

Finding on Hearing on
Clay Products Industries
(other than pottery)

The Committee for the Brick Manufacturers of Maine, New Hampshire and Vermont, and sundry other parties having filed petitions with the Administrator for the exemption of the manufacturing or processing of clay products (other than pottery) from the maximum hours provisions of the Fair Labor Standards Act as an industry of a seasonal nature pursuant to Section 7(b)(3) of the Act and Part 526 of the Regulations issued thereunder, the Administrator gave notice of a public hearing on the clay products industries (other than pottery) 1/ to be held at the Hearings and Exemptions Hearing Room on the third floor of 939 D Street, N. W., Washington, D. C., to commence at 10:00 o'clock a.m., August 7, 1939, before the undersigned as presiding officer. Pursuant to notice, the undersigned convened the hearing and an opportunity was afforded to all who appeared to present testimony and to question witnesses through the presiding officer. Appearances were entered for and against the application and by agreement supplementary data were filed.

This hearing was held to determine whether the processing or manufacturing of clay products (other than pottery) as defined in the Notice of Hearing or any subdivision thereof is an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of the Regulations issued thereunder.

Appearances were entered (1) on behalf of most of the brick manufacturers in the three northern New England states of Maine, New Hampshire and Vermont, (2) on behalf of the clay products manufacturers in New England as a whole, especially those in the three southern New England states of Massachusetts, Rhode Island and Connecticut, 2/ (3) on behalf of a manufacturer of bricks in North Dakota, and (4) on behalf of a brick and tile company in the State of Washington.

1/ The hearing was a combined hearing and included concrete products which are not considered herein.

2/ The record contains no statement exactly defining the scope of the appearance made by Colonial Clays, Inc. of Boston, Massachusetts. The application filed by this organization indicates that although this application is supported by nine manufacturers in Massachusetts and Connecticut the organization is a successor of several associations presumably representing brick manufacturing in the whole of New England. The testimony by Mr. Heath, representing Colonial Clays Inc., dealt most largely with production in southern New England. The exhibit submitted by Mr. Heath, however, embraced brick making operations in New England as a whole.

Appearance in opposition was entered by the United Brick and Clay Workers of America.

No testimony was introduced on behalf of the Chehalis Brick and Tile Company of Chehalis, Washington. Testimony recorded for the Red River Valley Brick Corporation of Grand Forks, North Dakota, did not show that the operations of this firm are representative of the operations of any such well-defined or integrated group as might be considered to constitute a branch of an industry within the meaning of the Act. Only the appearances for the brick manufacturers of the three northern New England states and for the clay products manufacturers of New England as a whole, could be considered as representative of general conditions in any defined geographical area.

All brick produced in the three northern New England states is classed technically as common brick. Three types are made in the twenty-four plants operating in 1939. Two types, water struck brick and sand struck brick, are moulded from soft mud. The third type, wire cut brick, is a stiff mud brick extruded from a press.

Of the twenty-four yards operating in northern New England, twenty-one produce water struck brick. Seventeen of them produce water struck brick exclusively. Four produce water struck brick and also either wire-cut or sand struck brick. Two yards make sand struck brick exclusively while only one yard makes wire-cut brick exclusively.

Brick is the only product of the northern New England plants save for a relatively few hand moulded clay shapes. The majority of the brick produced in this area is water struck brick. This brick is a specialty product more or less peculiar to the region. Water struck brick is little made outside of the three northern New England states. The record indicates that most of this brick is marketed within the same territory. Of the little brick exported, most is used in Massachusetts. Some competition is offered within the northern New England states by brick shipped into the region from without.

In northern New England, all brick is manufactured in yards which are open to the weather. The clay is excavated from open-pits and is taken immediately to the plants for processing. Clay for the making of water struck brick is soaked in water, in the open, for about twenty-four hours. Sand is then added and after mixing, the clay is moulded in a moulding machine in the open or under an open shed.

The plants in which clay for sand struck and wire-cut brick is prepared seem to be enclosed, although not heated, but the yards are open.

Water and sand are generally added to the clay as it is brought from the clay pit and the mass thoroughly mixed. After mixing, the clay is either moulded by a moulding machine or extruded by a press.

The water struck and sand struck brick are taken immediately from the moulding machines to an open drying bed. After they have hardened, they are piled loosely under narrow open sheds for further drying. Wire-cut brick is usually placed immediately on drying racks in open drying sheds.

