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

WAGE-HOUR STAND ON WAR PROBLEMS GIVEN BY WALLING

The enforcement policy which is being followed by the Wage and Hour Division of the U.S. Department of Labor in dealing with several of the more important war problems which have arisen under the Fair Labor Standards Act as a result of the war emergency was stated today by Administrator L. Metcalfe Walling. There has been no delay in meeting these problems as they have arisen since December 7 but the summerization made public today covers a number of the questions most frequently raised.

A list of these problems together with the position of the Division with respect to them follows:

I Volunteer Watchman

Employees frequently volunteer to serve outside of working hours in watching or other duties for the purpose of protecting defense and war plants from fire or other damage caused by air raids.

It is expected that a large variety of factual situations will arise with respect to this problem, many of which will be covered by the process of collective bargaining. Such collective bargaining will reflect the varying factual situations as accurately as would a detailed investigation by this Division. The Division in its enforcement policy will therefore respect the result which may be reached through such collective bargaining and, in general, will not undertake an independent analysis of the details of any particular factual situation covered by collective bargaining.

Certain situations together with the Division's views thereon, however, require special mention. Under the Fair Labor Standards Act an employee must be compensated for all hours that he is suffered or permitted to work for his employer. Thus if the employee in this case volunteers his service directly to his employer, the time spent in watchman or air raid protection services constitutes hours worked for the employer for which compensation must be paid. Likewise, if the employee, whether or not he is a regular employee of the plant and however he may be selected to do this work, displaces a regular watchman or other regular employee, he must be considered as working for the employer and must be compensated accordingly. In these two cases, if the period of duty includes a substantial amount of time in which the employee is permitted to sleep, the Wage and Hour Division will recognize any reasonable agreement between the employer and the employee as to what portion of the time spent in sleeping should be considered hours worked.

On the other hand, if the employee volunteers his services to a federal, state or local governmental agency engaged in defense activities, and subsequently performs watchman or air raid protection services subject to the control and supervision of that defense agency at the plant where he usually works, the time spent in these services constitutes hours worked for that governmental agency. Governmental agencies are not subject to the Fair Labor Standards Act and their employees are not subject to the act's requirements. Similarly if the employee volunteers his services to a committee in a particular plant, composed of representatives of the employer and of the employees, and such committee has been recognized by the appropriate governmental agency as having charge of defense activities in the plant, and subsequently he performs watchman or air raid protection services subject to the control and supervision of such committee at the plant where he normally works, the time spent in these services constitutes hours worked for the governmental agency and as such need not be compensated for under the terms of the act. In

connection with the situations discussed in this paragraph, the fact that the employer directs the manner in which the work may most readily be performed, assigns space and the like, would not serve to make the volunteer employee subject to his direction and control alone, so long as the volunteer is responsible to a governmental agency or to the recognized committee for his appointment, hours of work, and such basic criteria of the employment relationship.

II Blackouts and Air Raid Alarms

It is expected that many of the problems which are likely to arise with respect to blackout and air raid alarm periods will be covered by the process of collective bargaining. Such collective bargaining will reflect the varying factual situations as accurately as would a detailed investigation by this Division. The Division in its enforcement policy will therefore respect the result which may be reached through such collective bargaining and, in general, will not undertake an independent analysis of the details of any particular factual situation covered by collective bargaining.

Two types of situations together with the Division's view thereon, however, require special mention. First in any situation where during working hours the employee performs an activity for the employer during blackouts or air raid alarms, time spent by him on the premises of the employer must be considered hours worked for which the employer must make compensation. He will be considered as performing an activity for the employer if he is required to perform any duties, including standing by with a sand bucket, acting as a "spotter," or performing any fire watching functions.

On the other hand, if the employee is free to go off the premises or to a shelter or shelter area on the premises, or is free to go to some community air raid shelter and simply wait for the blackout or air raid alarm to end before returning to the employer's premises, the time spent during the blackout or air raid alarm is not to be counted as hours worked, provided, of course, that the employee performs no activity for the employer during this period.

