.

The wage and hour data covered all occupations except that of high-ranking supervisors and office employees. The data was set forth in 53 tables, which presented average wage figures for both the seamless and full-fashioned branches for various significant classifications of workers, plants, and regions, and the distribution of workers according to their average hourly earnings.

The average hourly earnings for all workers in the full-fashioned branch is shown to be \$.658 (Table 5, p. 21, "Committee's Exhibit No. 2"), and in the seamless branch \$.351 (Table 36, p. 79, "Committee's Exhibit No. 2").

seamless branch,<sup>46/</sup> even comparing those occupations which demand a similar degree of skill in both branches, a substantial wage differential exists. The occupations of packing, stamping and labeling in the full-fashioned and seamless branches require approximately equal skill. Packers, stampers and labelers, in the full-fashioned branch receive, each considered separately, an average of 43 cents an hour; packers in the seamless branch receive an average of 36 cents an hour; stampers and labelers in the seamless branch, 30 cents an hour.<sup>47/</sup> It is estimated that today a 40-cent minimum will result

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<sup>46/</sup> Table 11 in "Committee's Exhibit No. 1" gives the average hourly earnings of employees in the full-fashioned branch by occupation and classifies the occupations as skilled, semi-skilled, and unskilled. Table 22 in the same exhibit gives comparable information for the seamless branch. The Bureau of Labor Statistics classified knitters in the full-fashioned branch as skilled workers, in the seamless branch as semi-skilled. Mr. Dash testified that "the actual operations required of seamless hosiery workers are much more simple than those required of the majority of full-fashioned hosiery workers" (Record, p. 247). On cross-examination, Mr. Dash explained further the differences in skill required in the two branches and specified knitting, looping, grey examining, and grey mending as occupations illustrating this difference. See also testimony of Mr. Tolles, Record, p. 30; Mr. Constantine, Record, p. 99, and Mr. Dash, Record, p. 237.

<sup>47/</sup> The Bureau of Labor Statistics classified packers as semi-skilled workers in both the full-fashioned and seamless branches and stampers and labelers as unskilled in both branches (Tables 11 and 22 in "Committee's Exhibit No. 1"). Also Mr. Tolles, after contrasting wages paid in these occupations which "might be considered to be similar," concludes that these "sharply contrasting existing earnings, I believe, demonstrate better than any detailed discussion

in a 2.1 percent increase in the total wage bill in the full-fashioned branch, and a 20 percent increase in the wage bill in the seamless branch.<sup>48/</sup> There was evidence that these percentages might be larger in both industries, but the relative value of these figures for purposes of comparing the one industry with the other was not disputed.

Consequently, in view of these wage differences and also in view of those facts supporting the finding that full-fashioned and seamless are separate branches of the hosiery industry, I find that it was proper and necessary to treat separately and make separate recommendations for the full-fashioned and seamless branches in order to fix for both branches the highest minimum wage in accordance with the provisions of the Act.

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<sup>47/</sup> (Cont'd) that the industry itself considers the operations in the two branches of the industry to have contrasting degrees of skill since they customarily pay them very different rates even where the occupation has the same name." (Record, pp. 318, 319) But under cross-examination, Mr. Constantine answered a question put to him by Mr. Gordon by stating that operations on seamless and full-fashioned hose "are substantially the same beyond the dye house, provided we are talking in both cases of ladies' silk stockings, ladies' seamless on the one side and ladies' full-fashioned on the other, I would say yes, but if you want me to extend the seamless types beyond ladies' silk into other types of seamless, then I would have to say no" (Record, p. 131 and 132). Ladies' seamless silk stockings, however, constitute only a small proportion of seamless production.

<sup>48/</sup> Mr. Tolles, at Record, pp. 319 and 320. These estimates are computed from data collected by the Bureau of Labor Statistics and contained in Tables 13 and 44 of "Committee's Exhibit No. 2".

II. Seamless and Full-Fashioned Branches Treated Separately as <sup>49/</sup> Classifications Within the Meaning of Section 8(c) of the Act.

