

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

BACKGROUND OF OPP COTTON MILLS, INC., VS. ADMINISTRATOR  
OF THE WAGE AND HOUR DIVISION

The petition for a writ of certiorari filed this morning (Tuesday, August 13), if granted, will bring to the Supreme Court the first challenge to the constitutionality of the Fair Labor Standards Act of 1938 and to the legality of the procedure under which wage orders are issued by the Administrator of the Wage and Hour Division, U. S. Department of Labor. It is estimated that the wage rates of more than 500,000 workers have been increased approximately \$50,000,000 a year by the issuance of such wage orders, based on the recommendations of industry committees.

This case brought by an Alabama cotton textile manufacturer seeks to set aside the wage order of the Administrator of the Wage and Hour Division, U. S. Department of Labor, establishing 32-1/2 cents an hour as the lowest wage which can legally be paid in the production of textiles for interstate commerce. Textiles as defined under the order include cotton, silk, rayon, flax and jute. This wage order went into effect on October 24, 1939.

It is estimated that 175,000 of the 650,000 wage earners engaged in the production of textiles as defined were being paid less than 32-1/2 cents an hour. Presumably this number was given wage increases at that time to bring the rate up to 32-1/2 cents. It is estimated that this order increased the payroll of the textile industry by \$10,000,000 on an annual basis, irrespective of any increases which may have occurred above the 32-1/2 cent rate.

In the Act, Congress directed that "the Administrator shall, as soon as practicable, appoint an industry committee for each industry engaged in (interstate) commerce or the production of goods for (interstate) commerce." Congress also directed that "the committee shall recommend to the Administrator the highest  
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minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry."

The Act also directs that "with a view to carrying out the policies of this Act, by reaching as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in (interstate) commerce or the production of goods for (interstate) commerce, the Administrator shall, from time to time, convene the industry committee for each such industry, and the industry committee shall, from time to time, recommend the minimum rate or rates of wages to be paid."

The textile industry committee was appointed on September 13, 1938. Donald M. Nelson, chairman of the Executive Committee of Sears Roebuck and Co., was appointed as a public member and chairman of the committee. The committee was comprised of 21 members, equally representative of the public, the employees and the employers in the industry. On May 22, after conducting meetings of the committee and the sub-committee and hearing from 60 witnesses, the committee recommended a minimum wage of 32-1/2 cents an hour for the entire industry. This recommendation was made by the committee after a vote of 13 to 6 was recorded in its favor. Four employer members of the committee, all manufacturers of cotton textiles, voted against it, as did two public members.

A public hearing on this recommendation was begun in Washington on June 19 before Elmer F. Andrews, then Administrator of the Wage and Hour Division. The hearing was continued on June 26 in Atlanta, Georgia, and concluded after more than 100 witnesses and 3,000 pages of testimony were heard.

The Administrator on September 29, 1939, approved the recommendation of the committee and issued a wage order putting the 32-1/2 cent minimum rate for the textile industry into effect on October 24, 1939.

The Opp Cotton Mills, Inc., on October 20, 1939, filed with the United States Court of Appeals for the 5th Circuit at New Orleans, a petition to set aside the order. This action was brought under Section 10 of the Act ("Court Review") which provides that "any person aggrieved by an order of the Administrator issued under Section 8 may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court within 60 days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part."

The Section further provides that "the court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect." In accordance with this provision, the Opp Cotton Mills, Inc., and 17 intervening petitioners, all cotton textile mills, in Alabama, Mississippi and Louisiana, have each filed surety bond of \$10,000.

On April 2 the Fifth Circuit Court of Appeals in an unanimous decision held that "the procedure followed by the Administrator in adopting the recommendations of the industry committee was in accord with the due process requirements of the constitution . . . The wage order is affirmed." The petition filed today by the Opp Cotton Mills, Inc., is the first step in an appeal to the Supreme Court from that decision.

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