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U. S. DEPARTMENT OF LABOR
Wage and Hour and Public Contracts Divisions
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WAGE-HOUR COVERAGE OF WHOLESALE EMPLOYEES CLARIFIED BY WALLING

Many employees of most wholesalers are entitled to the benefits of the Wage and Hour Law under the decision of the United States Supreme Court in the Jacksonville Paper case, L. Metcalfe Walling, Administrator of the Wage and Hour and Public Contracts Divisions of the U. S. Department of Labor, stated today.

Mr. Walling's statement was made after careful study of the unanimous decision of the Supreme Court handed down last Monday as the result of an injunction proceeding brought by the Wage and Hour Division in the United States District Court at Jacksonville, Florida.

Under the Supreme Court's opinion, however, it will be necessary to examine into the activities of each particular employee to determine whether his activities relate to the particular transactions which constitute interstate commerce, Mr. Walling said. He emphasized that the decision involves the application of the Wage and Hour Law to wholesalers buying outside the state in which their establishment is located and reselling only to purchasers located within that state. Where a wholesaler sells across a state line, coverage of his employees under the Act is clear, he said.

The Supreme Court rejected the contention of the Paper Company that the entry of the goods into its warehouse ended the movement in interstate commerce, stating that "the adoption of that view would result in too narrow a construction of the Act." Referring to entry of the goods into a warehouse, the Court said: "A temporary pause in their transit does not mean that they are no longer 'in commerce within the meaning of the Act.'****If the halt in the movement of the goods is a convenient intermediate step in the process of getting them to their final destination they remain 'in commerce' until they reach those points."

The case was appealed to the Supreme Court from the Fifth Circuit Court of Appeals. The Circuit Court held two types of transactions covered under the Act: *
(1) activities relating to the ordering or receipt of goods from other states, such as unloading, checking receipt of, and clerical work in connection with the out-of-state purchases and (2) local distribution of goods purchased pursuant to specific prior order of a customer. The Supreme Court held that those activities were covered under the Act together with activities relating to "certain types of transactions which are substantially of the same character" as prior orders, that is, purchases made "pursuant to a pre-existing contract or understanding with the customer," and purchases of goods made from the manufacturer in the name of a particular purchaser of the wholesaler.

Except as to the types of distribution discussed above, the Court said that the Administrator failed to show that in this particular case the lower court erred in holding the local distribution to be outside the scope of the Act. The Court indicated that in order to demonstrate coverage as to employees of a wholesaler engaged solely in distributing within a State goods received from other States, it is "necessary to show that the goods in question were different from goods acquired and held by a local merchant for local disposition."

However, the Court indicated that transactions based on anticipation of needs of specific customers might "at times" constitute interstate commerce. In this connection the Court said: "We do not mean to imply that a wholesaler's course of business based on anticipation of needs of specific customers, rather than on prior orders or contracts, might not at times be sufficient to establish that practical continuity in transit necessary to keep a movement of goods 'in commerce' within the meaning of the Act." The implications of this statement are not clear, Mr. Walling asserted, and it will be necessary to have further decisions by the courts to determine when the movement of goods in interstate commerce ceases.

The Court said with respect to the scope of commerce: "It is clear that the purpose of the Act was to extend Federal control in this field throughout the farthest reaches of the channels of interstate commerce."

Mr. Walling also commented on the decision in Higgins v. Carr Brothers, an employee suit decided on the same day as the Jacksonville case. In this case, the Supreme Court said that in his brief the employee sought "to show an actual or practical continuity of movement of merchandise from without the state to respondent's regular customers within the state." The Court held this had not been proved. The Higgins decision, therefore, rests on the limited facts presented to the Court in that case.