

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

In the matter of
APPLICATIONS

OF

THE HALVORSON TREES, INC., THE BRADBURY
COMPANY, THE NORTHWEST EVERGREEN COMPANY,
AND SUNDRY OTHER PARTIES

For the exemption of the harvesting,
handling, processing, shipping or
distributing of decorative greens 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.

Decorative Greens

FINDINGS AND DETERMINATION

OF THE

PRESIDING OFFICER

February 1, 1940

The Halvorson Trees, Inc., the Bradbury Company, the Northwest Evergreen Company, and sundry other parties having filed petitions with the Administrator for the exemption of the harvesting, handling, processing, shipping or distributing of decorative greens 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 the Regulations issued by the Administrator, the Administrator gave notice of a public combined hearing on the above related industries to be held at 939 D Street, N. W., Washington, D. C., to commence at 10:00 o'clock a.m., November 29, 1939, 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 through the presiding officer. Appearances were entered for the application and as provided by the notice of hearing, statements were filed in lieu of personal appearance. Supplementary data were filed subsequent to the hearing. No appearance was made and no statement was filed in opposition to the applications.

As stated in the notice of hearing, the term "decorative greens" was used in the ordinary commercial sense and was understood to include but was not restricted to Christmas trees, holly, huckleberry, ruscus, lycopodium, statice, cattails, pepper grass, mistletoe, pine, spruce, hemlock, cedar, laurel, and Leucothoe.

At the hearing testimony was taken with respect to the processing and preparing of ruscus, statice, cycas, lycopodium, thistle, cattails, pepper grass, holly, hemlock, balsam and pine cones into Christmas grave wreaths and with respect to the processing of undried, evergreen holly wreaths.

Written statements were filed by firms engaged in the harvesting and processing of evergreens into Christmas trees and the harvesting and preparing of evergreen boughs into decorative boughs, ropings, wreaths, grave blankets, sprays, bouquets, and baskets.

Harvesting Evergreen Christmas Tress

Coniferous evergreens for Christmas trees are harvested in many parts of the United States. Most of them are obtained from northern New England, northern Minnesota, Michigan and Wisconsin, northwest Montana and the mountainous area of Colorado and the Pacific States.

The trees are available for harvest only during the period of dormancy which ordinarily begins about three months before Christmas and extends about the same length of time after Christmas, a total period of about 5 or 6 months. Trees harvested during the period of dormancy immediately after Christmas, however, even though processed, will not keep

until the following Christmas and hence cannot be used as Christmas trees. Therefore, in practice, harvesting always ceases shortly before Christmas.

The period of harvest is limited not only by a period of dormancy but also by the factor of accessibility. In certain areas, harvest is delayed by swampy terrain. In other areas, harvest must be accomplished before the snows are too deep.

Coniferous evergreens for Christmas trees are customarily harvested, handled and shipped by persons or firms organized for this specific purpose. Other businesses may be conducted by the same individuals or firms during the remainder of the year but the Christmas tree harvesting enterprise is a separate and distinct enterprise using an entirely different set of employees and generally operating in separate establishments. After the harvesting season, the harvesting organization is, in the typical instance, disbanded.

Harvesting and Preparing Undried Evergreen Holly Wreaths

Evergreen holly is produced principally in two areas in the United States. Most of the holly comes from the Eastern Shore of Delaware and Maryland, with production extending down the coast to the Carolinas. The bulk of the remainder is obtained from the West Coast of the United States. The eastern holly is customarily gathered in the wilds and made into wreaths by local farmers and their families. It is gathered from the first of October to the middle of December. It is not available before the first of October because not until this time does plant activity cease and the foliage become suitable for use. It is neither gathered, prepared nor handled after December 15 because the only market is the Christmas market, although it apparently could be harvested and prepared for two or three months after Christmas or until resumption of plant activity. The total possible harvesting period is thus only about five or six months. Most of the eastern holly thus harvested and prepared is afterwards processed.

Much of the western holly is obtained from holly orchards. There is no indication that the manner of harvest and preparation differs in any important respect from that practiced on the East Coast. Most of the western holly is marketed in the West and Middle West and does not compete in the Eastern Markets.

