

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

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IN THE MATTER OF THE :
RECOMMENDATION OF INDUSTRY : Findings and Opinion
COMMITTEE NO. 5 FOR MINIMUM : of the Administrator
WAGE RATES IN THE MILLINERY : December 15, 1939
INDUSTRY :
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This is a proceeding for the purpose of determining whether the 40 cent minimum wage recommendation of Industry Committee No. 5 for the Millinery Industry shall be approved and carried into effect.

On March 7, 1939, pursuant to Section 5(b) of the Fair Labor Standards Act of 1938, herein called the Act, Administrator Elmer F. Andrews, by Administrative Order No. 17, appointed Industry Committee No. 5, herein called the Committee, to recommend, after investigation, the minimum wage rates to be fixed for the millinery industry. The Committee was convened by Administrative Order No. 21, dated April 20, 1939, and commenced its study of conditions in the industry on May 31, 1939. Hearings were held and numerous witnesses were heard on the factors which the Committee is required to take into consideration by the terms of the Act. On June 2, 1939, the Committee,

by a vote of 14 to 1, recommended that the minimum wage rate in the millinery industry be 40 cents an hour. On June 12, 1939, Mr. L. D. Thompson of Atlanta, Georgia, the dissenting member of the Committee, filed with the Administrator a minority report. The report of the Committee, containing its recommendation, was duly filed with the Administrator on August 25, 1939, pursuant to Section 8(d) of the Act. On September 15, 1939, the Administrator gave due notice of a hearing to be held in this proceeding in Washington, D. C., before Mr. Paul Sifton, Deputy Administrator, pursuant to the provisions of Section 8(d) of the Act. The hearing began on October 2 and was concluded on October 5, 1939. In the absence of Mr. Andrews and Mr. Sifton, who had tendered their resignations on October 16 and 17 respectively, Mr. Harold D. Jacobs became Acting Administrator. The complete record of the hearing before Mr. Sifton was transmitted to Acting Administrator Jacobs. All parties who appeared at the hearing were notified that written briefs would be received until November 15, 1939.^{1/} On November 20, 1939, pursuant to notice published in the Federal Register on November 3 and duly served upon all the parties, oral argument on the record was had before Acting Administrator Jacobs in Washington,

^{1/} Briefs or memoranda were filed by counsel for Industry Committee No. 5, by United Hatters, Cap and Millinery Workers International Union, the Millinery Stabilization Commission, the Southern and Western Hat Manufacturers Association, the Midwestern Millinery Association, the Buffalo Millinery Manufacturers, the Southern Millinery Manufacturers Association, and the Allen Hat Company of St. Louis, Mo.

D. C.^{2/} On November 30, 1939, Mr. Jacobs was appointed Administrator.

During the hearing before Mr. Sifton, counsel for certain Buffalo, New York, manufacturers moved to dismiss the proceeding and for a summary direction disapproving the recommendations of the Committee. This motion was denied. Mr. Sifton also made a number of rulings on motions and on objections to the admission of evidence.

The Administrator has reviewed the acts and orders of Administrator Andrews made in connection with this proceeding and the rulings made by Mr. Sifton with respect to motions and objections to the admission of evidence, and, save for those acts, orders and rulings which are inconsistent with the findings, conclusions and orders set forth below, hereby affirms said acts, orders and rulings.

2/ Oral argument was presented by the following persons on behalf of the recommendation of the Committee:

Mr. Max Zaritsky, President, United Hatters, Cap and Millinery Workers, International Union, N.Y.C.

Mr. Marx Lewis, Executive Vice-President, United Hatters, Cap and Millinery Workers, International Union, N.Y.C.

Mr. John M. Keating, Counsel for Millinery Stabilization Commission, N.Y.C.

Mr. Richard H. Gregory, Jr., Counsel for Industry Committee No. 5

Mr. L. N. Margolin, Executive Director, Eastern Women's Headwear Assn., Inc., N.Y.C.

The following persons argued in opposition to the recommendation of the Committee:

Mr. Joseph E. Brodinsky, of Washington, D. C., Counsel for the Southern and Western Hat Manufacturers Assn. and especially on behalf of the Mexican-American Hat Co. and the Caradine Hat Co.

