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SPEECH DELIVERED BY
MAJOR ARTHUR L. FLETCHER, IN CHARGE OF COOPERATION AND ENFORCEMENT,
WAGE AND HOUR DIVISION, U.S. DEPARTMENT OF LABOR,
AT THE CONVENTION OF THE NATIONAL POULTRY, BUTTER AND EGG ASSOCIATION,
MONDAY, OCTOBER 3, 1938

A convention of the National Poultry, Butter and Egg Association is certainly a most appropriate place at which to discuss the new Fair Labor Standards Act of 1938.

Your products are the kind which all people would like to consume. Whether they use them and the extent to which they do depends on their purchasing power. A family with a good income has no hesitation in buying poultry, butter and eggs and using them in such quantities that, if all our families had such income, yours would be a most prosperous business.

It is a simple fact that in the United States a very large portion of our population, many of whom are fully employed, do not earn enough to buy the eggs and butter which they want. Obviously, if there is anything which can increase their income, their purchases of your products will expand.

The Fair Labor Standards Act has several objectives. One, of course, is to stabilize industry generally by limiting the effect upon competition of working standards which are admittedly undesirable.

Another objective is to eliminate or help eliminate conditions wherein a fully employed man is unable to buy his family the simple necessities of life. The requirements of the Act, both as to wages and hours, are not such as to spread wealth among the workers of this type, but it will, we feel sure, eliminate many of the worst conditions of ill health, malnutrition, and hardships.

The greatest objective of the Act, however, from your standpoint, is to increase the purchasing power of the people of the United States who desire to buy butter, and eggs, and poultry products, but who cannot do so at the present time because their wages are too low.

From the long-range standpoint, the objective of the Act is to make sure that there will always be in America enough purchasing power for everyone to buy butter and eggs and other poultry products.

Now, as to the provisions of the Act itself, I shall presume that those to whom I am talking have read the law. I think, however, that a quick review of its main provisions will add to the usefulness of our discussion here today.

The provisions of the Act which are understood by the greatest number of persons are naturally those which after October 24th require a minimum wage of 25 cents an hour, and a maximum workweek, without the payment of overtime, of 44 hours for all employees engaged in interstate commerce or in the making of goods for shipment in interstate commerce. The provisions establishing these standards go into effect on October 24th without exception among the industries and workers affected by the law.

Right here I think it would be wise to emphasize a point which, perhaps surprisingly enough, many people have misunderstood. The Fair Labor Standards Act is a Federal law and, under the powers granted the Federal Government by the Constitution, Congress is limited to the regulation of commerce between States. This law, therefore, affects <u>inter</u>state commerce.

As to what is interstate commerce, we shall have to rely ultimately on the Supreme Court. There have been, over the years, a number of decisions, but any lawyer will tell you, if you do not already know it, that the Court itself is by no means unanimous on a definition. Neither are those rulings

which they have already made so numerous nor so all-embracing as to enable us, offhand, to say precisely what is interstate commerce and what is not.

Our General Counsel is planning soon an interpretation or statement in which he will list as many as possible of those industries which are clearly and admittedly in interstate commerce.

Administrator Andrews, however, has warned that the omission from this list of any industry does not mean that that industry is not in interstate commerce. We hope that the statement will be helpful. It cannot be all-embracing.

As to what you should do if you are in doubt, I should like to recommend, especially since I am in charge of Cooperation and Enforcement, that you, in every way that you can, help us to establish and to maintain the standards set forth in the Act. We expect your cooperation, and you have my assurance that you may expect ours.

I know that you are especially interested in provisions of the Act which allow a partial or temporary exception to the standard 44-hour week at regular pay. You understand, of course, that an employee may work overtime if he is paid time and a half.

The Act provides three methods of partial exemption. The first—Section 7(b)—allows employers with collective labor agreements with their employees to exceed 44 hours' work in one week so long as they have guaranteed in a contract that no employee shall be employed more than 1,000 hours during a period of 26 consecutive weeks, nor more than 2,000 hours during any period of 52 consecutive weeks. The law also requires that such contracts shall be the result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board. The number of such contracts is relatively small at the present time.