After further drying, the green brick is set up in open scove kilns. These kilns are built up with the green brick on the inside and have an outer wall of waste brick built around them. The whole is plastered over with clay to keep the heat in.

Green brick is burned continuously from eight to ten days and nights. Various combinations of coal, oil and wood are used as fuel, wood being used most extensively. When the bricks have been burned they are allowed to cool for about a week after which the scoving is removed. The brick is sorted into several grades. It is then ready for shipment or storage.

Brick thus made in the open is subject to damage and loss any time before it is burned. Moulded brick on the drying bed may be ruined by showers. Early and later in the season, all unburned brick is subject to damage by a freeze or heavy frost.

Northern New England appears to be the only large area in which all brick is dried in open air. It appears to be the only area in which wood is used extensively as fuel. The use of scove kilns is also universal in this area. It is claimed that open air driers, wood fuel and scove kilns are essential for the production of this special type of brick. Production costs in this area are relatively high. This high cost is largely occasioned by the use of wood as a fuel and the long period of burning which is practiced.

None of the plants in northern New England is large. Of the plants reporting, the number of employees varied from none in some yards during the winter months to a maximum of sixty-two in one of the larger plants in July, 1939. Total employment of all reporting yards had a low of sixty-seven workers in January, 1939, and a peak of four-hundred and two in June, 1939.

Plants in this region generally operate approximately six months beginning the latter part of April and extending through October, and most

of the workers get only about 100 working days per season. During the four year period, 1935 through 1938, approximately 92 per cent of the green brick was produced after the first of May and before the first of October. One to six burnings are made during the year dependent upon the size of the plant. Often a last burning is made early in November. This burning includes green brick made early in October, which often requires an unusually long drying period. There is thus a period in which operations cease while the brick is drying, prior to the last burning.

Production ceases entirely in all plants in northern New England after the last Fall burning. A skeleton crew is retained for maintenance, repair and sales work only. During the four years, 1935 through 1938, employment began to taper off in September and tapered off rapidly after the first of November.

It is to be noted that this annual cessation of operations is caused by the incidence of climatic factors on three different stages of the brick making. Clay in the clay banks becomes unavailable because extraction is impractical in freezing weather. This condition would not necessarily affect later operations because the clay might be stockpiled (as it is elsewhere). However, the stockpile would freeze and it is impractical, though not entirely impossible, to mix frozen clay, sand and water in freezing weather. Thus, unfrozen clay is not available for mixing in these three states where all the operations are performed in the open air or in unheated sheds. Furthermore, to make satisfactory brick the moulded clay must remain unfrozen while it is being dried; but in open air driers, unfrozen moulded clay cannot be made available. Finally, it appears that the specialty brick produced in the Northern New England yards can be produced only with open air driers. Therefore, if the method of operation were changed it would not be possible to produce the present product.

Production of bricks in the southern New England states of Massachusetts, Connecticut and Rhode Island differs from that in northern New England in several essentials. Although most of the plants in southern New England, like those in the northern group of states, do not possess artificial drying facilities, more than one-third of the brick produced in the whole of New England in 1938 was produced in plants which have artificial drying facilities. All of these are located in southern New England.

Water-struck brick is the chief product of northern New England. Sand-struck brick is produced most commonly in southern New England. The production of sand-struck brick represented approximately 90 per cent of the brick production of southern New England in 1938 and 80 per cent of that of New England as a whole.

Plants with heat drying facilities produced only sand-struck and wire-cut brick. Of the plants with artificial driers, the group of 5 sand-struck plants, though not each individual plant, produced brick for eleven months in 1938, while the one wire-cut plant produced brick for ten months. Almost 60 per cent of the brick produced in the heat drier plants was produced before the first of May and after the first of October. This practice is in marked contrast to the production practice in plants unequipped with heat drying facilities.

Brick was produced in the 17 open-air, sand-struck plants in southern New England for 8 months in 1938, but in the 4 water-struck plants only for 5 months. Individual plants may have operated a shorter period.

Taking New England as a whole, it appears that this larger area produces all three types of brick and uses both open-air and heat drying facilities. In 1938 some wire-cut brick was produced in the area in all 12 months, some sand-struck in eleven, and some water-struck in seven. Some plants with heat-drying facilities were in operation all twelve months of the year, while brick was produced in some open-air plants in eight months of the year.

