

FAIR LABOR STANDARDS AMENDMENTS OF 1949

OCTOBER 17, 1949.—Ordered to be printed

Mr. LESINSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H. R. 5856]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 5856) to provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *That this Act may be cited as the "Fair Labor Standards Amendments of 1949"*.

DECLARATION OF POLICY

SEC. 2. Section 2 (b) of the Fair Labor Standards Act of 1938, as amended, is amended to read as follows:

"(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power."

DEFINITIONS

SEC. 3. (a) Section 3 (b) of such Act is amended to read as follows:

"(b) 'Commerce' means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof."

H. Rept. 1453, 81-1—1

(b) Section 3 (j) of such Act is amended to read as follows:

"(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State."

(c) Clause (1) of section 3 (l) of such Act is amended to read as follows:

"(1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation,".

(d) Section 3 of such Act is further amended by adding at the end thereof two new paragraphs as follows:

"(n) 'Resale' shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: Provided, That the sale is recognized as a bona fide retail sale in the industry.

"(o) Hours Worked.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee."

ADMINISTRATOR

SEC. 4. Section 4 (a) of such Act is amended by striking out "\$10,000" and inserting in lieu thereof "\$15,000".

SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. Section 5 of such Act is amended to read as follows:

"SEC. 5. (a) The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce, or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Administrator shall be subject to the provisions of section 8.

"(b) An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment

and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

"(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Administrator shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

"(d) The Administrator shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Administrator to furnish additional information to aid it in its deliberations."

MINIMUM WAGES

SEC. 6. (a) Section 6 (a) of such Act is amended by striking out subparagraphs (1), (2), (3), and (4) and inserting in lieu thereof the following:

"(1) not less than 75 cents an hour;"

(b) Such section 6 (a) is further amended by striking out "(5)" and inserting in lieu thereof "(2)".

(c) Section 6 (c) of such Act is amended to read as follows:

"(c) The provisions of paragraph (1) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands engaged in commerce or in the production of goods for commerce only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Administrator pursuant to the recommendations of a special industry committee appointed pursuant to section 5: Provided, That the wage order in effect prior to the effective date of this Act for any industry in Puerto Rico or the Virgin Islands shall apply to every employee in such industry covered by subsection (a) of this section until superseded by a wage order hereafter issued pursuant to the recommendations of a special industry committee appointed pursuant to section 5."

MAXIMUM HOURS

SEC. 7. Section 7 of such Act is amended to read as follows:

"SEC. 7. (a) Except as otherwise provided in this section, no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

"(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

"(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

"(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of forty hours in the workweek or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

"(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature, and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

"(c) In the case of an employer engaged in the first processing of milk, buttermilk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into sirup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

"(d) As used in this section the 'regular rate' at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

"(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

"(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

"(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

"(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

"(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or forty in a work week or in excess of the employee's normal working hours or regular working hours, as the case may be;

"(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

"(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding forty hours), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

"(e) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section

6 (a) and compensation at not less than one and one-half times such rate for all hours worked in excess of forty in any workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

"(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of forty hours—

"(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

"(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during non-overtime hours; or

"(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

"(g) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (d) shall be creditable toward overtime compensation payable pursuant to this section."

WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 8. Section 8 of such Act is amended to read as follows:

"SEC. 8. (a) The policy of this Act with respect to industries in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage prescribed in paragraph (1) of section 6 (a) in each such industry. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce in any such industry or classifications therein.

"(b) Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be

fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.

“(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that prescribed in paragraph (1) of section 6 (a)) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

“(1) competitive conditions as affected by transportation, living, and production costs;

“(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

“(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

“(d) The industry committee shall file with the Administrator a report containing its recommendations with respect to the matters referred to it. Upon the filing of such report, the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose), for further consideration and recommendations.

“(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof,

and to safeguard the minimum wage rates established therein. No such order shall take effect until after due notice is given of the issuance thereof by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give to interested persons general notice of such issuance.

"(f) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give general notice to interested persons."

INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOMEWORK REGULATIONS

SEC. 9. Section 11 of such Act is amended by adding at the end thereof the following new subsection:

"(d) The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect."

CHILD LABOR PROVISIONS

SEC. 10. (a) Section 12 (a) of such Act is amended to read as follows:

"(a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: Provided, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: And provided further, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution."

(b) Section 12 of such Act is further amended by adding at the end thereof the following new subsection:

"(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce."

