

For Release Friday  
November 19, 1943

PR-19 (rev.)  
(Substitute for PR-19)

U. S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
165 West 46th Street  
New York 19, New York

There will be no further enforcement of the wage and hour provisions of the Fair Labor Standards Act in regard to maintenance workers in office buildings occupied by tenants engaged solely in interstate commerce, L. Metcalfe Walling, Administrator, announced last night at a dinner of the Management Division of the Real Estate Board of New York, Inc.

The nationwide administrative policy, which Mr. Walling said becomes effective today, was adopted after recent court decisions which distinguished between maintenance employees in loft buildings in which the tenants produce goods for interstate commerce, who are covered, and similar employees, held not to be covered, who work in office buildings whose tenants only engage "in interstate commerce" rather than engage "in the production of goods for interstate commerce."

Mr. Walling made clear that the administrative policy will remain in effect unless the courts should indicate coverage or until further notice, but that it was not intended and could not in any way curtail the independent right of employees, under section 16(b), to bring their own suits to recover whatever compensation may be due them under the Act.

Mr. Walling said:

"Following the Supreme Court decision in Kirschbaum v. Walling, 316 U.S. 517, the Wage and Hour Division issued release R-1890, dated October 17, 1942, in which it reiterated its opinion that maintenance employees in buildings in which the tenants carried on interstate commerce activities are covered by the Fair Labor Standards Act. It was there pointed out that the Supreme Court, in the Kirschbaum decision, had held that maintenance employees working in loft buildings in which the tenants produced goods for interstate commerce are covered by the Act, and it was stated that the Division believed that maintenance employees in buildings in which the tenants carried on interstate activities were similarly covered by the Act.

"In view of recent decisions of the courts in employee suits brought by maintenance employees in office and bank buildings, L. Metcalfe Walling, the Administrator of the Wage and Hour and Public Contracts Divisions, announced today that until the courts indicated that the Act applied, or until further notice, he would take no further enforcement action under the wage and hour provisions of the Fair Labor Standards Act, with respect to maintenance employees in buildings in which less than 20 percent of the space is occupied by firms engaged there or elsewhere in the production of goods for commerce. He also stated that, in the interests of simplicity and uniformity in the application of this policy, for the present he would not include in the computation of the 20 percent banking firms or other firms whose interstate activities are limited to the preparation and transmission of documents, communications or correspondence, although in his opinion such activities involve pro-

duction of goods for commerce as defined in the Fair Labor Standards Act and of course involve engaging in commerce."

In this connection, the Administrator called attention to the fact that under the Act, goods are broadly defined to include:

" . . . goods (including ships and marine equipment, wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof. . . ."

and that under the Act production means:

" . . . produced, manufactured, mined, handled, or in any other manner worked on in any State, and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

###

*file after  
PR (9hev)*

February 18, 1944

Mr. G. W. Hamilton  
708 Barr Building  
Washington, D. C.

Dear Mr. Hamilton:

You recently requested advice as to the applicability of the Fair Labor Standards Act to maintenance employees in the Farmers Trust Bank of Carlisle, Pennsylvania. At that time I informed you that a statement on this question was to be issued in the near future. I think that the following statement will explain the Divisions' position with respect to maintenance employees in banks:

"The United States Supreme Court's recent denial of the petition for certiorari in Rucker v. First National Bank of Miami, Okla., No. 571, Jan. 31, 1944, 321 U.S. \_\_\_\_\_, coupled with its similar action in Stoike v. First National Bank of City of New York, No. 170, Oct. 11, 1943, 320 U.S. \_\_\_\_\_, and in Semeria v. Rosenberg, No. 322, Oct. 18, 1943/U.S. \_\_\_\_\_, has resulted in many inquiries with respect to the Divisions' position on maintenance employees in banks.

"Because of the Supreme Court's refusal to review the Circuit Courts' decisions in these cases, the Administrator has determined, as a matter of enforcement policy under the Fair Labor Standards Act, not to request restitution or to take any enforcement action in situations involving employees engaged solely in maintenance work in banks. If a janitor or other employee who spends part of his time in maintenance work, i.e., in washing, cleaning, or removing waste, also acts as a messenger, goes for mail, or performs other duties not involving maintenance work, this enforcement policy is inapplicable. Nor does it apply to guards and watchmen.

"This statement of policy should not be viewed as an interpretation of the Fair Labor Standards Act. It is not intended to affect or prejudice in any way whatever rights the maintenance employees to whom it relates may have to

recover back wages and liquidated damages under section 16(b) of the Act. As the enforcement policy of the Administrator, it will remain in effect pending further clarification by the courts of the Act's application to maintenance employees in banks."

Very truly yours,

L. Metcalfe Walling  
Administrator

SOL:WST:GMS