

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM

# Office Correspondence

Date June 19, 1937.

To Mr. Currie

Subject: The Fair Labor Standards Act of 1937

From Mr. Bassie

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DIGEST OF THE BILL

A Bill "to provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes."

Section I declares that the employment of workers under substandard labor conditions in occupations in or directly affecting interstate commerce results in the spread of conditions detrimental to health, efficiency, and well-being of workers; burdens interstate commerce and the free flow of goods; constitutes an unfair method of competition; causes industrial dislocations and diverts interstate commerce from areas of fair labor standards to those where substandard conditions exist; leads to labor disputes, causes undue price fluctuations, and prevents orderly marketing of goods, all of which burden and obstruct interstate commerce. It is proposed to remedy these evils "by prohibiting the shipment in interstate commerce of goods produced under substandard labor conditions and by providing for the elimination of substandard conditions in occupations in and directly affecting interstate commerce."

The actual scope of the Bill would be quite broad if liberally interpreted. Part III bars unfair goods from interstate commerce and protects interstate commerce from the competition of unfair goods not entering into interstate commerce. (Unfair goods are those in production of which workers have been employed in any occupation under any substandard labor condition.) Part IV protects fair labor standards

from interstate competition and eliminates substandard labor conditions in employments not entering into interstate commerce if such conditions lead to labor disputes, affect the movement of goods or the performance of services in interstate commerce, cause or threaten instability of prices of goods or services in interstate commerce, or interfere with the orderly marketing of goods or services in interstate commerce. Hence, the issuance of labor-standard orders is permissive with respect to a wide range of employments not actually entering into interstate commerce, but agricultural workers and professional and supervisory employees are at all times excepted.

Such labor-standard orders would be issued by the Labor Standards Board, created by the Act and consisting of five members appointed by the President. The policy of the Board would be to establish standards of minimum wages per hour and maximum hours per week only where workers are in need of legislative protection, and in no case to interfere with the establishment of proper differentials and higher standards in occupations effectively protected by collective bargaining or other voluntary arrangements. Thus, its orders may contain such terms and conditions as the Board may consider necessary or appropriate to prevent the established minimum standards from becoming maximum standards or to prevent the discharge or reduction of workers employed under higher standards. Orders of the Board would become effective upon publication in the Federal Register. However, no order can be issued except after a public hearing held upon publication of previous notice in the Federal Register.

Part II provides for the establishment of fair labor standards with respect to wages and hours. In Section 4 the general minimum wage standard is first established by Congress at \_\_\_\_\_ cents per hour (40 cents is discussed), to become effective with respect to any employment as rapidly as the Board finds that employment opportunities in that employment will not be unreasonably curtailed thereby. Similarly, the general maximum hours standard is set at \_\_\_\_\_ hours per week (40 hours is discussed), to become effective as rapidly as the Board finds that earning power of employees will not be unreasonably curtailed thereby. These basic "non-oppressive" standards could later be changed by the Board either upward or downward, as to all employees or as to any class or classes of employees to the extent that the Board finds a variation necessary or appropriate, consideration being given to minimum standards of health, efficiency, and well-being of the workers, and to possible curtailment of their employment opportunities or earning power.

In Section 5 the powers of the Board are further extended with respect to any occupation, whenever there is reason to believe that, owing to the inadequacy or ineffectiveness of the facilities for collective bargaining, wages lower than a fair minimum are being paid or hours longer than a reasonable maximum are being worked. What is fair and reasonable in this connection has no reference to the basic standards previously established but is determined by the Board on the basis of such considerations as living costs, the effects of the work on the workers, the number of workers available, the comparable wages and hours standards maintained by other employers, especially where

collective bargaining obtains, and in general such considerations as would guide the courts in cases in which similar questions might arise. If, upon investigation of the facts, the Board finds that substandard conditions exist in any occupation, it may issue orders establishing fair labor standards for the employment of workers in that occupation, which modify, extend, or rescind the standards previously in force. The minimum wages established by such orders may not exceed \$1,200 per year or 80¢ an hour, not including overtime, and the maximum hours so established may not be less than \_\_\_\_\_ hours per week.