Section 8(c) of the Act directs the Committee, coincident with recommending the highest minimum wage for the industry to make such classifications within the industry as may be necessary to arrive at the highest minimum for each such classification. Section 8(c) requires that these classifications are to be recommended with consideration for competitive conditions existing between classifications and with consideration for other factors existing within the industry. In so far as Section 8(c) may be relevant to a classification between two nearly non-competing groups, its provisions have been satisfied by the separate recommendations for the seamless and full-fashioned branches.

Competitive conditions between seamless and full-fashioned.

As already stated, competition between the full-fashioned and seamless branches is negligible, since, for the most part, each produces different products for different markets. To the extent that these two branches do not compete with one another, the provisions of subparagraph (1)<sup>50/</sup> of Section 8(c) of the Act are not relevant to the issue of fixing a classification for the two branches. Consequently, in view of the almost complete absence of competition between the

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<sup>49/</sup> The wording of the Committee's recommendation is not indicative of the construction placed by the Committee upon its separate treatment of the two branches. The Committee merely recommends that the "hosiery industry, as defined in Administrative Order 15, shall be classified into two branches." The Committee's report, however, indicates that the Committee deemed this division of the industry a separate classification within the meaning of Section 8(c) of the Act and accordingly observed the provisions of Section 8(c) in making this recommendation (pp. 8 and 9 of "Report and Recommendations of Industry Committee No. 3" which is placed in evidence as "Wage and Hour Division Exhibit C").

<sup>50/</sup> See footnote 18 above.

branches, I conclude that the provisions of this subsection (1) are not material or relevant to the issue of treating separately the seamless and full-fashioned branches as classifications under the Act.<sup>51/</sup>

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51/ The bulk of evidence indicates that even in the field of ladies' silk hose, where both seamless and full-fashioned stockings are sold, competition is not an important factor. Most seamless silk stockings sell at prices lower than the cheapest full-fashioned silk stockings. Where prices do overlap, the quality differs so markedly that each will normally be sold for a different use.

Mr. Tolles testified that "the only possible instance of competition would be between the cheapest grade of full-fashioned hose and the most expensive women's seamless silk stockings. Only a negligible proportion of the full-fashioned hose are believed to sell at 45 cents or less retail so as to compete with the women's seamless product" (Record, pp. 28-29). And later Mr. Tolles expanded on this remark thus: "I admitted that there might be theoretical instances, that is, theoretical in the sense that they very seldom occur, of very expensive women's seamless hose selling in an overlapping price range with the very cheapest women's full-fashioned, but they would be entirely different products. The women's seamless hose are very seldom made of pure silk, such as would justify a price range around 50 cents. On the other hand, you could not buy, I believe a satisfactorily made full-fashioned stocking for less than 50 cents, that was made of anything like the same material" (Record, pp. 31 and 32). Mr. Tolles' findings and opinions in this respect were not disputed by any persons present. Mr. Hoffman testified that "the purposes of the products produced in the two industries are dissimilar in ultimate consumer use with the exception of a small portion of ladies' silk hosiery where there is an overlapping. This overlapping is so slight it does not constitute legitimate competition" (Record, p. 663).

However, there was some evidence that ladies' seamless silk hose is competing directly and successfully with some low-priced grades of full-fashioned hose. The brief of the Full-Fashioned Hosiery Manufacturers of America, Inc., submitted to the Committee and introduced into this record as an exhibit of the Committee, marked "Committee's Exhibit No. 16," emphasizes, on pp. 22 and 23, "that shipments of women's seamless hose have annually and constantly increased during the past several years and that shipments of seamless knee-length women's hosiery have for the first time exceeded shipments of full-fashioned knee-length hosiery. Seamless knee-length shipments were twice the quantity of fashioned knee-length shipments for the year 1938" (data taken from National Association of Hosiery Manufacturers, Special News Letter, February 15, 1939). Table 2 on page 3 of "Committee's Exhibit No. 4,"

But, assuming competition in the industry between ladies' seamless and full-fashioned silk stockings does exist to a degree which would require recognition under Section 8(c) of the Act, it is evident that the application of a minimum rate for the production of women's seamless silk hose as high as that which is appropriate for full-fashioned hose would seriously dislocate this competitive situation. Consequently, the Committee's separate classification of the full-fashioned and seamless branches was made with due regard to such competitive conditions as do exist between these classifications.

