

U. S. DEPARTMENT OF LABOR  
Wage and Hour Division  
Washington

WALNUT AND FILBERT SEASONAL EXEMPTION DENIED

The application to have the receiving, grading and packing of unshelled English walnuts in California, Oregon and Washington, and unshelled filberts in Oregon and Washington declared to be an industry of a seasonal nature and therefore entitled to partial exemption from the hours provision of the Fair Labor Standards Act was denied in a finding made public today by the Wage and Hour Division of the U. S. Department of Labor.

The California Walnut Growers' Association and the North Pacific Nut Growers' Cooperative first applied for exemption for English walnuts, and the Administrator issued a determination stating that a prima facie case had been shown for the granting of it. Objections were received, however, from California labor department and officials and union officers and a hearing was set for September 28, 1939, before Harold Stein, Assistant Director of the Hearings Branch of the Wage and Hour Division, in San Francisco, California. In the interim, applications were received from the North Pacific Nut Growers' Cooperative and other parties for exemption of receiving, grading and packing of unshelled filberts in Oregon and Washington as a branch of an industry of a seasonal nature; and since the two matters were related, both were covered in the hearing.

In his findings and determination, Mr. Stein pointed out that although the receiving of the new crop of walnuts at the packing houses is an operation which is directly controlled by climatic and other natural factors, once the walnuts have been received in the packing houses the situation changes.

"It was specifically and definitely admitted by the applicants that the reason for the extremely short grading and packing season is the existence of a heavy consumer demand for walnuts in the Christmas holiday season," the findings

state. "To attempt to relate this holiday demand for walnuts to climatic and other natural factors is, of course, too far fetched to warrant serious consideration. . .

"What has been said in the preceding paragraph about walnuts applies with equal force to filberts. . . . The grading and packing do not necessarily occur at the time of the receiving season and their performance at that time is dictated solely by market demand, and not by the natural factors affecting the receiving of the walnuts into the packing houses. . . ."

Further, Mr. Stein found that the receiving, grading and packing of walnuts is not a separate branch of an industry but is a part of the whole walnut industry, including operations on unshelled nuts and also shelling and storing operations. Further, since the receiving, grading and packing of filberts takes place only in plants which also handle walnuts, the operations on filberts are not a separate industry or branch thereof, but are merely one phase of the walnut industry. Since the walnut industry, including the operations on unshelled nuts and the shelling, operates throughout the year, it is not an industry of a seasonal nature.

Mr. Stein noted as of interest in the consideration of this problem that California in its legislation considers the "nut cracking and sorting industry" to include both the shelled and unshelled operations, and that it does not grant any exemption from its maximum hours provisions for walnut operations, as it does for operations on various other commodities.

Mr. Stein concluded that: "Neither the receiving, grading and packing of walnuts, nor the receiving, grading and packing of filberts, nor both taken together, 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."

A notice of opportunity to petition for review of the findings and determination of the presiding officer, announcing a 15-day period during which such petition must be filed, appears in tomorrow's Federal Register.

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