

Transcript of the Record of the Question and Answer Period
Following the Speech of Elmer F. Andrews, Administrator,
Wage and Hour Division, U. S. Department of Labor,
Before the Southern States Industrial Council,
Birmingham, Alabama, September 29, 1938.

The Questions Were Submitted by Persons Present at the Dinner
And the Answers Were Given by Administrator Andrews

Q. Well, the first one I think will answer several questions at once.

"If possible, will you cause pamphlets to be printed immediately, explaining in detail the full objects of this law, so that confusion may be avoided."

A. There are on the press 5,000,000 copies of a pamphlet which will be ready, I think, by the end of the week, very likely, or the first part of next, for distribution.

We are going to try to distribute them through the United States Employment Service offices, and of course through trade organizations and labor organizations who will agree to do that distribution for us.

They are the simpler questions, I will admit, but still they will cover quite a lot of ground.

As we decide on learners and apprentices, seasonal industries, and so forth, we will give that of course to the press, and try to broadcast over the radio, and we will also have them sent to our local offices. We will have them in Birmingham where you can go, if you live in Birmingham, and we will try to get them out the minute we get them in Washington. We will shoot them out possibly by air mail to our local offices.

Q. The next one is: "What enforcement machinery is to be established in the several States, and will enforcement be effected through the State departments of labor?"

A. Well, at the very start we do not know how much we can call on State departments of labor. In some States we know that they are well manned and have a well-trained personnel. We want, of course, as we get money from Congress to give it to the States

for the labor departments, to increase their personnel so that those labor departments can take over the work of compliance.

I am going to ask industry, though, to help out to do the enforcement, if we may use that word, to a large extent in the beginning by letting us know those people who are not playing the game. I imagine labor will do the same thing.

Of course the Act is somewhat self-regulating because it does carry rather severe penalties for noncompliance.

Q. "Will it be possible either now or soon for a specific industry to meet with the administrator for the purpose of placing that industry directly under all of the provisions of the Act, in the appointment of an industry committee?"

A. Several industries have come to me and said they wanted an industry committee because they wanted to go on a forty-cent minimum. But even there, as much as I like that, and even if those industries can afford to do it—and they all have told me they don't intend to cut any wages above the forty-cent level—we only have thirty people on our Washington staff today. We are under civil service. To pick out the right kind of people to service industry, we have got to go slowly and get the right type of men, so I am not going to bring anybody to Washington for industry committees until I can have them serviced by the right sort of people.

We haven't got much money. Until we get more money from Congress we will have to go ahead with a limited staff. That is another reason why our main objective before October 24th is to get some people in the field so that we can get some information to you which you are so anxious to have so you can help out, beginning on October 24th.

Q. Here is an easy one. "Is the producer in a State who sells a partially finished product to a processor in the same State for shipment in interstate commerce subject to the Act, and to what extent is the processor liable for the first producer's compliance?"

A VOICE: Read the question again.

"Is the producer in a State who sells a partially finished product to a processor in the same State for shipment in interstate commerce subject to the act and to what extent is the processor liable for the first producer's compliance?"

A. Certainly if the first fellow knows his stuff is going into interstate commerce, he certainly is under the Act. I would not be unreasonable at all with a fellow who in good faith bought stuff from the first man, who was a noncomplier. I am very happy to know, however, that there are a great many processors who are having

certificates of compliance included as a part of their purchase contract. I think it is a good thing, it helps us a lot, anyhow. But we won't be unreasonable there.

Q. "In a group where one committee has been appointed will differentials be allowed for learners? What about watchmen, yard crews and other nonproductive help?"

A. Yes sir. We hope to be able to give you an idea of what an apprentice is, and what a learner should be, some time very soon. I think you will feel it is very reasonable, and I know none of you will try to use apprentices more than 10 or 15 years as such. (Laughter.)

What was the second part of that question?

Q. "What about watchmen, yard crews and other nonproductive help?"

A. Well, I may say that anything in connection with manufacturing is a part of the general manufacturing process. Watchmen, I know I have heard more about than anything else. Lord, I hope you can find superannuated or physically handicapped watchmen, because then the answer will be very simple.

