

For Release Thursday  
October 12, 1939

BEFORE THE UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
WASHINGTON, D. C.

In the Matter of	:	
REVIEW	:	
OF	:	
FINDINGS AND DETERMINATIONS	:	<u>OPINION, FINDINGS</u>
made upon	:	<u>AND ORDER</u>
APPLICATIONS FOR LEARNERS CERTIFICATES	:	October 10, 1939
in the	:	
APPAREL INDUSTRY	:	

This proceeding arose out of petitions filed by the National Association of House Dress Manufacturers and the National Association of Shirt and Pajama Manufacturers to review the findings and determinations (hereinafter called "the findings") made upon the applications of these associations and other representatives of the apparel industry for permission to employ learners at wages less than the minimum under the Fair Labor Standards Act of 1938. The original applications were made under Section 14 of the Act and paragraphs 1, 2 and 3 of Part 522 of the Regulations of the Wage and Hour Division as approved on October 12, 1938. The petitions for review were filed pursuant to paragraph 13 of Part 522 of the Regulations as amended May 20, 1939.

The findings were concerned with the necessity for allowing a learner's subminimum wage while the statutory minimum remained at 25 cents an hour. However, in view of the approaching 30 cents an hour minimum wage rate, which goes into effect on October 24, and the possibility of higher minimum rates in accordance with the recommendation of Industry Committee No. 2 for the Apparel Industry, the notice of this hearing, which was published in the Federal Register on July 29, announced that the findings would be reviewed not only with relation to the 25-cent minimum but also to the 30-cent minimum and such higher minima as were recommended by the Industry Committee.

Briefly stated, the findings under review are as follows:

1. Stitching operations require a learning period.
2. In order to prevent curtailment of opportunities for employment it is not necessary to grant to the apparel industry as a whole, or to any group within the industry, a minimum wage for learners less than the statutory minimum; but individual plant applicants may be able to show that a learner's subminimum wage rate is necessary under particular circumstances involving new plants or expansion of old plants.
3. Whenever a special certificate permitting employment of learners at a subminimum rate is issued in response to an individual plant application, the following terms should be imposed:

- (a) The learning period shall be not more than 8 weeks  
for each worker;

- (b) The learner shall be guaranteed at least 75 percent of the applicable minimum rate, and, if experienced workers are paid piecework rates, the learner shall be paid the same piece rates;
- (c) A "learner" shall mean a person who has not been employed in the apparel industry for more than 8 weeks during the preceding 3 years.

A. THE FINDINGS UNDER THE 25-CENT MINIMUM.

The record in this proceeding discloses very little objection to the findings under the 25-cent minimum rate. The petitioners for review of the findings twice requested that the hearing be postponed and, accordingly, this hearing, which was originally set for July 18, was not held until September 12. At the hearing both petitioners devoted their entire presentation to changes that should be made in the findings after October 24, 1939, under the 30-cent minimum and offered no evidence directed toward upsetting the findings under the 25-cent minimum. In addition, other groups appearing at the hearing to advocate changes in the findings under a higher minimum expressly approved the findings under the 25-cent minimum. The record below supports the finding of the Presiding Officer that "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 cents, the cost of replacement can be assumed by an employer without undue burden." Consequently

for the industry as a whole, no exemption from this 25-cent minimum was found necessary to prevent curtailment of opportunities for employment. The evidence on review does not upset this finding or conclusion, nor the findings with respect to the terms which should be contained in a special certificate whenever granted on individual plant application.

I, therefore, affirm in every respect the findings made below, in so far as the same are applicable to a 25-cent an hour minimum wage rate and shall order that these findings remain in effect until October 24, 1939.

B. THE FINDINGS UNDER THE 30-CENT MINIMUM.

No substantial contention was made at this hearing or at the hearing upon the original applications that a subminimum wage rate is necessary to prevent curtailment of opportunities for employment in the following divisions of the apparel industry: Coats and suits and separate skirts; dresses other than house dresses; men's and boys' suits, overcoats, top coats, and tailored uniforms; sportswear and outerwear (other than knitted outerwear); leather and sheep-lined garments; rain and oil clothing; and men's and boys' caps and cloth hats. Consequently the findings made here have no application to these divisions of the industry. Representatives of these divisions or individual plants in these divisions may make application to the Chief

of the Hearings and Exemptions Section under Part 522 of the Regulations of the Wage and Hour Division either for general provisions for the issuance of special certificates to plants throughout these divisions or any one of these divisions or for the issuance of a special certificate to the individual plant. No findings made here shall in any way prejudice such applications.

