For Release on Delivery at
Approximately 8:00 P.M., E.D.T.
Wednesday, September 13, 1939

R-403

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
INDUSTRIAL RELATIONS SECTION, PRINCETON UNIVERSITY
PRINCETON, NEW JERSEY; WEDNESDAY, SEPTEMBER 13, 1939

DEVELOPMENTS UNDER THE FAIR LABOR STANDARDS ACT

The work of the Wage and Hour Division of the United States Department of Labor is varied and far-reaching, an inevitable consequence of the nature of the law itself.

If the Fair Labor Standards Act of 1938 were a law of universal application, binding alike upon every employer in the country, its administration and enforcement might be relatively simple. It would then be necessary only to send into every State in the Union an ample number of trained, qualified inspectors to check over the pay rolls and time sheets of every employer in the country, and then proceed in the courts against the violators.

But the law does not apply to every employer alike. Congress was well aware of the complex nature of American industry. It well knew that in our continental domain and our island possessions we have every variety of economic activity. Yet it recognized that our natural resources are abundant enough to support our entire population on at least a minimum standard of comfort and decency and enacted a law designed to accomplish that purpose in large part. It was insistent, however, that this should be done without substantially curtailing employment or earning power. This injunction was repeated at a number of points.

An examination of the findings and declaration of policy which form the introduction to the Act makes it clear that this was not intended to be merely another labor law, in the usual sense. The existence of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and the general well-being of workers lead to a variety of unhappy economic and social consequences. This is the starting point. Where such conditions are tolerated, they are spread about and perpetuated in all the States by the channels and instrumentalities of commerce. They burden commerce and the free flow of goods in commerce. They constitute an unfair method of competition. They lead to labor disputes which also burden and obstruct commerce and interfere with the orderly and fair marketing of goods.

Remove these detrimental labor conditions and the benefits will be diffused throughout the length and breadth of the land. Workers will gain, but so will employers. Workers, employers and public all profit when destructive labor diputes are eliminated, as the removal of one cause of industrial disputes-- intolerably low wages and inhumanely long hours--will tend to eliminate at least some of them.

It is not expressly stated, but the legislative history of the Act shows that it was also intended that the addition to mass purchasing power made possible by raising even slightly the wages of many thousands of low-wage workers at the bottom of the heap would enlarge the domestic market for goods produced in greater volume at lower unit cost, create new jobs, cut the relief bill, bring a larger measure of security to all workers, and thus increase economic social stability and the general happiness

and welfare of all the people. This was social legislation in the broad meaning of that term.

It was assumed that, proceeding under the commerce clause, Congress could legislate properly for employees of establishments engaged in interstate commerce or in the production of goods for interstate commerce. This, of course, automatically eliminated from the direct benefits perhaps two thirds of our employed population. It wrote into the law a statutory minimum wage, and a moderate curtailment of the working week. It provided for a progressive rise of the minimum wage, and a progressive decline of the workweek, until we have attained a statutory minimum wage of 40 cents an hour and a maximum workweek of 40 hours. That would give us by 1945 a minimum wage of $16 a week at full time of 40 hours, still a very low minimum standard for wage-earners in what we like to boast is the richest nation on earth.

At the same time, it was recognized that a number of industries in the United States already were paying wages well above these low minima and that others unquestionably could do so without "substantially curtailing employment or earning power." Into the law, accordingly, was written a procedure whereby, industry by industry, minimum wages could be raised to the 40-cent level by wage orders before 1945, a technique for which there was precedent in the successful British Trade Boards Act dating from 1909.

These provisions and limitations would have given us a complex administrative problem if there had been no others. The minimum wage was to be applied only to those employees who are engaged in interstate commerce or in the production of goods for interstate commerce. There were to be

various levels of minima set by wage orders in certian industries. Indeed, there might be differing minima within one plant based upon classifications. In enforcing the law, we should have to know, first, whether any particular group of workers were in interstate commerce. Then we should have to know the exact minima that applied to each, if classifications had been made.

