

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

WAGE AND HOUR DIVISION REJECTS PACKING HOUSE EXEMPTION CONTENTIONS

Contentions raised by the Institute of American Meat Packers in seeking exemptions from the hours provisions of the Fair Labor Standards Act for employees in packing houses were rejected in a letter made public by the Wage and Hour Division today. The letter was addressed to the Institute at 59 East Van Buren Street, Chicago, by George A. McNulty, General Counsel of the Division.

The Institute had claimed that the 14-workweek exemption from the hours provisions of the Fair Labor Standards Act, provided in Section 7 (c) of the Act, extended to all employees in any place of employment where their employer handles, slaughters or dresses livestock, regardless of the work done by particular employees. The Institute also contended that the 14 weeks exemption from the hours provision need not be applied simultaneously to the entire plant but could be used in the case of different groups of employees at different times.

The letter released by the Division rejected both of these contentions. Mr. McNulty's letter, in full, follows:

"Mr. Wesley Hardenbergh
Institute of American Meat Packers
59 East Van Buren Street
Chicago, Illinois

"Dear Mr. Hardenbergh:

"On August 29 and again on September 5 you wrote to this Division and protested against the interpretations contained in paragraphs 21 to 24, inclusive, of our Interpretative Bulletin No. 14, insofar as those paragraphs related to the meat and livestock industry. These matters had been discussed with your representatives prior to the release of the bulletin. Following the receipt of your letters, a conference was held between certain representatives of your industry and members of this office at which the same protests were presented. Subsequent to that conference certain members of this Division visited two large meat packing establishments in Chicago in order to obtain first hand knowledge of the operations conducted in meat packing houses. The purpose of this letter is to reply to your protests.

"As you are aware, Section 7(c) of the Fair Labor Standards Act grants a fourteen workweeks exemption from the hour provisions to employees of an employer engaged in the 'handling, slaughtering, or dressing poultry or livestock.' In paragraph 21 of Interpretative Bulletin No. 14, the operations included within that expression are discussed. In paragraph 23(a) it is pointed out that any exemption provided by Section 7(c) extends only to (1) the employees performing the operations described in Section 7(c), and (2) the employees performing operations so closely associated to the described operations that they cannot be segregated therefrom for practical purposes, and whose work is also controlled by the irregular flow of commodities into the establishment. In paragraph 24 it is pointed out that the employer who is entitled to a partial exemption under Section 7(c) cannot take that exemption for one set of employees and thereafter take the exemption again for another set in the same establishment.

"With your letter of August 29, you enclosed a brief in which you requested that we withdraw the interpretations contained in paragraphs 23(a) and 24. You stated, first, that the exemption provided by Section 7(c) extends to all employees in any place of employment where their employer handles, slaughters or dresses livestock, regardless of the work done by particular employees. You stated, second, that 'the exempt weeks claimed as to one employee may be different from those claimed as to other employees; in short, that the employer has fourteen exempt weeks as to each individual employee and not as to the entire plant as a unit.'

"Taking up your two contentions in order, we wish to point out that after careful consideration of your brief and after a study made of the operations of meat packing establishments and of other pertinent matters, we have concluded that the interpretation contained in paragraph 23(a) of our Interpretative Bulletin No. 14 is correct.

"We have considered once again the three possible alternatives: whether (1) only the employees engaged in the handling, slaughtering or dressing of livestock are exempt, or whether (2), in addition to the employees engaged in those operations, the exemption applies to employees performing operations that are so closely associated thereto that they cannot be segregated for practical purposes and whose work is also controlled by the irregular movement of commodities into the establishment, or whether (3), all the employees in a place of employment where the employer is engaged in the handling, slaughtering or dressing of livestock are exempt. In our opinion the middle ground is the one which best effectuates the purpose of the exemption.

"In the diagram of slaughtering and processing operations conducted in a meat packing plant, which was part of your brief, the different departments in a representative meat packing establishment were shown. According to this diagram, the first three departments are those where employees are engaged in 'yarding and driving, slaughtering and dressing.' It is our opinion that Congress intended the exemption to apply only to the employees of these departments. The language of Section 7(c), namely 'handling, slaughtering, or dressing,' seems itself to carry a limitation of the exemption to such employees. Furthermore, after livestock has been slaughtered and dressed, the products normally move to coolers where they may be held for a few days. After the products have reached the coolers, the need for immediate operations is lessened. In view of the fact that the operations, which follow after the meat has reached the coolers, are performed a number of days after the live animals have been received in the yards, it seems doubtful that the purpose of Congress in adopting Section 7(c), namely to facilitate the handling of seasonal agricultural commodities during peak seasons, would be served by extending the exemption to the employees performing work on the meat after it has reached the coolers. As already indicated, the need for doing that work immediately is not nearly as great as the need of performing the handling, slaughtering and dressing operations immediately.

"With respect to fats and inedible products of the livestock, it seems that the necessity of immediate operations with respect to them is considerably lessened after they are removed from the livestock. Thus, in our opinion, the exemption does not extend to such operations. It may be pointed out that if the exemption did extend to such operations, it would include the refining of oil, the making of grease and the making of glue and margarine -- operations which Congress did not have in mind and to which the words 'handling, slaughtering and dressing' are clearly inapplicable.

"Furthermore, there are hundreds of establishments which do not slaughter and dress livestock but which perform operations upon products purchased from other meat packers. These operations, such as sausage making, are identical with those performed in an integrated meat packing establishment. When these operations are performed by a non-integrated establishment, the exemption cannot apply. However, if your position were to be sustained, the exemption would apply to such operations when conducted in an integrated

meat packing establishment. We do not believe that Congress intended to grant a competitive advantage to the integrated establishment over the non-integrated establishment carrying on the same operations.

"We wish to indicate, however, that in paragraph 21, where a discussion is found of the operations included in the expression 'handling, slaughtering, or dressing poultry or livestock,' the word 'dressing' is described as meaning 'bleeding, removing head, hide, hair, entrails and dirt.' Although it is not precisely stated at that point, it is our opinion that the operations, such as cleaning, performed upon casings and warm fancy meats before they are placed in coolers are included in the term 'dressing,' and that the exemption applies to such operations.

"With respect to your second contention, we wish to point out that here, too, in our opinion, the interpretation contained in paragraph 24 of Bulletin No. 14 is correct. The language of Section 7(c), we believe, supports our position that the exemption is one which extends to all employees at the same time and that separate fourteen workweeks exemptions cannot be taken at different times for different sets of employees in the establishment. The statute states that the exemption shall be applicable for fourteen workweeks 'to his employees' 'in any place of employment' and that seems to mean that when the exemption applies, it applies to all the employees at the same time. In other words, the Act does not provide consecutive exemptions for different sets of employees in the same establishment but provides only one exemption.

"Furthermore, if the partial exemption provided by Section 7(c) could be taken at different times for different sets of employees, it would be possible for an employer to obtain complete exemption from the hour provisions of the Act, while it is plain from the word 'fourteen' that the exemption was not to be a complete one. Elsewhere in Section 7(c) Congress granted complete exemptions from the hour provisions (for example, such an exemption is granted to the ginning and compressing of cotton). The grant by Congress of only partial exemption to handling, slaughtering and dressing operations clearly indicates that complete exemption was not intended."