

BEFORE THE UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

WASHINGTON, D. C.

In the matter of the

APPLICATION OF

THE NATIONAL KNITTED OUTERWEAR
ASSOCIATION, THE UNDERWEAR
INSTITUTE, ET AL

To employ learners at wages lower:
than the minimum wage applicable :
under Section 6 of the Fair Labor:
Standards Act of 1938 pursuant to:
Section 14 of the Act and Part :
522, as amended, of regulations :
issued thereunder :

Knitted Outerwear :
Knitted Underwear :
:
:
:

FINDINGS AND DETERMINATION

OF THE

PRESIDING OFFICER

OCTOBER 19, 1939

The National Knitted Outerwear Association, The Underwear Institute, and sundry other parties having made application under Section 14 of the Fair Labor Standards Act of 1938 and regulations (Part 522 - Regulations Applicable to Employment of Learners Pursuant to Section 14 of the Fair Labor Standards Act of 1938 - Title 29, Labor, Chapter V - Wage and Hour Division) issued by the Administrator thereunder for permission to employ learners in the Knitted Wear and Hosiery Industry at wages lower than the minimum wage applicable under Section 6 of the Act, the Deputy Administrator on November 28, 1938, gave notice of a public hearing to be held at the Raleigh Hotel, 12th and Pennsylvania Avenue, N. W., Washington, D. C., at 10 o'clock a.m., December 14, 1938, and designated the undersigned as Presiding Officer to conduct the said hearing and to determine (4):

"(a) what if any occupation or occupations in the Knitted Wear and Hosiery Industry require a learning period, and

(b) whether it is necessary in order to prevent curtailment of opportunities for employment to provide for the employment of persons in occupations requiring a learning period at wage rates lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938, and

(c) if such necessity is found to exist, to determine at what wages lower than the minimum wage applicable under Section 6, such employment of learners shall be permitted, and with what limitations as to time, number, proportion and length of service."

Pursuant to the notice the undersigned convened the hearing on December 14, 1938, and an opportunity was afforded to all who appeared to present testimony and to question witnesses through the Presiding Officer. The hearing continued through December 15, and was reconvened on January 31 (1-3, 445-7, 500-3). The term "knitted wear and hosiery" industry, as used in the notice, included men's, women's, infants', and children's knitted apparel, accessories and hosiery. With respect to this definition, it should be noted that a finding for hosiery has already been made, and no finding thereon is made herein. The record of the hearing also contains testimony on (1) the manufacture of articles included within the scope of the apparel learner hearings; such industry groups are dealt with by the Administrator's Apparel Learner Findings and Order and will not be discussed herein; and (2) gloves, which will be included in glove findings to be made in the future. Appearances were entered for and against the application. Certain additional data were filed subsequent to the hearings and were made part of the whole record upon which these findings and determinations are made.

FINDINGS OF FACT

1. Occupations Involving a Learning Period

The applicants requested that certificates be issued covering a large variety of occupations in the industries. Many of these occupations fall into the two major groups of sewing machine operators and knitting machine operators. Most of the others are in such occupations as presser,

trimmer, cutter, inspector, packer, etc., in other words, operations that precede or follow one or the other of the two major manufacturing processes. The record shows plainly that the operation of knitting machines and sewing machines involves the acquisition of skill and dexterity within the meaning of Section II of the Administrator's Explanation of the Learners Regulations. Furthermore, on all the evidence, I conclude that the same situation exists here as with apparel with respect to these other occupations and that the same finding is therefore necessary as was made by the Administrator with respect to the apparel industry. Accordingly, I find that all other occupations in the industry are either unskilled, or, if skilled, either filled by promotion from within or else customarily so highly paid that an appropriate learner rate is higher than any possible statutory minimum. I therefore find that the only occupations requiring a learning period are sewing machine operators and knitting machine operators.

2. Curtailment of Opportunities for Employment

The record contains much material bearing on the question of curtailment of opportunities for employment. It was shown that there is an expense involved in employing learners because of lack of production, wastage of materials and time of other employees spent in training learners. This expense can frequently be avoided in knitwear centers where trained labor is available, but in general not elsewhere. The burden of this expense varies with a variety of special factors such as the quality of the management

peculiar to each mill, and with the general factors of the proportion of learners to the total number of employees and the required statutory increase in minimum wages paid experienced employees. The Act does not contemplate the removal from employers of a burden they have so largely carried in the past, but merely the removal to the extent necessary to prevent curtailment of opportunities for employment. Thus the need for subminimum learner rates is proportionately greater (a) in the case of new plants and expansion of existing plants and (b) in the case of higher wage minima. While the 25¢ minimum rate was in effect it was clear from the record and from competitive wage rates paid in these industries that there would not be a curtailment of opportunities for employment if every learner had to be paid no less than 25¢ per hour. Nevertheless, the evidence in the record, taken as a whole, does show that it will be necessary, in general, after October 24, 1939, when the statutory minimum of 30¢ goes into effect, to issue Special Certificates for the employment of learners at subminimum rates, for normal or seasonal turnover, in these industries, whenever experienced workers are not available to the employer in question. Expansion cases should be considered on their merits.

Some of the applicants requested an industry wide certificate, but the record shows that the need for a certificate varies greatly in its incidence and is not necessary in any community where there is available an adequate number of experienced workers. I therefore find that the issuance of an industry wide certificate is not necessary to prevent curtailment of opportunities for employment.