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51 (continued)/ containing data taken from the National Association of Hosiery Manufacturers' Statistical Bulletin, shows that the shipments of women's seamless stockings (excepting wool) have increased 39 percent from 1934 to 1938, or from 9,779,000 dozen pairs in 1934 to 13,634,000 dozen pairs in 1938. The record does not show the proportion of this increase attributable to women's seamless silk hose. But there is evidence that in 1937 shipments of women's seamless silk hosiery increased 24.2 percent as compared with 1936, and the quantity of women's seamless cotton and rayon stockings taken by the market declined by 12.8 percent and 13.4, respectively (Committee's Exhibit No. 3, pp. 6 and 7). These facts appear to corroborate the contention made by the Full-Fashioned Hosiery Manufacturers of America, Inc., but, nevertheless, they are not persuasive evidence that a highly competitive situation exists between the seamless and full-fashioned product even within this limited field. (Also see footnote 88 below.)

Wages under collective labor agreements and voluntarily maintained minimum wage standards in the hosiery industry.

Section 8(c) also provides that in recommending a classification the Committee shall consider wages established by collective labor agreements and wages paid by employers who voluntarily maintain minimum wage standards in the industry. Unionization has progressed far in the full-fashioned branch where the American Federation of Hosiery Workers claims approximately 54,000 members out of a total of 86,000 workers.<sup>52/</sup> The employment of approximately 36,000 of these workers is directly subject to collective labor agreements.<sup>53/</sup> The minimum wages prescribed in these collective labor agreements are with few exceptions as high as 40 cents an hour.<sup>54/</sup> On the other hand, comparatively speaking, unions have penetrated only slightly into the seamless branch and only a small number of employees in this branch work under collective labor agreements.<sup>55/</sup> However, such collective labor agreements as do exist in seamless plants contain a basic

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<sup>52/</sup> See testimony of Mr. William Smith, Record, p. 612.

<sup>53/</sup> See testimony of Mr. William Smith, Record, p. 614.

<sup>54/</sup> See the section of this opinion on Classification within the Full-Fashioned Branch.

<sup>55/</sup> The Bureau of Labor Statistics' survey found "full-fashioned plants widely organized and seamless establishments mainly unorganized" (p. 6 of "Committee's Exhibit No. 2"). Mr. John McCoy testified that: "The Union has a limited number of collective bargaining agreements with employers in this industry, in no way comparable with its position in the full-fashioned industry. There are produced under union agreements, however, seven and one-half to eight million dozen pair of seamless hose annually" (Record, p. 638).

minimum wage of 32 $\frac{1}{2}$  cents per hour, except for special occupations varying from one agreement to another.<sup>56/</sup> In the full-fashioned branch many employers voluntarily maintain wage standards similar to those contained in collective labor agreements in full-fashioned plants.<sup>57/</sup> Apparently no comparable situation exists in the seamless branch. I conclude, therefore, that the Committee's recommendation of a separate classification for the seamless and full-fashioned branches was made with consideration for collective labor agreements and minimum wage standards voluntarily maintained as provided in Section 8(c) of the Act.

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On these facts, I conclude that the Committee properly considered separately and made separate recommendations for the seamless and full-fashioned branches. Such a division of the industry was appropriate under the Act and was necessary to carry out the provisions of the Act. Furthermore, assuming that the provisions of Section 8(c) are applicable to this division of the industry, I conclude that those provisions are satisfied.

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<sup>56/</sup> See Testimony of Mr. McCoy, Record, p. 639.

<sup>57/</sup> Mr. William Smith testified that 18,000 workers are indirectly affected by wage rates and wage minima prescribed in union agreements: "The 18,000 affected indirectly are employed in mills partially organized with whom agreements have not been consummated but which mills are maintaining voluntarily union standards of wages" (Record, p. 614).