In so far as brick is dried in the open air the effect of climatic factors in southern New England on the availability of the materials extracted, handled and processed by the industry is the same as in northern New England except that the possible operating season is longer. However, the climatic factors cannot and do not cause the cessation of operations where the brick is produced under cover and with the necessary heating facilities. It should be noted that the brick produced under the latter conditions appears to be different and have a different market from the brick produced without heating facilities..

Trade union opposition to the granting of an exemption was based on the following:

1. That the United States clay products industry, as a whole, is not of a seasonal nature.
2. That to grant an exemption to those plants which do not possess heat dryers and other necessary facilities for winter operations would be unfair to those plants which have much capital invested in such equipment.
3. That brick making is a declining industry and that an adequate labor supply is available at all times thus obviating the necessity for overtime hours.

Summary

Aside from the applications from North Dakota and Washington, which are individual and non-representative in character, and on which no industry-wide determination is possible, the applications under consideration herein overlap, since one refers to the three northern New England states and the other to the whole of New England. There are thus suggested two possible branches of the clay products industry. Other possible branches within the New England area might be based on type of brick manufactured (water-struck, sand-struck, and wire-cut) or on the type of facilities used (open-air dryer and scove kiln, heated dryer and scove, tunnel or down-draft kiln).

To determine that the manufacture of water-struck brick is a branch of the clay products industry might set up competitive maladjustment since the three types of brick are competitive within the area. Furthermore, since some plants manufacture two types of brick, such a determination would cause confusion and difficulty in defining the practical applicability of the exemption. A determination that plants equipped only with open-air dryers and scove kilns form a branch of the clay products industry, would not be feasible since the products of all the plants are locally competitive and since heat drier plants also operate with open air driers.

A determination that the manufacture of brick in the three northern New England states is an appropriate branch of the clay products industry is relatively free from the above difficulties, particularly since a large majority of the brick produced within the area is also consumed therein, and since almost all the brick produced therein is sold at a premium as a specialty product. It thus appears that brick manufacture in the States of Maine, Vermont and New Hampshire constitutes a well defined and integrated branch of the clay products industry. Furthermore, from what has been set forth above it is apparent that the northern New England branch is of a seasonal nature within the meaning of the Act and the regulations.

A similar determination with respect to the whole of New England (or to southern New England) does not appear feasible. The area taken as a whole (or its three southern states) lacks homogeneity. It includes plants with different kinds of driers and kilns, as is the case elsewhere. It is more competitive with brick-producing areas outside the region than is northern New England. It includes important plants that operate practically the whole year. Thus neither New England as a whole nor the three southern New England states constitute a branch of an industry of a seasonal nature.

Finding of Fact and Determination

Upon the basis of the whole record I find that:

1. The manufacture of brick in the three northern New England states of Maine, Vermont and New Hampshire is integrated and well-defined and constitutes a branch of the clay products industry (other than pottery) as defined in the notice of hearing; and
2. Brick cannot be manufactured in freezing weather in unheated plants with open-air driers because the clay is not available at the various stages of extraction, handling and processing in the only form in which it can be used by the industry, i.e., as unfrozen clay; and
3. Brick in northern New England is manufactured only in plants with open-air drying yards and scove kilns, and almost all the brick is a specialty product which can be produced only under these conditions. The plants produce green brick between April 15 and October 15, approximately, each year and shut down thereafter because of freezing weather, although one burning of approximately ten days' duration occurs after the last batch of green brick dries; and
4. The manufacture of brick in Maine, Vermont and New Hampshire is a branch of the clay products industry and is of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of the Regulations issued thereunder; and
5. Brick is manufactured in southern New England, and in New England as a whole, in plants with varying types of driers and kilns, as elsewhere; it is competitive with brick manufactured elsewhere; and the manufacture is carried on in important plants throughout the year; and
6. The manufacture of brick in the three southern New England states or in New England as a whole is **not** a branch of an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of Regulations issued thereunder; and
7. The applications filed by the Chehalis Brick and Tile Company of Chehalis, Washington, and the Red River Valley Brick Corporation of Grand Forks, North Dakota, fail to show the existence of any integrated and well-defined branches of the clay products industry.

The application of the Committee of Brick Manufacturers of Maine, New Hampshire and Vermont is granted.

The applications of Colonial Clays, Inc., the Chehalis Brick and Tile Company and the Red River Valley Brick Corporation are denied.

Signed at Washington, D. C. this 15th day of November, 1939.

Harold Stein

Harold Stein
Presiding Officer