EXEMPTIONS

SEC. 11. Section 13 of such Act is amended to read as follows:

"SEC. 13. (a) The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee employed by any retail or service establishment, more than 50 per centum of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located. A 'retail or service establishment' shall mean an establishment 75 per centum of whose annual dollar

volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or (3) any employee employed by any establishment engaged in laundering, cleaning or repairing clothing or fabrics, more than 50 per centum of which establishment's annual dollar volume of sales of such services is made within the State in which the establishment is located: Provided, That 75 per centum of such establishment's annual dollar volume of sales of such services is made to customers who are not engaged in a mining, manufacturing, transportation, or communications business; or (4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: Provided, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing (other than canning), marketing, freezing, curing, storing, or distributing the above products or byproducts thereof; or (6) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a share-crop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 14; or (8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where printed and published or counties contiguous thereto; or (9) any employee of a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, not included in other exemptions contained in this section; or (10) any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; or (11) any switchboard operator employed in a public telephone exchange which has not more than seven hundred and fifty stations; or (12) any employee of an employer engaged in the business of operating taxicabs; or (13) any employee or proprietor in a retail or service establishment as defined in clause (2) of this subsection with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed \$500 a month; or (14) any employee employed as a seaman; or (15) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees

employed by his employer in such forestry or lumbering operations does not exceed twelve.

"(b) The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of part I of the Interstate Commerce Act; or (3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or (4) any employee employed in the canning of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof; or (5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state.

"(c) The provisions of section 12 relating to child labor shall not apply with respect to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, or to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

"(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer."

LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

SEC. 12. Section 14 of such Act is amended by striking out in clause (1) the word "exclusively" and inserting in lieu thereof the word "primarily".

PROHIBITED ACTS

SEC. 13. (a) Section 15 (a) (1) of such Act is amended by adding at the end thereof the following: "and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful."

(b) Section 15 (a) (5) of such Act is amended by inserting after "section 11 (c)" the following: "or any regulation or order made or continued in effect under the provisions of section 11 (d)".

PENALTIES

SEC. 14. Section 16 of such Act is amended by adding at the end thereof the following new subsection:

"(c) The Administrator is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. When a written request is filed by any employee with the Administrator claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the Administrator may bring an action in any court of competent jurisdiction to

recover the amount of such claim: *Provided, That this authority to sue shall not be used by the Administrator in any case involving an issue of law which has not been settled finally by the courts, and in any such case no court shall have jurisdiction over such action or proceeding initiated or brought by the Administrator if it does involve any issue of law not so finally settled.* The consent of any employee to the bringing of any such action by the Administrator, unless such action is dismissed without prejudice on motion of the Administrator, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. Any sums thus recovered by the Administrator on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Administrator, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Administrator under this subsection for the purposes of the two-year statute of limitations provided in section 6 (a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action."

INJUNCTION PROCEEDINGS

SEC. 15. Section 17 of such Act is amended to read as follows:

"SEC. 17. The district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands shall have jurisdiction, for cause shown, to restrain violations of section 15: *Provided, That no court shall have jurisdiction, in any action brought by the Administrator to restrain such violations, to order the payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages in such action.*"

MISCELLANEOUS AND EFFECTIVE DATE

SEC. 16. (a) The amendments made by this Act shall take effect upon the expiration of ninety days from the date of its enactment; except that the amendment made by section 4 shall take effect on the date of its enactment.

(b) Except as provided in section 3 (o) and in the last sentence of section 16 (c) of the Fair Labor Standards Act of 1938, as amended, no amendment made by this Act shall be construed as amending, modifying, or repealing any provision of the Portal-to-Portal Act of 1947.

(c) Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this Act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with

the provisions of this Act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this Act.

(d) No amendment made by this Act shall affect any penalty or liability with respect to any act or omission occurring prior to the effective date of this Act; but, after the expiration of two years from such effective date, no action shall be instituted under section 16 (b) of the Fair Labor Standards Act of 1938, as amended, with respect to any liability accruing thereunder for any act or omission occurring prior to the effective date of this Act.

(e) No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or on or after the effective date of this Act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949 for such work was at least equal to the compensation which would have been payable for such work had section 7 (d) (6) and (7) and section 7 (g) of the Fair Labor Standards Act of 1938, as amended, been in effect at the time of such payment.

(f) Public Law 177, Eighty-first Congress, approved July 20, 1949, is hereby repealed as of the effective date of this Act.

And the Senate agree to the same.

