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U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

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ROUND TABLE DISCUSSION ON THE FAIR LABOR STANDARDS ACT OF 1938

Elmer F. Andrews, Administrator of the Wage and Hour Division of the Labor Department, Calvert Magruder, General Counsel of the Wage and Hour Division, and Miss Beatrice McConnell, Director of the Industrial Division of the Children's Bureau of the Labor Department took part in the discussion with Ben McKelway, Managing Editor of the Evening Star, of Washington, D. C. The discussion was made on the National Radio Forum, arranged by the Star, over a National Broadcasting Company network at 10:30 to 11 p.m.

McKELWAY: Tonight we bring you a discussion of the Fair Labor Standards Act, the law which not only protects employees against substandard wages and excessive hours but protects employers from competition based on the sweating of labor. On Labor Day, Administrator Elmer F. Andrews of the Wage and Hour Division of the Labor Department gave an initial explanation of the law. The response to that talk has demonstrated a marked interest among all groups in the Nation.

Tonight we have, in addition to Mr. Andrews, our previous guest, two officials who will share in the responsibility for making effective this new venture into Government protection of labor standards. They are Mr. Calvert Magruder, the General Counsel of the Wage and Hour Division, and Miss Beatrice McConnell, Director of the Industrial Division of the Children's Bureau of the Labor Department, which will administer the Child Labor provisions of the law.

Mr. Andrews, I believe you've promised to tell us exactly how this law can and will be applied to help both employees and employers.

ANDREWS: Congress devised the Act so that it would help both employees and employers. However, the translation of an act of Congress into a vital and accepted part of our daily life is always a problem in ways and means. It's somewhat like preparing a meal--you know what you want to serve on the table, what the result of your work should look and taste like. But to achieve that you must combine your ingredients properly. Congress has furnished us with the ingredients, and we are setting out to prepare and serve a dish which will nourish the country and its people.

It is our intention to administer this law so that it will benefit every possible employer and every possible worker. I have been urged from time to time--and probably I will be urged again--to go easy on this crowd or to overlook that practice. Fortunately, we have no discretion in the matter.

The successful use of this law to bring about improved working conditions throughout the United States requires the understanding, sympathy and cooperation of all our citizens.

McKELWAY: Well, Mr. Andrews, regardless of individual opinions about whether the law is wise or unwise, it is now the law of the land. One thing everybody wants to know is how the law will affect us when on October 24th the wage and hour sections go into operation.

ANDREWS: Let's assume that you, Mr. McKelway, work in a cotton mill or a paper mill, for example. First, we've got to be sure that you're covered by the Act. I'll call upon Mr. Magruder to give an opinion on that.

MAGRUDER: I don't want to set a precedent for giving legal advice over the radio, in view of the possible effect on the employment situation among lawyers. However, I believe you, Mr. McKelway, if you worked in most cotton or paper mills, would be covered. The Act applies to employees engaged in interstate commerce or in the production of goods for interstate commerce.

McKELWAY: That includes not only the men who transport goods across State lines after they are made, but the men who helped make those goods. Are there any exemptions?

MAGRUDER: Yes. Neither the wage nor hour provisions apply to agricultural workers, seamen, employees of airlines, street car, motorbus and interurban railways, and they do not apply to employees of some weekly or semiweekly newspapers. The law does not apply, either, to executives, administrative and professional workers, outside salesmen, and persons working in retail trade where the trade is largely within a State. Other persons exempt are those employed in any retail or service establishment, the greater part of whose selling or servicing is in intra-State commerce. Persons employed in fishing and the fishing industry, and those who handle agricultural, horticultural, or dairy products in the area of production are likewise exempt.

McKELWAY: Well, Mr. Magruder, does that mean, then, that except for the exemptions which you have cited briefly, everyone engaged in interstate commerce and in making goods for interstate commerce is affected by the law?

MAGRUDER: That's right. However, there are special provisions affecting learners, apprentices, and handicapped workers. For these persons, the law permits the Administrator to issue individual certificates which authorize the employment of such persons at a wage lower than that set in the Act. The lower wage is allowed, however, only if without the lower wage these handicapped persons would lose opportunities for employment.

McKELWAY: Then, if an employer believes he is faced with the choice of continuing to employ one of these persons at a wage lower than that set in the Act or discharging that person, what should he do?

MAGRUDER: He should apply to the Administrator for permission to hire them at the lower wage.

McKELWAY: Thank you, Mr. Magruder. Now, Mr. Andrews, let's get back to our example, the cotton or paper mill. Just how does this law make itself felt there?

ANDREWS: Many of the plants and businesses which once maintained a high standard of working conditions in recent years have been subjected to ruinous competition from less scrupulous employers who have paid wages so low that it may fairly be said that they were selling the sweat of their employees along with their product. I think Miss Beatrice McConnell, director of the Industrial Division of the Children's Bureau will back me up in that statement. I know the Children's Bureau has always been concerned about low wages in connection with child labor.