In Section 6, the Board is authorized to allow certain exemptions from the standards set up under Sections 4 or 5. Such exemptions include: firms employing less than \_\_\_\_\_ workers; necessary overtime during peak seasons or emergencies, if compensated at one and one-half times the regular hourly wage; employment of apprentices; handicapped persons, and all persons employed on special terms as when room and board are included in remuneration; and in general whenever the situation justifies special treatment. The Board is in all cases authorized to set up its own classifications and to define the method of determining the number of employees employed by any employer in order to prevent circumvention of the Act through use of agents, contractors, home or off-premise employees, or by any other means.

The Board would have authority also to make regulations and institute procedures necessary for the establishment of labor-standards and for the carrying out of labor-standard orders. Employers would be required to maintain such records as the Board prescribed and to produce the same on request, to testify before the Board, to open their plants for inspection

by the Board, and to place special labels on their goods if so requested. The penalties for each violation of the Act are \$500 fine or six months' imprisonment, these penalties to be doubled in the case of any employer who wilfully discharges or discriminates against an employee because the latter has filed a complaint or otherwise participated in any action against the employer under the Act. Further, workers employed under substandard conditions would be entitled to reparations to the extent of the difference between wages actually received and the established minimum, recoverable in a civil suit, with attorney's fees allowed. The orders of the Board are subject to review in any of the circuit courts of appeal, but such review is to be limited to questions of law, findings of fact by the Board being conclusive.

TESTIMONY AT THE JOINT HEARINGS

Government witnesses testified in favor of the Bill for the most part, although a number of modifications were suggested. Mr. Robert H. Jackson, Assistant Attorney General, asserted the constitutionality of the Bill on the basis of Federal power to regulate interstate commerce. He thought the only doubtful point to be the child labor provision, and expressed the opinion that in view of recent decisions this also would receive the approval of the Court. He further stated that certain objections to the Bill were eliminated by the discretionary power of the Board, which, in establishing its standards, will give due weight to differentials which now exist with respect to wages, hours, and living standards in the various localities. Miss Frances Perkins, Secretary of Labor, supported the Bill for its social value and suggested that standards be left to the Board and not set by Congress and that industrial homework be prohibited entirely. Other witnesses also stressed the social necessity for legislation of this kind, from the standpoint of eliminating evils arising from economic exploitation of the poorer classes, such as insufficient living standards and child labor abuses.

Labor representatives also testified in favor of the Bill, agreeing as to its basic objective of improving the worker's position, although in some cases taking exception to some provisions of the Bill. Mr. William Green, President of the American Federation of Labor, endorsed the maximum hours provisions of the bill but objected to the minimum wage provisions as an encroachment on collective bargaining. Mr. John L. Lewis, Chairman

of the Committee for Industrial Organization, supported all the Bill's general objectives but agreed with Mr Green in opposing the possibility provided by Section 5 that the Board might be able to abrogate wage contracts arrived at by collective bargaining, even though in so doing it set a minimum higher than that established by such contracts. His reasons for supporting the Bill were (1) the increase in mass purchasing power through wage increases, (2) the increase in employment through shortening of hours, (3) the extension of leisure and well-being to the submerged classes, and (4) the improvement of opportunities for the individual worker with respect to engagement in collective bargaining. His objections to the provisions of Section 5 were not so much concerned with the dangers to collective bargaining, which he recognized as possibilities, as with the effect of the determination of a rate of pay by a governmental agency in consideration of all the equities involved, which might come to be recognized as a fair or legal wage. This he felt would align public opinion against the workers in future labor disputes. Mr. Sidney Hillman, President of the Amalgamated Clothing Workers of America, declared more strongly in favor of the Bill, including Section 5. He explained his difference with Mr. Lewis on this point as being one of perspective, stating that there was no need for the section in the basic industries, such as coal, with which Mr. Lewis had been concerned, but that there was strong need for it among the millions of shoe, garment, and textile workers for whom he, Mr. Hillman, spoke.

