

U.S. DEPARTMENT OF LABOR
Wage and Hour and Public Contracts Divisions
Washington 25, D. C.

McGlasgow
5420

MCCOMB MAKES FURTHER STATEMENT ON EFFECTS OF DECISION IN LONGSHOREMEN'S CASE

Employers who have in the past paid time and one-half compensation for work because performed on Saturdays, Sundays, or holidays or at hours actually "outside the normal or regular working hours" and have treated the extra pay as an overtime premium in good faith reliance on the interpretations of the Wage and Hour Division are in most cases protected by the Portal-to-Portal Act from any resulting back-wage liabilities, it was announced today by Wm. R. McComb, Administrator of the Wage and Hour and Public Contracts Divisions, U. S. Department of Labor, in a statement of his views on the effects of the Supreme Court decision handed down Monday in Bay Ridge Operating Co. v. Aaron and Huron Stevedoring Co. v. Blue.

Mr. McComb added, however, that under the Supreme Court decision, employers could no longer follow the Administrator's interpretations (expressed in paragraphs 69 and 70 of Interpretative Bulletin No. 4 and elsewhere) insofar as such extra payments are made because of the undesirable hours when the work is performed rather than because the hours are in excess of a specified standard. For the future, therefore, some employers will have to make necessary adjustments in their overtime pay practices in order to come within the scope of the Supreme Court opinion. The opinions expressed in paragraphs 69 and 70 of Interpretative Bulletin No. 4 are now withdrawn, Mr. McComb emphasized, insofar as they relate to extra payments of the kinds above described. In order to give affected employers a reasonable opportunity to make any necessary changes in their practices, Mr. McComb said, the Divisions will begin enforcement on the revised basis on July 1, 1948.

It was also pointed out by Mr. McComb that under the Supreme Court's decision extra pay by contract or statute for hours worked in any day or week in excess of a bona fide standard is not part of the base wages on which overtime must be computed under the Fair Labor Standards Act, and can be credited toward the extra compensation required by the Act for work beyond 40 hours in a workweek. This may be illustrated by collective bargaining agreements calling for bona fide overtime pay at time and one-half for work after 7 hours a day or 35 hours a week. The Supreme Court's opinion explicitly approved this interpretation which has been the Divisions' interpretation. In consequence, Mr. McComb added, the fears which were expressed in some quarters, after the Circuit Court's opinion, that such overtime payments could not be offset against the requirements of the Act, have proven to be unfounded.

Mr. McComb advised both labor and management operating under the law to review their own overtime pay practices in the light of the Supreme Court's opinion. He reaffirmed his previously expressed opinion that, except for the longshoring industry, there would not be any significant back-wage liabilities growing out of the decision in the longshore cases. He pointed out that even in the longshoring industry the amount of liability would not be nearly as much as had been feared because of a number of factors. Among these are the fact that most longshoremen have not worked over 40 hours a week for a single employer in any significant number of workweeks, the fact that there is, in most instances, a good-faith defense under the Portal-to-Portal Act insofar as payments for Saturdays, Sundays, and holidays is concerned, and the fact that there is a two-year statute of limitations under the Act.

"The essence of the Supreme Court ruling," said Mr. McComb, "is that an employee who receives a higher wage rate because of undesirable hours or disagreeable work is entitled to be paid for work beyond 40 hours in a workweek at time and one-half figured on his actual pay, but that extra pay received for working long hours is not a part of the regular rate and can be credited against the overtime pay required by the Wage and Hour Law."

#####