COMMERCIAL FINISHING AND DYEING PLANTS

The Committee did not make a separate recommendation for the commercial finishing and dyeing plants. The record shows that these establishments are engaged primarily in finishing and dyeing full-fashioned hose. Most seamless hose is knit with pre-dyed yarn so that finishing and dyeing of seamless hose in independent plants is not customary.<sup>58/</sup> In the full-fashioned branch there is an intimate connection between the integrated full-fashioned plants which process their own hosiery and the commercial dyeing and

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<sup>58/</sup> Mr. Constantine testified: "We have so-called textile processing establishments which, in part or in whole, are occupied with the dyeing and finishing of hosiery. The type of hosiery which they dye and finish is, today, I would say, over 90 percent full-fashioned and something less than 10 percent seamless" (Record, p. 102). Seamless hose is "most commonly made of yarns which have been bleached or dyed before they are knit, so that the hose requires no subsequent dyeing operation" (Record, p. 26). On the other hand, note that Mr. Maynard's finishing plant finishes both his full-fashioned and his seamless products.

finishing plants.<sup>59/</sup> The latter are a comparatively recent development in the industry. They have grown out of a tendency of chain stores and other larger buyers to purchase full-fashioned hose in the grey and have the processing done later by the independent dye houses to meet seasonal color styles.<sup>60/</sup> Both the full-fashioned knitting mills and the commercial finishing plants are about equally unionized.<sup>61/</sup>

Wage scales, though slightly lower in the commercial dyeing plants

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<sup>59/</sup> Mr. Constantine testified that the independent finishing and dyeing branch of the industry has grown up during the last six or seven years due, in part, to "large buyers, buying in the grey and then putting it through this finishing plant on a commission dyeing and finishing basis because they feel they can save something over what they would have to pay if they bought the wholly integrated product" (Record, p. 103). The Bureau of Labor Statistics recognized that "independent finishing establishments compete directly with the dyeing and finishing departments of the integrated hosiery mills" (p. 52 of "Committee's Exhibit No. 2"). The brief of the American Federation of Hosiery Workers which advocated a 40-cent minimum wage for the full-fashioned branch states: "The commercial finishing and dyeing of hosiery is competitive with the inside finishing and dyeing of hosiery and the same minima must apply to prevent any accrual of advantage to such commercial establishments" (p. 42 of "Union Exhibit No. 1").

<sup>60/</sup> There are also mills which sell "their entire output only in the greige to volume merchandisers or to converters who have the finishing done according to their needs and resell to volume purchasers" (p. 29 of "Union Exhibit No. 1").

<sup>61/</sup> "The Union has agreements with 35 employers engaged in the commercial finishing of full-fashioned hosiery, who do 75 percent of the industry's commercial finishing production. These employers operate under a uniform wage agreement . . ." (Testimony of Mr. McCoy, Record, p. 629). See also the statement on p. 33, "Committee's Exhibit No. 5" to similar effect. For full-fashioned, compare footnote 52 above.

than in the dyeing departments of the integrated mills, are nearly alike. <sup>62/</sup> In both, average wages are high, and consequently the recommended minimum will affect each only slightly and to an almost similar degree. <sup>63/</sup> No objection was taken to the Committee's action in this respect. I find, therefore, that the inclusion of these finishing and dyeing plants under recommendations for the seamless and full fashioned branches was proper and in accordance with the provisions of the Act.

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<sup>62/</sup> Mr. Dash testified that "the wage rates in the commercial dyeing and finishing houses are slightly below comparable wage rates in the so-called integrated plant in which dyeing and finishing is done along with the knitting operations. I think that has been necessary because of the fact that the hosiery dyeing and finishing industry is a service industry, which cannot control its production in the same manner as an integrated plant which can have its dyeing and finishing done in some plant-controlled method because of the fact it produces its own gray hosiery. . . . But there is not enough variation between the commercial dyeing and finishing plant and the integrated plant wage rates on dyeing and finishing operations to cause any curtailment of operations in the commercial dyers and finishers" (Record, pp. 245-246). The Bureau of Labor Statistics' survey covered 16 independent finishing and dyeing plants. The average hourly earnings for all workers in these plants was found to be 52.9 cents. (p. 52 and Table 21, "Committee's Exhibit No. 2"). The average hourly earnings of all workers engaged in finishing and dyeing operations in integrated mills were not computed, but a comparison of earnings in nine finishing operations in independent plants, with the average earnings in those operations in integrated plants shows higher averages in the integrated plants in six of these operations (p. 52 and Table 23 on p. 55 of "Committee's Exhibit No. 2"). The differences taken together are slight.

