

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

Inactive

LOWELL SUN DECISION TO BE APPEALED

The Supreme Court of the United States will be asked to review the decision of the First Circuit Court of Appeals denying the authority of the Administrator of the Wage and Hour Division to delegate the power to sign subpoenas for the production of records, it was announced today by General Philip B. Fleming, Administrator. General Fleming has received an affirmative reply to his request to Solicitor General Francis Biddle that the case be appealed to the Supreme Court.

The case arose upon the refusal of the Lowell Sun of Lowell, Mass., to make its payroll records available to an inspector of the Wage and Hour Division. A subpoena was issued signed by the Acting Regional Director for New England, and this was upheld by the District Court, but the Circuit Court of Appeals held that the Administrator could not delegate his power to issue subpoenas.

"If this decision stands, it will be a serious impediment to administrative procedure," General Fleming said.

In appealing the order of the District Court to obey the subpoena, the Lowell Sun raised a number of issues. The application of the Act to the business of publishing newspapers was challenged on constitutional grounds; the application of the Act to newspapers was questioned; the right of the Administrator to institute the proceeding was objected to and the delegation by the Administrator to the Acting Regional Director of the power to sign a subpoena was challenged. The Circuit Court of Appeals in its opinion, however, only held, first, that the Administrator had the authority to conduct the proceedings involved and, second, that he could not delegate his power to issue subpoenas.

The same issue was raised in the Cudahy Packing Company of Louisiana vs. Fleming, Administrator, and while the opinion of the Fifth Circuit Court did not discuss the specific point, the District Court's order to produce the records was affirmed in that case. Numerous other Federal district courts have enforced subpoenas signed by Regional Directors.

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