Industrial leaders and their representatives, on the other hand, declared against the Bill with few exceptions. Their primary attack was directed against the discretionary power of the Board, on the grounds that it tended to destroy democracy, to establish communism or fascism, and to take away the authority of Congress, the Courts, and the several States. Dr. C. T. Murchison, President of the Cotton Textile Institute, objected to a number of provisions and stated that the Bill would be impossible to administer. Mrs. Leila Blomfield of the New York Economic Council stated that the economics of the Bill were unsound and Mr. Harvey Willson, General Manager of the National Upholstery and Drapery Textile Association, declared that the Bill would lead to uncertainty, confusion, and the disruption of industrial relations. The legal case against the Bill was presented in a detailed brief by Mr. James A. Emery, General Counsel of the National Association of Manufacturers. Some of the witnesses raising similar objections accepted the basic need for improving conditions of employment and in some instances tied up their agreement with suggestions for special modifications, such as increased tariff duties or exemption of specific industries from the provisions of the Act. Others, however, attacked the basic objectives of the bill, particularly the child labor provisions, and to a lesser extent the labor practices provisions and the hours and wages provisions. Mr. John A. Edgerton, President of the Southern States Industrial Council and former President of the National Association of Manufacturers, stated that he paid wages on the basis of efficiency only, that the minimum should not be higher than \$11 per week, and that if there



was any need not met by the wages paid, he dealt with the same through his church work.

GENERAL CONSIDERATIONS

The theory underlying legislation of this kind is that it will not only produce advantages for the lower wage groups but that it will also improve general business conditions, through the effects of increased wages and employment in bringing about general increases in productive activity. In setting minimum wages above the rates currently paid to low-wage employees, it is intended to increase the total wages paid by the extent of increases to those employees, as no reductions in the wages paid to higher-wage employees are contemplated. Similarly, in shortening maximum hours of work per week it is intended to increase employment proportionally, by restricting the amount of work done by present workers and calling into service the unemployed labor reserve for the maintenance of current levels of production. Supporting this view is the doctrine that employers must continue operations if they are to realize anything at all on their investment. Thus, it is believed, not only will total wages paid be increased, but also a great many unemployed workers will again become earning members of the community, so that mass purchasing power will be greatly increased. The normal ultimate effect of this would then be a general increase in productive activity, to meet the increased demand based upon this additional purchasing power.

The defect of this theory lies in the necessary qualification. Only if current output is maintained at the same level will wages be increased to the extent of the differences between wages now paid and the established minima; only in that event also will employment be increased in proportion to the decrease in working hours; and only if production is maintained and prices are not raised will the burden of the anticipated changes be

borne by employers in the form of reduced profits. The traditional defenses of employers for maintaining profits against such measures are raising of prices and restriction of output on the one hand, and reorganization of the productive process on the other. When the first of these methods is adopted, the working staff is reduced and the corresponding reductions in payrolls tend to offset the increases in wages paid to the workers retained. In so far as the competitive situation does not allow this practice on the part of the individual producer, the anticipated effect will ensue in the short run, but if profits disappear and losses accrue, some producers may be forced out of business and restriction ultimately will take effect. When the second method is adopted, there is a switching to productive processes which use less labor of the types that obtain the greatest benefits under the legislation. Reorganizations designed for this purpose usually take the form of displacing such labor by other labor whose wages are not increased and particularly by mechanical equipment, as, for example, by installing mechanical conveyors to replace the low-wage labor that had previously been used to move work in process from one operation to the next. Although in some instances this may result in greater output and lower prices, the general tendency, when this procedure is adopted to meet the pressure of increased labor costs, is, as in the previous case, toward higher prices and reduced output. When increasing costs force up the prices of commodities the pressure of higher costs is passed on to later stages of production and diversion of income as between the various lines of normal expenditure results,

with a shifting of economic activity as between such lines, the general movement being toward lower levels.

The net effect of these conflicting tendencies is difficult to estimate. The most probable answer in terms of the short-run effect seems to be that total wages will be increased somewhat, total employment increased somewhat, and total production decreased somewhat. Also prices would probably rise somewhat, perhaps slightly more on the average than the increase in total wages. Production would for a while remain at a level somewhat lower than that correlative with the new levels of wages and prices, because of the building up of stocks in the period before the Bill became effective. The net effect in the long run is still more difficult to estimate, probably being on the whole somewhat deflationary, depending upon the degree to which investment might be discouraged. This tendency might be offset, however, by continued upswing of the business cycle or by continued willingness of the government to meet possible increases in unemployment with an adequate program of work relief.