Mr. George A. Sherman, of St. Louis, Mo., on behalf of the Associated Millinery Industries.

Mr. I. M. Schieber, of St. Louis, Mo., in behalf of the Allen Hat Co.

Mr. Philip Halpern, of Buffalo, N.Y.

Mr. John L. Westmoreland, of Atlanta, Georgia, in behalf of Southern Millinery Industry and Dallas (Texas) Millinery Council

Mr. Raymond Merlander, of Chicago, Ill., in behalf of Midwestern Millinery Association.

At the oral argument before Mr. Jacobs, a number of objections to the promulgation of the recommended wage order for the millinery industry were raised by various parties. In so far as those objections are inconsistent with the findings, conclusions, and order set forth below, the Administrator finds them to be without merit.

The Administrator has read the entire record of this proceeding, heard oral argument, read the briefs submitted, and consulted with subordinates who have likewise read and analyzed the record, the arguments, and the briefs. Upon all the evidence, the Administrator makes the following findings, conclusions, and order.

I. Definition of the Millinery Industry.

Administrative Order No. 17 of March 7, 1939, which appointed the Committee, contained a definition of the millinery industry. ^{3/} The definition of the industry was made by the Administrator after consultation with employers and representatives of labor and upon the basis of an investigation conducted by the Economic Section and Industry Committee Counsel Section of the Legal Branch of the Wage and Hour Division of the United States Department of Labor.

The millinery industry is defined as

"the manufacture of all headwear, except knitted headwear, for ladies, misses, girls and infants, from any material, but not including the manufacture of felt hat bodies of fur or wool."

^{3/} This definition was amended, for the purpose of clarification, by Administrative Order 23, issued May 6, 1939.

The sole objection to the definition interposed at the hearing concerned the inclusion therein of the headwear known as "harvest hats."^{4/} I have considered the evidence pertaining to "harvest hats" and find that such headwear is manufactured in competition with the other types of millinery included within the

^{4/} Mr. Joseph E. Brodinsky appeared in behalf of the Southern and Western Hat Manufacturers' Assn., and especially on behalf of the Mexican-American Hat Co., and the Caradine Hat Company. R. page 851.

Mr. Brodinsky urged that "harvest hats," which are defined under the Tariff Act of 1930 as "hats, bonnets or hoods of straw, chip, paper, palm leaf, willow, osier, rattan, real horsehair, Cuban bark, vemie, or Manilla hemp" should not be included within the definition of the Millinery Industry. He contended that "harvest hats" were separately classified under the Tariff Act of 1930 (Section 1504(b)(5), under the N.R.A. code of February 5, 1934, and under the recommendation of Industry Committee No. 4 for the Hat Industry which recommended a separate minimum of 35 cents an hour for the straw and "harvest hat" industry.

The economic data submitted to the Millinery Industry Committee covered the manufacture of all types of headwear embraced in the definition of the industry. Presumably the Committee considered the straw and "harvest hat" branch of the industry in arriving at its recommendation. It was not until the hearing before Mr. Sifton that the "harvest hat" manufacturers sought to exclude "harvest hats" from the definition of the millinery industry. Even then no contention was made that substantial curtailment of employment among employees manufacturing "harvest hats" would result by reason of a 40-cent minimum for "harvest hats."

It is apparent from the evidence offered, that the ladies' "harvest hats" are highly styled and compete with similarly priced hats necessarily included within the definition of the millinery industry. The style factor, as stated elsewhere herein, represents the most competitive element in the manufacture and sale of millinery. Certainly, this is not true in the manufacture and sale of men's hats. The style changes in "harvest hats" which have rendered them competitive with sports millinery, beach and resort wear, and summer millinery, have occurred within the last few years, so that at the time of the Tariff and N.R.A. definitions "harvest hats" probably did not compete with millinery in general.

definition.^{5/} Accordingly, I conclude that the definition of the millinery industry properly includes the manufacture for ladies, misses, girls and infants of the type of headwear known as "harvest hats."

^{5/} Ibid.