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

ALL AFFECTED GROUPS MAY APPEAR AT
WAGE-HOUR HEARING ON "EXECUTIVE", ETC. ON APRIL 10

Representatives of groups who may be affected will be able to take part in a hearing on April 10 on petitions to re-define "executive," "administrative," "professional" and "outside salesman" as these terms are used to describe employees in the wholesale distributive trades exempt from the benefits of the Wage and Hour Law, Colonel Philip B. Fleming Administrator of the Wage and Hour Division, U. S. Department of Labor, announced today.

Such representatives may file briefs and participate in oral argument if any is entertained. Evidence, however, will be confined to the effect of the present and proposed definitions of such classifications of workers to the wholesale distributive trades.

The fear had been expressed by Abraham J. Isserman, Counsel for the American Newspaper Guild, that "if these categories are re-defined for the wholesale distributive trades, a precedent undoubtedly will be established which will have a tremendous weight in the other industries covered by the Fair Labor Standards Act of 1938."

The hearing on April 10 was set on the application of the Council of National Wholesale Associations, the American Retail Federation and the Southern States Industrial Council for changes in the wording of Part 541 of the regulations issued by the Administrator defining the terms used to describe exempt employment in Section 13 (a)(1) of the Fair Labor Standards Act as they apply to employees in the wholesale distributive trades.

Mr. Isserman's letter to Colonel Fleming, and the Administrator's reply follow in full:

"March 22, 1940

Col. Philip B. Fleming
Administrator
Wages and Hours Division
Department of Labor
Washington, D. C.

Dear Colonel Fleming:

The American Newspaper Guild, through press notices, has been made aware of the hearing which you have announced for April 10 on petitions on behalf of representatives of the "wholesale distributive trades" to redefine the terms "bona fide executive, administrative, professional" and "outside salesmen capacity."

From the way this hearing was announced, first impression was gained that persons employed in these categories in the newspaper industry would not be affected by this hearing.

On reflection, however, it becomes apparent that if these categories are re-defined for the wholesale distributive trades, a precedent undoubtedly will be established which will have a tremendous weight in the other industries covered by the Fair Labor Standards Act of 1938. It is inconceivable, at least as to one or more of these categories, that they will be defined from the wholesale distributive trades in different terms than they may be subsequently defined for other industries, including the newspaper industry.

It must necessarily follow, then, that the scope and possible effect of the hearing proposed to be conducted by the Wages and Hours Administration on the 10th of April will be much broader than the actual notice of hearing indicates by its express terms. This is regrettable. Many persons interested in maintaining the status quo on these definitions for particular industries erroneously reached the conclusion that the hearing on April 10 will not in anywise affect them. I have spoken to several such persons holding responsible positions in trade unions, who consequently had not planned to be represented at the hearing. It would be unfortunate if many trade unionists and other persons interested in the fullest enforcement of the Fair Labor Standards Act for the maximum number of people would, after the hearing on April 10 be faced with a fait accompli in the way of changed definitions in respect to which they would have had no opportunity for study and comment. This situation would not be remedied by receipt of notice of subsequent hearings in which the precedent of newly established definitions would carry great weight.

Col. Philip B. Fleming

My concern, and the concern of the American Newspaper Guild on whose behalf I am writing this letter, is greatly increased by the fact that we have heard, although somewhat indirectly, that at the April 10 hearing the question of linking up one or more of these definitions with monthly earnings of employees will be on the agenda for discussion. As you know, the Guild objects to such limitation in principle, as do many other unions who have no direct interest in the wholesale distributive trades. We are of the opinion that all of them should be made aware of the importance and possible effect of the April 10 hearing on conditions in their own industries. Rightfully, we believe, they should be invited to participate in the April 10 hearing, at least insofar as any possible change in definition may have a future effect on industries other than the wholesale distributive trades.

May we therefore respectfully request that public announcement be made by the Wages and Hours Administration on the significance and importance of the hearing of April 10 in its possible effect on other industries, and that all interested persons may be present to express their viewpoints and to submit evidence in support thereof.

Specifically we request such an invitation for the American Newspaper Guild.

Respectfully yours,

ABRAHAM J. ISSERMAN¹¹

The Administrator's reply:

"March 28, 1940

Mr. Abraham J. Isserman
Isserman, Isserman & Kapelsohn
Federal Trust Building
Newark, New Jersey

Dear Mr. Isserman:

I have your letter of March 22, 1940. expressing apprehension that definitions which may be made upon the record in the scheduled hearing for the wholesale distributive trades under Section 13 (a)(1) of the Fair Labor Standards Act may become precedents applicable to other industries which are not included in the hearing. Your suggestion in behalf of the American Newspaper Guild that the scope of the hearing be broadened "and that all interested persons may be present to express their viewpoints and to submit evidence and support thereof" has been carefully considered.

Before publishing notice of the April 10, 1940 hearing for the wholesale distributive trades I considered the question of holding a general hearing for all industries affected or separate hearings for major industries. There is such a wide variation in the work and functions performed by executive, administrative and professional employees in different industries, especially in the administrative and professional classes, that it appeared more practicable to hold separate industry hearings. It follows that a definition for one of these classifications in one industry is not necessarily to be treated as a precedent in others.

I realize, as your letter points out, that certain standards of definition adopted in one industry might well be applicable in another and that employees in the newspaper business for example are naturally interested in the standards and definitions which may be applied to the wholesale trades in so far as they could be applied to analagous circumstances in other lines of employment. But if all industries were heard at one

general hearing I fear the record would contain a confusion of testimony and other evidence. Evidence applicable to one industry may not in many instances be applicable to others. This and other considerations suggested the separate industry method of approach to the subject. Under such procedure evidence should be confined to the industry for which the hearing is called but I see no reason why representatives of other industries should not appear as observers during the taking of testimony and, if they desire to do so, file briefs on the legal aspects of the subject. I shall therefore welcome the appearance of representatives of the American Newspaper Guild at the April 10, 1940 hearing, which of course is public, and at the conclusion of the hearing and before definitions are adopted you may file briefs on the legal phases of the subject. If oral argument is heard representatives of your organization may also be heard in behalf of your own views on proposed definitions which you believe may affect your classification under the Act.

It does not necessarily follow that definitions will be immediately promulgated following the April 10, 1940 hearing. It may be that further hearings will be found desirable before action is taken. My present approach to the subject however is indicated by the procedure above outlined.

Yours very truly,

Philip B. Fleming
Colonel, Corps of Engineers
Administrator"

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