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U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
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AVERAGING OF HOURS UNDER COLLECTIVE BARGAINING AGREEMENTS CLARIFIED

Opportunity for organized workers and management to stabilize employment by limiting hours annually or semi-annually instead of on a weekly basis was emphasized today by Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, in issuing a revision of the Division's "Interpretative Bulletin No. 8."

Colonel Fleming pointed out that exceptions to maximum hours provisions based on Section 7(b)(1) of the Fair Labor Standards Act, providing for two consecutive 26-week (or semi-annual) periods, are not the equivalent of exceptions based on Section 7(b)(2), under which the employer guarantees an annual wage and is allowed to average his hours over an entire year. The literal language of Section 7(b)(1) will apply. That is "no employee shall be employed more than 1,000 hours during any period of 26 consecutive weeks." In other words, the exception to the maximum hours provision based on agreements limiting hours in two successive periods of 26 consecutive weeks cannot be utilized to crowd the hours worked around the end of one period and the beginning of another to the extent that more than 1,000 hours is worked in "any period of 26 consecutive weeks." Thus, although periods named in an agreement may be from January 1 to June 30 and from June 30 to December 31, it still must be possible to apply the limitation of 1,000 hours worked against any 26 consecutive weeks of any employee's work experience under the agreement without encountering any 26 week period in which more than 1,000 hours has been worked. The same is true where no period is named

in the agreement but the agreement merely provides that no employee shall work more than 1,000 hours. However, the Bulletin points out that the requirements of Section 7(b)(1) will be met if only one 26 consecutive week period in a year is specified but the employee does not work more than 1,000 hours during that period.

Colonel Fleming further emphasized that the annual wage guaranteed in agreements under Section 7(b)(2) allowing hours to be averaged over an entire year must be the employee's regular wage. A guarantee of the statutory minimum wage (30 cents an hour) is not enough.

Interpretative Bulletin No. 8 deals with exceptions to the requirement that at least time and a half the regular rate be paid for work in excess of 42 hours a week made possible (1) under collective bargaining agreements limiting employment to 1,000 hours "during any period of 26 consecutive weeks"; or (2) where a collective bargaining agreement includes an annual wage guarantee and a limitation of 2,000 hours "during any period of 52 consecutive weeks." Such agreements must be in contracts negotiated by "representatives of employees certified as bona fide by the National Labor Relations Board," and under them overtime (or payment of at least time and a half the regular rate) does not begin until after 12 hours in any workday and after 56 hours in any workweek.

"Many industries which have great peaks of production are not entitled to the 'seasonal' exemption from the maximum hours provisions of the Act," said Colonel Fleming. "'Seasonal' industries under our regulations must be affected by 'climate or other natural conditions.' Organized workers and management in the former type of industry can arrange

under these sections to have their hours limited annually or semi-annually, instead of weekly. Groups in several industries have already put such agreements into effect. Some of them are agreements between unions and associations of employers. Quite a few of them are in the millinery industry--an industry in which labor is organized and an industry which has great peaks of production due to style seasons rather than to climate.

"While the newspaper industry is one of very regular production, several agreements limiting employees to 1,000 hours during 26 week periods have been filed with the Division. Many of these agreements are with local guilds of the American Newspaper Guild. They are probably attractive to the industry because the gathering of news makes for great irregularity in hours. Others are with the typographical unions. Several are agreements between longshoremen unions and maritime employers. Others are between associations of merchant tailors and locals of the Journeyman Tailors Union. Other industries which have forwarded such agreements to the Wage and Hour Division include hosiery, shoes, oil, electrical manufacturing, electric light companies, meat packers, saw mills, and coke ovens.

"Section 7(b) of the Act originated in the suggestion of Representative Bruce Barton of New York that annual wage plans such as one sponsored by the Hormel Packing Company be encouraged in industry by relieving employers guaranteeing an annual wage from overtime provisions. Mr. Barton's suggested amendment did not include the provisions that such plans be a part of collective bargaining agreements and that agreements could be made

on a 26 week basis without guarantee of employment.

"The Act says that agreements making possible the averaging of hours over 26 week or 52 week periods must be 'made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board.' The Interpretative Bulletin as revised points out that certification of a union by the National Labor Relations Board as a collective bargaining agent of the employees for the purposes of the National Labor Relations Act does not constitute certification for the purposes of the Fair Labor Standards Act. For instance, a union certified as a result of a plant election may not dispense with the necessity of applying for separate certification.

"A revision of the regulations on record-keeping is issued coincident with this bulletin (Federal Register, June 18, 1940). The regulations as revised require employers to keep a record of total hours worked during 26-week periods."

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