JOHN LESINSKI,
AUGUSTINE B. KELLEY,
ADAM C. POWELL, Jr.,
SAMUEL K. McCONNELL, Jr.,
WALTER E. BREHM,
Managers on the Part of the House.
ELBERT D. THOMAS,
JAMES E. MURRAY,
CLAUDE PEPPER,
ROBERT A. TAFT,
GEORGE D. AIKEN,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 5856) to provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute amendment. The conferees have agreed to a substitute for both the House bill and the Senate amendment. The substitute agreed to in conference is explained below.

SHORT TITLE

Both the House bill and the Senate amendment provided that it was to be cited as the "Fair Labor Standards Amendments of 1949." The conference agreement adopts this title.

FINDINGS AND DECLARATION OF POLICY

The House bill amended subsection (b) of section 2 of the act by referring to the power of Congress under the Constitution to regulate commerce with foreign nations as well as commerce among the several States. This technical change was made in conjunction with the change made in subsection (b) of section 3 defining the term "commerce," which is hereinafter discussed. No such provision was included in the Senate amendment of the House bill. The conference agreement adopts the House provision.

DEFINITIONS

Section 3 of the act, relating to definitions, is unchanged by the conference agreement except that definitions of the terms "commerce," "produced," and "oppressive child labor" are amended and new definitive language is provided for the terms "resale" and "hours worked."

Commerce.—The definition of "commerce" in section 3 (b) of the act now covers outgoing foreign commerce "from any State to any place outside thereof" in addition to interstate commerce "among the several States." It does not cover incoming foreign commerce. The House bill amended the definition by substituting the word "between" for the word "from" and the word "and" for the word "to," so that the definition would cover foreign commerce "between any State and any place outside thereof." The Senate amendment did not contain any provision amending this definition. The conference agreement adopts the House provision. The effect of the amendment is to eliminate inequalities under the act between employees engaged in foreign commerce based on whether the flow of such foreign commerce is out of a

State rather than into it. The amendment, will, for example, place employees of importers on an equal footing with employees of exporters under the act.

Produced.—The House bill amended the definition of “produced” in section 3 (j) by inserting the words “closely related” before the words “process or occupation” and substituting the word “indispensable” for the word “necessary”. The Senate amendment left the definition of “produced” as contained in the present law unchanged. The bill as agreed to in conference follows the House bill except that the words “directly essential” are substituted for the word “indispensable”.

Coverage under the act for a large category of employees is determined by the definition of the term “produced”. The definition is divided into two parts. The first part, which the conference bill leaves unchanged, covers any employee “producing, manufacturing, mining, handling, transporting, or in any other manner working on * * * goods.” Thus the first part covers employees engaged in actual production activities as opposed, for example, to employees engaged in maintenance, clerical, or custodial work. The second part of the present definition, covering any employee engaged in “any process or occupation necessary to the production” of goods, has been interpreted by the Administrator and the courts to cover employees of many local merchants, because some of the customers of such merchants are producing goods for interstate commerce. It has made no difference that the merchants sell their goods locally and that such goods do not become a part or ingredient of the goods produced by any of their customers (*McComb v. Deibert* (E. D. Pa. 1949), 16 Labor Cases Par. 64,982). The courts have also held the act applicable to employees engaged in maintaining and repairing private homes and dwellings where such homes and dwellings are being leased by interstate producers to their employees. Coverage of the act has also been extended to employees of an independently owned and operated restaurant located in a factory (*McComb v. Factory Stores*, 81 F. Supp. 403 (N. D. Ohio 1948)).

Under the bill as agreed to in conference an employee will not be covered unless he is shown to have a closer and a more direct relationship to the producing, manufacturing, etc., activity than was true in the above-cited cases. On the other hand, the proposed changes are not intended to remove from the act maintenance, custodial, and clerical employees of manufacturers, mining companies, and other producers of goods for commerce. Employees engaged in such maintenance, custodial, and clerical work will remain subject to the act, notwithstanding they are employed by an independent employer performing such work on behalf of the manufacturer, mining company, or other producer for commerce. All such employees perform activities that are closely related and directly essential to the production of goods for commerce.

The bill as agreed to in conference also does not affect the coverage under the act of employees who repair or maintain buildings in which goods are produced for commerce (*Kirschbaum v. Walling*, 316 U. S. 517) or who make, repair, or maintain machinery or tools and dies used in the production of goods for commerce. Likewise, employees of public utilities, furnishing gas, electricity or water to firms within the State engaged in manufacturing, producing, or mining goods for commerce, will remain subject to the act. All the employees men-

tioned in this paragraph are doing work that is closely related and directly essential to the production of goods for commerce.

