

Wednesday, April 10, 1940

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

NOTICE OF CHANGE IN DATE OF ORAL ARGUMENT IN
REVIEW OF DETERMINATION AND ORDER RE EMPLOY-
MENT OF LEARNERS IN THE KNITTED WEAR INDUSTRY
AT WAGES LOWER THAN THE MINIMUM WAGE APPLICABLE
UNDER SECTION 6 OF THE FAIR LABOR STANDARDS
ACT OF 1938

AND

TENTATIVE AMENDED DETERMINATION AND ORDER

WHEREAS, the Administrator of the Wage and Hour Division caused to be published in the Federal Register on March 19, 1940 (5 FR 1096), a notice which stated that the Administrator would hear oral argument from interested parties either in support of or in opposition to the Determination and Order Re Employment of Learners in the Knitted Wear Industry at Wages Lower than the Minimum Wage Applicable Under Section 6 of the Fair Labor Standards Act of 1938 on April 23, 1940, in Room 5144, United States Department of Labor Building, Washington, D. C., provided that notice of intention to appear was filed with the Administrator prior to the close of business April 22, and that the Administrator would receive supplementary briefs or memoranda provided they were filed with the Wage and Hour Division prior to the close of business April 18, 1940; and

WHEREAS, the Administrator has been requested to postpone said hearing for reasons which appear to be valid;

NOW, THEREFORE, the request is granted and notice is hereby given that pursuant to the provisions of Section 522.13 of the Regulations of the Wage and Hour Division (Part 522--Regulations Applicable to the Employment of Learners Pursuant to Section 14 of the Fair Labor Standards Act of 1938 - Title 29, Chapter V, Code of Federal Regulations) the Administrator will hear oral argument from interested parties either in support of or in opposition to the Tentative Amended Determination and Order set forth below on May 2, 1940, at 10:00 A. M. in Room 214, Hutchins Building, 939 D Street, N. W., Washington, D. C., provided that notice of intention to appear has been filed with the Administrator prior to the close of business April 30. The Administrator will receive supplementary briefs or memoranda provided that they are filed with the Wage and Hour Division prior to the close of business April 26, 1940. All material must be filed in triplicate and will be available for examination by interested persons in Room 5144, United States Department of Labor Building, Washington, D. C.

WHEREAS, the Administrator caused to be published in the Federal Register on October 24, 1939 (4 FR 4351), a notice which set forth in

full the DETERMINATION AND ORDER RE EMPLOYMENT OF LEARNERS IN THE KNITTED WEAR INDUSTRY AT WAGES LOWER THAN THE MINIMUM WAGE APPLICABLE UNDER SECTION 6 OF THE FAIR LABOR STANDARDS ACT OF 1938 which had been filed with the Administrator by Merle D. Vincent who had been authorized to make such determination; and

WHEREAS, the said Merle D. Vincent found that "A reconsideration of the determinations * * * * * may be appropriate if a Wage Order for either or both industries becomes effective before October 24, 1940;" and

WHEREAS, Wage Orders for the Knitted Outerwear Industry and for the Knitted Underwear and Commercial Knitting Industry, recommended by Industry Committees Nos. 7 and 8, have been approved by the Administrator and will become effective on July 1, 1940, and May 6, 1940, respectively; and,

WHEREAS, experience relating to the effect of the existing Determination on the industry under the 30¢ minimum wage rate and the probable effect of the Determination under the new minima (35¢ for knitted outerwear and 33.5¢ for knitted underwear) have been considered by the Division since October 24, 1939; and

WHEREAS, additional information has been presented in letters of numerous applicants and in briefs filed with the Administrator by the Underwear Institute, the International Ladies' Garment Workers' Union, the Textile Workers' Union of America, and in informal conferences attended by representatives of the above-named associations and unions and representatives of the Administrator;

NOW, THEREFORE, as a basis for oral argument before the Administrator, the following tentative determination and order amending the determination and order published in the Federal Register October 24, 1939 (4 FR 4351), is hereby issued:

1. Special certificates permitting the employment of learners at sub-minimum rates in the occupations of machine knitter, machine stitcher, presser, winder, dyeing machine operator, brush machine operator and dryer operator shall be issued upon the following terms to any plant in the industry making application therefor, representing that experienced workers are not available to the plant unless experienced workers are found to be available.
 - (a) Learners employed under the certificate shall not exceed 5% of the total number of workers in the plant engaged in the occupations of machine knitter, machine stitcher, presser, winder, dyeing machine operator, brush machine operator and dryer operator in the knitted wear industry, provided, however, that employment of as many as five learners may be authorized in any certificate.
 - (b) No learner shall be employed under the certificate longer than 480 hours in the occupation of machine knitter,

320 hours in the occupations of machine stitcher and presser, and 240 hours in the occupations of winder, dyeing machine operator, brush machine operator and dryer operator.

- (c) Learners employed under the certificate shall be paid not less than 25¢ an hour and in plants where experienced operators are paid on a piece-work rate shall be paid at least the same piece-work rate and shall receive earnings paid on this rate if in excess of the 25¢ minimum.
 - (d) No learner shall be employed at a subminimum wage under the certificate until and unless the certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.
2. (a) Any special certificate issued pursuant to this Order shall be cancelled if it is found that experienced workers are available. However, in the absence of fraud, learners already hired under a special certificate may be retained under the terms of the certificate if the learning period extends beyond the date on which the certificate has been cancelled.
- (b) Any special certificate issued pursuant to this order shall be cancelled as of the date of issue if it is found that fraud has been exercised in obtaining the certificate or in hiring workers thereunder.
- (c) Any special certificate issued pursuant to this Order shall be cancelled as of the date of violation if it is found that any of its terms have been violated.
3. Only learners may be employed at a subminimum wage under the certificate. In this Order, the term "learner" means a person who has not been employed within the previous two years in the knitted wear industry for more than 480 hours in the occupation of machine knitter, or 320 hours in the occupations of machine stitcher or presser, or 240 hours in the occupations of winder, dyeing machine operator, brush machine operator or dryer operator; the term "experienced worker" means a person who has been employed within the previous two years in the knitted wear industry for more than 480 hours in the occupation of machine knitter, or 320 hours in the occupations of machine stitcher or presser, or 240 hours in the occupations of winder, dyeing machine operator, brush machine operator or dryer operator; the term "knitted wear industry" includes the commercial knitting of fabrics and men's, women's, infants' and children's knitted apparel and accessories except gloves and hosiery as defined by Industry Committees Nos. 7 and 8.

Argument may be addressed to the legal and administrative considerations surrounding the problem of the employment of learners when experienced workers are available.

Signed at Washington, D. C., this 5th day of April, 1940.



Philip B. Fleming
Colonel, Corps of Engineers
Administrator
Wage and Hour Division
U. S. Department of Labor