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

U. S. DISTRICT COURT OPINION UPHOLDS BENEFITS OF WAGE-HOUR LAW FOR NON-RETAILING EMPLOYEES OF WHOLESALERS

Approximately 500,000 non-retail selling employees of the nation's chain store and wholesaling industries are affected by a far reaching Wage-Hour Law opinion just announced in U. S. District Court at Philadelphia, Pennsylvania.

Specifically, the opinion, by Judge Harry E. Kalodner, upholds the contention of the Wage and Hour Division, U. S. Department of Labor, that some 3,200 non-retail selling employees of American Stores Co. are entitled to the minimum wage and overtime benefits of the Fair Labor Standards Act. Howevdr, the principles expressed by Judge Kalodner in requiring extension of the law's provisions to the distributing and other non-retail selling employees who serve the grocery chain's 2,300 retail stores in seven states and the District of Columbia, are held to be applicable to both chain stores and the wholesaling industry in general. The firm also operates 11 warehouses in seven states; seven bakeries in three states; two canneries; purchasing offices; central offices; coffee roasting plant; auto maintenance shop; mechanical shop; laundry and garment shop; printing and multigraphing shop; laboratory; bottling works and food processing plant.

Judge Kalodner pointed out:

"The defendant's warehouses perform essentially the same functions as those performed by independent wholesale grocers, and their mode of operation is substantially the same. It is patent that the cost of operation of those warehouses is reflected in the cost of operation of the retail stores which they serve, since each retail store is debited by the defendant with the overall charges of the servicing warehouse."

Comparing chain-store warehouses with warehouses operated by wholesalers, Judge Kalodner said:

"Since wholesalers who sell in interstate commerce to non-chain grocery stores and meat shops, which are engaged in competition with the stores operated by the defendant, are compelled to comply with the Act, an exemption of similarly operated warehouses would result in a burdensome differential to the complying warehouses and their customer retail stores.

"Additionally, a differential in labor costs would weight heavily against wholesalers and public warehouses which perform functions analogous to and in competition with the chain store warehouses.

"It does not follow that because a unit of an enterprise is a component or necessary part of that enterprise that is it to be so regarded as part and parcel of the whole enterprise as to lose its individual and separate indentity as an establishment.

"I can find no basis for rejecting the commonly accepted definition of 'retail establishment' and substituting for it the definition of the defendant, as has been pointed out, the Act being remedial and Section 13(a)(2) being an exemption, the burden rests upon the defendant to prove that it comes within the exemption. It has failed to meet this burden."

In reply to the company's contention that employees of four of the 11 warehouses were engaged in intrastate shipments only, since merchandise handled by those four warehouses did not move out of the state in which the units were located, Judge Kalodner held such employees were covered, inasmuch as they handled and reshipped merchandise which came from points outside of the state.

Declaring "that contention, too, cannot be sustained," Judge Kalodner found: "The test to be applied as to whether or not employees come within the scope of the Act is the nature of their employment -- not the nature of their employer's business."

The decision was reached after an extended trial. Abner Brodie of The Department of Labor's legal staff headed the government lawyers who presented the case on behalf of the Administrator.

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