MISS McCONNELL: We have indeed, and as a matter of fact, I have here, very appropriately, a notice which has been posted on the bulletin board of a certain cotton mill. It ways:

"NOTICE! Here is the bad news you have been hearing so much of lately—a reduction in wages. We kept it off as long as we could, but under present conditions, we see no way out for us but to follow the other mills. . . . This reduction will take effect one week from today."

ANDREWS: That is an example of what the Fair Labor Standards Act is designed to prevent. I am not yet familiar with all the facts concerning that mill, but it is a good illustration. Let us assume that, as a result of the kind of competition which that notice indicates, the mill puts on a Saturday shift and begins working 48 hours a week. It cuts wages repeatedly in a disastrous fight with its competitors until the rate of pay finally drops to 20 cents an hour.

McKELWAY: For a 48-hour week that is just $9.60 a week, not much for a family to live on.

ANDREWS: Well, that's the situation with a great many families today. The Fair Labor Standards Act, which becomes effective on October 24th, is Congress' effort to change that, for that law will require that mill and every other competing mill immediately to pay its workers not less than 25 cents an hour, and will prevent the mills from working employees for more than 44 hours without paying them overtime at the rate of time and one-half.

McKELWAY: That's $11 a week, an increase over the old wage, with four more hours of leisure. Suppose the mill wants a man to work 48 hours during a week. Could the mill management have him do so and pay him a dollar and a half additional for those extra four hours?

ANDREWS: Yes, that's right. But not only does our employee benefit by this higher wage. The mill that employs him also receives a substantial benefit. After October 24th the mill can know definitely that no competitor in the industry can undercut it solely because that competitor underpays and overworks employees. Our mill will know that no competitor can pay less than 25 cents an hour or work its men longer than 44 hours a week without paying overtime.

McKELWAY: How does that benefit the employer?

ANDREWS: Well, he can now take steps to improve the working conditions of his employees which he had wanted to take for a number of years, but which he has not done because of the competition based on substandard wages and harmful working conditions. He can also expect better business conditions as these workers, who are consumers, receive more money to spend.

McKELWAY: Mr. Andrews, what heppens if a mill refuses to put in on October 24th the pay scale and workweek provided under the Act?

ANDREWS: There are several effective means of enforcing this law and securing its full benefits provided by Congress. The Government, of course, may bring criminal prosecutions through the Department of Justice, and employers convicted of violations are subject to fine or imprisonment. The Administrator can also bring suit to enjoin any employer from violating the provisions of the law. However, perhaps more important to the individual worker is the special machinery set up to protect him. Will you explain that, Mr. Magruder?

MAGRUDER: The law allows any employee or group of employees to bring suit against an employer who has violated the Act, for money owed to him or them as unpaid minimum wages or unpaid overtime.

McKELWAY: Does the employee have to bring suit himself?

MAGRUDER: Such suits may be brought by the employee himself or through an agent such as his union representative. If in such a suit an employer is found to have violated the wage and hour provisions of the Act, he

is liable to his employees not only for the money which has been wrongfully held from them, but for an equal amount as damages. The Court is also directed under the law, in addition to the double damage awarded the worker, to allow reasonable attorney's fees and court costs.

MISS McCONNELL: Mr. Andrews, going back to the standards of the Act, you have not yet mentioned one provision which many people feel is of great importance. I mean the method of providing for higher minimum wages than 25 cents an hour through industry committees.

ANDREWS: Yes. A committee has already been set up for the cotton, rayon and silk textile industry with the responsibility of recommending the highest minimum wage rate for that industry which will not substantially cut employment. This rate will be above 25 cents but it cannot be above 40 cents.

McKELWAY: Is this committee composed of employees?

ANDREWS: This textile committee, as with all the industry committees which are to be set up, has an equal number of representatives of employees, employers, and the public. Its chairman is Mr. Donald Nelson, Vice President of Sears, Roebuck and Company. Among its 20 other members are Miss Grace Abbott, former Chief of the Children's Bureau of the U.S. Department of Labor and now at the University of Chicago; Mr. Louis Kirstein, president of one of Boston's biggest department stores; Mr. George Fort Milton, Chattanooga's nationally known editor and author; Sidney Hillman, chairman of the Textile Workers Organizing Committee: and Charles A. Cannon, the North Carolina towel manufacturer.

McKELWAY: Mr. Magruder, will you outline for us the procedure to be followed by this industry committee in recommending a minimum wage schedule?

MAGRUDER: First of all, Mr. Nelson will convene his textile industry committee in Washington on Oct. 11 for the purpose of organization and of determining what his problem is. The committee will then decide what studies it wants to make. It will also be informed of the data which the Administrator and his staff have available on the subject. The committee may request further data and receive any information submitted by persons directly affected or interested in the determination of the schedule.

McKELWAY: Does the committee have to take into consideration any special factors?

ANDREWS: Yes, by direction of Congress they are to give special consideration to the following factors:

First, the competitive conditions as affected by transportation and living and production costs; second, the wages established for similar work by agreements negotiated between employers and employees by representatives of their own or by employers who voluntarily maintain minimum wage standards in their industry.

In addition, Congress inserted into the law the specific provision that no classification may be made solely on a regional basis or on a basis of age or sex.