Q. "Has the Administrator defined employees mentioned under Section 13-A, the Section which exempts executive, administrative and professional folks?"

A. No. I have had that in mind more than anything else, and we will have that for you within the next week or two. I am very sympathetic toward your problem there, because I know a superintendent is not a clock watcher, nor does he punch a time clock. Certainly if he was the sort of fellow that you would take care of if he is sick or knocked out, if you think enough of him for that, I think that really indicates he is a part of the executive family.

I have told some of this—or it is an illustration of how cautious a fellow who is new on the job must be. Shortly after I was appointed Deputy Commissioner in New York State, I was invited to the City of Rochester by the Rochester Chamber of Commerce to meet their industry committee. We had just passed a law which changed the hours of labor for mercantile employees, that is, females and minors.

Somebody asked me was a buyer under this new hours law, and I said "Heavens, no." I was thinking of a buyer who goes to New York, Paris, et cetera. The next Monday the supervising inspector of the Rochester District called me up and said "What did you tell them?" I said "Why", and he said "One store in Rochester has put 90 percent of the salesgirls on as buyers. They send them down the street twice a week to look in the windows and see what the competitors

are selling, and what price they charge, and they come back and tell us, so they are buyers."

I said "Oh, yes!" I said "Start prosecutions", and this store decided after all they were still salesgirls.

I say that as an illustration of the fact that it is very difficult to say, particularly as new as I am at this game, to say to you tonight where a worker leaves off and a professional or executive begins.

Q. "Will a written contract statement by a small mill operator stating he believes he has complied with regulations excuse the purchaser from penalties?"

A. I think that is very much the same question as we had before. That is, I think it is very advisable, if you want to help out, for you to receive assurances that the small fellow is complying with the law, but certainly we are not going to start any action against you if you are the innocent victim.

Q. "An industry sells its product entirely within the State in which it is located but receives raw material or supplies from without the State. Is the industry employed in interstate or intrastate commerce?"

A. Well, now, I am getting pretty close to the Supreme Court, I am afraid.

What we plan to do is to try to give to industry an idea of the industries which to our mind are clearly interstate, with a very, very strong warning that if we are unfortunate enough to have left out any industry and you get into the courts, it won't help you very much if we have made a mistake.

But what we plan to do is if you write in and you have any question, we are preparing a questionnaire which we are asking you to please fill out, and then we can give you an answer as to what we think your status is.

Q. "Will those concerns which are already paying in excess of minimum wage and operating under maximum hours be exempt from classification or assignment?"

A. Well, the law says that the Administrator should as soon as possible establish industry committees. So even to make 40 cents, as the battery people want us to do, the minimum for the whole industry, we would have to appoint an industry committee and have it meet and make a recommendation to the Administrator and he would then have to hold public hearings. So in order to legalize a

higher minimum than 25 cents we would have to appoint an industry committee, and the Act contends that the Administrator apparently should do this for all industries as soon as possible. That "as soon as possible" is going to be a long time, I am afraid, with some industries.

Q. "Where an employer is paying higher wages than its competitors, can he not reduce the wages to meet the competitive situation where he observes the minimum?"

A. I have heard of that in some of the communications industries, that that is being contemplated. Of course the Act contains a pious wish that that should not be done. I think it is not going to make for any happier industrial relationship, it is not going to make for any better feeling between employer and employee. I think it is economically unsound and pretty generally unfair, but that is all I can say about it.

Q. "Will the small manufacturer be allowed a lower wage scale than the larger units so that they may stay in business?" (Laughter.)

A. Who wants to stay in business, the big fellow or the little fellow?

No, I don't think there is anything in the law which would permit differentials on the basis of size of plants. There certainly might, or I can conceive of differentials based on the size of communities, possibly, but certainly not within an industry. You will have a minimum wage that possibly might be more, one minimum wage more in certain parts of the country than in others. In textiles where might be one wage for sweepers, and one for all other employees, but once you get minimum wages established for all concerned in that particular industry, that will be the status. True, there may be differentials which are not geographical under the law, but because certain conditions may be geographical there may be in specific industries a different wage for different localities in the country.

