

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

NOTICE OF HEARING ON MINIMUM WAGE REC-  
COMMENDATION OF INDUSTRY COMMITTEE NO.  
9 FOR THE RAILROAD CARRIER INDUSTRY

WHEREAS, the Administrator of the Wage and Hour Division of the United States Department of Labor, acting pursuant to Section 5(b) of the Fair Labor Standards Act of 1938, on November 2, 1939, by Administrative Order No. 34, appointed Industry Committee No. 9 for the Railroad Carrier Industry, composed of an equal number of representatives of the public, employers in the industry and employees in the industry, such representatives having been appointed with due regard to the geographical regions in which the industry is carried on; and

WHEREAS, Industry Committee No. 9, on May 8, 1940, recommended a minimum wage rate for the Railroad Carrier Industry and duly adopted a report containing said recommendation and reasons therefor and has filed such report with the Administrator on August 15, 1940, pursuant to Section 8(d) of the Act and Section 511.19 of the Regulations issued under the Act; and

WHEREAS, the Administrator is required by Section 8(d) of the Act, after due notice to interested persons and giving them an opportunity to be heard, to approve and carry into effect by order the recommendation of Industry Committee No. 9 if he finds that the recommendation is made

in accordance with law and is supported by the evidence adduced at the hearing before him, and, taking into consideration the same factors as are required to be considered by the Industry Committee, will carry out the purposes of Section 8 of the Act; and, if he finds otherwise, to disapprove such recommendations;

NOW, THEREFORE, notice is hereby given that:

I. Industry Committee No. 9 by a majority vote in each case made the following separable recommendations for minimum wage rates in the Railroad Carrier Industry:

(1) "Wages at a rate of not less than thirty-six (36) cents an hour shall be paid under Section 6 of the Fair Labor Standards Act of 1938 by every employer to each of his employees in the Trunk Line Division of the Railroad Carrier Industry who is engaged in commerce or in the production of goods for commerce."

(2) "Wages at a rate of not less than thirty-three (33) cents an hour shall be paid under section 6 of the Fair Labor Standards Act of 1938 by every employer to each of his employees in the Short Line Division of the Railroad Carrier Industry who is engaged in commerce or in the production of goods for commerce."

Industry Committee No. 9 recommended the following reasonable classifications within the Railroad Carrier Industry having determined them to be necessary for the purpose of fixing for each such classification within the industry the highest minimum wage rate (not in excess of 40 cents per hour) which (1) will not substantially curtail employment in such classification, and (2) will not give a competitive advantage to any group in the Industry:

(a) The trunk line division shall mean the industry carried on (1) by an express company, switching company, terminal company or sleeping car company subject to Part I of the Interstate Commerce Act, (2) by any carrier by railroad subject to Part I of the Interstate Commerce Act having annual operating revenues of more than one million dollars (\$1,000,000) as shown by such carrier's last annual report to the Interstate Commerce Commission or other regulatory body, and (3) by any company which is directly or indirectly owned or controlled by one or more such carriers, by one or more carriers under (b) hereof or by one or more such carriers jointly with one or more carriers under (b) hereof or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and by any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such company or carrier by railroad: Provided, however, That the term "trunk line division" shall not include the industry carried on by any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power;

(b) The short line division shall mean the industry carried on by any carrier by railroad, subject to Part I of the Interstate Commerce Act, having annual operating revenues of less than one million dollars (\$1,000,000) as shown by such carrier's last annual report to the Interstate Commerce Commission or other regulatory body, and by any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such carrier by railroad: Provided, however, That the term "short line division" shall not include the industry carried on (1) by any carrier or company included within paragraph (a) hereof or (2) by any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of

the general steam-railroad system of transportation now or hereafter operated by any other motive power.

II. The definition of the Railroad Carrier Industry, as set forth in Administrative Order No. 34, issued November 2, 1939, is as follows:

"As used in this order the term 'Railroad Carrier Industry' means the industry carried on by an express company, sleeping car company or carrier by railroad, subject to Part I of the Interstate Commerce Act, and by any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and by any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such company or carrier by railroad:

Provided, however, That the term 'Railroad Carrier Industry' shall not include the industry carried on by any street, inter-urban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power."