3. Terms and Conditions of Special Certificates

A. Learner Wage Rates

The learner wage rate requested by the representative of the knitted

outerwear industry was 75 per cent of the applicable minimum, and by the representative of the underwear industry, $66\frac{2}{3}$ per cent of the applicable minimum. The record fails to reveal any substantial reasons why there should be a differentiation between the two industries. All the data presented point to the adequacy of a 25 per cent abatement from the 30-cent statutory minimum, i. e., $22\frac{1}{2}$ cents per hour. I therefore find that a rate of not less than $22\frac{1}{2}$ cents per hour for learners is appropriate for learners in the industries so long as the 30-cent minimum remains in effect.*

The record shows that payments on a piece work basis are common throughout the industry. In order to prevent abuse and discrimination against learners, I find that it is necessary that wherever learners are employed in an occupation in which experienced workers of the same employer are paid on a piece work basis, the piece rates for learners shall be not less than those paid experienced workers, and the learners shall be paid the full amount earned on a piece rate basis whenever that amount exceeds the amount earned at $22\frac{1}{2}$ cents per hour, or such other higher learner rate as may be set by the employer.

B. Length of Learning Period

The applicants requested a learning period of 12 weeks. How-

* It may be noted that the total wage bill of an employer paying the statutory minimum and employing 5 per cent learners is greater at 30 cents than at 25 cents even though a learner rate of $22\frac{1}{2}$ cents is permitted at the 30-cent minimum, and no learner differential allowed at 25 cents.

ever, the evidence submitted to justify this request tended to show that 12 weeks in most of the occupations specified was the time needed to attain average or maximum production rather than that needed to attain the level of the minimum qualified experienced worker. Thus, for example, Exhibits K through N show clearly that, in the four operations involved, learners reach the "semi-skilled level of productivity" in 4, 4, 7, and 9 weeks, respectively. Other evidence bears out this general conclusion and indicates that, on the average, an 8 weeks learning period is appropriate, and certainly, sufficient, whereas a 12 weeks period is too long. I therefore find that an 8 weeks learning period is appropriate.

I also find that a learner is a person who has not had more than 8 weeks' experience in the aggregate in the operation of sewing machines or knitting machines, respectively, during the previous three years. No evidence was presented that showed that there need be any limitation on the particular type of sewing or knitting machine on which experience had been acquired. It may be noted, by way of explanation, that this finding does not preclude the employment of an experienced knitter as a sewing machine learner, but it does preclude the employment of, for example, an experienced apparel sewing machine operator as a sewing machine learner in these industries. The record fails to disclose any evidence, other than unsupported implications of the underwear application, that shows how long a previously

experienced operator can be said to remain experienced. Because of the many similarities between these industries and the apparel industry, I find that the period of 3 years set in the Administrator's apparel findings is valid herein as well.

C. Number and Proportion of Learners

The representative of the underwear industry requested that there be no limitation on the number of learners whereas the representative of the knitted outerwear industry requested 5 per cent of the total employees in the learner occupations. However, the record fails to show the need for more than 5 per cent. It also fails to show any great dissimilarity in the amount of turnover in the two industries, and it follows that the 5 per cent limitation, apparently sound, and conceded to be adequate for one industry, is presumably adequate for both, and I so find. The correctness of this finding is reinforced by the fact that the limitation of the learning period to 8 weeks will permit the employment of a much larger number of learners in the course of a year than would be possible with a 12 weeks learning period. This 5 per cent limitation is, of course, to be computed on the basis of the total number of sewing and knitting machine operators in each establishment. The 5 per cent limitation is necessarily an estimate of need, based on evidence, and not necessarily to be allowed on all applications. It should be treated as experimental and subject to such change as experience may indicate. I also find that it is appropriate, in view of the number of small establishments in the industries, and the need for a full complement of workers on the several operations to permit the employment of not more than 5 learners at subminimum rates in any certificate. In the case of a new plant or expansion of an already existing plant, it may also be necessary to employ learners in excess of the 5 per cent provided in these special

certificates. Applications for learners in excess of 5 per cent under these circumstances may be made under Part 522 of the Regulations.

D. Special Conditions

In relation to the findings made above on curtailment of opportunities for employment, it is clear that special certificates should not permit and should in fact expressly prohibit the employment of learners at subminimum rates when the employer can by reasonable diligence obtain experienced workers to fill vacancies. Furthermore, to apprise all interested parties of their rights and obligations, I find that no special certificate should be valid unless it remains posted at all times, during the period of its validity, in a conspicuous place in the plant. Finally, since the evidence in the record is necessarily limited, in large part, to the probable effects of the 30 cents or higher wage rates, I find that no special certificate shall be valid beyond October 24, 1940. The present findings can thus be reviewed in the light of actual operating conditions. Furthermore, I find that a reconsideration of the determinations set forth below may be appropriate if a wage order for either or both industries becomes effective before October 24, 1940.

DETERMINATION AND ORDER

Upon the whole record of evidence, I determine and order:

1. Effective on or after October 24, 1939, Special Certificates permitting employment of learners at subminimum rates as sewing

machine and knitting machine operators in the knitted wear industry shall be issued 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 sewing machine and knitting machine operations in the knitted wear industry 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 sub-minimum 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.

2. Any special certificate issued pursuant to this order shall be cancelled as of the date of issue if it is found that such certificate was issued when experienced workers were available and shall be cancelled prospectively or as of the date of violation if it is found that any of its terms have been violated or that skilled workers have become available. No certificate issued pursuant to this order shall be valid after October 24, 1940.

3. 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 sewing machine or knitting machine operations, respectively; and the term "knitted wear industry" includes men's, women's, infants' and children's knitted apparel and accessories, excepting gloves and hosiery.

Signed at Washington, D. C., this 19th day of October, 1939.


Merle D. Vincent