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

LEGAL MINIMUM FOR TEXTILE WORKERS DEFENDED

Legality of an hourly wage rate increase for 175,000 textile workers, which went into effect more than a year ago, was supported in a brief filed today by Solicitor-General Francis Biddle in the Supreme Court of the United States.

The brief was in answer to the appeal of the Opp Cotton Mills, Inc., of Opp, Alabama, asking the highest court to set aside the textile wage order. This order was put into effect on October 24, 1939, by the Administrator of the Wage and Hour Division of the U. S. Department of Labor. It directed the payment of at least 32-1/2 cents an hour to all the 650,000 employees of the textile industry.

An action brought by the Opp Cotton Mills to have this order set aside was denied by the United States Circuit Court of Appeals for the Fifth Circuit on April 2, 1940. The Supreme Court of the United States, on October 14, 1940, granted a writ of certiorari for which both parties to the issue had petitioned.

Ten other cotton mills of the deep South, plus a group of small mills organized as the Southern Cotton Manufacturing Association, joined in the petition to the Supreme Court.

They are: Selma Manufacturing Company, Montgomery, Alabama; Aponaug Manufacturing Company, Jackson, Mississippi; The Alden Mills, Meridian, Mississippi and New Orleans, Louisiana; Geneva Cotton Mills, Geneva, Alabama; Jefferson Mills, Jefferson, Georgia and Pulaski, Virginia; Lane Cotton Mills Company, New Orleans, Louisiana; Nicolas Cotton Mills, Opp, Alabama; Dana Cotton Mills, Enterprise, Alabama; Poulan Cotton Mills, Poulan, Georgia; and J. W. Sanders Cotton Mill, Inc., of Jackson, Mississippi.

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The individual mills listed above have posted bonds totalling $180,000. These bonds are surety that the mills, should they lose their suit, will pay 32-1/2 cents an hour retroactively to their workers now getting less than that rate -- some 3,000 in all.

The constitutionality of the Fair Labor Standards Act (Federal Wage and Hour Law) is defended by reference to the recently filed brief in the United States of America vs. F. W. Darby Lumber Company. This brief states: "It is submitted that the court has abandoned the principles which controlled the decision in Hammer vs. Dagenhart (in which a federal child labor law was held unconstitutional) and that the case should be expressly overruled."

Constitutionality under the commerce clause is supported as follows:

"The Fair Labor Standards Act is a valid exercise of the commerce power of Congress. This conclusion is required both by the character of the economic problem, as measured against the broad purpose of the commerce clause, and by the decisions of this Court which sanction the particular provisions of the Act here attacked.

"State legislators, Congressional committees, federal commissions, and businessmen over a long period of time have realized that no state, acting alone, could require labor standards substantially higher than those obtaining in other states whose producers and manufacturers competed in the interstate market.

"The reiterated conclusion that the individual states were helpless gained added force during the prolonged economic depression of the 1930's. The Thirty-Hour Week bills, the National Industrial Recovery Act, the textile and the coal bills, and the Fair Labor Standards Act itself each reflect a great volume of testimony adduced at congressional hearings and elsewhere to the effect that . . . employers with lower labor standards possess an unfair advantage in interstate competition, and that only the national government could deal with the problem. . . .

"The Congressional committees made specific findings which were embodied in the Fair Labor Standards Act as the congressional judgment that low labor standards were detrimental to the health and efficiency of workers, caused the channels of interstate commerce to spread those labor conditions among the states, burdened interstate commerce, led to labor disputes obstructing that commerce, and constituted an unfair method of competition. Particularly when these findings accord with the facts of which this Court has already taken judicial notice, they are to be given conclusive weight.

"The incapacity of the individual states to remedy the serious evils resulting from long hours and low wages in interstate industry rests in part upon the commerce clause itself, which prevents the states from forbidding importation of goods produced under substandard conditions. And, even if a state could constitutionally protect its industries within its own borders, it could not safeguard them against the loss of their markets in other states. (6629)

" . . . Appellee relies largely on the authority of Hammer v. Dagenhart, which held unconstitutional a statute prohibiting the interstate transportation of child-made goods. That statute might be distinguished from the present Act on the ground that Congress has here made specific findings, based upon facts of common knowledge, as to the existence of a relationship between the statutory prohibition and interstate commerce. And the economic integration of the nation in the past two decades has made even less tenable the basic postulate of self-sufficient states which underlay that decision. Apart, however, from the force to be given to these considerations we recognize that the statute declared unconstitutional in Hammer v. Dagenhart is identical with the child-labor provisions in the present Act. And the prohibition against transporting goods produced by adults working under substandard labor conditions which is involved in this case cannot be distinguished in theory from the ban upon shipping goods produced by children.

"The Child Labor Act in terms applied only to the transportation of goods across state lines; it thus regulated interstate commerce itself, and nothing else. But the majority of the Court viewed the Act as a mere regulation of labor in the states. Four Justices of this Court thought at the time that the statute was a regulation of interstate commerce within the meaning of the Constitution. We believe that they were correct, and that their views have been given effect by the Court in subsequent decisions. In particular, the decision in Hammer v. Dagenhart is squarely inconsistent with Mulford v. Smith supra, which upheld a prohibition of interstate commerce having just as great an effect upon production as the Child Labor Act.

