

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

IN THE MATTER OF THE APPLICATION	:	
	:	
OF	:	
	:	
THE CIGAR MANUFACTURERS ASSOCIATION	:	
OF AMERICA, INC.	:	DETERMINATION AND ORDER
	:	
ET AL.	:	OF THE
	:	
TO EMPLOY LEARNERS IN THE CIGAR	:	
MANUFACTURING INDUSTRY AT WAGE RATES	:	PRESIDING OFFICER
LESS THAN THE APPLICABLE MINIMUM	:	
SPECIFIED IN SECTION 6.	:	JANUARY 2, 1940
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	:	
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This proceeding arose out of applications of the Cigar Manufacturers Association of America, Inc., and a number of individual manufacturers in the cigar industry,^{1/} filed under Section 14 of the Fair Labor Standards Act of 1938 and Part 522 - regulations of the Wage and Hour Division applicable to the employment of learners, for Special Certificates authorizing employment of learners at a wage less than the applicable minimum wage specified in Section 6 of the Act.

A public hearing was held pursuant to notice on November 1 and 2, 1939, in Washington, D. C., before the undersigned as Presiding Officer duly designated and authorized to determine:

- "(a) What, if any, occupation or occupations in the cigar manufacturing industry, or branch thereof, require a learning period, and
- (b) the factors which have a bearing upon curtailment of opportunities for employment within the cigar manufacturing industry, or branch thereof, and
- (c) under what limitations as to wages, time, number, proportion, and length of service special certificates may be issued to employers in the cigar manufacturing industry, or branch thereof, for whatever occupation or occupations, if any, are found to require a learning period."

As used in the Notice of Hearing, the term "cigar manufacturing industry" was defined to mean:

- (a) the manufacture of machine-made cigars, and
- (b) the manufacture of hand-made cigars.

Findings of Fact

I. Occupations Requiring a Learning Period

Until 1919 occupations in the Cigar Manufacturing Industry were unmechanized and cigar making was a highly skilled craft. Employment was reasonably regular from year to year. In the years following the introduction of machines mechanized production rose rapidly and employment declined rapidly from approximately 112,000 wage earners in 1921 to slightly less than 56,000 in 1937. Of these only an estimated 15,000 to 16,000 are now hand-

^{1/} Rec. pp. 19, 32, 97, 213, 228, 241

cigar makers. The remaining number are machine operators, non-productive employees, and those engaged in stripping, cellophaning and packing occupations. As machine production increased, the volume of hand-made cigars diminished. At the same time total cigar production decreased from a total of approximately 8,000,000,000 cigars in 1920, the peak year, to 5,500,000,000 in 1937.

During this period of declining production, emphasized by keen competition from cigarettes, the higher priced cigars^{2/} diminished in volume while Class A cigars (5 cents and less) rose from 30 per cent of total cigar production in 1921 to approximately 86 per cent in 1937.^{3/} Class C cigars, representing 40 per cent of the total production in 1921, declined to about 10 per cent of the total production in 1937. This trend still continues. It is estimated that 5 cent cigars are 60 per cent of the Class A production and that the remainder are largely 2 for 5 cent cigars.

The evidence indicates that approximately 80 per cent of all cigars and 87 per cent of the Class "A" cigars are machine made. Industry representatives emphasized the fact that machine production continues to rise and the volume of hand-made cigars to diminish.

In the transition from a hand-made to a machine-made product there has simultaneously occurred a change in the type of workers employed. The machine operator, unlike her predecessor, the hand cigar maker, is invariably a woman. She normally begins her trade between the ages of 18 and 20 years, with no prior cigar-making experience, and usually continues for several years. The hand cigar worker is a highly skilled craftsman. Cigars in the medium and higher price classes call for a high quality of workmanship. The evidence indicates that the hand cigar maker's skill and personal characteristics acquired by experience may make him less immediately adaptable to work on a machine. Nevertheless, the evidence is quite conclusive that women operators are employed in the machine branch because they can be employed at wage rates substantially lower than the rates paid men.