III. The full text of the report and recommendation of Industry Committee No. 9, together with a report filed by a minority of the Committee, are available for inspection by any person between the hours of 9:00 a.m. and 4:30 p.m. at the following offices of the United States Department of Labor, Wage and Hour Division:

Boston, Massachusetts  
120 Boylston Street

New York, New York  
Port of N. Y. Authority Building  
111 Eighth Avenue

Buffalo, New York  
Dun Building  
110 Pearl Street

Philadelphia, Pennsylvania  
1205 Widener Building  
Chestnut and Juniper Streets

Pittsburgh, Pennsylvania  
216 Old Post Office Building

Newark, New Jersey  
1004 Kinney Building  
790 Broad Street

Richmond, Virginia  
215 Richmond Trust Building  
627 E. Main Street

Baltimore, Maryland  
606 Snow Building  
Calvert & Lombard Streets

Raleigh, North Carolina  
507 Raleigh Building

Atlanta, Georgia  
314 Witt Building  
249 Peachtree Street

Jacksonville, Florida  
225 Post Office Building

Birmingham, Alabama  
818 Comer Building  
2nd Avenue & 21st Street

New Orleans, Louisiana  
1512 Pere Marquette Building  
150 Baronne Street

Nashville, Tennessee  
Medical Arts Building  
119 Seventh Avenue, N.

Cleveland, Ohio  
728 Standard Building  
1370 Ontario Avenue

Cincinnati, Ohio  
421 Keith Building  
525 Walnut Street

Detroit, Michigan  
358 Federal Building

Chicago, Illinois  
1200 Merchandise Mart  
222 W. North Bank Drive

Indianapolis, Indiana  
Room 708  
108 E. Washington Street

Minneapolis, Minnesota  
406 Pence Building  
730 Hennepin Avenue

Kansas City, Missouri  
504 Title & Trust Building  
10th & Walnut Streets

St. Louis, Missouri  
100 Old Custom House Building  
815 Olive Street

Denver, Colorado  
Chamber of Commerce Building  
1726 Champa Street

Dallas, Texas  
620 Wilson Building  
1621 Main Street

San Antonio, Texas  
716 Maverick Building  
400 E. Houston Street

San Francisco, California  
785 Market Street  
Room 500

Los Angeles, California  
H. W. Hellman Building  
354 South Spring Street

Seattle, Washington  
206 Hartford Building  
208 James Street

San Juan, Puerto Rico  
Post Office Box 112

Juneau, Alaska  
D. B. Stewart  
Commissioner of Mines

Washington, District of Columbia  
Department of Labor, 4th Floor

Copies of the Committee's report and recommendation, together with a report filed by a minority of the Committee, may be obtained by any person upon request addressed to the Administrator of the Wage and Hour Division, Department of Labor, Washington, D. C.

IV. A public hearing for the purpose of taking evidence on the question of whether the recommendation of Industry Committee No. 9 shall be approved or disapproved pursuant to Section 8 of the Act will be held on September 23, 1940, at 10:00 a.m. at the Willard Hotel, in Washington, D. C. before Henry T. Hunt, Esquire, Principal Hearings Examiner of the Wage and Hour Division, United States Department of Labor, as presiding officer.

V. Any interested person, supporting or opposing the recommendation of Industry Committee No. 9, may appear at the aforesaid hearing to offer evidence, either on his own behalf or on behalf of any other person; provided, that not later than September 16, 1940, any such person shall file with the Administrator at Washington, D. C., a notice of his intent to appear which shall contain the following information:

1. The name and address of the person appearing.
2. If such person is appearing in a representative capacity, the name and address of the person or persons whom he is representing.
3. Whether such person proposes to appear for or against the recommendation of Industry Committee No. 9.
4. The approximate length of time requested for his presentation.

Such notice may be mailed to the Administrator, Wage and Hour Division, United States Department of Labor, Washington, D. C., and shall be deemed filed upon receipt thereof.

VI. Any person interested in supporting or opposing the recommendation of Industry Committee No. 9 may secure further information concerning the aforesaid hearing by inquiry directed to the Administrator, Wage and Hour Division, United States Department of Labor, Washington, D. C., or by consulting with attorneys representing the Administrator who will be available for that purpose at the offices of the Wage and Hour Division in Washington, D. C.

VII. Copies of the following documents relating to the Railroad Carrier Industry will be available for inspection by any interested person between the hours of 9 a.m. and 4:30 p.m. at the offices of the Wage and Hour Division listed in paragraph III above:

U. S. Department of Labor, Wage and Hour Division, Research and Statistics Branch, Report on the Railroad Carrier Industry (Class I Railways).

U. S. Department of Labor, Wage and Hour Division, Research and Statistics Branch, Report on Railroad Carrier Industry (Classes II and III Railways).

U. S. Department of Labor, Wage and Hour Division, Research and Statistics Branch, Report on Railroad Carrier Industry (Switching and Terminal Companies).

U. S. Department of Labor, Wage and Hour Division, Research and Statistics Branch, Report on Railroad Carrier Industry (Electric Railways).