<sup>63/</sup> The Bureau of Labor Statistics' survey shows that the 40-cent minimum wage rate will increase the wages of approximately 23.1 percent of the employees in commercial finishing and dyeing plants covered by the survey (Table 22 on p. 54 of "Committee's Exhibit No. 2"). Compare the first paragraph in the section of this opinion on Dislocation of Employment in the Full-Fashioned Branch, below.

A THIRTY-TWO AND ONE-HALF CENT  
MINIMUM RATE FOR SEAMLESS

The Record contains abundant evidence concerning the effect which the  $32\frac{1}{2}$ -cent minimum rate will have upon employment in the seamless branch of the hosiery industry. This evidence is directed toward showing (1) the effect which the proposed minimum rate will have upon aggregate employment in the seamless branch as a whole, (2) the effect which this rate will have upon particular seamless plants and groups of plants and the possibility that a temporary dislocation and shifting of employment may result within the seamless branch, and (3) the necessity for determining classifications within the seamless branch in order to fix the highest minimum wage rates for such classifications within the meaning of Section 8(c) of the Act. The evidence on each of these issues will be reviewed in order.

I. Effect upon Aggregate Employment in the Seamless Branch as a Whole.

Aggregate increased wage bill

Experts at the hearing testified, and statistical studies placed in the Record show, that the  $32\frac{1}{2}$ -cent minimum wage rate will cause an increase in the total wage bill of the branch of approximately

7.3 percent. <sup>64/</sup> This estimate was arrived at without allowing for any wages below the  $32\frac{1}{2}$ -cent minimum or any wage increases above the minimum. On the one hand, Section 14 of the Act provides that the Administrator shall issue special certificates authorizing employment of learners at wages below the minimum rate where necessary to prevent curtailment of opportunities for employment. On the other hand, some witnesses contended that a substantial number of mills within the industry will be forced as a result of a  $32\frac{1}{2}$ -cent minimum wage rate to increase wages of some employees above  $32\frac{1}{2}$  cents. This was supported by evidence showing adjustments which must be made in low-wage plants if the  $32\frac{1}{2}$ -cent minimum is made effective. <sup>65/</sup> Other witnesses, representing plants in the industry paying average wages or higher, testified

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<sup>64/</sup> This estimate is based upon data obtained from the Bureau of Labor Statistics' survey and contained in "Committee's Exhibit No. 2." Mr. Tolles summarized the results of this survey as follows: "In spite of the fact that 48 percent of the workers are receiving less than  $32\frac{1}{2}$  cents, the raising of those workers up to  $32\frac{1}{2}$  cents would only increase the wage bill by 7.3 percent . . . Furthermore, we found that the universal minimum wage of 30 cents which takes effect next October will require an increase of 4.2 percent in the seamless wage bill" (Record pp. 36-37). Consequently the net increase in the industry's wage bill over and above the increase required by the 30 cent minimum will be slightly in excess of 3 percent.

<sup>65/</sup> Mr. Berry testified: "Your help above the minimum is going to rise. You have to do that. You have to raise it above. You can't go and take  $32\frac{1}{2}$  cents as your minimum, and here is a fellow that is probably making 40 cents and here is one making 45 cents and here is one making 50 cents and that you don't have to raise those people above. You might not raise them as much as you did before, but if you are going to have a satisfied mill you have to raise your people above" (Record 370). Mr. Lamb testified: "Two weeks ago over 43 fixers notified us they would expect a raise of 20 to 25 cents an hour as soon as the

(continuation of 65/)

32 $\frac{1}{2}$ -cent rate went into effect, - this from those who now make more than double our average wage" (Record 398). Mr. Arthur testified that the average wage in his mill is about 26 cents an hour. "When the change in the wage rate goes into effect, you can't pay everybody 32 $\frac{1}{2}$  cents an hour - there is not a man here that does not know that. It just can't happen that way. A looper that can loop 75 or 80 dozen a day is entitled to more pay than the one who loops forty or forty-five dozen a day." (Record pp. 462-463). It should be noted, however, that both Mr. Berry and Mr. Arthur testified that they are today operating their plants with an average wage very close to the 25-cent minimum. See also testimony of Mr. Constantine, (Record pp. 97-98).