Employers attempted to establish that there are several highly skilled occupations in the machine cigar factory and that a substantial learning period is required for each of them. The most important data presented were in relation to the learning period for machine operators, but the studies offered by employers as proof of a learning period showed upon analysis such serious inconsistencies as to throw doubt on the reliability of conclusions based on them. Furthermore, the arguments and evidence presented in relation to the length of the learning period in other occupations were not persuasive.

^{2/} The Commissioner of Internal Revenue classes cigars as "A" (not over 5 cents); "B" (over 5 cents and not more than 8 cents); "C" (over 8 cents and not more than 15 cents); "D" (over 15 cents and not more than 20 cents); and "E" (more than 20 cents).

^{3/} Except for the year 1938, the absolute as well as the relative production of Class A cigars has increased each year since 1921.

The Cigar Makers International Union of America introduced several young women operators with ten to fifteen years experience on both two and four operator machines, who testified that a young woman could learn each of the different machine operations in less than 13 weeks, as claimed by the employers. The practice in the particular plant where these young women operators are employed is to place a new girl at a machine with an experienced operator in order that she may acquire knowledge in the handling of the machine. This beginner observes the operations for three or four days, in some instances, for only a few hours, after which she is placed at a machine with experienced operators. In this manner the operator is able to learn not only one operation, but within a very short time becomes sufficiently trained to take her place at any operation. The evidence revealed that the operators were interchangeable with practically no loss of production, even though a beginner might be performing on the same machine.

One of the young women operators pointed out that she is working at a machine with a beginner at the present time and that production after the first three days was 3800 cigars, which is the capacity of the machine. The evidence established that there is little, if any, slowing up in production when beginners are placed on a machine with experienced operators. The testimony revealed that there is nothing to indicate that a particular finished cigar has been made on a machine on which a learner has been handling one of the operations. After the first day, the product of these beginners is sent to the packing room with that of the experienced workers with no identification other than the machine number, and is packed with the product of experienced employees. It is true that occasionally the volume of rejected stock may indicate that the cigars were produced by machines on which beginners worked. In general, the testimony of these operators indicated that proficiency is rapidly acquired.

A machine manufacturer from Pennsylvania substantially corroborated the testimony offered by the young women operators (that machine operators could learn the operations in less than 13 weeks) when he submitted figures indicating that at a piece rate of 80 cents per thousand cigars the average hourly earnings for a group of learners at the end of an 8 week period were 28.4 cents per hour. However, this manufacturer does not place a beginner with an experienced operator in his plant because the experienced operator does not have the patience to wait and take the loss in volume while the inexperienced operator is learning to operate the machine. Beginners in this plant are taught by an instructor. In spite of this testimony, the manufacturer did not refute the testimony that placing a beginner on a machine with an experienced operator is a satisfactory method to teach machine operations to beginners.

It is true that a few apt beginners will learn the minimum very quickly, on the one hand, and that there is some loss of material and low productivity during the early part of the training period, on the other. The evidence as a whole, however, indicates that an eight week period is sufficient time in which to train a beginner on any of the machine operations.

Other occupations in a machine factory include stripping, cellophanning and packing. Employers testified that stripping and cellophanning require a substantial learning period, but this evidence is not convincing. These occupations are simple and are efficiently performed after very little experience. On the other hand, packing, i. e., sorting the finished cigars, requires a knowledge of colors and other characteristics of cigars, which demands a somewhat more extended learning period. The extent of the learning period varies according to the manufacturer's standards, but the average learning period appears to be approximately the same as that required for machine operation, i. e., eight weeks.

On the basis of the entire record of evidence I find that a learning period in the machine branch of the cigar manufacturing industry is limited to the occupations in the operation of cigar making machines, and the packing operation. These occupations are not highly skilled, are quickly learned in a comparatively short period, usually not exceeding six to eight weeks and sometimes less. No other occupations in the machine branch of the industry require a learning period.