III Air Raid Protection Training Programs

Time spent by employees at defense or war plant air raids protection training programs, which they attend voluntarily after regular working hours, will not ordinarily be considered hours worked. This opinion is limited to situations in which there is a bona fide training program rather than the performance of a recurring service for the employer. Whether or not there is a bona fide air raid protection training program will depend upon the facts in the particular case.

IV Work on Goods to be Donated to the Red Cross

It has come to our attention that frequently an employer will wish to donate a day's production to the Red Cross and his employees will wish to donate their services on that day without receiving any compensation. Under the Fair Labor Standards Act, however, as long as the employer supervises the employees' work on that day, they are working for him and must be compensated in accordance with the Act's requirements for the hours worked on that day. It makes no difference in this case that the employer gives his product away to the Red Cross instead of selling it. The employees may, however, contribute their wages or any part of their wages to the Red Cross either directly or by voluntary assignment.

In some few situations, however, an employer may turn over his plant on a particular day to the Red Cross and his employees donate their services on that day. This may occur particularly when the plant is quite small. In this situation time spent by the employees working on such day need not be considered hours worked for the employer, if the Red Cross supervises the work, and pays neither the employer nor the workers. This opinion does not apply to volunteer work carried on simultaneously with the employees' regular commercial work for their employer.

V. Donations by employees to the Federal Government

The Act requires that employees subject to its provisions be paid time and one-half their regular rate of pay for all hours worked in excess of 40 in any work-week. Even though employees may wish to donate their wages for part of these hours, they are still working for their employer during those hours, and if their total hours worked for the week exceed 40, their employer must pay them overtime.

But workers who wish to make donations of part of their wages to the Government may of course do so. For further information on this general subject of donations to the United States, the public is advised to communicate with the United States Treasury Department in Washington.

VI. DEFENSE BONDS AND STAMPS

Although employees may not waive their rights to the minimum wages or the overtime compensation required under the Fair Labor Standards Act, they may accept part of the wages due them in cash and the balance in defense bonds or stamps. In addition, employees may voluntarily agree to have deductions made from their wages for the purchase of such bonds or stamps. As long as the deductions are for the amount paid for the bonds and stamps and not for the face value of the securities, they are legal under the Act even though they reduce the employees' cash wage below the minimum wage set by the Act.

The Division, as an incident to its enforcement of the Act, has frequently obtained restitution for employees of unpaid wages due under the Act. Employees may accept such restitution payments in defense bonds and stamps rather than in cash so long as the choice is voluntary on their part.

VII. Volunteer Work for Local Defense Savings Committees

The Division understands that the United States Treasury Department appoints a state administrator for defense bond sales. He in turn appoints local committees which assign the work of selling bonds and stamps to volunteers who wish to donate their services. At times these volunteers are assigned to a factory to work out with the employer a salary allotment plan in connection with the sale of bonds and stamps. At other times these volunteers are assigned to a bank where they engage in selling the bonds and stamps. So long as the Treasury Department, through its local committee, directs and controls the work of the volunteer by designating him as one of the volunteers to perform this work, and by assigning to him the type of work which he shall do for the committee, the employee for the purposes of the Fair Labor Standards Act will be considered an employee of the United States and as such not subject to the Act's requirements. This conclusion will not be affected by the fact that the bank or factory operator directs the manner in which the work may most readily be performed, assigns space and the like, so long as the volunteer worker is responsible to the Treasury Department or the recognized

committee for his appointment, hours of work and such basic criteria of the employment relationship. Of course, if the employee is not designated as a volunteer worker by the Treasury Department or its recognized committee, but merely sells bonds in connection with his routine activities performed as an employee of a bank, or merely volunteers his services to his employer in connection with a salary allotment plan that his employer has worked out with representatives of the Treasury Department, the time spent in performing such services constitutes hours worked for the bank or factory for which compensation must be paid.