Q. "Does the law permit an employer to continue working present weekly hourly schedules, above 44, so long as time and one-half is paid for overtime?" The question says "present", which I suppose they mean to be after October 24th when those provisions go into effect.

A. Yes, there is no limitation of hours, so far as hours themselves are concerned. The law said if you work more than 44 hours, or if the employees work more than 44 hours they shall receive time and a half for every hour over 44 in any week.

Q. "Can a company operating a manufacturing plant and also a service department work the manufacturing employee under the wage and hour provisions and work the service department without complying with the Wage and Hour Law?"

A. I would say off hand it seems there might be a possibility of the service people being dealt with separately.

I will say, though, that if the service people were getting less than the people in the manufacturing end, you would find everybody in the service end would want to be in the manufacturing end.

But that is something that, as I have said, I would want to consult with counsel on first. It is very difficult to answer these things without knowing what particular industry you are thinking about or asking about, and I would want to know that, of course.

Q. "What percentage of the business' output must be shipped from a State to make the business one of an interstate character and subject to the Act?"

A. I imagine that is up to the discretion of the rulings made by the Administrator, but still I think they specify 20 percent, is it not, in retail stores? I think retail stores, if more than 20 percent goes out of the State, they are in interstate commerce. So far as manufacturing is concerned, there is nothing definite in the law about that. We will just have to use our own good judgment. We will have some definite rule to follow, of course.

Q. "Are railroads exempt from the provisions of the Wage and Hour Law?"

A. Well, certainly, so far as a great many things are concerned, they are. We have the question now that we are trying to decide—Mr. Hall, you will be interested—are maintenance of waymen in interstate commerce or not? And that is one of the questions that study will have to answer. We are not just sure where the line should be drawn there. I say to people who ask me, if you have a workman's compensation act, do your employees in the railroad business come under the State Workmen's Compensation Act or the Federal Act. That might be a guide.

Q. "Are plant superintendents and department heads classified as executives, and are they limited as to hours?"

A. I think that is the same question I have had before. I think we will have to give you some information on that very soon. I think that even then we will have in a lot of cases to investigate the particular concern to see just what the status of that particular employee who is called an executive is.

Q. "Will local foundries that do not ship out of the State come under the Wage and Hour Law?"

A. Well, there it depends upon whether they come in because they bring their materials in from another State. A great many people, I think, imagine they are in interstate commerce because they are manufacturing and bringing in the product they use in their manufacturing processes from outside of the State in which they operate.

Q. "What will be the status of inventories at the effective date of the Fair Labor Standards Law?"

A. Well, I have told people not to worry. Of course, if we found out somebody had been working 70 hours a week in the last 4 or 5 months in order to stock up and then close down October 24th, I think we might have an interest to find out what it is all about, but certainly not in the course of ordinary normal production. I think we will have enough to worry about without trying to stop goods from flowing in interstate commerce because they were manufactured before that date.

Q. "Will men used in the upkeep of mill villages come under the Textile Code?"

A. I had the same question asked me by some cooperators in Washington the other day,—are employees in company stores under the Act?

I should say, still reserving the right to change my mind, they would not come under the Act. You see, I don't like to say anything definite until I have talked to counsel, but it does not seem to me very reasonable to consider that they are engaged in interstate commerce.

Q. "Do the provisions of the Act apply to employees of banks?"

A. I don't think so. It never occurred to me that it did until somebody from the American Bankers Association asked me that the other day. I know national banks certainly do not come under the provisions because their employees represent Federal employees. If they are Federal employees they would be exempt from the Act because they are Federal employees, and the question of interstate commerce would not come into it.

Q. "I don't notice any questions here on the child labor provisions of the Act. There may have been some submitted. I think Mr. Andrews might like to comment on some of those provisions in the Act and the part that this administration does not play in the administering of those provisions."