McKELWAY: Mr. Andrews, when do you expect the recommendation of the minimum wage schedule from the textile industry committee?

ANDREWS: There is no way of estimating the time required for the preparation of such a recommendation. However, I know that Mr. Nelson and his associates will make every effort to bring in a prompt recommendation, both in the interests of the employees who will be covered and their employers.

McKELWAY: Mr. Andrews, what happens after Mr. Nelson's committee completes its work and makes its recommendations?

ANDREWS: We will give due notice to all interested persons inviting them to appear at a public hearing and give evidence concerning the committee's findings. Under the law, if we find that the committee's recommendations accord with the provisions of the Act, and that it is supported by facts and evidence obtained by the committee at the hearing, and that the committee considered all the factors referred to by Mr. Magruder, I must give my approval and issue a wage order containing the minimum wage schedule recommended by the committee. If I find that the recommendation does not accord with the law or is not supported by the evidence and, considering those same factors, will not carry out the objectives of the law, I am required to disapprove the recommendation.

McKELWAY: May you accept, say, part of the recommendation?

ANDREWS: No, I cannot change the recommendation in any manner, and if it is disapproved I either ask for a new recommendation or appoint another committee. I'd like to emphasize that no wage order can provide an hourly rate of less than 25 cents.

McKELWAY: Mr. Magruder, isn't there a special legal procedure for appeal from a wage order?

MAGRUDER: Yes, any person—employer or employee—aggrieved by a wage order may secure a review of that order in a U.S. Circuit Court of Appeals. The Court will review the questions of law involved in the wage order. However, findings of fact by the Administrator, when supported by substantial evidence, are conclusive.

Now, Mr. Andrews, you have been asking me questions. What about answering one of mine? Won't the administration of the Act require the keeping of records by employers and the examination or inspection of those records by agents of the Wage and Hour Division?

ANDREWS: Yes, however, we hope to keep the records as simple as possible. Regulations dealing with these records will be issued promptly by this Division. The Act provides that the Administrator's representatives may enter and inspect records and question employees whenever necessary.

Miss McConnell, you have been very generous in letting us go on talking about our own personal sections of the Act. What about the child labor provisions which you will be administering?

MISS McCONNELL: I was beginning to wonder if you were going to let me talk about what I think are the best features of the law! The measures for controlling the labor of children are simple. No producer, manufacturer, or dealer may, after October 24th, ship, or deliver for shipment in interstate commerce, any goods produced in an establishment which has employed oppressive child labor within 30 days of the removal of the goods.

McKELWAY: Does that mean 30 days before October 24th or 30 days after?

MISS McCONNELL: The 30 days will be counted after October 24th, so that no employer of a child before that date will come under the Act.

McKELWAY: Well, Miss McConnell, just what is "oppressive child labor"?

MISS McCONNELL: Oppressive child labor is defined as, first, the employment of children under 16 in any occupation, except that children of 14 or 15 may do work which the Children's Bureau has determined will not interfere with their schooling, health, or wellbeing, but this work under the law must not be either manufacturing or mining employment.

Oppressive child labor is defined, further, as the employment of children 16 or 17 years of age in any occupation found by the Children's Bureau to be particularly hazardous or detrimental to health or wellbeing

McKELWAY: Are there exceptions to those provisions, Miss McConnell?

MISS McCONNELL: Yes. The child labor provisions do not apply to children who are actors in motion picture or theatrical productions; to children under 16 employed by their parents or persons standing in place of parents in nonmanufacturing and nonmining occupations; and to children employed in agriculture while they are not legally required to attend school.

ANDREWS: But, Miss McConnell, how can employers make certain they are not employing children contrary to the minimum age standards of the Act?

MISS McCONNELL: The employment of a child will not be held to be oppressive child labor if his employer has a signed certificate of age issued according to the regulations of the Children's Bureau, showing that the child laborer is above the oppressive child labor age for the occupation in which he is employed. The Children's Bureau will issue regulations regarding acceptable certificates of age, cooperating wherever possible with State and local offices which issue employment certificates under State child labor laws.

McKELWAY: Thank you very much, Miss McConnell, for your helpful description of how this law affects child labor.

Well, from this discussion tonight, it is evident that it is the theory and the purpose of the Act to raise standards of pay and working conditions.

ANDREWS: Of course, Mr. McKelway, the standards established by this Act are not ideal. The law is another step forward. And President Roosevelt, in his message to Congress in May 1937, said:

"Although a goodly portion of the goods of American industry move in interstate commerce and will be covered by the legislation which we recommend, there are many purely local pursuits and services which no Federal legislation can effectively cover. No State is justified in sitting idly by and expecting the Federal Government to meet State responsibility for those labor conditions with which the State may effectively deal without fear of unneighborly competition from sister States. The proposed Federal legislation should be a stimulus and not a hindrance to State action."

"As we move resolutely to extend the frontiers of social progress", the President continued, "we must be guided by practical reason and not by barren formulae. We must ever bear in mind that our objective is to improve and not to impair the standard of livin of those who are now undernourished,poorly clad, and ill housed."