The findings which relate to the operations that require a learning period, the length of that period, and who may be a learner are affected only indirectly by an increased minimum. Nevertheless, evidence was offered by a few persons to show a need for a longer learning period and a different definition of a learner under the higher minimum rates. The increased cost of training a learner under these higher rates may bear upon these issues and, therefore, is reason for carefully considering this evidence. On the other hand, the evidence offered below on these issues is also relevant despite the higher minimum rates and, consequently, the new evidence can only be viewed in the light of all the evidence in the record below.

1. Operations requiring a learning period.

The finding that stitching operations do require a learning period has been found appropriate under the 25-cent minimum and is equally appropriate under the 30-cent minimum. Moreover, no contention was made at the hearing that under the 30-cent minimum other operations will require a learning period and a subminimum wage rate. There was evidence that other occupations in the industry either are unskilled or, if skilled, are customarily learned by employees in the industry while they are employed in their regular productive occupations or are customarily paid for at rates under which the beginner earns well above the minimum. I conclude, therefore, that the stitching operation does require a learning period under the 30-cent minimum and that, with respect to other operations in the apparel industry, no such finding is required in connection with this industry-wide application.

2. Length of Learning period.

Several parties requested a learning period longer than 8 weeks. Similar requests were made at the hearing on the original applications and with relation to the 25-cent minimum. In support of those requests, evidence was introduced showing that in some plants learners in stitching operations paid on the plant's piecework rates will not be able to earn 25 cents or 30 cents an hour at the close of the first 8 weeks.

The evidence shows that with the more difficult stitching operations this condition exists even though piecework rates are high enough to permit the skilled worker to earn as much as 45 and 50 cents an hour. This evidence alone, however, is not indicative of a need for a longer learning period. The learner's exemption contained in the Act is not designed to relieve the employer of all the expense involved in training employees. Only where that expense threatens a curtailment of opportunities for employment can an exemption be granted. The evidence offered both at this hearing and below demonstrates that some beginners will be able to earn the 30-cent rate after 8 weeks, and that the failure to allow a longer learning period will not so burden employers of beginners who will not be able to earn the 30-cent minimum until after a somewhat longer period as to result in the curtailment of opportunities for employment. I conclude, therefore, that the finding below that the learning period shall be not more than 8 weeks for each worker is supported by the evidence and should continue in effect under the 30-cent minimum.

3. Definition of a learner.

The findings provide that 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." Modifications proposed at the hearing would bar from employment as learners only persons who had been employed in the apparel industry (1) upon stitching operations and (2) on products similar to those on which the learner is to work.

The first of these modifications is supported by the record here and below and does not appear to be inconsistent with the findings of the Presiding Officer below. The evidence offered to support the second suggestion is again based upon the assumption that the learner's exemption should be designed to protect the employer from incurring any expense whatever in training the learner. There was evidence that stitching operations upon some products demand exceptional skill and experience. The peculiar training required of stitchers on such articles must be considered, however, in the light of convincing proof that basic stitching operations are similar and that familiarity with these basic operations does accelerate the beginner's capacity to become adept in the more specialized operations. I conclude, therefore, that a learner should be defined as a person who has not been previously employed for more than 8 weeks in the aggregate during the preceding 3 years upon a stitching operation in the apparel industry. It follows that any worker ceases to be a learner as soon as his aggregate employment upon a stitching operation in the apparel industry amounts to 8 weeks in a three year period even though the worker had not been so employed for 8 weeks in the aggregate in the 3 year-period preceding the beginning of his employment as a learner under a Special Certificate.



4. Necessity for subminimum rates to prevent curtailment of opportunities for employment.

There is evidence that the 30-cent minimum, as compared with the present minimum, will add considerably to the cost of training a learner. Learners' earnings at piecework rates are, in some divisions of the industry, in some plants, and with some employees, well below the 30-cent minimum. Instances were shown in which the learner earns between 20 and 25 cents an hour even toward the close of the 8-week learning period on piecework rates which will bring the experienced worker wages well above the minimum. Although the cost of training learners includes in some instances paying for an instructor, for wastage and for delayed production, payment by the employer of the difference between piecework earnings and the minimum rate is generally a large portion of the cost to the employer of training the learner. With the advent of the 30-cent minimum, this portion of the cost of training learners will increase.

