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

APPEAL TAKEN IN PUERTO RICO NEEDLEWORK
COOPERATIVE WAGE-HOUR CASE

The legality of a device under which Puerto Rican needleworkers were formed into a so-called labor cooperative, purporting to make them joint owners of the business and transform their employer into a manager working for them is attacked by the Wage and Hour Division, U. S. Department of Labor, in a brief filed today with the U. S. Circuit Court of Appeals for the First Circuit, at Boston. The cooperative is described as a device to evade compliance with the minimum-wage and maximum-hour provisions of the Fair Labor Standards Act.

Filed by Gerard D. Reilly, Solicitor, and Irving J. Levy, Assistant Solicitor, of the Department of Labor, in behalf of General Philip B. Fleming, Administrator of the Wage and Hour Division, the brief contends that despite the alleged cooperative arrangement these needleworkers are still employees within the meaning of the Act and therefore entitled to its benefits.

The court is asked to recognize "the organization which the individual defendants created as a means of evading the law for the transparent device which it is" and the government seeks to have "the individual defendants who have sought to hide behind it" enjoined from violating the wage and hour law.

(8560)

The action was originally instituted in the Federal Court in Puerto Rico against the Caribbean Embroidery Cooperative, Inc., Santiago R. Palmer and his wife, Magdalena, its manager and assistant manager respectively. Judge Robert A. Cooper, of that court, found that the more than 1,000 needleworkers who were not members of the cooperative but who were working on its goods in their homes were employees of the cooperative entitled to the benefits of the Act and granted an injunction restraining the defendants from violations of the Act in respect to paying such workers less than the legal minimum wages.

However, Judge Cooper held that the cooperative was a bona fide one and that its members were not employees within the meaning of the Act and accordingly denied the Division's request for an injunction with respect to them. It is from this phase of the court's decision, holding hundreds of workers beyond the protection of the law, that the present appeal is being taken.

It is alleged this cooperative was organized to permit the Palmers to underpay their workers by attempting to give the latter the status of "partners" in the business rather than employees. It is contended by the Wage and Hour Division that the cooperative is nothing more than a continuation in a different form of the Caribbean Embroidery Company, owned and operated by the Palmers for some years prior to the organization by them of the Caribbean Embroidery Cooperative, Inc., on October 25, 1938, the day after the wage and hour law became effective.

The cooperative is called a sham device formed only for the purpose of evading the law's requirements, and the Palmers are declared, in the guise of officials acting for the cooperative, to "have continued to operate the business and employ the workers in the same manner as they did before the passage of the Act."

Even if the cooperative is what it purports to be, the Division argues that its members are "employees" and both the organization and the Palmers as its agents are "employers" within the meaning of the Act. It is pointed out that these "members" continued to receive substantially the same meagre compensation of a few cents an hour which they had received as "employees," whereas the Palmers and their relatives were placed in important positions in the cooperative and received more than they had previously.

In further support of its contention that the cooperative is a mere continuation of the original company the Division points out that operations are carried on in the same manner, that the same buildings and equipment, "rented" to the cooperative by Mr. Palmer, are being used, and that the cooperative's board of directors is entirely subservient to and controlled by Mr. Palmer, even holding its meetings in his dining room. The "dividends" to which the needleworkers, as members of the cooperative, are entitled, average approximately \$5.33 a year for each worker, it is alleged.

In addition to Mr. Reilly and Mr. Levy, the attorneys representing the Administrator in the case are Philip F. Herrick, regional attorney, Leo L. Holstein and Erwin B. Ellmann.

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