

BEFORE THE UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

WASHINGTON, D. C.

In the matter of the :
:
APPLICATIONS OF :
:
THE VIRGINIA-SMITHFIELD MEAT PACKERS :
ASSOCIATION AND SUNDRY OTHER PARTIES :
:
For the exemption of peanut-fed, long :
process, non-refrigerated meat curing :
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 :
:
:

FINDINGS AND DETERMINATION

OF THE

PRESIDING OFFICER

February 6, 1940

(2/5/40)

Applications having been filed by the Virginia-Smithfield Meat Packers Association and sundry other parties for exemption from the maximum hours provisions of the Fair Labor Standards Act of 1938 for the curing of peanut-fed, long process, non-refrigerated meats as an industry of a seasonal nature pursuant to Section 7(b)(3) of the Act and Part 526 of the Regulations issued thereunder, the Administrator gave notice of a public hearing to be held in Washington, D. C., on January 9, 1940, before the undersigned as Presiding Officer.

The undersigned convened the hearing pursuant to notice and an opportunity was afforded to all who appeared to present testimony and to question witnesses.

As stated in the notice of hearing, the term "peanut-fed, long process, non-refrigerated meat curing" is used to mean the activity of those establishments engaged entirely, or almost entirely, in the curing by a "long cure" process of Jowls, shoulders, sides, and hams from peanut-fed hogs without the aid of artificial refrigeration.

The question set for hearing was declared by the notice of hearing to be:

"Whether peanut-fed, long process, non-refrigerated meat curing is 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 in particular,

- "(1) Whether the above-described curing constitutes an industry or a branch thereof within the meaning of Section 3(h) of the Fair Labor Standards Act and Section 526.2 of Regulations, Part 526; and
- "(2) Whether the alleged industry engages in the handling, or processing of materials during regularly recurring seasons within the meaning of Regulations, Part 526.3(a); and
- "(3) Whether the alleged industry ceases production, except for repair, clerical and sales work during the remainder of the year because, owing to climate or other natural conditions, the materials handled or processed, in the form in which they are handled or processed, are not available during the remainder of the year within the meaning of Regulations, Part 526.3(b)."

The peanut-fed, long process, non-refrigerated meat curing on a commercial scale is described by the applicants as follows:

"The method of cure is unique and prevails only in this industry.

The finest quality of meat produced by this industry is cut from the carcass of oily type hogs (fed on peanuts and soy beans), from nine to twelve months old and ranging in weight from 180 to 200 pounds on the hoof. One of the first acts of the processor is to trim the cut of meat as much as is consistent with the making of a long, lean cut and in the case of the hams the butt is not removed but it is trimmed very close to the outer edge of the large bone. As soon as the trimming is complete the cut is sprinkled with saltpeter and packed in flake salt where it remains for a period of time varying according to the size of the meat and the weather conditions. Within a few days this salt pack is broken up and the meat is immediately re-introduced to a fresh pack of new salt. At the end of this second salting period each piece of meat is thoroughly scrubbed, by hand, in clear hot water and is then removed to the smoking room where its face is first covered with pure black pepper and is then hung on rafters until thoroughly dry. The drying period ranges from five to thirty days dependent upon the size of the meat, weather and other conditions. Once thoroughly dry the smoking process commences and continues, intermittently until the amber color is obtained. Only red oak, hickory, apple and maple wood are used in smoking. After the smoking process is completed and the meats are allowed to hang for approximately sixty days, after this each piece is taken down and its face again covered with pure black pepper, after which it is re-hung according to size and is allowed to remain there until it is ready for market." 1/

Although some doubt on the matter was expressed by the opponents of the application, the evidence in the record satisfactorily supports the contention of the applicants that this method of cure is unique and produces a unique product, and that it is practiced only within the peanut belt of Virginia in the territory beginning at the city of Richmond and running eastwardly to Smithfield and Suffolk, Virginia, a total distance of approximately 85 miles, except as some farmers outside the belt, not operating commercially, may use a similar cure. The peanut-fed, long process, non-refrigerated meat curing, as it is carried on in the above-described belt, is known as the Virginia-Smithfield cure. The term "Smithfield cure", by act of the Virginia Assembly, can be used to designate only the above-described cure and when employed within the corporate limits of the town of Smithfield. The same type of cure, when pursued in the town of Suffolk or in the city of Richmond or any other parts of the Virginia producing area, is known as the Virginia cure.

The record is clear that the carcass of a peanut-fed hog is essential to produce the ham known as the Virginia-Smithfield ham. Most of the peanut-fed hogs which yield carcasses for this cure originate in the peanut belt of Virginia and North Carolina. This peanut belt comprises the Virginia counties of Surry, Isle of Wight, Nansemond and Southampton and five small counties in eastern North Carolina. Approximately 15 to 20 per cent of the hams which are cured, however, are shipped in from the peanut producing sections of Georgia.

1/ From Application of Virginia-Smithfield Meat Packers Association dated October 14, 1939.