He nominates me.

After the effective date, the Law provides that goods produced under oppressive child-labor conditions shall not be shipped in interstate commerce. Oppressive child-labor conditions are defined in a great deal of detail, and there are some exemptions.

The best way to sum it up, I think, is that the Children's Bureau of the Labor Department is charged with the enforcement or administration of those provisions of the Act. We have nothing to do with that except that we are sending out any information that we can on it from Washington. The best thing to do on the child-labor provisions is, we have been telling those who have asked us, from Washington, is to write in to the Children's Bureau and get, I think they call it, a certificate of age, which clearly sets forth just the provisions under which the child labors, and under which the child can be worked.

Here is another question: "Many clerical and nonsupervisory employees are on a monthly- or weekly-wage basis. Is it necessary for such wages to be recalculated to an hourly-wage basis and time and one-half paid for hours over 44?"

- A. Well, of course, for the sake of answering the question we will assume that the supervisory people we are talking about are truly a part of the executive family. Of course that answers that, they are out.

Clerical forces, we all feel, are included in the Act. But I cannot see where there is going to be any practical difficulty there because your clerical force in any plant of any consequence certainly is earning on a basis of more than 25 cents an hour, weekly wages divided by the hours they work. If they are well above 25 cents an hour it seems to me that there would not be much question about time and a half for overtime, because you could figure in that weekly wage that time and a half over the 44 hours had been given consideration as remuneration for their full week's work.

- Q. "If salesmen who come under the wage and hour law are selling on a commission or per-unit basis and their pay varies each week along with the number of hours worked, how is time and pay to be figured?"

- A. Well, salesmen of course are excluded from the Act, outside salesmen.

A VOICE: What is an outside salesman?

- A. Well, I suppose we will have to, for someone's benefit, decide how much time a fellow spends outside.

THE VOICE: Is that outside of the plant or outside of the city in which the plant is located?

A. Outside of the plant.

THE VOICE: Outside of the plant?

A. Yes.

ANOTHER VOICE: How about the fellow outside of the city?

A. He is outside of the plant too, then, I imagine.

Q. "Is a laundry a service institution within the meaning of the Act?"

A. It most certainly is. However, I know of some laundries in New York State that do a lot of business in New Jersey, and I imagine if they did a great proportion of that work out of New York, it would be called interstate. But certainly, the great majority of laundries are purely service, and are intrastate. In many States they have minimum wage laws for the laundry industry, because they have been declared a service industry there, a great many times, and a very low paid industry, at that.

Q. "If paper manufacturers continue to purchase wood from independent producers delivered at river landing or rail siding at an agreed price, is the paper company responsible for the wage scale under which the wood is cut and delivered?"

A. Well, that is one of the things I could not answer until we knew just exactly the terms of the contract. I understand a great deal of pulp-wood is cut by individuals on leisure time on the farm. Certainly that would be purely—those people doing that type of work would not be under the Act because they would be individual contractors as it were, or even perhaps farmers.

But there we would have to know really the relationship between the mill and the person supplying the pulp, and just what routine was gone through and just what agreement had been entered into.

Q. A VOICE: Assuming you had an independent contractor who does not comply with the contract, what responsibility has the mill?

A. I think that is a question, sir, that we have talked of before. I don't feel there will be a great deal of danger for the purchaser there. But it would certainly be very helpful to us for you to have a statement from those people that the Wage and Hour Law had been complied with. Really it is a matter of cooperation with the administration.

A VOICE: Would that eliminate any liability to the purchaser under the law, if we have that statement?

- A. I have been trying to find out in the Act where this fear has arisen on this thing. I want to study that more and find out where this concern is coming from.

A VOICE: Section 15, sir.

- A. I didn't hear that—what?

THE VOICE: Section 15 makes the processor or purchaser personally a guarantor.

- A. We are going to try to be very sensible there, but it would be very helpful if you would help us out by seeing that you are not made a goat of through no error of your own.

- Q. "When an employer has wages on a level above the minimum, but where wages within his plant are not equalized as to different operations can he equalize those rates by reducing the higher rates to conform to the lower?"

