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U. S. DEPARTMENT OF LABOR
Wage and Hour Division
Washington

CIRCUIT COURT UPHOLDS WAGE-HOUR DIVISION INTERPRETATIONS

Sweeping support for the position taken by the Wage and Hour Division, U. S. Department of Labor, that the Fair Labor Standards Act should be liberally construed in questions of coverage while exemptions specifically mentioned in the Act are subject to strict construction, came in a decision of the U. S. Circuit Court of Appeals for the Eighth Circuit at Kansas City, received today in Washington, in which the victory won by the Hawkeye Pearl Button Company in a District Court was reversed. The opinion, written by Judge Archibald K. Gardner for the full court, referred the action back to the District Court.

The Wage and Hour Division had contended in an injunction suit that the button company, with plants at Muscatine, Iowa; Keokuk, Iowa, and Canton, Missouri, and sales offices in New York City, was violating the Act by failing to pay the minimum wage, failing to pay overtime, failing to keep adequate records as required by law, and with decentralizing its operations to so-called "privy" shops, in an effort to evade the Act. The company argued that since making buttons out of mussel shells was processing a fish by-product, it was exempt. The District Court upheld this contention, which was reversed in the decision received today.

The firm employs 185 persons in its central plant in Muscatine and also handled the output of 23 individual small cutters in the so-called "privy" plants. The Hawkeye firm, by the prices it pays these cutters, rendered it impossible for the smaller operators to obey the law. In the decision of the Circuit Court, the contentions of the Wage and Hour Division that the operations were covered and the employees involved entitled to the benefits of the Wage and Hour Law were upheld.

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The Court referred to the findings of Congress, which appear in Section 2 of the Act "to the effect that there exists in industries engaged in interstate commerce labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers, which have caused an unwholesome state of affairs in interstate commerce, resulting in such conditions being perpetuated among the workers of the several states and burdening commerce and the free flow of goods in commerce, and resulting also in unfair methods of competition, labor disputes, and interference with the orderly and fair marketing of goods in interstate commerce. The preamble may properly be referred to, to assist in ascertaining the intent and meaning of a statute susceptible of different constructions. Price v. Forrest, 173 U. S. 410. The manifest declared purpose of the statute was to eradicate from interstate commerce the evils attendant upon lower wages and long hours of service in industry. Accepting this as the declared purpose of the Act, exemptions would tend to defeat its purpose. The statute is remedial, with a humanitarian end in view. It is therefore entitled to a liberal construction. Crier v. Kennan, 8 Cir., 64 F. 2d 605.

"We must assume that all employees in interstate commerce, so far as reasonably possible, should be made subject to the provisions of the Act. This is emphasized by the title (United States v. Katz, 271 U. S. 354). The findings and declaration of policy contained in Section 2, the inclusiveness of the language of Section 6 ('Every employer'), and of Section 8(a), reciting that 'the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, etc.'

"Section 13 (a)(5) creates an exception to the general scope of the Act, and hence, is subject to strict construction. Thompson v. United States, 8 Cir. 25 8 F. 196; United States v. Maryland Casualty Co., 7 Cir., 49 F. 2d 556; United States v. Dickson, 15 Pet. 141. In the last cited case, it is said:

> 'In short, a proviso carves special exceptions only out of the enacting clause; and those who set up any such exception must establish it as being within the words as well as within the reason thereof.'

"This rule of construction is applicable even though the statute contains certain penal provisions. Here no penalties are sought to be enforced but remedies. In such circumstances, exemptions should be construed strictly. Smith v. Townsend, 148 U. S. 490."

The Court then disposed of various arguments advanced by the Hawkeye firm, continuing:

"It is argued that this was a sick industry, and that it was not the intent of Congress to injure ailing industries but any such declared intent cannot be construed as indicating a general policy of exemption because a particular industry may not be financially prosperous. The minimum wage provisions of Section 6 are absolute, except for the exemptions of Section 13. . . . . If, in the competitive struggle, any business or industry could not survive and pay such wages, its existence could not be prolonged at the expense and to the prejudice of employees.

"It is argued that Congress exempted agriculture in Section 13 because it was a sick industry, and hence, it must be intended to exempt the pearl button making industry for the same reason. But, as we have pointed out, the motivating purpose of Congress was to benefit industrial workers. . . . . "

The opinion pointed out that the Congress had rejected an amendment which would have exempted employees engaged in the "manufacture of fishery products." This, it was held, should show clearly the intention to give such employees the benefits of the Act.

The Hawkeye Pearl Button Company, according to the complaint filed by the Wage and Hour Division, shortly after the Act went into effect began a reduction of operations in its three large cutting plants and, instead, encouraged and promoted an increase in the operations of small cutting plants, ostensibly independent of Hawkeye, "but in reality dominated and controlled by Hawkeye." Thus the defendant company sought to circumvent the law by transfer of its work to so-called "privy" plants.

"The 'privy' plants have been established in sheds, out-houses, frame shacks basements of dwelling houses, and similar shelter, and for the most part, lack adequate light, heat, or sanitary facilities. By encouraging the growth in operations of such plants for the cutting of button blanks Hawkeye was able to reduce its cost of cutting button blanks substantially."

Sitting with Judge Gardner when the case was argued by Rufus G. Poole, Associate General Counsel of the Wage and Hour Division, and Alex Elson, Regional Attorney, were Circuit Judge John B. Sanborn and District Judge John Caskie Collet.

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