

BEFORE THE UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

WASHINGTON, D. C.

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IN THE MATTER OF :  
APPLICATIONS OF :  
THE HALL GRINDSTONE COMPANY AND :  
SUNDRY OTHER PARTIES :  
For the exemption of the quarrying :  
of dimension stone from surface or :  
open cuts, from the maximum hours :  
provisions of the Fair Labor :  
Standards Act of 1938 as an :  
industry of a seasonal nature, :  
pursuant to Section 7(b)(3) of the :  
Act and Part 526 of Regulations :  
issued thereunder :  
Dimension Stone :  
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FINDINGS AND DETERMINATION  
OF THE  
PRESIDING OFFICER  
January 17, 1940

(1/11/40)

(3097)

The Hall Grindstone Company of Marietta, Ohio, together with sundry other parties, having filed petitions with the Administrator for the exemption of the quarrying of dimension stone from surface or open cuts and necessary milling activity incident thereto from the maximum hours provisions of the Fair Labor Standards Act of 1938 as an industry of a seasonal nature pursuant to Section 7(b)(3) of the Act and Part 526 of Regulations issued thereunder, the Administrator gave notice of a public combined hearing on several surface or open-cut mining industries to be held at the Raleigh Hotel, 12th Street and Pennsylvania Avenue, N. W., Washington, D. C., to commence at 10 o'clock a.m., June 19, 1939, before the undersigned as Presiding Officer.

Pursuant to notice the undersigned convened the hearing and an opportunity was afforded to all who appeared to present testimony and to question witnesses through the Presiding Officer.

The quarrying of dimension stone from surface or open cuts was defined in the notice of hearing to mean the extraction of such stone from pit, bank or marine deposits by hand or power methods including the necessary milling activities incident thereto but not embracing any underground operations.

The present findings relate solely to dimension stone and not to any of the other industries included in the general scope of the hearing.

Appearance was made at the hearing by the Vermont-New York Slate Industry and written statements were filed by the Hall Grindstone Company of Marietta, Ohio, and sundry other parties.

The American Federation of Labor appeared in opposition to the application but entered no testimony.

#### Southern Ohio Grindstones

The Hall Grindstone Company is one of four producers operating in southern Ohio and produces 30 to 40 per cent of the grit grindstones produced in that territory. It produces approximately one-quarter of all grit grindstones produced in the United States. Exemption is asked for the quarrying of grindstone in the southern Ohio field. The ensuing findings and determination, therefore, will apply specifically to the open-cut quarrying of grindstone in the southern Ohio field; but for reasons set forth below it is not necessary to decide whether or not this group constitutes an industry or branch thereof.

The mining or quarrying operations consist of the excavation of the grindstone at the quarry, transportation of rough grindstone from the quarry to the mill, and the finishing at the mill.

Excavation consists of cutting grindstone and stripping overburden with the two operations being carried on alternately for periods of a few weeks or few months, depending upon the dependability of the quarry, the depth of the ledge, the depth of the overburden, etc. Excavation customarily takes place from March through October and ceases from November through February. Production of certain types of stone, however, may take place in certain seasons during the months of November and February under favorable circumstances and an insubstantial amount of production has been noted during December in some years. Stripping of overburden can be carried on when the cutting of the grindstone is impractical.

Excavation must ordinarily cease from November through February because low temperatures destroy the quarry product by freezing before the "quarry sap", present at the time of excavation, has had a chance to evaporate. Moreover, operations during these periods are unusually hazardous because of the presence of ice and snow in the quarry pits.

Hauling from quarry to mill presumably also ceases ordinarily from November through February. The milling operations, however, apparently are now carried on during substantially the entire year.

It is clear that the excavating, hauling, and milling operations, taken together, do not constitute an industry of a seasonal nature inasmuch as the milling operation apparently does not cease. Insufficient evidence has been presented to determine whether the excavation of grindstones or the excavation and hauling of such stones might be considered a branch of an industry. This determination, however, would not appear necessary because even though the one operation or both were declared to constitute a branch of an industry, the season operated (between 8 and 9 months, or longer) is too long, in the light of the fourteen workweek period of exemption provided by Congress in Section 7(b)(3), to base a finding of seasonality thereon. The record fails to show whether or not the production of grindstones in southern Ohio constitutes an industry in itself or a separate branch of the grindstone industry, or whether there are any other branches of the grindstone industry that are or are not of a seasonal nature. With respect to grindstones, therefore, a final determination on the record is possible only for the southern Ohio field.

#### Vermont-New York Slate

Discussion of the quarrying and milling of slate in New York and Vermont is unnecessary since it was admitted by the applicants that the industry is not of a seasonal nature within the meaning of Regulations, Part 526.

Other Dimension Stones

Applications were received from individual employers engaged in the open-cut mining of other types of dimension stone. In none of these applications was there evidence which could be used to establish the existence or extent of any branch, whether of a seasonal nature or not, of the dimension stone industry.

DETERMINATION

On the whole record I find and determine that:

1. The excavating, hauling, and milling of grit grindstones from surface or open-cuts in the southern Ohio field, if considered as a single industry or branch of an industry, does not cease operation during the year, and, therefore, is not an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of Regulations issued thereunder, and

2. The excavating, or the excavating and hauling of grit grindstones from surface or open-cuts in the southern Ohio field takes place during a period too long in relation to the period of exemption afforded by Section 7(b)(3) of the Fair Labor Standards Act, to justify a finding that such operations, even if they constitute an industry or branch thereof, are of a seasonal nature, and, therefore, do not constitute 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, and

3. The quarrying and milling of slate in the Vermont-New York zone is admittedly not of a seasonal nature within the meaning of Regulations Part 526, and

4. The record is inconclusive on the existence or extent of any other branches, whether of a seasonal nature or not, of the dimension stone industry for which applications were filed.

The applications of the Hall Grindstone Company and the Vermont-New York Slate Industry are denied.

All other applications from employers in the dimension stone industry are denied without prejudice.

Signed at Washington, D. C., this 17th day of January, 1940.

*Harold Stein*

Harold Stein  
Presiding Officer