The following are some examples of cases in which the Administrator and the courts will no longer be able to hold the act applicable because the activities involved in such cases are not closely related or directly essential to production:

1. A local fertilizer company engaged in selling all of its fertilizer to local farmers within the State for use on land on which sugarcane is grown, which cane is then sold to sugar mills within the State and processed into raw sugar which is sent out of the State (*McComb, Administrator v. Super-A Fertilizer Works*, 165 F. (2d) 824 (C. C. A. 1)).

2. Employees of a quarry engaged in mining and processing stone for local use in the construction of a dike located in the same State and who transport such rock from the quarry to the construction site, where the construction of the dike would have the effect of preventing an oil field that produced oil for commerce from being flooded (*Schroeder v. Clifton*, 153 F. (2d) 385 (C. C. A. 10); cert. den., 328 U. S. 858).

3. Employees of a local window-cleaning company doing business wholly within the State but many of whose customers are engaged in interstate commerce or in the production of goods for interstate commerce (*Martino v. Michigan Window Cleaning Company*, 327 U. S. 173; reh'g den., 327 U. S. 816).

4. Employees of a local independent nursery concern whose duties include mowing the lawn around the plant of a customer within the State engaged in producing goods for interstate commerce (1944-45 W. H. Man., p. 125).

5. Employees of a local architectural firm whose activities include the preparation of plans for the alteration of buildings within the State which are used to produce goods for interstate commerce (1944-45 W. H. Man., pp. 138-139).

6. Employees of a local exterminator service firm, who work wholly within the State exterminating roaches and other pests in private houses, apartments, hotels, barber shops, colleges, hospitals, and also in buildings within the State used to produce goods for interstate commerce (3 C. C. H., Labor Law Reporter, 4th ed., No. 25,150,385).

All such employees, as well as the employees of the merchant selling his goods locally and employees engaged in providing residential, eating, or other living facilities for factory workers, are quite clearly not performing any activities that are closely related or directly essential to the production of goods.

Oppressive child labor.—Under the bill as agreed to in conference, the definition of "oppressive child labor" in section 3 (1) of the act is amended to include parental employment of a child under 16 years of age in an occupation found by the Secretary of Labor to be hazardous for children between the ages of 16 and 18 years. This provision was contained in substantially the same form in both the House bill and the Senate amendment, except that the House bill substituted the Administrator of the Wage and Hour Division for the Secretary of Labor, who is responsible under the present law for administration of the child-labor provisions. The conference agreement adopts the language of the Senate amendment. This provision closes a loophole

in the present definition under which a parent or person standing in place of a parent, who may not employ his child in a hazardous occupation if between 16 and 18 years of age, is permitted to employ the child in such an occupation until he becomes 16 years of age.

Resale.—The House bill in section 3 (1) declared that “resale” shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance. The Senate amendment added a proviso that the sale must be recognized as a bona fide retail sale in the industry. The conference agreement adopted the Senate amendment. Under the conference agreement a sale of building materials to a building contractor for use in residential or farm construction is not intended as a sale for resale within the meaning of section 13 (a) (2) provided that it is recognized as a bona fide retail sale in the industry.

Hours worked.—The House bill in section 3 (o) added a partial definition of the term “hours worked.” The Senate amendment did not contain an amendment on this subject. The conference agreement adopts the House provisions with an amendment. Under the section as passed by the House, for the purposes of the minimum wage and maximum hours provisions of the act, there would be excluded from “hours worked” any time spent by the employee which was excluded from measured working time under a bona fide collective-bargaining agreement applicable to him or custom or practice thereunder. The conference agreement limits this exclusion to time spent by the employee in changing clothes and cleaning his person at the beginning or at the end of each workday.

ADMINISTRATOR

The House bill amended section 4 of the act by changing its title to read “Administration” instead of “Administrator”, by increasing the salary of the Administrator of the Wage and Hour Division to \$15,000 per annum and by adding a new subsection (e) providing a defense to any alleged violation of the act with respect to “any act done or omitted in good faith in conformity with any written regulation, order or interpretation of the Administrator or the Secretary of Agriculture, as the case may be,” notwithstanding the subsequent amendment, rescission or invalidation of such regulation, order or interpretation. Section 4 was not otherwise changed. The Senate amendment made no changes in section 4 of the act.

