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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
New York, New York

REPORT TO THE SENATE ON CONDITIONS AND PRACTICES OF EMPLOYMENT OF REDCAPS IN RAILROAD AND TERMINAL COMPANIES BY L. METCALFE WALLING, ADMINISTRATOR WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS, U. S. DEPARTMENT OF LABOR

November 4, 1942

The Vice President
United States Senate
Washington, D. C.

Dear Mr. Vice President:

In accordance with the terms of Senate Resolution 105 of the 1st Session of the 77th Congress, I am pleased to submit my report.

Under the provisions of the Senate Resolution, the Division has conducted an inquiry into the wages, hours, and other conditions and practices of employment of Redcaps in railroad and terminal companies, giving full opportunity, in public, to both the employees and the employers to present evidence, information, and argument. The inquiry was conducted through the process of hearings, independent investigations, and a statistical survey. All phases of the inquiry were carried on in accordance with arrangements developed in conferences with representatives of employers and employees. The railroads were represented by the Association of American Railroads and a committee of railroad officials designated to deal with redcap problems; the employees were represented by the United Transport Service Employees of America and the Brotherhood of Railway and Steamship Clerks.

The record of the investigation comprises 5,250 pages of transcript of sworn testimony, given by 144 witnesses heard in Chicago, New York, Dallas, St. Louis, and Washington, D. C., between July and December, 1941. It also includes a total of 321 exhibits, consisting of correspondence, payroll records, bulletins, union agreements, and reports which resulted from questionnaire and field investigations carried on by members of the Division's staff. A copy of the transcript of the hearings is being transmitted to the Senate under separate cover. The exhibits are voluminous, and the single set of them is being held, for convenience, at the offices of the Wage and Hour Division in New York. They can be furnished to the Senate at any time.

Following the holding of hearings and the making of the investigations, an analysis of the complete record was prepared by the Economics Branch of the Division. This analysis, entitled Redcaps in Railway Terminals Under the Fair Labor Standards Act, 1938 - 1941, was submitted to the employers and the employees, and made available to all interested persons. Opportunity was given for the filing of briefs on the report, the record, and the recommendations which the Administrator was obligated to make under the terms of the Senate Resolution. Briefs were filed by the railroads and the United Transport Service Employees of America. Opportunity was offered for final oral argument before the Administrator, but neither the employees nor the railroads requested such argument.

This report to the Senate is based upon the entire record of the inquiry, including the report, Redcaps in Railway Terminals Under the Fair Labor Standards Act, 1938 - 1941, ten copies of which are submitted herewith.

Nature of the Evidence Disclosed by the Inquiry.

The record of the inquiry showed that about 70 percent of the nation's 4,500 Redcaps worked for no other compensation than tips before the Wage and Hour Law went into effect. When the law, which required the payment of 25 cents an hour as a minimum wage during its first year, took effect, railroads and railway terminal companies generally adopted a policy of counting the tips received by the Redcaps as part of their wages. Under this arrangement, which was known as the "Accounting and Guarantee Plan," Redcaps were required to account for all tips received, the employers agreeing to make good any differences between the amounts accounted for and the minimum wage rates to which the Redcaps were entitled under the provisions of the law. During the first two years of the law's existence, the "Accounting and Guarantee Plan" was challenged before the Division and in the courts by Redcaps' representatives, who maintained that the tips were payments made directly by passengers to the Redcaps and could not be counted as part of the minimum wage required to be paid by the Fair Labor Standards Act. The Division, desiring to obtain judicial opinion on the question whether tips were wages within the meaning of the law, became a party to several employee suits. The United States Supreme Court in March 1942, in the cases of Pickett versus Union Terminal Company and Williams et al versus Jacksonville Terminal Company, 62 Sup.Ct. 659 (1942), held under the facts of those cases that tips under the "Accounting and Guarantee Plan" were "wages" within the meaning of the Act.