The effects of such legislation on the distribution of income can be more clearly delineated. The rise in prices would result in a transfer of real income from those whose incomes were not increased in the same proportion to those receiving greater proportional increases under the minima established. Profits would be reduced, and employers would command a smaller share of the total income. Total wages received would for a large number of workers be reduced, because of the reduction of working hours, and the income lost in this way would

accrue to those previously unemployed who now are called to carry on the work. To sum up, there would be a general movement of incomes in the direction of equality, with a probable small net decrease of income for the community as a whole.

Another important effect would lie in the redistribution of employment as between occupations, industries, and regions. A flat minimum wage applied throughout would produce many maladjustments in the industrial system and would amount to discrimination against certain classes of employers and employees; the South would on the whole suffer more than the North, and small firms using comparatively unmechanized processes would suffer more than large firms using the most modern equipment. Similarly, a flat maximum number of working hours would produce serious labor shortages wherever there does not exist a reserve labor supply of the requisite skill, or wherever normal seasonal peak demands are sufficient to employ the entire reserve now available; the effect of this shortage might simply be increased wages for overtime to these workers, but in most cases, there would probably be reductions in output and higher prices. Hence, if standards high enough to be effective are established, it may be necessary to provide differentials to account for differences between occupations, industries, and regions. If existing average differentials are maintained, the effects would be limited largely to the types discussed in the preceding paragraphs, but little would be accomplished toward raising the standards of the lowest economic groups in the population. Extended research of a high order would be necessary to determine what the various differentials should be, and the staggering of effective dates may be the saving

feature of the whole program. Nevertheless, back of such research should stand a determination of the fundamental philosophy on which the establishment of the labor standards rests. Should they be set up, for instance, to maintain existing differentials as between various regions, to eliminate such differentials immediately in so far as possible, or to reduce such differentials immediately and only later eliminate them entirely with the final intention of placing competition on a purely efficiency basis? Political pressure from the South, where progress toward higher living standards is most needed and most unsettling, would stand against the elimination of the differentials unless some means of handling the increase in unemployment were provided. Would the Government be willing to share the burden of these costs of progress with the Southern States? These are pressing questions from the standpoint of proper administration of the Act.

There is little that can be said, as a matter of fact, about the actual operation of the Act apart from further knowledge concerning its administration. Everything depends upon the wisdom with which the Board makes use of its discretionary powers. One objection that might be raised to its determination of "fair" standards of wages and hours concerns the use of "fair value" as a basis of determination; for experience in connection with judicial valuation and public utility regulation indicates that "fair value" is a most unsatisfactory instrument to use in this connection. On the other hand, whatever the basis of determination and whatever the orders issued, there would be numerous protests and disputes. There would also be continual pressure for various kinds of exemptions and for support in obtaining increased tariff

protection against foreign competition. Moreover, such exceptions as might be permitted would be made the basis of various types of evasions; and complaints would arise on every hand. The volume of such controversies would be tremendous, and the Board would in effect be dropped into this jungle with little more than a pious hope that its administration would be efficient enough to save the situation.

To be set over against these various difficulties with the operation and administration of the Act are the social values accruing therefrom. Congress is of course at present concerned with the possibilities of such values and with the serious problems of public policy connected therewith. Among these problems are the protection of collective bargaining rights and the control of governmental expenditures. This Bill will both support and undermine the existing mechanisms for collective bargaining, and the relationship of the Labor Standards Board to the National Labor Relations Board has yet to be determined. This Bill will also accentuate the problem of relief, as unemployment will be greater the higher the standards are set, at least in some localities; and the extent to which the Government shall carry the relief burden is dependent upon the force of the drive for economy. If economy measures may be adopted, the laboring groups as a whole might well gain more through the complete or partial abandonment of this legislation in favor of legislation for the modification of taxes in a progressive direction and for the continuation of the work relief program, while at the same time, through a period of increasing prosperity, labor organizations continued their fight with employers for a larger share of the total income produced.