Some of the eastern holly and all of the western holly is sold without being processed, or as unprepared holly boughs. The harvesting of holly and the preparation into wreaths for sale in the unprocessed state do not differ in any important detail from that undertaken with respect to processed holly except that such harvesting and preparation may take place over a shorter period of time. Unprocessed holly is normally prepared by the persons who harvest it. Unprocessed holly wreaths may be kept in cold storage until marketed.

Harvesting and Preparing Miscellaneous
Undried Evergreen Boughs and Branches

In most instances, undried evergreen boughs and branches, after being gathered, are prepared for market during the same season. Such preparation consists of arranging the boughs and branches either singly or in combination into decorative shapes or by twining on frames or ropes. They remain unprocessed, for the most part, and after preparation many are placed in cold storage to hold for the holiday market. Some firms do no preparing other than forming the boughs and branches into sprays for the wholesale florist trade. Others prepare single greens or combinations of greens into decorative shapes for the retail trade. The undried evergreen boughs and branches can be harvested and prepared only during the period of dormancy of the tree or plant from which they are gathered. In most instances, this period of dormancy does not exceed six months. With respect to such boughs as are used only for the Christmas trade, the period of gathering and preparation is materially less than six months.

The undried decorative boughs, ropings, grave blankets, wreaths, sprays, bouquets, and baskets seem to be prepared (including incidental handling and shipping) and the materials often gathered and prepared by firms specially organized for the purpose. The preparing, or the harvesting and preparing of such undried evergreens and for the purpose of this finding, of deciduous holly, would appear to be carried on as a separate and distinct business and in most instances no important part of the employees engaged therein are engaged in other activities in the same establishment during the remainder of the year.

Processing Evergreen Christmas Trees

Processing coniferous evergreen Christmas trees takes place almost exclusively in northern Minnesota where two firms engage in treating practically all of the Christmas trees processed for the domestic and foreign markets. The trees used are harvested by these firms and are conveyed immediately to the processing plants where they are treated to intensify the green color or to change the color to white, silver or blue. The processed trees prepared early in the same season may be stored before shipment to all parts of the country and to foreign markets as well. The harvesting and processing season extends for about three months before Christmas and might extend for two or three months after Christmas. The trees are not available due to natural causes during the rest of the year.

Approximately 90 percent of all processed Christmas trees are processed by a firm which engages in no other business and ceases operations entirely some time in December of each year. During the remainder of the year, a few employees are engaged in maintenance, repair and sales work for the next season.

Processing Undried Evergreen Holly Wreaths

Most eastern holly wreaths are sold as processed holly wreaths. This processing begins and ends about the same time as the period of harvest and preparation. The processing consists of treating the wreaths to preserve the foliage and berries and to preserve and perhaps intensify the color.

Three firms process holly wreaths on the Eastern Shore of Delaware and Maryland. These firms appear to conduct such processing, including the incidental handling and shipping, as a separate and distinct business, to operate only during that portion of the year in which the wreaths are available and to cease operations thereafter because the holly is no longer available. The employees of these firms seem to be hired specifically for the processing of the wreaths and are disbanded after the Christmas season is over.

It appears that a large share of the undried holly made into wreaths is processed by firms organized for this specific purpose and which cease operations during a portion of the year because the wreaths which they process are unavailable during the remaining period. The holly from which the wreaths are made would appear to be available during a longer period than the actual harvesting but the maximum period of availability generally would not appear to be more than five or six months.

It should be noted that there is some indication in the record that some florist supply houses also process undried holly. This processing, when conducted by such employers, appears to be merely an operation in the general florist supply business and therefore neither an industry nor a branch of an industry.

Preparing Evergreen Huckleberry and Evergreen
Ferns in the State of Washington

A statement filed by one petitioner in the State of Washington who prepares evergreen huckleberry and evergreen ferns indicates that although his firm conducts no business other than the preparing and shipping of such evergreens and the employees engaged therein engage in no other operations, such operations are carried on substantially the entire year. The evergreens prepared by this company are harvested only during the dormant season of from eight and one-half to ten months, which is shortened by other climatic causes sometimes by as much as six weeks. They are at least partially prepared and handled during this season after which the prepared or partially prepared product is placed in cold storage for shipment throughout the year. It can not be determined from the record whether or not the preparation continues throughout the year. It nevertheless appears that the operations of this firm are conducted over a period so long as to be ineligible for the exemption in the light of the limited exemption period afforded by Congress.