While the legal issue was thus settled after more than three years of controversy, the Senate will be interested in the light which

the investigation threw upon the nature of the "Accounting and Guarantee Plan." The record shows clearly that the "Accounting and Guarantee Plan" operated in many instances to deprive Redcaps of the minimum wage rates guaranteed to them by law. In those instances in which Redcaps uniformly earned at least the minimum wage in tips received from passengers, there was no question that their total earnings amounted to the legal requirements of the Fair Labor Standards Act. But there were many cases in which Redcaps did not receive the equivalent of the minimum wage rates in tips for substantial periods of time because of seasonal declines in volume of passenger travel, inequitable distribution of work opportunities among the Redcaps at particular stations, general depression of business conditions, and other factors. Many Redcaps who received less than the minimum wage in tips nevertheless reported that they had received the minimum wages, either under real or imagined intimidation from management, or out of fear that they would be discharged or disciplined if their tip earnings did not at least meet the minimum wage level. Station officials had generally told their Redcaps that discharges would be made if the number of Redcaps was found to be too large to yield all employees opportunity to earn the minimum wage rate in tips; statements of this type usually were sufficient to instill fear among the Redcaps, whose employment status and security had always been precarious. In most such cases records were kept of wage payments and tip receipts, but it is clear from the evidence in the record that little reliance could be placed upon the accuracy of these records or, indeed, upon the accuracy of any tip reports made by any employees to employers under like circumstances.

Since 1940, the "Accounting and Guarantee Plan" has gradually been eliminated from the railroad industry, although it was still in use at a few stations at the time of the inquiry. In 1940 and 1941 most of the railroads and terminals abandoned the "Accounting and Guarantee Plan" and substituted the 10-cents-a-bag system or Cincinnati Plan, which now is used by most railroad and terminal companies. Under this arrangement, Redcaps are employed on a straight wage basis and are required to collect 10 cents from passengers for each bag carried, and to turn the proceeds of the 10-cent charge system over to their employers. Redcaps keep all tips over and above the 10-cent charge. The record shows that the new plan resulted in strained relations between employers and Redcaps for a considerable period of time, primarily because of three factors. First, the Redcaps objected to any procedure under which they had to turn over to the railroads any payments made by the public, on the ground that these payments were made as personal gratuities and were not railroad property. Second, they objected on the ground that they were compelled, under the new system, to handle more

bags than they had formerly handled so that they could earn at least the minimum wage in bag charges. Third, the Redcaps claimed that the plan cut their tip receipts and, in consequence, their total earnings. At about the same time that the new plan was introduced, dissatisfaction also arose over the introduction of technological changes. The chief technological change was the extension of the use of hand trucks: instead of serving one passenger, a Redcap would have to serve several passengers at each train. During the year following the introduction of the 10-cents-a-bag system and the extension of the hand truck system, a number of disputes arose over the details of working arrangements, especially in the larger eastern terminals. Many of these problems have been solved through the application of the techniques of collective bargaining and others are on their way to being solved. In some cases, the aches and pains of infancy still attend the development of adequate machinery for the settlement of disputes.

Despite the frictions and strained relations which were engendered by the changes in working relationships during the period 1938-1941, it can without question be said that the earnings, hours, and working conditions of Redcaps had substantially improved by the end of this period. Aggregate hourly earnings - including tips and wages - increased from about 30 cents during the "free tipping" period prior to the Act to more than 40 cents in the middle of 1941. This rise was accompanied by an increase in total weekly earnings, a general reduction in the workweek from about 56 to 48 hours, and the institution of a schedule calling for one day's rest each week. Under the Wage and Hour Law and under the terms of an Interstate Commerce Commission decision handed down just prior to the effective date of the law (Ex Parte 72, sub. no. 1. In the Matter of Regulations Concerning Class of Employees and Subordinate Officials to be included within the term "employee" under the Railway Labor Act, 229 I.C.C. 410), Redcaps for the first time attained status as regular employees. As employees, they have been entitled to the protection of minimum wage, retirement, and unemployment compensation legislation, as well as to the protection of collective bargaining. During the period of the Act's existence, approximately 85 percent of the Redcaps have been organized into unions which have won for them improvements in wages, decreases in hours, the protection of seniority, and other improvements in working conditions.