"The effect of the decision in Hammer v. Dagenhart was to establish a limitation upon the commerce power which is contained nowhere in the Constitution, and which is contrary to the scope of that grant of power as defined in cases running from Gibbons v. Ogden, 9 Wheat. 1, to the most recent decisions. Since the states are precluded by the commerce clause itself from forbidding interstate shipment of goods produced under substandard labor conditions, the decision created a no man's land in which neither state nor nation could function. The establishment of such a hiatus in governmental power is plainly contrary both to the letter and spirit of the Constitution."

Much of the 117 page brief in answer to the petition of the Opp Cotton Mills is devoted to a defense of the manner in which administrative law functioned in the procedure which led to the issuance of the textile wage order.

The brief outlined the long proceedings by the Industry Committee which investigated the industry and recommended the rate incorporated in the wage order. "Altogether one year and sixteen days intervened between the appointment of the committee and the Administrator's final order," the brief states. "This would not appear to constitute undue haste."

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While no formal notice was required for the Committee's hearing of witness/ it is pointed out that about 130 representatives of organizations were invited to appear and that about 200 persons representing organizations of large membership did appear before the committee or its subcommittees.

The recommendation of the Committee was the subject of a hearing conducted by the Administrator personally. A notice of this hearing providing for the appearance of interested persons was published in the Federal Register and in trade and daily newspapers in sections where the industry is carried on. More than 135 witnesses and over 3,300 pages of testimony were taken, plus eight volumes of exhibits.

The argument justifying the wage order makes these points, among others:

"The Act contains no invalid delegation. The statute prescribes the factors which the Industry Committee and the Administrator are to take into effect in establishing a minimum wage between 30 cents and 40 cents per hour. This method of defining the scope of administrative action has frequently been held to be adequate, even though the precise weight to be given each factor is not specified. . . .

"The procedure before the Administrator was proper under the statute and the constitution. Petitioners' representative was given ample notice of the hearing before the Administrator and opportunity to be heard, the testimony presented on their behalf occupying 290 pages in the printed record. . . .

"Petitioners argue that the Administrator's findings are unsupported by substantial evidence because much of the evidence supporting them would not be admissible in a court of law. The evidence thus challenged consists of official documents, memoranda summarizing such documents, and the testimony of the persons responsible for the preparation of such memoranda. Such evidence, though heresay, is the kind on which reasonable minds would rely in determining such questions of economic fact as are in issue here. As long as the evidence has 'rational probative force' and is the kind 'on which responsible persons are accustomed to rely in serious affairs,' it is sufficient to support an administrative finding irrespective of whether admissible under the technical rules of evidence. . . .

"The Administrator's finding that the 32-1/2 cent minimum wage would not substantially curtail employment was supported by evidence showing that, as contrasted with the 30 cent statutory minimum, a 32-1/2 cent wage would increase labor costs 2.1 percent for the Nation and 2.15 percent for the South, and manufacturing costs less than 1 percent for both, and that such slight increase in costs would be unlikely to affect retail sales prices or consumers' demand. . . .

"Petitioners have raised many objections to the procedure before the Industry Committee and the Administrator. Most of these objections are used to support th the charge that the requirements of the statute have not been followed and the allegation that the procedure violates the constitutional guarantees of due process of law. . . .

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"In general it may be said that although petitioners pay lip service to the doctrine that administrative action is not to be set aside by the courts unless plainly arbitrary and capricious, they attempt to evade the rule by characterizing everything with which they disagree as 'arbitrary.' In effect petitioners seek to have the Court substitute their judgment for that of the Administrator on practically every question upon which the latter passed. In most instances the mere statement of what transpired will be sufficient to show that the procedure was lawful under both the statute and the Constitution. . . .

"Petitioners have amplified their argument as to the inadequate representation of the South generally by asserting that (1) small mills in the South, (2) the cotton mills whose wage bills would be most increased, (3) nonunion employees, and (4) the 'deep South' were given insufficient representation on the Committee. Since the Act demands only that the Administrator give 'due regard' to 'geographical regions,' he was not required under the law to allocate his appointments in accordance with the size of the establishment, the number of wage earners receiving low wages, or the collective bargaining unit to which they belonged. Indeed, the suggestion that the membership of the Committee should be allocated so as chiefly to represent those whose wages would be increased would, if applied generally, enable the factories paying the lowest wages to determine whether there should be any increase above the basic statutory minimum, a result obviously not contemplated by Congress. . . .

"Although it is not essential that the Administrator's prediction as to the effect of a wage order turn out to be correct, if his findings are reasonable and supported by evidence, it is worth noting that the dire consequences prophesied by those opposing the Industry Committee's recommendation do not appear to have come true. Officially published reports showing productivity and employment in the cotton textile industry monthly by states indicate that the South generally and each southern state individually except Mississippi, has considerably increased its total production and employment since October 1939, when the wage order became effective. . . ."

In addition to Mr. Biddle, those on the brief are Robert L. Stern, George A. McNulty, and Warner W. Gardner, Special Assistants to the Attorney General; Gerard D. Reilly, Solicitor, Irving J. Levy, Assistant Solicitor, Rufus G. Poole, Assistant Solicitor, and Louis Sherman, Attorney, of the United States Department of Labor.

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