Hand cigar making is admittedly a highly skilled operation. To become completely skilled on Class B or C cigars may take as long as two or three years. In view of the far lower standard of workmanship required on Class A cigars, the learning period on this class of cigar is much shorter. Furthermore, the higher piece rates paid Class B and C workers should yield these learners wages above the statutory minimum long before the completion of their full learning period. On the whole, therefore, a six month period appears reasonable. With the same considerations in mind, it appears that the packing operation on hand made cigars, which is basically similar to the operation on machine made cigars, requires the same learning period, i. e., 8 weeks.

II. Curtailment of Opportunities for Employment

The application for learners in the hand branch of the cigar industry was not supported by any assertion that there is present need for learners. Indeed, the evidence is conclusive that there is a large reservoir of experienced workers in all hand made cigar centers available for employment in that branch of the Cigar Manufacturing Industry. The principal employer witness for the hand-made branch testified that "hand manufacturers with whom I have spoken so declare it. We have no problem at the moment and I want that understood. At the present moment we have plenty of help." The desire for the learner classification in the hand-made branch of the industry is based on the hope that there will be an upturn in business which will result in the need for training hand cigar makers since none are being trained at the present time.

Representatives of trade unions testified that there are now available in Tampa, Florida, where a large percentage of hand-made cigars are manufactured, 4,000 unemployed hand cigar makers. They also testified that wherever hand cigar plants are located - in Pennsylvania, New Jersey, New York,

and other sections of the country - an abundant supply of skilled hand cigar makers is available and is seeking employment. There is no indication that there will be any substantial change in the current status of employment for some years. It follows that a denial of the application of the hand-made branch of the industry cannot and will not curtail opportunities for employment in that branch of the cigar manufacturing industry.

Several members of the National Association of Cigar Manufacturers, Inc., whose member firms manufacture about 70 per cent of all cigars made and approximately 90 per cent of the Class A cigars, testified respecting the need for learners in the machine branch of the cigar manufacturing industry. They admitted, with the exception of two manufacturers, that there was no present need for the employment of learners. They anticipate that business conditions, now on the upswing, will deplete the ranks of experienced machine operators at an early date, making the employment of learners necessary. The two manufacturers referred to operate factories in towns that are remote from other cigar manufacturing centers and stated that no experienced workers are available for current expansion or to replace turnover. With these minor exceptions, the applicants representing the machine branch of the industry did not present convincing evidence that experienced workers were not available at the present time.

It is further contended by the Association that if the application is denied the manufacturers will cease to hire learners and instead will undertake the "more efficient utilization of existing machinery"; but the evidence in the record does not indicate that the machine branch of the cigar industry is in such a financial situation that it is unable to bear the burden of training new personnel without resort to such devices as the speed-up.

In order to determine the possible extent of curtailment of opportunities for employment it is necessary to review the history of mechanization in the industry. With the introduction of the cigar-making machine during the 1920s and 1930s, the direct labor cost of manufacturing cigars was cut in half for those employers who chose to use machines. In addition, machine manufacturers were able to realize the more general economies of volume production and distribution, which resulted from the maintenance of large-scale mechanized enterprises.

Despite the great increase in output per worker and the realization of many management economies, the earnings (hourly, weekly and annual) of cigar workers declined. Employers replaced skilled craftsmen by young, inexperienced girls, and paid them less than they had paid the craftsmen. The presence of the new low-wage group of semi-skilled even lowered the level of wages of skilled workers.^{1/} Far from being an instrument for a progressive raising of living levels, mechanization has effected a decline in the level of living of workers in the cigar industry.

^{1/} U. S. Bureau of Labor Statistics, Mechanization and Productivity of Labor in the Cigar Manufacturing Industry, Bulletin No. 660 (1939), pp. 62-63.