Despite a general decline in hours of work, Redcaps have continued to work an average of 48 hours a week, without receiving extra compensation for hours above 40. (Redcaps, like other railroad employees, are exempt from the provisions of Section 7 of the Act.)

Long hours of work, particularly those resulting from split shifts, were found to be one of the worst features of employment in the occupation.

Employment of Redcaps decreased by approximately 5 percent over the 1938-1941 period, when passenger traffic was increasing and should ordinarily have occasioned a rise in volume of employment. The decline was undoubtedly a reflection of the railraods' decisions to reorganize their redcap forces so that an adequate amount of work could be distributed among all employees who remained in the service. Prior to the Act, working time, earnings, and employment opportunities had been supervised loosely; the railroads generally maintained such large groups of workers at their stations that it was impossible in many instances for all Redcaps to earn in tips the minimum wage rates of the Fair Labor Standards Act. Since the effective date of the Act, railraod officials have been careful to organize their forces with a view to the avoidance of increased labor costs.

Decreases in employment were greatest at the larger stations in the East, South and Midwest, where Redcaps had been paid no wages prior to October 24, 1938. Railroad and terminal companies generally cut employment slightly, rationalized and supervised operations, or introduced technological changes when they had to assume the burden of paying wages to their Redcaps. But there was no consistent practice in this respect; some railroads kept employment at the pre-Act levels and paid the minimum wage obligations required by the Law to all employees. In the far West, where Redcaps had for many years received salaries in addition to tips, and where the use of hand truck systems and "mass production" devices for handling passenger traffic had long prevailed, employment increased during the 1938-1941 period.

One of the grievances which was aired during the course of the investigation was the allegation that the railroad companies were making a great deal of money from the 10-cent charges levied under the Cincinnati plan or 10-cents-a-bag system. You may recall that General Fleming, former Administrator of the Wage and Hour Division, in his report on Senate Resolution 325 (76th Cong., predecessor of Senate Resolution 105), submitted to Senator Thomas of Utah, Chairman of the Senate Committee on Education and Labor, on November 30, 1940, pointed out that preliminary investigations had showed certain companies to be profiting from the system. Our inquiry has disclosed that such profits were made only during the early months of the system's operation. As the system continued in existence over a

period of time and was accompanied by increases in hourly wage rates paid to employees -- increases occasioned by the operation of the Act and by collective bargaining -- the railroads generally ceased to make any money on the operations of the system, and on the contrary, had to make net expenditures, over and above revenue received, for paying Redcaps' wages. The railroads and terminals generally have had to spend more money for Redcap service since the Wage and Hour Law became effective than they did prior to the Act -- more in the aggregate and more for each Redcap, on the average. It should be borne in mind, however, that by the use of the "Accounting and Guarantee Plan" and the 10-cent-a-bag system the railroad and terminal companies were able to avoid additional annual Redcap payroll, over and above that which they paid, of approximately $2,000,000, which would have been required had Redcaps been paid wages and been permitted to keep all passenger payments without accounting for or turning them back to the companies.

The inquiry also was concerned with the effect of the 10-cent-a-bag system upon the public. Soon after its inauguration, the plan was challenged by the Redcaps in a proceeding before the Interstate Commerce Commission on the ground that a 10-cent charge to passengers was contrary to the regulations of the Commission: the Redcaps held that the service was a free service covered by the regular transportation charge. The Commission, in the case of Ida M. Stopher versus Cincinnati Union Terminal Co. Inc., 246 I.C.C. 41, rejected this contention but ordered the filing of tariffs respecting the new charge. Under this decision, of course, the public has had to pay the 10-cent charge levied by the railroad and terminal companies. The plan was the object of considerable public criticism during the first year of its existence, especially at certain terminals where the use of the bag system was an annoyance during rush hours. Several of the railroads modified the system to eliminate the tagging feature and the public has for the most part grown used to the charge plan; complaints have become fewer. Some passengers, of course, have adjusted to the new system by carrying their own bags or by allowing the Redcaps to carry only the heavier of their bags. On the whole, in view of the adjustments which passengers have made to the new system, it is impossible to state that the system is costing the public any more than the tipping system cost them. Many passengers have, of course, had to adapt themselves to less personalized service than that which they used to receive prior to the effective date of the Act; some have resented being fitted into a mass-production scheme of service. In the far West, however, where the practice of having Redcaps handle several passengers at once has been of long standing, so-called "mass production" handling seems to have gained general acceptance.

