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ADMINISTRATION OF THE FAIR LABOR STANDARDS ACT

by

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As with most proverbs, the old saying that the watched pot never boils is not true. Watched pots do boil. But it sometimes takes a long time to get them to a rolling boil. The fire needs attention and fuel. So it has been with us Government labor officials in the long years of effort to establish basic standards of wages and hours. There has been an advance here in hours this year, there in wages next year, with occasional back-sets by the courts, followed by renewed efforts at obtaining legislation and adequate enforcement. Government labor officials generally, knowing how fundamental wage and hour standards are to the welfare of labor and industry, and to the health and balance of our entire society, have never quit—not even in the darkest days when it was declared that a woman wage earner should not have her "freedom to contract" abridged by the establishment of a minimum wage for the industry and occupation in which she was engaged. Labor officials patiently pointed out that such freedom of contract was in fact freedom to accept whatever pittance might be offered; that with millions of unemployed competing for the few available jobs, with fair employers forced to compete with cut-throat employers operating on basis of sweat-shop wages and working conditions, Government intervention to protect

wage earners, fair employers, the purchasing power of the masses of our people--and therefore our consuming markets—was a necessity.

A major factor in bringing the problem of basic wage and hour standards to the boiling point was, of course, the stubborn continuance of unemployment throughout the Nation. If wage and hour standards were not to be debased to the point where purchasing power and our domestic market would provide less and less outlet for farm products and manufactured goods and services, some measure of stabilization of minimum fair labor standards had to be established. Without this standard, this stabilization, there would have been a continuing tendency for the chiseling employer to drive out the fair employer, exactly as, without a standard of coinage, base money tends to drive out good money.

The knowledge, the experience, and the well-grounded conviction of labor officials that wage and hour legislation was necessary on a national scale was of powerful assistance in promoting the Fair Labor Standards bill and in obtaining its enactment in the closing days of the past session of Congress. We, who have heard from employers and from employees the first-hand stories of interstate competition in various industries, know that minimum standards of wages and hours, as generally applied to the manufacture and handling of goods moving in interstate commerce, can only work if they are applied uniformly throughout the Nation.

Immediately before us is a gigantic and delicate task of providing for uniform enforcement of the Fair Labor Standards Act throughout the United States and territories, in States which have Labor Departments that may be willing and able to take on this additional task, and in areas where such delegation of responsibility for enforcement may not be immediately feasible. I think you will agree that this responsibility is not one

lightly to be undertaken. For the year beginning October 24, 1938, the Fair Labor Standards Act provides that employees paid less than the minimum rate up to 44 hours per week and less than time and one-half for overtime above that figure may sue individually or in groups and collect double the unpaid amount, together with reasonable legal expenses and court costs. As Administrator, I have solicited the assistance of employers in enforcement of the Act. It is to be hoped that the fair employers and industries will be prepared to report promptly complaints of violations in their industries. These complaints will be received, investigated, examined, and acted upon. Because competition based on substandard wages and hours is punishing competition which has a quick effect on other employers attempting to sell goods produced under fair labor conditions, any agency charged with responsibility for inspection, investigation, examination, and prosecution under the Act must be prepared to discharge that responsibility quickly and accurately.

In the short time I have been on the job as Administrator, a beginning has been made in the task of drafting organization plans for the administration of the law, particularly the machinery for compliance which must be set up and in working order prior to October 24, 1938, when the wage and hour provisions become effective.

May I say at once that I count as the greatest piece of good fortune I have had since taking this position the fact that the key position in the vitally important work of enforcement, that of Assistant Administrator in charge of Compliance, for the entire United States and territories, has been accepted by a former President of this organization and a progressive labor commissioner;—a man whose service in his native State has demonstrated to all that he is a genuine progressive not only

in advocating, promoting and attaining the enactment of labor legislation, but in the more prosaic and difficult task of day-to-day administration. I refer to Major A. L. Fletcher, Commissioner of Labor of the State of North Carolina who will be on the job with me September 15, 1938.

Before discussing in some detail the plans for the administration of the law, particularly the enforcement phase, it is perhaps worthwhile to review briefly the principal provisions of the Act.

The Act covers workers employed in industries engaged in interstate commerce or in the manufacture of goods shipped in interstate commerce. Generally speaking, the Act exempts from both the wage and hour provisions, workers in agriculture and agricultural industries, those dealing with certain perishable products, seamen, air transport and electric street railways and local motorbus employees, fishermen, professional, administrative, and executive employees, employees of certain types of newspapers, outside salesmen, and employees in retail and service establishments whose business is largely within a State. Certain other employments are totally or partially exempt from the maximum hour provisions alone.

The Act has as its declared objective the establishment of a 40-cent hourly minimum in as short a time as is economically feasible without the curtailment of employment. It proposes to reach this objective in two ways. First, it provides for statutory minimum wages advancing by steps—25 cents an hour the first year; 30 cents for the next 6 years and thereafter not less than 40 cents.

In addition, machinery is established for setting higher wages for individual industries.