But beyond such practical problems as these we are confronted by the fact that Congress saw fit to exclude certian categories of workers from some or all of the benefits by exemptions. Thus, agricultural workers are entirely excluded, as are fisherman, seamen, employees of certian small weekly and semiweekly newspapers, and some other categories. An amendment adopted at the recent session of Congress excludes telephone operators employed by telephone companies with fewer than 500 subscribers. Employees engaged in handling, packing or canning fresh fruits and vegetables within the area of production are exempt from the wage and hour provisions. Workers is seasonal industries are exempt from the hours provisions for 14 weeks a year, although during the 14 weeks they must be paid time and a half for overtime worked in excess of 12 hours, a day or 56 hours a week. The Administrator is required to define the term "area of production" and he also must determine what is a seasonal industry.

There are other exclusions. Employees employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesmen, are exempt from both wage and hour provisions, and the Administrator is required to define these terms. Learners, apprentices, messengers, and workers physically or mentally handicapped may be exempted from the wage provisions upon certification by the Administrator.

Without going into further detail, I have said enough, I think, to indicate in outline the nature of our job. In the field the work of detecting violations goes ceaselessly on. At headquarters in Washington we have been largely occupied to date in defining the terms we are required to define and embodying them in regulations, in holding hearings upon applications for those exemptions that we are empowered to grant and in arriving at decisions thereon. And always with the injunction in mind that opportunities for employment must not be curtailed.

Let me give you a brief resume of the process of arriving at a wage order to illustrate still further the complexity of the task. The law enjoins me as Administrator to appoint an industry committee for each industry "as soon as practic able." Practicability to date has been conditioned by the limited funds at our disposal. Since we could not set up a committee for every industry at the start, we have chosen to take them one at a time. The industry first must be defined and delimited, a difficult task, since every industry has a way of shading off at the edges into other industries.

The committee must be composed of representatives of the public, and of the employers and employees in the industry in equal numbers. They must be chosen with due regard to the geographical regions in which the industry is carried on. The Administrator must furnish the committee with adequate legal, stenographic, clerical and other assistance-- and "other assistance" manifestly must include competent economic advisers. The Administrator by rules and regulations must prescribe the procedure to be followed by the committee.

The Industry Committee is required by law to consider, among other relevant factors, competitive conditions in the industry as affected by transportation, living and production costs; the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry. Having duly considered these matters, the committee shall recommend the highest minimum wage rate (not exceeding 40 cents an hour) which will not substantially curtail employment and will not give a competitive advantage to any group in the industry. Classifications within the industry are permitted, but no classification shall be made and no minimum wage rate shall be fixed solely on a regional basis, nor shall any classification be made on the basis of age or sex. To meet these requirements involves careful and often expensive research.

When it has completed its work the committee files with the Administrator a report containing its recommendations. Then the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contianed in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the committee, will carry out the purposes of the Act. Otherwise, he shall refer the matter back to the committee, or to another committee which he may appoint for such purpose, for further consideration and recom-

mendations. There is no opportunity here for arbitrary or capricious action. The Administrator may not alter in any respect the recommendation of the committee. He may not issue a wage order setting a minimum rate except upon the recommendation of a committee. And finally, provision is made for court review.

Despite budgetary limitations in the first fiscal year, we did manage to set up seven industry committees. They were for cotton, silk and rayon textiles; for woolen manufacture, for apparel, for hats, for millinery, for hosiery and for shoes. Six of the committees have submitted their recommendations. Hearings have been held on the textiles and hosiery recommendations, and the first wage order--for the hosiery industry--has been issued.

This is not enforcement, but administration. It involves the exercise of quasi-legislative functions and it consumes a good deal of our time and energies. I can give you an idea of the volume of this sort of work, perhaps, by reciting the various administrative orders and notices of one sort or another issued during August, a fairly typical month. By title, they were as follows:

Notice of the issuance of special certificates for the employment of learners in three apparel firms.

Recommendation of the Shoe Industry Committee for a 35-cents-an-hour minimum wage rate.

Extension of the date for briefs on the textile committee hearing.

Interpretative Bulletin on the exemption of agriculture and on the exemptions for the processing of agricultural commodities.

Notice by the Administrator approving the recommendations of the Hosiery Industry Committee.

Finding and opinion in the matter of the recommendation of Industry Committee No. 3 for minimum wage rates in the hosiery industry.

Issuance of a wage order carrying the recommendations of the Hosiery Industry Committee into effect.