The situation in the far West deserves special mention. With few exceptions, Redcaps in this area had received the Fair Labor Standards Act minimum prior to October 24, 1938, and in addition had kept all tips which passengers gave. Neither the "Accounting and Guarantee Plan" nor the 10-cents-a-bag system was used in the 1938-1941 period. Relations between Redcaps and managements in that area have been much more amicable than have relations in the East; in fact, it may well be said that the "Redcap problem" was one which centered about the large eastern and midwestern and the southern stations. In the far West, unlike the rest of the country, Redcap employment has increased since 1938, and average hourly earnings have remained relatively higher than those of the rest of the country.

Recommendations

Upon the basis of the record of the inquiry I am prepared to submit to the Senate a report on the three questions to which specific answer was requested:

(1) The extent to which such condition and practices violate the letter or the spirit of the Fair Labor Standards Act of 1938 or other Federal statutes, if at all;

(2) The extent to which such conditions and practices are susceptible to regulation under the Fair Labor Standards Act in its present form; and

(3) What legislation, if any, should be enacted for the purpose of further regulating wages, hours, and other conditions and practices of employment of Redcaps under the Fair Labor Standards Act of 1938.

(1) With respect to the first, it is now clear that neither the "Accounting and Guarantee Plan" nor the 10-cent-a-bag system violates the letter of the Fair Labor Standards Act of 1938. The legality of the "Accounting and Guarantee Plan" was established by the decision of the Supreme Court in the Pickett and Williams cases; the legality of the 10-cent-a-bag plan, insofar as it involves the Fair Labor Standards Act, has never been questioned by the Division. I do believe, however, that the "Accounting and Guarantee Plan" unquestionably violates the spirit of the Act. Its operation has deprived many Redcaps of the benefits provided by the Fair Labor Standards Act because it

invariably induces the keeping of improper records and defies adequate control through administrative powers granted under the law. No specific attempt was made during the course of the investigation to determine whether the "Accounting and Guarantee Plan" or the 10-cent-a-bag plan violated the letter or spirit of federal statutes other than the Fair Labor Standards Act.

(2) With respect to the second question, I can report that, insofar as the payment of minimum wages is concerned, the 10-cent-a-day bag plan is easily susceptible to regulation under the Fair Labor Standards Act in its present form. The "Accounting and Guarantee Plan" however, is not so easily susceptible to regulation; in fact, as has already been indicated, its operation tends to deprive many employees of the minimum wage guarantees provided by the law. Other features of the two plans than those which relate to the minimum wage are, of course, more appropriate for regulation under other types of federal statutes.

(3) With respect to the third question, I should like to recommend the following proposal for further legislation: that the Fair Labor Standards Act of 1938 be amended to prohibit the application of tip receipts toward the payment of the minimum wage. This amendment would eliminate the use of tip accounting plans in the railroad and bus industries, where they still prevail, would prevent the re-establishment of such a system by railroad companies which discarded it in 1940 and 1941, and would prevent its institution in other tipping trades covered by the Act.

In addition to the foregoing, I would like to give further thought to the possibility of applying the hours limitation provisions of section 7 of the Act to Redcaps. The investigation indicated that Redcap employment is of a type which is no different from other employment covered by the overtime provisions of the law, that it could probably be regulated within the framework of the overtime provisions, and that Redcaps would derive substantial benefits from being covered. Any proposal to include Redcaps within the overtime provisions, however, would inevitably raise the question of the coverage of other railroad employees, which may involve serious difficulties because of the long history of regulation under collective bargaining along entirely different lines than those provided by the Fair Labor Standards Act. It may be that further investigation will show that regulation of hours of work of Redcaps cannot be considered separately from that of other employees of railway and terminal companies.

Very truly yours,

L. Metcalfe Walling

L. Metcalfe Walling
Administrator

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