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

U. S. CIRCUIT COURT OPINION HOLDS CERTAIN ELEVATOR OPERATORS WATCHMEN, FIREMEN ETC., COVERED BY WAGE AND HOUR LAW PROVISIONS

A U. S. Circuit Court of Appeals opinion announced today upholds the contention of the Wage and Hour Division, U. S. Department of Labor, that elevator operators, watchmen, firemen, and other employees of a building housing firms producing goods for commerce are covered by the Fair Labor Standards Act.

The opinion, rendered by the Circuit Court for the Third Circuit, at Philadelphia, Pennsylvania, confirms the decision of Judge William H. Kirkpatrick, in U. S. District Court at Philadelphia, which enjoined the A. B. Kirschbaum Company, of that city, from further violating the wage and hour provisions of the Fair Labor Standards Act. The suit was instituted by the Division.

The opinion extends the benefits of the 30-cents per hour and time and one half for overtime beyond 40 hours per week provisions of the Wage-Hour Law to three elevator operators, two watchmen, three firemen, an engineer, a carpenter, a carpenter's helper, and a porter. All are employed by the Kirschbaum company in a Philadelphia building rented by tenants who are engaged in the production of goods for commerce.

In announcing the opinion, Baird Snyder, Acting Administrator of the Wage and Hour Division, pointed out that the Circuit Court overruled objections of the defendant that the employer was not himself engaged in commerce or in the production of goods for commerce.

"We conclude," the opinion stated on this point, "that it was the intention of Congress to make the act applicable to all those who are employed in commerce or in the production of goods in commerce without regard to the nature of their employer's business and that this intention was given apt

(9791)

expression in Sections 6 (the minimum wage provisions) and 7 (overtime provisions) of the act."

The court's recognition that the employees involved are engaged in processes or occupations necessary to the production of goods for commerce is shown by its finding:

"Thus for the purposes of the act an employee is to be deemed engaged in the production of goods for commerce not only when he has direct physical contact with the goods, but also when he is employed in any process or occupation necessary to the production thereof .'. . . . . In each instance the work is so essential to the production of the tenants' goods that if the defendant were not to provide the services the tenants themselves would have had to provide them. The vital necessity to production of the services of elevator operators, engineers and firemen is vividly demonstrated by evidence presented by the plaintiff as to the effects of a strike of building. maintenance workers in New York City in 1939."

With special reference to elevator operators, the Circuit Court opinion held such employees to be "also directly engaged in commerce, for although their activities take place entirely within the state they carry out one step in the actual transportation of the goods to points outside the state."

The defendant also argued that the employees involved are not entitled to the benefits of the Wage-Hour Law because they are employed in a service establishment, which is exempt. However, the Circuit Court dismissed this argument with the finding that "the rendering of some service is incidental to most businesses but they are not thereby necessarily stamped as 'service establishments.' That term may not be given so broad a meaning since it represents a special exception to the general coverage of the act."

The Court reasoned that "it is fair to infer that the type of establishment meant by the Act is that which has the ordinary characteristics of a retail establishment except that it sells services instead of goods. In other words it is an establishment, the principal activity of which is to furnish service to the consuming public." # # # (9791)