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that they did not anticipate any need for increasing the wages of those workers now earning more than 32 $\frac{1}{2}$  cents. <sup>66/</sup> I conclude that only a relatively small proportion of employees in the industry will receive wage increases above 32 $\frac{1}{2}$  cents an hour as a result of the proposed minimum; and further, that these increased wages will, at most, amount to only a negligible increase in the total wage bill either in the plants involved <sup>67/</sup> or in the entire industry; and will not, therefore, change appreciably the 7.3 percent estimate made above. <sup>68/</sup>

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<sup>66/</sup> Mr. J. T. Langley testified that he does not anticipate as a result of the 32 $\frac{1}{2}$ -cent minimum rate any increases in wages in his plants above the 32 $\frac{1}{2}$ -cent minimum (Record p. 160. Mr. Maynard offered evidence to the same effect.

<sup>67/</sup> These low-wage mills are considered in detail (Record p. 182) in the Section of this opinion on Dislocation of Employment in the Seamless Branch.

<sup>68/</sup> This 7.3 percent increase does not take into account increases in the industry's wage bill which have already resulted from the 25-cent minimum rate at that time which became effective October 24, 1938. The 25-cent minimum at that time increased the industry's wage bill, according to the Bureau of Labor Statistics survey, approximately 3 percent (see p. 38 of "Committee's Exhibit No. 4") so that the total increase in the industry's wage bill from a time just prior to the application of the Act, if the 32 $\frac{1}{2}$ -cent minimum is promulgated, will be approximately 10.3 percent. (See Table 17 on p. 38 of "Committee's Exhibit No. 4"). For an explanation of the calculation of these percentages refer to pp. 36 through 38 of "Committee's Exhibit No. 4."

Aggregate increased manufacturing cost

The ratio of labor cost to total manufacturing cost in the seamless branch was estimated to average not more than 40 percent.<sup>69/</sup> It results, then, that a 7.3 percent increase in the branch's wage bill will cause a 3 percent increase in the branch's

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69/ Mr. Tolles testified: "The ratio of labor cost to total manufacturing costs varies greatly according to the exact type of hose which are being produced. A study of the transcript of the testimony taken by Industry Committee No. 3 reveals that the estimates ranged all the way from 20 percent to 55 percent, that is, of labor cost to manufacturing costs. A special inquiry made by the National Association of Hosiery Manufacturers made for the benefit of the Hosiery Committee showed ratios of direct labor cost to total manufacturing cost ranging from 29.6 percent to 33.3 percent. These ratios were found on socks retailing at from 10 to 25 cents and on these cheaper grades the ratios are likely to be higher than for the more expensive items" (Record pp. 41-42). For the purpose of calculating the increased manufacturing cost that will result from an increased labor cost, Mr. Tolles assumed that labor costs account for 40 percent of manufacturing costs. This estimate was reached on data taken from a study, made by the United States Tariff Commission, of the production of 10 cent socks on which labor ratios would be the highest and consequently it is likely that average figures in the industry would show labor costs somewhat less than this 40 percent (Record pp. 42 and 43, also p. 190). Mr. Moore, from his examination of four small southern mills, concluded that the average of labor cost to total manufacturing cost would be approximately 37 percent (see Record p. 556). The Committee's report adopted an average ratio of labor cost to manufacturing cost of 33.3 percent (p. 19 of "Wage and Hour Division's Exhibit C").

total manufacturing cost.70/

Manufacturer's capacity to absorb increased wage bill.

The record contains a great deal of technical discussion of various methods by which the construction of socks may be altered to compensate for variations in costs of raw material, labor, and other manufacturing expenses.71/ It was shown that the seamless manufacturer customarily compensates fluctuations in the cost of raw materials by

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70/ The Committee in its report used a ratio of labor cost to total manufacturing cost of 33.3 percent and thereby arrived at an estimated increase in total manufacturing cost of 2.44 percent (see p. 19 and Table IV of "Wage and Hour Division's Exhibit C"). Mr. Dash was of the opinion that the Committee's finding was correct (Record p. 253). However, Mr. Dash recognized that "labor costs bear a varying relation to total manufacturing costs for various products of the seamless hosiery industry and for various retail price brackets of seamless hosiery" (Record p. 253). This statement is vividly illustrated by Table 13 on page 41 of "Union Exhibit 1-A," which shows the ratio of labor cost to total manufacturing cost on a few items of seamless hosiery and shows the lowest labor cost ratio to be 15.5 percent and the highest 45.1 percent. In view of this difficulty in determining the average labor cost ratio for the entire seamless product, I have accepted Mr. Tolles' estimate which is the highest suggested at the hearing.