The record contains tables showing the percentage of increase in the wage bill of various divisions of the apparel industry which are anticipated as a result of the 30-cent minimum. In most of the divisions under consideration here the percentage of increase exceeds four percent. Plants in these divisions will be required to undergo readjustment

of wage scales to conform with the 30-cent minimum. Readjustments following the effective date of the 30-cent minimum may, in some instances, tend to discourage employment of unskilled workers unless a certificate permitting the employment of learners at less than the minimum rate is granted.

The record shows that for some divisions of the industry and in some localities unemployed skilled workers are not available and additional employees upon stitching operations are in demand. There was also some indication that this demand for additional employees is increasing.

I conclude, therefore, that, under the 30-cent minimum, the divisions of the apparel industry considered here will as a result of an increased need for learners face increased costs in training learners and in making wage scale readjustments. Consequently, I conclude upon the basis of these findings that it will be necessary whenever experienced workers are not available, in order to prevent curtailment of opportunities for employment during the year following October 24, 1939, to permit employment of learners in the divisions of the apparel industry under consideration at special subminimum rates under special certificates issued to individual plants as follows and subject to the following terms:

(1). Issuance of Special Certificates. Nothing in these findings warrants the employment of a learner at a wage rate less than 30 cents an hour if experienced operators are available to the employer at the time that the learner is hired. To prevent any abuse of these findings, therefore, special certificates will be issued only upon application from individual plants and only in case it is represented that experienced workers are not available to the plant. Applications for special certificates must be made upon forms prepared by the Wage and Hour Division. These application forms may be secured by writing to the Hearings and Exemptions Section, Wage and Hour Division, Department of Labor, Washington, D. C.

(2). Available Skilled Workers. Special certificates issued pursuant to these findings shall not be effective to permit employment of a learner at subminimum wages if the learner was hired when an experienced worker was available.

The issuance of a special certificate to a plant upon the representation in the application that skilled labor is not available shall not be deemed a finding by the Wage and Hour Division as to the truth of the representation and, if it later develops that skilled labor

was in fact available at the time the certificate was issued, the certificate may be cancelled retroactively and an order issued that the learners employed thereunder be paid the difference between the statutory minimum and the wages paid. Furthermore, even though skilled labor was not available when the certificate was granted, if skilled labor later becomes available the special certificate may be cancelled prospectively in which case no new learners may be employed thereunder. To this end, the Hearings and Exemptions Section will make periodic reviews of the availability of experienced workers and cancel special certificates where an adequate supply of experienced workers is indicated.

(3). Special Certificate shall be posted. No plant shall be permitted to employ learners at subminimum rates pursuant to these findings until and unless the plant posts and keeps posted, in a conspicuous place in the plant a Special Certificate issued to the plant pursuant to these findings. The employment of learners at a wage lower than the minimum when no special certificate has been issued and posted cannot be made lawful by the subsequent issuance and posting of a special certificate.

(4). Number of learners allowed. I find that it is not necessary, in order to prevent curtailment of opportunities for employment, to grant to these divisions of

the industry permission to employ in any single plant learners in excess of 5 percent of the total number of workers engaged in stitching operations in the plant provided, however, that employment of as many as 5 learners may be authorized in any certificate.

This finding is based upon data contained in the record regarding the normal rate of turnover in the industry. Since the learning period of each learner continues only 8 weeks, this 5 percent leeway for learners is the equivalent of an annual turnover greater than 30 percent, which is considerably higher than any estimates given for annual turnover in any division of the industry. On the other hand, some divisions have peak seasons which may require more than the average annual turnover figure to take care of normal conditions of employment.

In case a special certificate is issued pursuant to these findings to a plant which employs workers in the divisions of the apparel industry which are under consideration here and also in those divisions named above which are not under consideration here, the number of learners which may be employed in the plant under this special certificate shall not exceed five percent of the total number of workers exclusively engaged in stitching operations in those divisions of the apparel industry under consideration here provided, as above, employment of as

many as five learners may be authorized in any certificate. Furthermore, the learners employed under special certificates issued pursuant to these findings must be engaged in stitching operations in the divisions of the apparel industry which are being considered here.