The employers have maintained that the savings resulting from mechanization have been absorbed by lowered prices, better materials, and national advertising campaigns, all of which have been used as instruments of competition. The record shows clearly that the lowering of wage levels has been an important feature of this competition, and that manufacturers have not hesitated to lower wages in a period when productivity and other production economies were increasing. Disregard of traditional labor standards appears to have been the common method of meeting a competitive situation. The Fair Labor Standards Act was designed to remove the element of unreasonably low wages from the competitive structure, and to make competition dependent upon other production factors within management control. The record fails to show that management economies could not be effected throughout the industry. On the contrary, efficiency, at least as measured by labor turnover, varies greatly within the industry, and management practices are no doubt susceptible of detailed study and improvement. The employers themselves pointed to the possibility of more efficient utilization of existing techniques. Further, the record fails to show conclusively that the fruits of mechanization have all been exhausted in the defense of the industry in its competitive struggle with the cigarette and smoking tobacco industries. The production of Class A cigars, now the most important class of cigars, has expanded constantly with a concomitant increase in quality and a declining labor cost. On the whole, the record does not prove that present production, or the opportunities for employment which accompany that production, will be affected by a denial of learner privileges.

The evidence is also conclusive that where the turnover is lowest the need for a learner rate is negligible if it exists at all. In fact, none of the applicants proposed a specific learner wage rate. Where the piece rates are highest, management experiences a low labor turnover. Where the turnover is high the rates are lower. From these low rate plants we have the most insistent demand for a learner rate below the minimum. For example, in a Boston plant with a turnover of only 5 to 7 per cent per annum, the piece work rate is \$1.05 per thousand cigars. In those factories where the turnover ranged from 20 to 25 per cent the rate per thousand cigars is only 80 to 85 cents and the hourly earnings are correspondingly low. One manufacturer who testified that his turnover was high was able to show that only one machine operator made as much as 39 cents per hour. A majority earned from 31 to 33 cents. It is obvious that these low piece work rates and hourly earnings account for a high labor turnover. These factors are reflected in a high percentage of inexperienced workers, a lower productivity and higher cost. It is therefore necessary to place responsibility for this condition upon management and not on a lack of labor supply with which to maintain a working force of experienced operators. Training and maintaining an adequate working force is as much the responsibility of employers as other items that enter into manufacturing cost.

It is also clear that the setting of a subminimum rate for learners in the Machine Branch of the Cigar Industry and the issue of Special Certificates authorizing the employment of learners at such subminimum rate would grant a competitive advantage to that branch over the Hand-made Branch of the Industry which has traditionally paid higher wage rates.

Finally the evidence shows that the Class A cigar selling for 5 cents and 2 for 5 cents now dominates the cigar market and in recent years, notwithstanding a decline in the general production and market for cigars, (including all price lines) there has been an increase in the production and market for Class A cigars, indicating a stability of demand which makes it possible for manufacturers in the industry to train their own working forces without curtailment of opportunities for employment.

In view of the foregoing I find that it is not necessary to issue Special Certificates authorizing the employment of learners at subminimum rates in either the hand or machine branch of the cigar industry to prevent curtailment of opportunities for employment.

III. Learner Wages, Number of Learners, Terms and Conditions

From what has been set forth above it is clear that at the present time there is no need for any subminimum rate for learners in either branch of the cigar industry, nor is it possible at the present time to predict what an appropriate rate might be if conditions so changed as to make the issuance of certificates appropriate.

It is also clear that no finding can be made with respect to the number of learners needed, or the terms and conditions of certificates, since none are to be issued unless conditions change materially.

Determination and Order

Upon the whole record I determine and order:

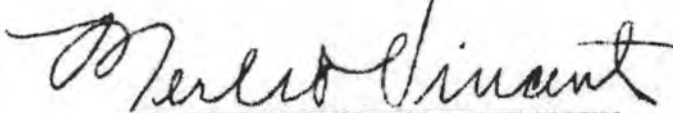
(1) The occupations of packer and cigar machine operator in the machine branch, and packer and hand cigar maker in the hand branch of the cigar industry require a learning period.

(2) The learning period for packers and for cigar machine operators is eight weeks and for hand cigar makers is six months.

(3) It is not necessary in order to prevent curtailment of opportunities for employment to issue Special Certificates authorizing the employment of learners in the cigar industry at subminimum rates.

The applications are denied.

Signed at Washington, D. C., this 2nd day of January, 1940.



Merle D. Vincent
Presiding Officer