

*The Bennett's letter*

In connection with the application of the 48 hour work week, the employer will first have to consider whether the Executive Order and regulations on this subject are applicable to him. In the first place, it is clear from the Regulations of the War Manpower Commission that the Executive Order and Regulations are only intended to apply in the areas designated. At present there are 52 such areas. Moreover, the only penalty provided for failure to go into a 48 hour week in a designated area is that the employer may not hire any more workers. No other penalties are prescribed and it has been publicly stated by the Chairman of the War Manpower Commission that he hopes to achieve the goals established in his manpower program by voluntary action.

Assuming that the employer adopts the 48 hour week but wishes to make some adjustment in the wages or salaries of his employees, consideration will have to be given to (1) the Price Control Act of October 2, 1942, (2) the Executive Order relating to economic stabilization issued under such Act, (3) the regulations of the Director of Economic Stabilization prescribed pursuant to the Act, and (4) the Fair Labor Standards Act of 1938 (the wages and hours law).

(1) The Price Control Act of October 2, 1942 provides in part that the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages and salaries affecting the cost of living and, except as otherwise provided in the Act, "such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942" and the President may "thereafter provide for making adjustments with respect to prices, wages and salaries to the extent that he finds necessary to aid the effective prosecution of the war or to correct gross inequities." The Act also provides that no action shall be taken under authority of the Act for "the purpose of reducing wages or salaries for any particular work below the highest wages or salaries paid therefor between January 1, 1942 and September 15, 1942", provided that the President may adjust wages or salaries to the extent he finds necessary to correct gross inequities and aid in the effective prosecution of the war. It will be noted that under the Act wages or salaries may not be reduced below a specified point.

(2) The Executive Order provides that (a) increases or decreases in wage rates must first have the approval of the National War Labor Board, (b) that the National War Labor Board should not approve a decrease in the wages for any particular work below the highest wages paid between January 1 and September 15, 1942 unless to correct gross inequities and aid in the effective prosecution of the war, and (c) no decrease shall be made in the salary for any particular work below the highest salary paid therefor between January 1 and September 15, 1942 unless to correct gross inequities and to aid

in the effective prosecution of the war. Thus, it will be noted that the Executive Order follows the statute with respect to the reduction of wages and salaries but also provides that decreases in wage rates are permissible but must first have the approval of the War Labor Board. Decreases in "salary rates" are not covered by the Executive Order.

(3) The regulations of the Director of Economic Stabilization provide that no decrease in the case of a salary rate under which an employee is paid a salary of less than \$5,000 per annum for any particular work should be made by the employer below the highest salary rate paid for such work between January 1 and September 15, 1942 except to correct gross inequities or aid in the effective prosecution of the war; and any decrease in such salary rate must have the prior approval of the National War Labor Board or the Commissioner of Internal Revenue. Reduction of wages or wage rates is not specifically dealt with in the regulations. Moreover, the use of the word "rate" is not inadvertent, since the terms "salary", "salary payments", "wages", "wage payments" and "salary rate" are separately defined in the regulations. Stabilization Director Byrnes has the distinction in mind between "salary" and "rate", as evidenced by the clipping from the New York Herald Tribune of February 24, 1945. Roughly, the term "salary" is defined to mean compensation computed on a weekly, monthly or annual basis, and "wages" is defined to mean compensation computed on an hourly, daily or piece-work basis.

Summarizing the effect of the Act, the Executive Order, and the regulations, it will be seen that the Act does not prevent the reduction of a salary rate so long as the amount of salary actually received in any week or month is not reduced below the highest amount received during the January 1 - September 15, 1942 period. However, any adjustment in salary rates must have the approval of the War Labor Board or the Commissioner of Internal Revenue. In conforming to the 48 hour week no difficulties in this connection should be encountered since the amount of salaries actually paid would not be decreased although, in working out the arrangement discussed hereinafter, the salary rate might be decreased, in which event it will be necessary to obtain the approval of the War Labor Board or the Commissioner of Internal Revenue. Salary rate under the regulations is not the same as salary rate under the Fair Labor Standards Act. Therefore, if the employee is under the Fair Labor Standards Act, that Act must be considered.

(4) The Fair Labor Standards Act (time and a half for overtime in excess of 40 hours per week) does not apply to employees in the executive, administrative or professional grades and with respect to employees to whom the Act is applicable there is nothing in the

Act which specifically prevents the decrease of either salaries or salary rates, except below the minimum prescribed. For the purpose of administering this Act, the wages or salary of an individual is reduced to an hourly rate which in the Act is called the "regular rate". The Supreme Court of the United States has held that the "regular rate" where only a weekly salary is involved is to be determined by dividing the weekly salary by the number of hours actually worked in the week. See Overnight Motor Co. v. Missel, 316 U. S. 572.

However, under the decision of the Supreme Court in Walling v. Belo Corp., 316 U. S. 624, delivered by Mr. Justice Byrnes, it is possible in making an adjustment of salaries to reduce the hourly or regular rate but at the same time maintain a guaranteed weekly salary. This case is rather long and complicated and for that reason is not discussed herein, but briefly stated it upheld an arrangement whereby the hourly or regular rate of salary of the employee was reduced but the actual weekly salary received by the employee remained the same. Thus, by carefully following the arrangement in the Belo case, if an employer so desired he could continue to pay an employee as much or more than he is now getting but less than he would receive under the Fair Labor Standards Act for overtime in a 48 hour week if no action were taken to adjust his pay, by reducing the hourly rate so that with one and a half times such rate for overtime the employee would have to work somewhat in excess of 48 hours per week before he would be entitled to more than the guaranteed weekly salary.

AKC:mmm  
5/6/43

Going to a 48-hour week and paying the increased salaries resulting from time and a half will disrupt the entire salary schedule of some businesses, increasing, in some instances, the salaries of those affected above the salaries of the executives and supervisors over them. The attached article from the New York Herald-Tribune has, therefore, been read with interest.

(1) The Price Control Act authorizes the President to issue a general order stabilizing wages and salaries, forbidding a decrease, however, below the highest paid between January 1 and September 15, 1942.

(2) The Executive Order provides that (a) increases or decreases in wage rates must first have the approval of the National War Labor Board; (b) that such Board shall not approve a decrease in the wages for any particular work below the highest wages paid between January 1 and September 15, 1942; and (c) no decrease shall be made in the salary for any particular work below the highest salary paid therefor between January 1 and September 15, 1942.

(3) The regulations of the Director, however, provide that no decrease in the case of salary rate under which an employee is paid a salary less than \$5,000 should be made by the employer below the highest salary rate paid for such work between January 1 and September 15, 1942. Any decrease in salary rate must have the approval of the National War Labor Board or the Commissioner of Internal Revenue as the case may be.

Is it correct that in going from a 40-hour week to a 48-hour week the only way to keep wages and salaries from reflecting the full increase occasioned by time and a half would be to reduce wage rates and salary rates? Is it correct also that, under the Executive Order and regulations, wage rates and salary rates may be decreased (within the limitations of the Act) but only with the approval of the National War Labor Board or Commissioner of Internal Revenue, whichever has jurisdiction?

It is assumed that in any event consideration would have to be given to the application of the Fair Labor Standards Act. Is it correct that where that Act is applicable, adjustments within the scope approved in Walling vs. Belo Co., 316 U. S. 624, could be made?

Attachment

JPD  
3/9/43