The intent of Congress in this case is obvious. It is the desire to help employers and their organized workers in their joint efforts to stabilize wages and to guarantee to workmen a fixed weekly income regardless of the number of hours of work per week which the production requirements of the employer impose. In the instance of a Minnesota packing plant, I understand that a thoroughly amicable arrangement has been negotiated by the union and the company, and the employees during some weeks work as little as 20 or 30 hours, and in other weeks as much as 50 hours. The result is that the wife of the packing-plant worker knows that each week she will have enough to buy groceries, including butter and eggs.

Section 7(b) also permits the employment of workers for not more than 14 workweeks in any calendar year for not more than 12 hours a day or 56 hours a week in an industry found by the Administrator to be of a seasonal nature.

I realize that there is great interest, not only among you but among other businessmen who are handling perishable foods for market, as to what is "seasonal", and as to what industries will be found to be seasonal. That is a determination which will have to be made by the Administrator, who is now working on it with the assistance of his legal staff. I assure you that the Administrator will make that determination as promptly as possible. And I am confident that the determination, when made, will be clear and helpful.

A special provision for partial exemption for the same number of hours a day and a week as the exemption for seasonal industries was written into the law for certain types of production. Section 7(c) allows an employer who is engaged in the processing of milk, whey, skimmed milk or cream into dairy products to employ his workers for not more than 14 workweeks in any calendar year without paying any overtime.

This section also eliminates the overtime pay requirement for 14 workweeks per year for employees engaged in the first processing within the area of production of any agricultural or horticultural commodity during seasonal operation or in handling, slaughtering, or dressing poultry or livestock. It will be necessary for the Administrator to define the term "within the area of production." However, it seems apparent from the wording of the Act that persons engaged in handling, slaughtering or dressing poultry or livestock may take advantage of the 14-week period during which they will not be required to pay the overtime rates.

I understand that your association includes car-lot distributors and car shippers in addition to processors. I regret that I cannot give right now an opinion as to whether shippers and distributors will come within the definition of handling, slaughtering, or dressing. That is a determination which will have to be made after further study of the Act by our legal staff.

The Fair Labor Standards Act, as a result of the desire of Congress to raise wage rates as soon as possible to a level above 25 cents an hour, includes special machinery for setting higher minimum schedules, industry by industry. Borrowing from the experience of the States, Congress directed the Administrator to appoint industry committees composed of an equal number of representatives of employers, employees and the public. Each committee is to investigate conditions in its particular industry and recommend wage rates above 25 cents an hour, but not to exceed 40 cents an hour. These recommendations are to be submitted to the Administrator, who will then hold a public hearing. If the Administrator finds that the recommendations of the industry committee are in accordance with law and are supported by the evidence collected by the Committee, and received at the hearing, and finds the recommendations to be reasonable, a wage order may be issued after

due notice. If they do not seem reasonable, he may reject them and either refer them to the same committee for further study and recommendation or appoint a new committee.

Already a committee, headed by Donald Nelson of Chicago—vice president of Sears, Roebuck and Company—is preparing recommendations for the textile industry. Soon other committees will be selected.

The Act requires the industry committee to make a thoroughgoing investigation of competitive and economic conditions. Freight-rate differentials, costs of production, cost of living and wages paid in other industries in the same locality must be considered with a view to possible different minimum wage schedules within the same industry, based on various classifications. The Act also requires that wage orders shall not substantially curtail opportunities for employment.

My own particular task in the administration of this law is to work with employers and employees in an effort to get the fullest measure of cooperation. I am required specifically to enforce the provisions of the law. Administrator Andrews and I both expect to administer this law so that it will benefit every possible worker and every possible employer. We expect to enforce it with sympathy but without any partiality.

In the administration of complex economic laws affecting business and competitive practice, it is essential that there shall be special treatment for no one, and that the requirements on employers shall be uniform insofar as possible.

Now I shall be glad to answer what questions I can. In addition, if the officers of your convention can later furnish me with a transcript of this question period, I should like to take the questions back to Washington with me so that our Administration may study them for guidance in our work.