- A. We have had that same question before, I think, Mr. King. I said that I just hope it won't be done.

I might say there is some question there. I notice somebody is worrying about people delivering ice being salesmen. In the first place I didn't know delivering ice was interstate commerce, but I certainly should think that would be in almost every case intrastate and not under the Act.

- Q. In that connection, some questions were passed to me earlier in the evening. I misplaced the slips on which they were written, but two of them consisted of this: "Are employees who are engaged at certain times of the year in icing cars involved in the Act", and also "Are employees of steamships going to foreign ports involved?"

- A. Those are two questions that I certainly would want to have very good legal advice on. You were speaking about office employees of steamship companies?

MR. KING: Yes.

- A. Certainly they are paid more than 25 cents an hour, I am sure of that.

A VOICE: What if they work more than 44 hours?

- A. They still get enough wages, I am sure, that if you want to break it up into so much per hour, so much for time and a half, it would still work out.

A VOICE: May I ask a question that I did not get a chance to put in? What is seasonal industry within the meaning of the Act?

A. What is a seasonal industry?

THE VOICE: Within the meaning of the Act?

A. In the first place it is an industry and not a concern. We have to decide by industries rather than by individual plants. I could tell you what we have decided on already, the toy industry, and canning, of course, and we think we may have a broad classification of manufacturers of Christmas goods.

We are going to have a list of those things for you. We have not yet decided definitely on that list. It may be an industry where the majority of the plants are closed down 3 months in the year, or something of that kind. We will have that for you well before October 24th.

A VOICE: How is the term "seasonal industry" applied, as to the soft drink industry, the beverage industry, say the soft drink beverage industry? It operates only certain seasons of the year, say from May until September.

A. We will have to go into it and see just what fluctuation there is in employment there. No doubt you would be very much surprised to know that the Bureau of Labor Statistics tells us the most stable industry is the ice cream manufacturing business, so there is a lot of times a way of carrying over those low places and cutting down these peaks. We are taking it industry by industry, and we will have hearings on it, and if you feel aggrieved you will have a chance to have your say so.

Q. A question passed up is "What is a first processor under the Act?"

A. I suppose the first fellow that grabs the stuff from the farmer and starts to do something with it.

A VOICE: I was wondering if you have made any approach to finding what constitutes the area of production for the purpose of defining a seasonal industry.

Q. This gentleman asks what constitutes an area of production in a seasonal industry.

THE VOICE: I think that is the language of the Act. I think the Act provides where the first processing occurs, that your area of production may be according to the Administrator's findings and classification of the status of a seasonal industry. I wondered if you had made any approach to defining what constitutes the area of production?

- A. Yes, we have a committee that is working on that now, because we will have to have that for you too. Some of the citrus people called the other day, and they said they heard I had decided that the area of production for citrus fruit was all of the area of the United States south of the Mason-Dixon Line. I can assure you I had no such broad idea of the area of production as that.

What I told the citrus people to do, and I ask you to do the same thing, and that is to write in if you are worried about it, write in and say what is your idea.

Some people in Florida will say certain counties are the area of production. I hope I will be able to agree with them. It will be very helpful in determining what is the area of production for oranges, lemons, grapefruit and so forth.

- Q. One other question passed up says "If 20 percent of a firm's goods is shipped into another State does the manufacturer come under the Law?"

- A. Well, that, I think, applies to retail trade. I think it was written in because in certain large cities on the border line quite a lot of business goes from a large city across the State line. There are several recent Supreme Court decisions on that, if any of you lawyers want it. It might be a guide.

- Q. "There are two or more industries which compete directly with each other but with different commodities. Will they be handled under one industry committee?"

- A. I suppose you might think of the canning industry, possibly, and a certain container industry, which might be under the paper classification. Of course the whole Act intends that we do not create unfair competition and we do not intend to. I do not think we could say, where the processor or manufacturer is very much different, and the wage scale very different, that we could either legally or on the basis of sound economy say that because there was some competition in the selling end, that we could call them a single industry in order to overcome that objection. Certainly I don't think any of you who are interested in paper and pulp would want to be classed with the canning industry.