Processing Dried Decorative Greens

One appearance testified concerning the handling, processing and preparing of dried decorative greens. The evidence in the record relates only to the processing of such greens as are used in Christmas grave wreaths. The record shows that about one-half dozen companies in this country are engaged in the business of handling, preparing and processing such dried decorative greens into Christmas grave wreaths. Such companies are all engaged in the general florist supply business. Most of the materials used in making these wreaths are imported, and are received in a dried and frequently partially processed state. Some, including cycas, lycopodium, thistle, and holly, it was testified, can be imported the year around. Others, including ruscus and statice, are available for importation only during the fall. Pepper grass, which is secured domestically, is also available only during a limited period of the year. All of the materials must be processed before they are used and most of them must be preserved as a part of the processing operation.

Work is started on the wreaths immediately after the fourth of July. At this time, the frames are made and the available materials are stemmed, i.e., tied to toothpicks. The wreaths cannot be completed until the remaining materials become available later in the year. The making of grave wreaths ceases a few days before Christmas because there is no demand for them thereafter.

It was indicated that between the first of July and the last of December, one employer making these wreaths increased the number of his employees from 40 or 50 to 150. Immediately after Christmas the force is decreased again to approximately 40 or 50. Approximately 100 employees are engaged in the production of Christmas wreaths. The remaining 40 or 50 employees are engaged in other activities of the company including the handling and selling and perhaps the preparing and processing of general florist supplies.

Christmas grave wreaths are not made after Christmas. The materials used in such wreaths, however, are used in the general florist supply business and some are apparently used to make wreaths for the Easter trade. Thus it is clear that (1) the employers engaged in the preparation of Christmas grave wreaths are all engaged in the general floral supply business; and (2) the materials used in Christmas grave wreaths are also used as regular items in the florist supply business. It follows that the preparation of Christmas grave wreaths is neither an industry nor a branch of an industry but merely an operation in the florist supply business which, as a whole, does not cease operations at any time.

Findings of Fact
and Determination

Upon the basis of the whole record I find:

1. (a) That the harvesting and preparing of undried evergreens, including both evergreen and deciduous holly but excluding evergreen huckleberry and evergreen ferns in the State of Washington, for use as Christmas trees, wreaths, decorative boughs, ropings, grave blankets, sprays, bouquets, and baskets, including the incidental handling and shipping thereof; and
- (b) the processing of coniferous evergreen trees into Christmas trees including the handling and shipping incident thereto; and
- (c) the processing of undried evergreen holly including the handling and shipping incident thereto except when such processing is conducted as part of the florist supply business which operates throughout the year;

takes place during a season or seasons aggregating six months or less occurring in a regularly, annually recurring part or parts of the year and ceases apart from work such as maintenance, repair, clerical and sales work during the remainder of the year, because, owing to climate, the undried evergreens, including deciduous holly, are unavailable in the form in which they are used and hence constitute industries of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of the Regulations issued thereunder.

2. That the harvesting and preparing of evergreen huckleberry and evergreen ferns in the State of Washington takes place during a season in excess of six months and so long as to be inconsistent with the period of exemption afforded by Section 7(b)(3) of the Act and does not cease for any substantial period apart from work such as maintenance, repair, clerical and sales work;

and hence does 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.

3. That the preparing and processing of dried decorative greens, including the handling and shipping incident thereto, is not a separate and distinct industry but is an integral part of the florist supply industry.

and that entire enterprise does not cease operation at any time 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 the Regulations issued thereunder.

4. That no pertinent evidence was presented at the hearing in the matter of jobbing and central market distribution of evergreens, or in the matter of the harvesting, handling, processing, shipping or distributing of undried commercial greens, other than evergreens and deciduous holly;

and therefore no finding is possible with respect thereto.

Signed at Washington, D. C., this 1st day of February, 1940.

Harold Stein

Harold Stein
Presiding Officer