71/ Mr. McCoy testified: "The possibility of altering cost of production by changing the method of construction has wide possibilities in the seamless industry and has considerable possibilities under union wage scales in that industry . . . We know of approximately 20 distinct constructions of hosiery of various types and styles available in the 10 cent bracket. At least 15 of the identical styles and constructions are also available in the 15 cent bracket. The only point of difference which may appear may be the use of specially developed colors or in a slightly superior raw material. Some volume mills put out the identical styles in both a 10 cent and 15 cent bracket, substituting mercerized yarn for regular cotton yarn in the higher priced product" (Record p. 644, 645). See also Mr. Hoffman's cross examination of Mr. Arthur, particularly, Record pp. 522-527, and of Mr. Brunson, Record pp. 600-602.



changes in the construction of his product.<sup>72/</sup> Normally, small increases in cost of material do not increase the price to the consumer or decrease the volume of consumer demand for hosiery.<sup>73/</sup> Similarly increased labor cost may be compensated by changes in methods of construction.<sup>74/</sup> In addition no contention was made that this industry as a whole is not, at least, normally profitable<sup>75/</sup> and the record does show that the demand for seamless

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72/ Mr. Tolles testified that "small changes in material prices appear to lead to small variations in the construction of the types of hosiery that will be sold in a given price bracket. When the changes become very large they accumulate for a considerable period and then there may be a shift in the price bracket." (Record p. 70.) A study of labor costs, raw material costs and selling price for the years 1929 through 1938 on three classifications of seamless hosiery indicates that there is almost no correlation between labor cost and price whereas the correlation between raw material costs and price is more clearly defined. (See pp. 24-27 of "Union Exhibit No. 1-A" and particularly Tables 7 and 8 in that exhibit.)

73/ See footnote 72 above.

74/ Mr. McIver testified that by changing construction his mill could absorb an 18 percent increase in labor cost without changing retail prices (Record p. 209). Mr. Slane was asked whether he could make a sock to sell for 10 cents if the minimum rate was established at 40 cents an hour. He replied that he could and explained his answer as follows: "The average yarn cloth of the 10 cent sock we are making now is costs about 30 cents a dozen and that is constructed of the facing of the sock being of rayon and the back of the sock being of cotton. Now, you can construct the same gauge hose, same type of hose out of all-cotton and decorate them with a white or red or green thread for about a 22 cent yarn cost" (Record p. 314).

75/ The fact that the profitability of the industry was placed in issue at the hearing (Record p. 75) and no attempt was made to show that the industry as a whole is not making normal profits may lend some support to the conclusion that the industry is at least normally profitable. Mr. Tolles testified: "It is impossible to get -- I have not seen, at least -- satisfactory nation-wide figures on the profitability of the industry" (Record p. 75). See also testimony of Mr. Dash that "profit or earnings of most seamless hosiery companies are not available" (Record p. 272).

hose, particularly the cheaper grades, is increasing<sup>76/</sup> and that new mills are being established from year to year.<sup>77/</sup> Upon these facts, therefore, I find that the manufacturer will be able to absorb a major portion of any increased manufacturing cost which results from the 32 $\frac{1}{2}$ -cent minimum wage rate.<sup>78/</sup>

Capacity of wholesaler and retailer to absorb increased wholesale prices.

A study of methods used in the distribution of the seamless product, showing the margins between wholesale and consumer prices, was placed in evidence.<sup>79/</sup> This study shows that retail markups are very substantial.<sup>80/</sup> It shows that the bulk of hosiery is sold by the manufacturer

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<sup>76/</sup> Shipment of seamless hosiery in 1938 had increased 14,286,000 dozen pairs over shipments in 1934, or had increased 19.8 percent. (See Table 2 on p. 3 of "Committee's Exhibit No. 4," and also testimony of Mr. Dash, (Record p.249). With respect to the cheaper grades of seamless hosiery, Mr. Tolles testified that "we know the physical demand for these products is on the upgrade rather than the downgrade" (Record p. 76).

