

percent on, for example, the wholesale value of wool-felt hat bodies.^{68/} Expressed as a percentage of the wholesale selling price of finished millinery, the disadvantage would be somewhat less. As to shipments of finished millinery, the record discloses that approximately 60 percent of the millinery output of the South Atlantic area is sold within that area, and with a consequent transportation cost advantage even over New York City.^{69/} There are also certain transportation charges incurred by New York manufacturers that are not present in the South Atlantic or other areas.^{70/} Mr. O'Keefe testified that "the competitive advantages of any section of the country over any other section in the matter of transportation differences in general are not of major importance. It should be noted that in selling the markets within a given area, manufacturers located within that area are advantageously situated with respect to transportation costs, and that a substantial proportion of millinery production is sold by manufacturers under such favorable circumstances. With respect to all other markets, there is no substantial competitive advantage in actual practice."^{71/} I find that this conclusion was based upon an analysis of rates from the major producing centers to the major markets.

^{68/} Industry Committee Exhibit 8b

^{69/} R. p. 485.

^{70/} R. pp. 469-470.

^{71/} R. p. 750; Industry Committee Exhibit 3, pp. 29-39; Industry Committee Exhibits 8a, 8b, 8c.

As to living costs, ^{72/} the evidence discloses that intra-regional differences in such costs far exceed interregional variations. No significant variation in food prices exists between New York City and Atlanta, Georgia. ^{73/} No distinctively regional cost of living pattern can be constructed from the abundance of evidence adduced on this subject. ^{74/}

Mr. Thompson also contended that manufacturers outside of the New York City area have two items of cost not possessed by manufacturers in New York City in that copyists of hat styles must journey to New York from outlying areas and manufacturers located at a distance from New York, which is the main source of raw material supplies, and must keep large inventories of raw materials. ^{75/} These disadvantages, if they exist (no proof of their magnitude was offered) would seem to be far outweighed by the differential wage advantage enjoyed by the South Atlantic area and apparently otherwise unjustified.

^{72/} Industry Committee Exhibit 4; R. pp. 755-764.

^{73/} Zaritsky Exhibits 1, 2, 3 and 4; R. pp. 888-890.

^{74/} Industry Committee Exhibit 4.

^{75/} It was also urged that workers in the South Atlantic area lacked the productivity of New York City workers. There was no evidence, however, tending to establish that the productivity of workers in various regions differed materially, thus justifying a differential. The firms in the South Atlantic area have been established longer and are relatively larger than those elsewhere in the industry. See Thompson Exhibit 2, p. 1. In fact, the inference would appear to be otherwise, in view of the fact that Massachusetts is also a low wage area and it was not contended that this could be attributed to the non-productiveness of its workers.

The evidence in the record on wages established by collective labor agreements and by minimum wage standards voluntarily maintained by employers indicates that these factors do not justify a regional differential.^{76/}

Considering transportation, living and production costs together with the evidence on collective labor agreements and voluntary wage standards, I find that these costs do not differ between any reasonably definable groups or regions within the millinery industry so as to affect competitive conditions within the industry or make necessary a classification within the meaning of Section 8(c) of the Act.

^{76/} R. 906-908; Industry Committee Exhibit 3, p. 17.

CONCLUSION

Under all the circumstances and upon all the evidence, I conclude that the creation of separate classifications for "non-productive" workers or for any region or area is unjustified.

V. Recommendation Made in Accordance with Law.

It was urged at the hearing by way of "motion to Dismiss the Proponent's case and for a Summary Direction of the Administrator Disapproving the Recommendation of the Millinery Industry Committee" that the proceeding is defective in that the Industry Committee did not "investigate conditions in the industry," as required by the Act, that the wage data was inadequate, that no report of the Committee was made because the Committee did not convene for the purpose of signing its report, and that the Industry Committee was improperly influenced in reaching its recommendation. These contentions were reiterated in oral argument and augmented by challenges to the legality of the procedure utilized in the disposition of the wage recommendation. In my opinion, none of these issues, in so far as they relate to proceedings before the Industry Committee, is here before me. I have, nevertheless, considered the contentions and find them to be without merit. The principal contentions are treated below.

A. Adequacy of the Investigation by the Industry Committee.

The record establishes conclusively that the Committee investigated extensively conditions in the millinery industry and

considered those conditions before making its recommendations. Approximately one month before the Industry Committee convened each member of the Committee was given a study, entitled "Conditions in the Millinery Industry in the United States." prepared by the Women's Bureau of the United States Department of Labor.^{77/} Much of the statistical data introduced at the Committee Hearing was based upon this study by the Women's Bureau and upon additional data collected by the Bureau of Labor Statistics of the Department of Labor. Members of the Staff of the Economics Section of the Wage and Hour Division analyzed the affect of various minima upon wage bills, and the factors affecting competition, economic conditions, and living and transportation costs in the various areas of production.^{78/} These studies were presented to the Industry Committee during their sessions on May 31, June 1 and June 2, 1939,^{79/} and were explained to the Committee by economists from this Division. At the hearing before the Committee, interested parties appeared and gave evidence, and briefs and economic studies were received from the Southern Millinery Manufacturers Association and from manufacturers in Atlanta, Georgia; Minneapolis and St. Paul, Minnesota; and Dallas and Waco, Texas.^{80/} I conclude, therefore, that the Committee has investigated and considered conditions in the Millinery Industry in accordance with law.

^{77/} Industry Committee Exhibit 1.

^{78/} Industry Committee Exhibits 2, 3 and 4.

^{79/} A night session which adjourned at 10:00 p.m. was held on May 31, 1939.

^{80/} Administrator's Exhibits 1, 2, 3, 4, 5 and 6.

B. Adequacy of the wage data.

The adequacy of the wage data presented to the Industry Committee and utilized by the proponents of the Committee's recommendation to support their case at the public hearing, was challenged by several witnesses.^{81/} In the data compiled by the Women's Bureau and the Bureau of Labor Statistics and adduced in evidence, sample distributions of hourly earnings were available for all employees in six of twelve major producing areas.^{82/} Wage distributions for "productive," but not for "non-productive" workers, were available as to four areas - Northern New Jersey, Illinois, Cleveland, Detroit and Milwaukee, and San Francisco.^{83/} Approximately 55 percent of the employees in the industry were covered by the sample studies and in the low wage areas of Massachusetts, Texas and the South Atlantic States, the average coverage was somewhat higher.^{84/} No data on the distribution of average hourly earnings for "non-productive" employees were available for the areas of Up-State New York and Connecticut and for the four areas of Northern New Jersey, Illinois,

^{81/} Mr. Merlander testified that he did not challenge the accuracy of the studies prepared by the Economics Section, but that he did not believe that the information supplied by employees was a proper basis for compilation of the data. See R., p. 812, et seq. See footnote 90, infra.

^{82/} A major producing area is one in which firm sales exceed \$1,000,000. Industry Committee Exhibit 1, p. 14.

^{83/} Information on the distribution of average hourly earnings of "productive" workers for the Up-State New York and Connecticut areas was also available, but the sample was relatively small.