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CIRCUIT COURT HOLDS EMPLOYEES OF CHAIN STORE WAREHOUSES  
ENTITLED TO BENEFITS OF WAGE-HOUR LAW

The Wage-Hour Law exemption for retail establishments does not include employees in chain store warehouses or central executive offices, or employees engaged in the production of goods, L. Metcalfe Walling, Administrator of the Wage and Hour and Public Contracts Divisions of the U. S. Department of Labor, pointed out today,

He also asserted that from the very nature of the operations of chain stores, employees of their warehouses and executive offices are almost sure to be within the scope of the law.

Mr. Walling based his position on a recent decision of the Third Circuit Court of Appeals at Philadelphia in a suit brought by the Wage and Hour Division against the American Stores Company. The decision supported the position of the Division and specifically overruled the contention of the chain store that its entire operation, including warehouses, executive offices, canneries, bakeries, food manufacturing plants and over 2,300 retail stores in five states and the District of Columbia, constitutes a single exempt retail establishment. The Division conceded that the employees in the retail stores are exempt.

Four of the chain store company's warehouses distribute only to the company's retail units in the same states, while the remaining seven warehouses distribute across state lines. It was conceded that employees in the latter warehouses are within the coverage of the Act, but the Circuit Court ruled that its benefits also extend to employees of the four warehouses which ship no goods outside the state.

Pointing out that the retail outlets to which distribution was made by the four warehouses are operated by American Stores Company or a wholly owned subsidiary, the Circuit Court found that there exists "a practical continuity of movement of goods until they reach the defendant's retail stores." The Court found that the maintenance of the warehouses is not to break that continuity but to make it "even, economical and uninterrupted."

Emphasizing the rapid turnover at the warehouses, the Appellate Court held that the employees of all the Company's warehouses are within the general coverage of the Wage-Hour Act. The Court made it clear that in its opinion this was not a case of "goods acquired and held by a local merchant for local disposition." The quoted language was from a recent decision in the Jacksonville Paper Company case, in which the United States Supreme Court pointed out a situation where coverage does not exist under the Wage-Hour Law.

The present case is the first time a lower court has had occasion to apply the standards in this recent Supreme Court case, Mr. Walling said.

Elaborating on the reasons for its opinion on the commerce question, the Court asserted that there is a fairly even flow of goods to the company's warehouses, and it is its policy to avoid overstocking. Buyers order in anticipation of the regular and continuous requirements of the retail stores. Guided by past experience the buyers make considerable allowance for seasonal factors and merchandising programs, the opinion stated, and the method of operation is designed to keep the goods moving.