<sup>77/</sup> In January, 1937, there were 485 seamless hosiery mills in the country; In December, 1938, there were 514. 69 of those 82 new mills were established in the South and these new southern mills accounted for 1,329 knitting machines (Tables 3 and 4 on pp. 4 and 5 of "Committee's Exhibit No. 4").

<sup>78/</sup> The history of the bundle-goods branch of the seamless industry during the N.R.A. and afterward illustrates vividly this conclusion. See the section of this opinion on N.R.A. Experience.

<sup>79/</sup> "Committee's Exhibit No. 4," pp. 16-23.

<sup>80/</sup> Data taken from the U. S. Bureau of Labor Statistics, Division of Wholesale Prices, indicate that in 1938 the average wholesale price for men's silk half-hose which retail at 35 cents was 16.7 cents, men's cotton half-hose which retail at 10 cents was 6.7 cents, men's cotton work socks which retail at 12.5 cents was 7 cents, and women's cotton seamless hose which retail at 25 cents was 11.7 cents (See Table 10 on p. 22 of "Committee's Exhibit No. 4").

directly to large retailers including chain stores.<sup>81/</sup> Statistics prepared by the National Retail Dry Goods Association indicate that hosiery departments stand among the most profitable of the many departments in retailing establishments.<sup>82/</sup> It is reasonable to conclude that these chain stores and retailing concerns can absorb increases in wholesale prices of hose without increasing retail prices. Also, there is evidence that large wholesalers and jobbers in the hosiery trade are able to absorb increases in the manufacturers' prices.<sup>83/</sup>

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81/ It is estimated that in 1938 approximately 43 percent of seamless hosiery was sold directly to large chains, 14 percent directly to independent retail stores and 43 percent through wholesalers and jobbers (See p. 17 of "Committee's Exhibit No. 4").

82/ Mr. Tolles testified: "The 1937 report on departmental merchandise and operating results published by the Congress of the National Retail Dry Goods Association, shows that the percentage profit of the sales of women's hosiery in department stores and specialty shops average 8.4 percent, as compared with an average of all store items of 1.6 percent, and that on children's hose, all of which are seamless, I believe, the average rate of profit on sales was 4 percent compared with a storewide average of 1.6 percent" (Record p. 90). See also "Committee's Exhibit No. 9."

83/ Mr. Dash testified: "The mill wholesale price range within which the low-end hosiery is sold to chains, jobbers, and retailers is sufficiently wide to permit most of the mills with increased labor costs to keep their prices still within their previous wholesale price range. Finally, the range of merchandising markup of most of the outlets for low-end hosiery is sufficiently wide to keep the low-end hosiery selling within its former retail price brackets even though the mill wholesale price to the outlet may increase slightly" (Record p. 255).

Rigidity of retail prices.

The record shows that seamless hose is generally sold in price brackets of 10, 15, 19 and 25 cents.<sup>84/</sup> Economists for the Committee testified that it is not reasonable to assume that a small variation in wholesale prices will cause the retailer to raise his retail price from one bracket to another.<sup>85/</sup> Testimony

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84/ See testimony of Mr. Tolles, (Record p. 49, Mr. Arthur, p. 525 Mr. Dash, p. 269, Mr. McCoy, p. 645) and p. 47 of "Committee's Exhibit No. 4."

85/ Mr. Tolles testified: "I think it very unlikely that a retailer would sell his products except on clearance at prices falling between customary brackets. It seems less likely that retailers will generally move the price of a given item to the next bracket and so jeopardize the volume of their sales, if they were faced with the small increases in wholesale price which might result from a  $32\frac{1}{2}$ -cent minimum wage" (Record p.49). Mr. Dash testified to similar effect: "Retailers as a whole probably will not move the price of a particular style up into the next price bracket and so reduce their volume of sales just because they are faced with a very small increase in the mill wholesale price which may come about from the application of the  $32\frac{1}{2}$ -cent recommended minimum. To carry this last point one step further, it should be mentioned that the spread between wholesale and retail prices of hosiery has permitted most retailers in recent years to make a comparatively high profit on the sale of hosiery even in the lines considered as low-end hosiery" (Record pp. 256, 257).