

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

Inactive

BUILDING OWNERS WARNED EMPLOYEES MAY BE COVERED

Attention of owners and managers of buildings with tenants producing goods for interstate commerce was called today by Thomas W. Holland, Administrator of the Wage and Hour Division, U. S. Department of Labor, to a decision of the United States Circuit Court of Appeals for the Second Circuit handed down in New York City. The decision, the second one to the same effect, holds that maintenance employees in such buildings are entitled to time and a half for overtime after 40 hours a week, and to a wage of at least 30 cents an hour under the Federal Wage and Hour Law.

The decision was in the case of the Division against the Arsenal Building Corporation of New York City. The Circuit Court opinion reverses a U. S. District Court decision which denied coverage under the Wage-Hour Law to approximately 25 employees of the corporation who maintain a 22-story loft building occupied principally by manufacturers of women's clothing.

As was held by the Circuit Court for the Third Circuit at Philadelphia, recently in the case of the A. B. Kirschbaum Co., a Philadelphia building operator who also rents to establishments engaged in the production of goods for interstate commerce, the New York court's opinion found that building maintenance employees were "necessary to the production" of the products made by the tenants they served.

"Cutters and stitchers," the opinion of Learned Hand, Presiding Judge, stated, "cannot work in a cold or filthy building; they must have light and power to drive their machines; they cannot be required to carry goods from one story to another. Those who make and keep the factory fit for them in these ways are as 'necessary' to 'production' as they are themselves."

The Appellate Court also overruled the finding of the lower court that the defendant's loft building was a service establishment entitled to the exemption under Section 13(a)(2) of the Fair Labor Standards Act.

Irving J. Levy, Associate Solicitor, represented the Administrator in the Circuit Court.