The Administrator is charged with the appointment of industry committees as soon as practicable. They must be equally representative of workers and employers in the industry, and of the public. As they are

called upon by the Administrator to do so, such Boards are charged with recommending to him the minimum industry rates in excess of statutory rates but not in excess of 40 cents an hour. The Administrator may approve the recommendation of a committee and after a public hearing, issue an order making such recommendation mandatory; or if he disapproves, he may resubmit the matter to the same or to another committee. His approval or disapproval is to be based on the requirements set forth in the law and on the facts considered by the committees.

As administrators you will appreciate the implications of this program.

The 25-cent rate may be low, but there is no doubt that it will offer protection to a very considerable group, while investigations leading to higher minimum wages are under consideration. During the period of the 25-cent minimum, we hope that we may carry on an effective program of education through regular inspections.

The Act provides for the reduction of hours to a maximum working week of 40 hours at the expiration of 2 years. During the first year, the basic week is set at 44 hours; during the second at 42 hours. Hours worked in excess of these maximum workweeks must be compensated at a rate of one and one-half of the regular rates paid. Exemptions from the regular overtime provisions of the Act are provided in the case of certain bona fide trade union agreements and in industries declared seasonable by the Administrator, but even in these cases the overtime rate must be paid for hours over 12 a day and 56 a week.

The Administrator, in addition to the right of entry and inspection, may compel the attendance of witnesses. Designated courts are given jurisdiction to restrain violations by injunction.

The Administrator, through the Attorney General, may prosecute for violation of the provisions of the Act and minimum wage orders, and adequate penalties are provided in case of conviction. Violations of the child labor provisions of the Act will be prosecuted by the Chief of the U. S. Children's Bureau.

I might mention here that I shall not discuss the child labor provisions of the Act. They are important, but the responsibility for their administration and enforcement is placed by the Act on the Chief of the Children's Bureau of the U.S. Department of Labor.

Employees, individually or in groups, may recover the amount of their unpaid minimum wages and overtime compensation as well as an equal amount in liquidated damages.

So far the pattern of the law is clear cut. I need not point out to such a group as this, however, that the Administrator will be called upon constantly for decisions which will be essential to uniform enforcement. Many of these points are already being given legal consideration. Many of them must be decided by October 24.

There will be the industries which are border-line with respect to their interstate character.

There will be the question of seasonal industries.

There will be the question of learners, and the handicapped.

At the moment I can state only one general policy in connection with such questions as these, and that is that we expect to be guided by what we know to have been the intent of Congress in enacting this law. That intent was clearly that as many workers as possible should be given the protection of basic labor standards.

The Act places an immediate obligation upon the Administrator, the enforcement of the basic wage and hour provisions. Those of you who

have the responsibility for the enforcement of State laws can realize the weight of that duty alone. It presupposes that employers throughout the country have been in the habit of keeping complete and accurate records of hours and earnings and that they are accustomed to regular inspection.

Unfortunately, this is not generally true even though the compliance with the Social Security Act in the past three years has promoted the orderly keeping of pay-roll records. Many employers are not now in the habit of keeping such records as may be necessary in the effective enforcement of the Fair Labor Standards Act. I hasten to add that it is not proposed to require a great mass of records and reports in addition to those now kept by employers. We shall make every effort to keep record-keeping at a minimum, with regard to the number of records, the number of columns, and the frequency of reporting. It may be that only one or two lines in addition to the records now required under the Old Age Insurance Titles of the Social Security Act may be required.

If we can administer the law effectively with no information in addition to that required by the Social Security Act to be kept, that will be a break for the employers and for us. As a State Industrial Commissioner, I, like many of you, am keenly aware of the obligations landed on employers already in the matter of record-keeping and reporting, and every proposal to add to these burdens will have to make out a strong case before it is approved. We will not collect information for the sake of information, but only for effective administration.

Informing employers as to what record keeping is required and, equally important, what will not be required, is perhaps our first important job. Throughout the country employers are asking what is necessary to comply with the Act. So great is the task of distributing precise information on this point and of laying the ghosts of unfounded apprehensions, that I

am calling upon organized industry, both employers and labor, to cooperate between now and October 24, 1938, by circularizing its members both as to the basic terms of the Act and the requirements in connection with record keeping and inspection. And, of extreme importance, by urging its members to assist in obtaining a compliance with these provisions from the start.

Our first interest will be in the equal enforcement of the law throughout the country. By this I mean that every employer and worker must be subject to a single interpretation of the law and of the rulings and orders issued under it.

For this reason, it will be essential to have, from the start, uniform enforcement procedure, uniform inspection methods, uniform reporting methods, a uniform conception of the whole spirit and purpose of the law.

As State administrators, we have all experienced the difficulty of dealing with employers whose business is carried on in many States through branches. They are sometimes justifiably puzzled by the differences in laws between States, and by the differences in administrative procedure. We have here an opportunity to extend throughout industry over the whole country at one time, a single pattern covering minimum wage and maximum hour provisions. The States may build upon this foundation to bring about even higher standards, and to extend them to the industries over which the Federal law has no jurisdiction.