The findings made in this proceeding are not designed to take care of unusual circumstances, plant expansion or new plants. In such instances, where learners in excess of 5 percent of the plant's stitching workers are to be hired, the employer may file an application for a learner's special certificate under Section 522 of the Regulations.

(5). Subminimum rate allowed. I find that the appropriate minimum wage rate for learners in the divisions of the industry under consideration here is not less than  $22\frac{1}{2}$  cents an hour. The record shows that a lower rate is not necessary in order to prevent curtailment of opportunities for employment even in those divisions of the apparel industry which will undergo the most severe readjustments under the 30-cent minimum wage rate. Furthermore, in plants where experienced operators are paid on a piece-work rate, learners shall be paid at least the same piece-work rate and shall receive earnings paid on this rate if in excess of the  $22\frac{1}{2}$ -cent special learner minimum.

On the basis of these findings the Chief of the Hearings and Exemptions Section of the Wage and Hour Division will be directed to issue Special Certificates permitting employment of learners on the above terms to each plant operating in whole or in part in those divisions of the Apparel Industry under consideration here provided that the plant makes application therefor representing that experienced workers are not available and also provided it is not found that experienced workers are available to the plant.

No special certificate issued under these findings shall remain in effect after October 24, 1940.

C. THE FINDINGS UNDER A MINIMUM HIGHER THAN 30 CENTS.

There was evidence in the record that conditions presently prevailing in the industry are uncertain and may be subject to sudden changes. The present record does not offer any basis for making different findings applicable to possible future minima. Also, these findings, made with respect to the 25-cent minimum and the 30-cent minimum, do not foreclose further proceedings under a minimum rate higher than 30 cents an hour.

\*\*\*\*\*

Upon the above findings, it is hereby ordered that:

1. The findings and determinations of the presiding officer in the matter of the application of the National Association of Shirt and Pajama Manufacturers Inc., et al., to employ learners at wages

lower than the statutory minimum are approved under the 25-cent minimum and shall remain in effect until October 24, 1939.

2. Effective on or after October 24, 1939, Special Certificates permitting employment of learners at subminimum rates in stitching operations in the divisions of the apparel industry considered here shall be issued by the Chief of the Hearings and Exemptions Section of the Wage and Hour Division upon the following terms to all plants in the industry making application therefor representing that experienced workers are not available to the plant, unless experienced workers are found to be available:

(a) Learners employed under the certificate shall not exceed 5 per cent of the total number of workers in the plant engaged in stitching operations in the divisions of the apparel industry considered here provided, however, that employment of as many as five learners may be authorized in any certificate.

(b) No learner shall be employed under the certificate longer than 8 weeks.

(c) Learners employed under the certificate shall be paid at a rate not less than  $22\frac{1}{2}$  cents an hour and, in plants where experienced operators are paid on a piecework rate, shall be paid at least the same piecework rate and shall receive earnings paid on this rate if in excess of the  $22\frac{1}{2}$ -cent minimum.



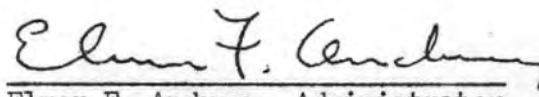
(d) Only learners shall be employed at a subminimum wage under the certificate and no learner shall be employed under the certificate unless hired when an experienced worker was not available.

(e) No learners shall be employed at a subminimum wage under the certificate until and unless the certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.

3. The Chief of the Hearings and Exemption Section shall cancel as of the date of issue any special certificate issued pursuant to this order if found that such certificate was issued when experienced workers were available and shall cancel prospectively or as of the date of violation a certificate if found that any of its terms have been violated or that skilled workers have become available.

4. In this order the term "learner" means a person who has not been previously employed for more than 8 weeks in the aggregate during the preceding three years upon a stitching operation in the apparel industry; and 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.

Signed at New York, New York this 10th day of October, 1939.

  
Elmer F. Andrews, Administrator  
Wage and Hour Division  
Department of Labor