The hog grown in the Virginia-North Carolina peanut belt, the carcass of which is used to produce Smithfield and Virginia ham, is customarily one farrowed in the spring of the year, pastured on native or cultivated pasture during the summer, on soy beans in the early fall, and on peanuts during the late fall and winter.

The peanuts on which the hog is pastured are those remaining in the peanut fields after the crop has been harvested. The hog remains in these fields for a period ranging from two weeks to two months and is ordinarily fed a ration of corn for a period of ten days to two weeks immediately before marketing. A hog fed in this manner yields a carcass which is soft and oily. Such a carcass is necessary to produce hams which, when properly cured and aged, have a soft exterior rather than a hard, flinty one. It was testified that a hog fed an excess of corn or soy beans would yield a carcass unsuitable for the Smithfield-Virginia cure. In fact, a larger percentage of hams are rejected at the beginning and the end of the peanut feeding season than during the height of the season because they are judged too hard or of improper quality to take a successful cure. Also, it was testified, that a hog receiving little or no peanuts yields a ham lacking in the desirable and characteristic Virginia-Smithfield flavor.

Peanut-fed hogs are marketed during the five-month period, November through March. They do not become available until around the middle of November each year because the peanut crop generally is not harvested until the last of October or the first of November and consequently the hogs may not be turned into peanut fields until after that time. The marketing ceases some time during early March. One of the reasons for this is that the peanut fields have been cleaned up and the peanut-fed hog is no longer available. Hogs which are fed peanuts within the peanut feeding season and which are not marketed during this season lose the characteristics imparted by the peanut during the summer pasturing period. In no instance are hogs fed harvested peanuts, because the cost of feeding would be prohibitive.

The Virginia-Smithfield curing and packing season commences with the availability of the peanut-fed hog about the fifteenth of November and ceases during March when the peanut-fed hog becomes unavailable. It is likewise true that starting in March, the rise in temperature renders successful unrefrigerated curing operations impossible. Furthermore, the Virginia-Smithfield packers believe that excessive moisture accompanying artificial refrigeration inhibits a successful cure. Moreover, even though a successful cure could take place under artificial refrigeration, the smoking operation, which cannot be refrigerated, must take place at a relatively low temperature. Such low temperature ordinarily does not occur from March or April to October.

During the 1938-1939 season the members of the Virginia-Smithfield Meat Packers Association, purchased for curing 9,300,000 pounds of green meat. All of this green meat was purchased during the five-month period, November through March. During this period these packers employed altogether an average of 300 workers. During the seven-month period, April through October, an average of only 49 workers were employed in these same plants.

In most of the above packing houses the workers are engaged only in maintenance, repair, clerical, and sales work during the period, April through October. Such maintenance includes the periodic peppering of the aging hams and other cuts to prevent insect infestation. In one plant, some sausage is made during the summer months from fresh pork. Such sausage, however, comprises only an insubstantial amount of the total products packed by this company and is made in a special refrigerated sausage room.

Throughout the foregoing description of the industry reference has been made primarily to the hams produced by the Virginia-Smithfield packers and only secondarily to the other products. The industry is based on the sale value of the hams, which sell at a considerable premium over all other domestic hams, whereas the other products are sold either at the same price as short-cure products or even at a discount. The industry is distinguished by its high-priced specialty product, the Virginia-Smithfield ham.

It seems abundantly clear therefore that the curing and packing of Smithfield and Virginia cured meats by the Virginia-Smithfield meat packers is an industry separate and distinct from the curing and processing of livestock products by commercial meat packers using standard factory methods. It is also clear that this industry operates during a season occurring in a regularly, annually recurring part of the year, November through March, and ceases operation apart from maintenance, repair, clerical, and sales work from April through October because of the fact that owing to climate and other natural conditions the materials handled and processed in the form in which they are handled and processed are not available during this period.

On the basis of the whole record I therefore find and determine that:

- (1) The curing and packing of Virginia-Smithfield cured meats by the Virginia-Smithfield meat packers is an industry or branch of an industry within the meaning of the Fair Labor Standards Act; and
- (2) The curing and packing of the Virginia-Smithfield cured meats by the Virginia-Smithfield meat packers takes place during the period, November through March, and ceases during the period, April through October, because of the fact that owing to climate and other natural conditions the peanut-fed hog used for this cure is not available from April to November in the form in which it is handled and processed, and therefore the curing and packing of Virginia-Smithfield cured meats is 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.

- (3) As used herein, "Virginia-Smithfield cured meats" means those cured from the peanut-fed hog by the long process, non-refrigerated meat curing methods.
- (4) "Virginia-Smithfield meat packers" as used herein means those establishments engaged solely, or almost solely in the curing of meats from peanut fed hogs by the long process, non-refrigerated meat curing methods in the peanut belt of eastern Virginia.

This determination is without prejudice to a determination on applications from other meat packers operating in substantially the same manner for the same reasons.

Signed at Washington, D. C., this 6th day of February, 1940.

Harold Stein
Harold Stein
Presiding Officer