Amendment to Regulations, Part 524, extending temporary certificates of exemption to certain handicapped workers to May 1, 1940.

Finding in the matter of the application for exemption of the spring freshet driving of lumber in the States of Michigan, Minnesota and Wisconsin from the maximum hours provisions of the Act as a seasonal industry.

Findings an determination of the presiding officer in the matter of the application of the National Association of Hosiery Manufacturers for the employment of learners at less than the statutory minimum wage.

Provisions for the employment of learners in the hosiery industry.

Notice of opportunity to petition for review of determination upon applications for permission to employ learners in the hosiery industry at wages lower than the applicable minimum specified in Section 6 of the Fair Labor Standards Act.

Report of the Millinery Industry sub-Committee.

Report of the Apparel Industry Committee.

Now every one of these decisions and notifications was based either upon intensive research or upon pretty exhaustive hearings, or both, the purpose in every instance being to carry out the provisions of the law with the maximum of protection to workers and with a minimum of hardship to employers.

You have noted reference to an interpretative bulletin having to do with the exemptions for agricultural workers and employees engaged in the processing of agricultural commodities. We have issued 14 of these interpretative bulletins as a gratuitous service to industry. Congress has given us no authority to decide what the law means. That is for the courts to say

Yet needing some criteria as a basis of administrative procedure, we have given to employers our best judgment of the meaning of the Act--the meaning which guides us in our administrative endeavors.

The importance of this interpretative work may be illustrated as it applies in the matter of coverage. Congress has not defined interstate commerce. I think most employers know whether they are in interstate commerce or not, yet there are numerous borderline cases. For example, a building contractor in Princeton, New Jersey, builds houses for Princeton people to live in. Are his workmen employed in interstate commerce or in the production of goods for interstate commerce? Probably not, so far as his carpenters, masons and plumbers are concerned. But how about those of his employees who drive the truck down to the railroad siding and haul to the building site the brick, as it arrives from New York, lumber as it arrives from Virginia, and the plumbing supplies as they are delivered from Pennsylvania? In the opinion of our general counsel, certain employees of this contractor may be covered by the Act and others may not. Perhaps the courts will have to decide eventually, but in the meantime it would clearly be unfair for us to encourage the building contractor to proceed as though all of his employees were exempt if, in our best judgment, the courts would hold some of them to be covered.

Organization of the Wage and Hour Division logically has developed around the functions imposed upon the Administrator by Congress. One branch of the Division is charged with the routine work of enforcement or, as we call it, cooperation and inspection. The Wage and Hour Standards Branch, through appropriate sections, carries out our responsibilities in relation to the work of the Industry Committees, and conducts the hearings incident to the granting of such exemptions as

we are authorized to confer. The Legal Branch handles opinions and litigation. Through an Information Branch we undertake to inform employers and employees of the rights and obligations laid upon them, and to that end we have cooperated with newspapers, magazines, radio, and have distributed millions of copies of explanatory pamphlets couched in popular terms.

Thus we have created an organization which, by means of hearings, decisions, interpretations, and the dissemination of information, has set up the framework into which our activities naturally and logically fit. We go on from here. Much of this is preliminary work, but we think we have built soundly and that most of the structure will stand, unless there should be drastic amendments to the Act that will greatly increase our responsibilities or substantially subtract from them.

This necessarily brief outline may have suggested to you that the Fair Labor Standards Act is a pretty complex instrument. It is, of course, but fortunately the complexities are for us in the Wage and Hour Division to worry about; they are not of such a nature that the employer need by very much concerned with them. If he is under the law--and if he has any doubt about that we will do our best to advise him--we expect nothing more of him than that he shall pay his employees not less than the applicable minimum wage with extra pay at the rate of time and a half the regular hourly rate for all hours worked in excess of the statutory maximum, and that he shall keep pay roll and time records in sufficient detail to show that he is complying with the law.

Since the first of July we have been decentralizing our work, so far as that can be done safely. Our first, provisional field organization is being revamped. When this revamping is completed we shall have 16 regional offices throughout the country, each under the supervision of a regional director. At no time during the fiscal year which ended June 30 did we have more than 114 inspectors in the field. Thanks to additional appropriations granted for this present fiscal year, we expect to build up to a field organization of 500. Each regional office will be staffed with inspectors, lawyers and the necessary clerical and stenographic help. Ww have an accumulated backlog of complaints and with increases personnel we hope to clean them up within the next few months. We have set up a school in Washington in which we are training these new employees who, of course, are appointed from the Civil Service registers.

