

UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington

TWO MINING DETERMINATIONS ANNOUNCED

Two administrative determinations, one dealing with the status of lessees in metal mines, the other with working time in bituminous coal mines, were announced today by Colonel Philip B. Fleming, Administrator, Wage and Hour Division, U. S. Department of Labor.

The first determination was made at the request of metal mine operators and lessees of such operators in the intermountain states on the question of whether or not lessees of mining property are considered by the Wage and Hour Division as employees under the Fair Labor Standards Act. Colonel Fleming stated that each case must be determined on its particular facts, with primary importance given to the terms of each individual lease agreement and the method of operation under such agreement. If under the lease agreement control and supervision over the operations of the so-called lessee are reserved to the lessor, such lease agreement embodies the normal incidents of the employer-employee relationship and the so-called lessees will be considered as employees under the Fair Labor Standards Act. On the other hand, if a particular lessee is operating mining property which is not a part of the property currently being operated by the mining company with regular employees, and if in the lease agreement the mining company does not have the right to control the lessee in his operation of the mining property, it may well be that the lessee is not an employee of the mine owner but is in fact an independent operator of such property. However, Colonel Fleming pointed out, if such lessee has his own employees who assist in the operation of the leased mine, such employees must be paid in accordance with the Fair Labor Standards Act if the products of the mine move in interstate commerce. Colonel Fleming added

that in the ordinary case the mine owner retains title to the ore mined by the lessee and his employees and ships the product of the leased mine, along with his own, in interstate commerce. Therefore, if the lessee does not pay his own employees in accordance with the requirements of the Fair Labor Standards Act, section 15(a)(1) (the so-called "hot goods" section of the Act) prohibits the mine owner from shipping the product of the leased mine in interstate commerce.

Colonel Fleming also pointed out that two courts have recently held lessees of mining property to be employees of the mine owner. One of the cases was decided by the Supreme Court of Utah under the Utah Unemployment Compensation Act, designated as National Tunnel and Mines Company v. Industrial Commission of Utah, 102 P. 2d 508. The other decision was under the Fair Labor Standards Act and was rendered by a Federal Judge in Oregon as a result of proceedings instituted by the Wage and Hour Division against the Cornucopia Gold Mines Company. In both of such cases, Colonel Fleming stated, the mining company exercised complete control over the operations performed by the lessees.

The second administrative determination announced by Colonel Fleming today involved the question of determining the number of hours worked by miners in the bituminous coal mining industry.

Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of bona fide collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a "face to face" basis in the bituminous coal mining

industry would not be unreasonable. Colonel Fleming explained the term "face to face" to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry.

# # # # #