U. S. Department of Labor, Wage and Hour Division, Research and Statistics Branch, Report on Railroad Carrier Industry (the Pullman Company, the Railway Express Agency, Inc., and Car-Loan Companies).

VIII. The hearing will be conducted in accordance with the following rules, subject, however, to such subsequent modifications by the Administrator or the Principal Hearings Examiner as are deemed appropriate:

1. The hearing shall be stenographically reported and a transcript made which will be available to any person at prescribed rates upon request made to the official reporter, Electric Reporting Service, 1707 I St., N. W., Washington, D. C.

2. In order to maintain orderly and expeditious procedure, each person filing a Notice to Appear shall be notified, if practicable, of the approximate day and the place at which he may offer evidence at the hearing. If such person does not

appear at the time set in the notice he will not be permitted to offer evidence at any other time except by special permission of the presiding officer.

3. At the discretion of the presiding officer the hearing may be continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the presiding officer, or by other appropriate notice.

4. At any stage of the hearing, the presiding officer may call for further evidence upon any matter. After the presiding officer has closed the hearing before him, no further evidence shall be taken, except at the request of the Administrator, unless provision has been made at the hearing for the later receipt of such evidence. In the event that the Administrator shall cause the hearing to be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place fixed for such further taking of testimony shall be given to all persons who have filed a notice of intention to appear at the hearing.

5. All evidence must be presented under oath or affirmation.

6. Written documents or exhibits, except as otherwise permitted by the presiding officer, must be offered in evidence by a person who is prepared to testify as to the authenticity and trustworthiness thereof, and who shall, at the time of offering the documentary exhibit, make a brief statement as to the contents and manner of preparation thereof.

7. Written documents and exhibits shall be tendered in duplicate and the persons preparing the same shall be prepared to supply additional copies if such are ordered by the presiding officer. Where evidence is embraced in a document containing matter not intended to be put in evidence, such a document will not be received, but the person offering the same may present to the presiding officer the original document together with two copies of those portions of the document intended to be put in evidence. Upon presentation of such copies in proper form the copies will be received in evidence.

8. Subpoenas requiring the attendance of witnesses or the presentation of a document from any place in the United States at any designated place of hearing may be issued by

the Administrator at his discretion, and any person appearing in the proceeding may apply in writing for the issuance by the Administrator of the Subpoena. Such applications shall be timely and shall identify exactly the witness or document and state fully the nature of the evidence proposed to be secured.

9. Witnesses summoned by the Administrator shall be paid the same fees and mileage as are paid witnesses in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance witnesses appear, and the Administrator before issuing subpoena may require a deposit of an amount adequate to cover the fees and mileage involved.

10. The rules of evidence prevailing in courts of law or equity shall not be controlling.

11. The presiding officer may, at his discretion, permit any person appearing in the proceeding to cross-examine any witness offered by another person in so far as is practicable, and to object to the admission or exclusion of evidence by the presiding officer. Requests for permission to cross-examine a witness offered by another person and objections to the admission or exclusion of evidence shall be stated briefly with the reasons for such request or the ground of objection relied on. Such requests or objections shall become a part of the record, but the record shall not include argument thereon except as ordered by the presiding officer. Objections to the approval of the Committee's recommendation and to the promulgation of a wage order based upon such approval must be made at the hearing before the presiding officer.

12. Before the close of the hearing the presiding officer shall receive written requests from persons appearing in the proceeding for permission to make oral arguments before the Administrator upon the matter in issue. These requests will be forwarded to the Administrator by the presiding officer with the record of the proceedings. If the Administrator, in his discretion, allows the request, he shall give such notice thereof as he deems suitable to all persons appearing in the proceeding, and shall designate the time and place at which the oral arguments shall be heard. If such requests are allowed, all persons appearing at the hearing will be given opportunity to present oral argument.

13. Briefs (12 copies) may be submitted to the Administrator following the close of the hearing, by any persons appearing therein. Notice of the final dates for filing such briefs shall be given by the Administrator in such manner as shall be deemed suitable by him.

14. On the close of the hearing the presiding officer shall forthwith file a complete record of the proceedings with the Administrator. The presiding officer shall not file an intermediate report unless so directed by the Administrator. If a report is filed, it shall be advisory only and have no binding effect upon the Administrator.

15. No order issued as a result of the hearing will take effect until after due notice is given of the issuance thereof by publication in the Federal Register.

Signed at Washington, D. C. this 20th day of August, 1940.

  
Philip B. Fleming  
Administrator  
Wage and Hour Division

Published in Federal Register, August 23, 1940.