Enforcement proceeds in accordance with time-tested techniques with which you probably are familiar. Somebody makes a complaint that his employer has not paid him at least the applicable minimum wage. Or some employer or his trade association sends us a complaint that a competitor is violating the law. These complaints are studied to determine whether or not the employer complained against is in interstate commerce and therefore subject to the Act. It may be necessary to obtain supplementary information on this point. If we conclude that he is under the law, inspectors are sent into his plant to check up on his records. If falsification of records is suspected, it will be necessary to interview the employees and obtain statements from them

as to the hours worked and the compensation received. When we are satisfied that a violation of the law has occurred, the information is turned over to the litigation section for appropriate action.

In some cases we have obtained injunctions restraining the employer from further violation of the law. Where such injunctions have been issued, employers generally have been required to make payment of back wages due to the employees. Injunctions also have been used to tie up "hot goods"--commodities produced in violation of the law--to keep them out of the stream of interstate commerce. If the violation appears to be flagrant--if, for instance, it involves falsification or destruction of records--the case is referred to the Department of Justice for criminal prosecution.

In a number of instances in which violations were nominal or technical, or were due to ignorance or misunderstanding of the law, we have worked out with employers themselves satisfactory adjustments without court action involving the payment of back wages due and giving assurances of future compliance. Many thousands of dollars of illegally withheld wages have been paid to workers by means of such adjustments.

We realize, of course, that so long as our enforcement activities are restricted to proceeding against violators only after complaints have been filed we cannot be sure of uniform compliance. Consequently we are moving on to a basis of routine inspection, and we intend this procedure to become standard practice as our inspectional force becomes adequate to the task.

Naturally, you ask whether we are meeting with success in our effort to put a floor under wages and a ceiling over hours. The answer, I am sure, is that we are meeting with very substantial success. It is difficult to obtain reliable statistical measurements of our achievements, but there are at least some impressive data. For instance, the Secretary of Labor reported that in May of this year 680,000 more workers were employed in industry than in May of last year, when there was no Wage and Hour law. Pay rolls were up. It would be impossible to prove that this improvement was due solely to the Fair Labor Standards Act, but, conversely, opponents of the Act, who had predicted that the law would lead to widespread bankruptcies and curtail employment, certainly cannot contend that the Fair Labor Standards Act has harmed business.

In any event, I think our successes to date can be expressed in terms of the response we have received. We now know that the public is behind us. The majority to employers support the law, are complying with it, and in many instances are actively cooperating in enforcement. Naturally so, becuase they appreciate the importance of diffusing purchasing power as an essential to the success of the mass production industries. You can't sell clothing, radios and electric refrigerators to people who haven't the money to buy. They also support the law because it eliminates from the competitive picture the business rival who undersells the market by gouging his profits out of the living standards of his workers.

Communities and States want the law enforced because it offers

them some insurance against the loss of industries that might be lured away by the offer of attractive bait in other areas. The offering of special inducements, such as low wages, are not confined to any one section of the country. The bait has been used in New England, in the Middle West, and in the South. Many communities once offered such allurements in the mistaken belief that they could build up a sound and profitable local industrial life by practices which tend to undermine markets and exploit local labor. Actually the result of exploitations ultimately make these operations a social and economic liability and not an asset.

We concede, of course, that not everybody is complying with the law. There are people on the industrial and ethical fringe who are still paying less than the statutory minima, but we are increasingly making their position untenable. Yet the time is coming when the principle of a living wage for humane hours of work will be so firmly entrenched in the conscience of the whole people, as it is now in the conscience of most, that no one will dare challenge it. The man who contaminates the stream of commerce by taking his profits from the pockets of his workers eventually will become an outcast, not merely in the sight of the law, but also in the sight of his club, his church, his trade association and his Chamber of Commerce. We have learned how to deal with the "Typhoid Marys" who carry about with them the contageon of physical disease, and we shall in time find and isolate these other "carriers" who, left at large, would inoculate the Nation's economic bloodstream with the virus of starvation wages and human misery.

----oOo----