A VOICE: That question related to the aggregates industry, such as sand gravel and crushed stone.

- A. I certainly should think, just thinking quickly, that we would take sand gravel and crushed stone all together, very likely.

Q. "A concern has a union contract with its employees, which does not expire until April 1939. May this concern continue to operate under the terms of this contract until its expiration, without being liable for violation of the Wage and Hour Law, or must it change its union contract and make it comply with the provisions of the law at the date on which such law goes into effect?"

A. No, there can be no union contracts which are in violation of the Law.

Q. "Will several minimum wages be established within a single plant for various classifications of jobs or tasks?"

A. No, I don't think the law contemplates that. It would be a hopeless thing if we were going to break industries down into a great number of titles under which people work. I should cite the possibility, however, of in textiles perhaps having a rate for sweepers and another for all other employees who would come under the Act.

A VOICE: Wouldn't that apply to skilled vs. unskilled?

A. No, because I don't think you will ever find any skilled workers just paid 25 cents an hour. I don't think it will be the intent of industry committees to take into consideration the wages of those skilled workers. I mean after all a minimum wage law is the floor of the very lowest wage to be pegged, and my experience in New York has been, despite the opponents to minimum wage legislation and there are none left there that I know of,—that it will not tend to bring down the upper bracket. It doesn't work out that way. The minimum law applying to women did not result in any women losing their jobs. I hope the Federal Law will find the same effect that the State Minimum Wage Law has had.

A VOICE: May I ask one more question?

(The first part of the question was inaudible to the reporter.)

If you were to establish a 40-cent minimum you might get some skilled men on that basis; especially in certain industries there is a question as to what constitutes skilled labor.

A. Yes, you might, but remember the Administrator is not having anything to do with these minimum wages; with your minimum wages which may be higher because of industry committees. It is the industry committee which recommends to the Administrator, and the Administrator cannot do anything about it. If he doesn't like it, all he can do is refer it back to the Committee. After public hearings if the recommendations seem just, he can accept them and it becomes a part of the law. I want you to very clearly understand it is not an arbitrary thing on the part of the Administrator. It is up to the committees and the only thing that I can ask you to do is to have confidence in the Administrator, that he will appoint committees who will be fair-minded and will be truly representative

of the public, of the employees and of the employers. But as I say you have got first the public hearing, and then you have got to get the sentiment of the public generally or the industry generally before the Administrator can either accept or reject the recommendations of an industry committee, and they undoubtedly will have all of those factors, such as wages paid to skilled vs. unskilled, before them when they make their studies, before they come with a recommendation to the Administrator.

Q. "If a piece-worker earns \$25, and if the worker works more than 40 hours, does he get extra pay for overtime?"

A. You mean 44, I suppose?

MR. KING: Yes.

A. You will have to translate your earnings on the piece basis into an hourly rate of some kind.

Q. "How does the Act affect prison manufactured goods?"

A. I wish to the Lord it did away with them entirely, but that of course is a matter of State's rights that I cannot say anything about.

Q. "Do truck drivers hauling to industrial plants come under the Act?"

A. Certainly, if the truck driver were an employee of the manufacturer, he would. Of course busses and trucks are somewhat excluded as they come under the Interstate Commerce Act, as you know. Some States also have laws regulating hours of truck drivers.

CHAIRMAN HALL: Ladies and gentlemen, some of those here are going to have to leave to catch trains.

We have imposed on Mr. Andrews now for something over an hour. The questions propounded, which have not been answered, will be answered from Mr. Andrews' office.

I think the nature and variety of these questions indicate the tremendous difficulty that Mr. Andrews and his associates will have, and I take the liberty of bespeaking for him the same patience and indulgence on your part that you very properly expect from him and his associates.

I want to thank Mr. King who so ably assisted Mr. Andrews, and I want to thank them both for coming, and I assure them again of our cooperation. I thank you all, and good night.