We are most fortunate in having knowledge of the procedures which have had practical tests in the various States and have been found to meet their needs. These will form the basis of our enforcement program, and they will be adapted to the practical situations with which we will be faced. In this process of adaptation, I feel that we shall be further

fortunate if we are able to build up our administrative techniques on the basis of suggestions which we hope will be submitted to us from time to time. In this I am reminded of the excellent clearance which exists in many State Departments of Labor in connection with enforcement of safety and health regulations. It is the practice in such States for the inspection staff to bring to the attention of the administrative office particular problems arising out of new industries or new processes which bear upon the safety or health of workers. In this way, not only is a remedy supplied almost as soon as the new condition is found, but every inspector is placed on guard to look for that particular condition, and to be on the alert for other conditions which must have their own special treatment. If we may have such clearance upon the points which undoubtedly will arise under the administration of this new wage and hour law, we may hope that our procedure will be both realistic and effective.

The law gives the administrator very complete authority for enforcement. He and his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to the Act; and may enter and inspect such places and inspect such records and make transcriptions, question such employees and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of the Act. Congress has here clearly given to the Administrator that authority which all State administrators of labor laws feel to be essential—the free right of entry into work places and the right of inspection and of transcription of records relating to employment.

The Administrator is authorized to employ a staff, in accordance with the regulations of the Federal Civil Service Act. He may further utilize such voluntary and uncompensated services as may from time to time be needed. He is directed to utilize the bureaus and divisions of the United States Department of Labor for necessary investigations and inspections. In addition to these provisions for administration, with the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Chief of the Children's Bureau may, for the purpose of carrying out their respective functions and duties under the act, utilize the services of State and local agencies and their employees and may make reimbursements for services rendered. We have every reason to believe that full provision will be made for the enforcement of a law which Congress held to be basic in the control of unemployment and the sustaining of purchasing power.

In setting up his program for enforcement, the Administrator is faced with two basic truths which he must accept and reconcile. One is that the law places squarely upon him the final responsibility for enforcement. The second is a point on which I am sure you will bear me out.

No State labor department including the one for which I have recently been responsible, was ever fully enough staffed to insure complete enforcement of all the labor laws for which it was held responsible.

Our objective in the Wage and Hour Division is a sound and permanent system of enforcement of this law. In this work the inspection and enforcement systems of the State departments of labor will play an active part. In every State in the Union, we shall be entering a new field with respect to enforcement of wage and hour regulations for men. Oklahoma alone has pioneered in this field, but has not yet had the opportunity to put its orders into practical effect.

Because of the final responsibility of the Administrator, he must make haste slowly in asking States to take on this added task, although in the interest of sound administration the task must ultimately be very largely theirs.

Without question, States will need to be reimbursed for the additional expense incurred in additional enforcement and this is provided for in the Act. If the expense were all that were involved undoubtedly the program of State participation could go forward as rapidly as the Congress made funds available. That, however, is only one item to be considered. In the interest of uniform enforcement, there must be a complete formulation of enforcement standards. The Wage and Hour Division cannot draw up and present such a formulation as a final pattern in the brief time available before the effective date of the Act. There will be an administrative program of course at that time. It will be based upon the procedures which have stood the test of administration throughout the States.

This administrative program must be adjusted to meet the practical situations which will arise and it must be fitted into the regular enforcement programs of State labor departments so that it will interfere with them as little as possible.

We are all agreed upon the desirability of avoiding the multiplicity of governmental inspections. However, as an administrator I should not presume in the first instance to place the whole burden of this task in its formative period upon the already burdened State departments of labor.

The Wage and Hour Division plans to work closely with State departments of labor from the very beginning. It will direct its energies toward helping the States to equip themselves to carry on a regular program of enforcement. In this task, I am planning to utilize the services of the Division of Labor Standards which, because of the nature of its work, is familiar with the administrative procedures now existing in the various States. As rapidly as is possible we shall work toward more complete State participation in enforcement.

In the planning of this program there will be many questions of common interest on which I shall solicit your aid and the benefit of your experience.

We shall need to insure a high standard of personnel in this work; we must define that standard.

We must be sure of sound training in what will, for the majority of such staffs, be a new field.

And, having given this training, we must insure some sort of continuity of service so that the benefits of that training may not be lost; so that both labor and industry may count upon a stable group of administrators who are constantly building up their inspection skills upon the sound foundation of tested procedures.

All of us, I think, feel the challenge of this latest step forward. It is the first measure which has set up a specific set of standards from which every start may move forward. It leaves to the States the whole field of standard-setting in the industries for which the Congress may not act.

We could not ignore, if we would, the many complexities of this task of administration. I want to express my deep appreciation of the efforts which are being made by organized labor to clarify the terms of the Act to its membership and thus aid in enforecemnt and of the cooperation which has been evidenced generally by industry. Of the sympathetic understanding and aid of such a group as this, I am assured, and I look forward with eagerness to the sound accomplishment of our joint enterprise.