The conference agreement follows the provisions of the Senate amendment with respect to the act’s administration, except that the salary of the Administrator is fixed at \$15,000 per annum.

The conference agreement omits the provision for a “good faith” defense since its subject matter is covered in sections 9 and 10 of the Portal-to-Portal Act of 1947.

The present act does not contain any provision relative to the compensation of the Solicitor of Labor, and neither the House bill nor the Senate amendment contained such a provision. In agreeing to the amendment increasing the salary of the Administrator to \$15,000 annually, it was the unanimous agreement of the conferees that the salary of the Solicitor of Labor should be increased to a like figure. It is through the Solicitor and his staff that the Administrator brings actions under section 17 of the act and will bring the actions for recovery of unpaid minimum wages and unpaid overtime compensa-

tion which are authorized by the new section 16 (c) contained in the conference agreement. The conference agreement omits a provision equalizing the salary of the Solicitor of Labor with that of the Administrator only because of a parliamentary situation which the committee has been advised might subject the conference agreement to a point of order if such a provision were included. It is the unanimous opinion of the committee of conference that the duties of the Solicitor of Labor are of such a nature that his position should receive the highest possible rate of compensation under the new legislation revising the Classification Act (H. R. 5931).

INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS

The House bill amended section 5 of the act by limiting its application to the appointment of special industry committees to recommend the minimum rate or rates of wages to be paid under section 6 of the act to employees in Puerto Rico or the Virgin Islands engaged in commerce or in the production of goods for commerce. The Senate bill made no changes in section 5 of the act.

The conference agreement follows the provisions of the House bill. In order to preserve existing orders of the Administrator restricting industrial homework in certain industries, the conference agreement provides that a new subsection is added to section 11 of the act under which all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect, and the Administrator is authorized to issue such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary to prevent the circumvention or evasion of, and to safeguard, the minimum wage rate prescribed by the act.

MINIMUM WAGE

The House bill provided that every employer would be required to pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at a rate of not less than 75 cents per hour. The Senate amendment made almost identical changes in subsection (a) of section 6. The conference agreement adopts the provisions of the Senate amendment.

The House bill also made the following changes in subsection (c) of section 6: The minimum wage rates established by existing wage orders for employees in Puerto Rican and Virgin Islands industries were continued in effect unless and until superseded by a wage order issued pursuant to the recommendations of a special industry committee appointed pursuant to section 5; and the rates prescribed in any such order were made applicable to every employee in any Puerto Rican or Virgin Islands industry covered by such order who is within the coverage of and not exempt under the provisions of the act as amended by the House bill, including employees who either were not covered by the law as it existed prior to such amendment or were exempted from its application, but who were brought within the application of the law by the House bill. The Senate amendment provided that existing wage order rates for employees in Puerto Rico and the Virgin Islands should continue in effect until superseded by a wage order issued pursuant to the recommendations of a special

industry committee appointed pursuant to section 5. The conference agreement follows the provisions of the House bill with respect to the scope and effect of existing wage orders for employees in Puerto Rican and the Virgin Islands industries.

MAXIMUM HOURS

General explanation.—The House bill completely revised section 7 of the act relating to maximum hours and overtime compensation, including a definition of “regular rate” and other provisions affecting the application of the overtime compensation requirements of the act. The Senate amendment left section 7 unchanged except for the extension of the overtime exemption provided by subsection (c) to include the first processing of buttermilk into dairy products, a provision also contained in the House bill. The conference agreement follows the provisions of the House bill except as hereafter noted. The general requirement of the present act, that employment in excess of 40 hours in a workweek shall be compensated at a rate not less than 1½ times the regular rate at which the employee is employed, is retained. This requirement applies, as under the present act, to employees engaged in commerce or in the production of goods for commerce, except those specifically exempted. Obsolete provisions of the present section 7 and the provision relating to the effective date of the maximum hours provisions of the 1938 act are deleted.

Semiannual and annual employment agreements.—Under the House bill section 7 (b) (1) of the act, providing a partial exemption from the overtime pay requirement of section 7 (a) for employees employed under collective-bargaining agreements limiting employment to 1,000 hours in any period of 26 consecutive weeks, was amended by inserting “one thousand and forty hours” in lieu of “one thousand hours.” This would permit employment under such agreements for an average workweek of 40 hours during any 26-week period. The conference agreement adopts the House provision.

The House bill modified the provisions of section 7 (b) (2) of the act, relating to guaranteed annual employment plans established by bona fide collective bargaining, to provide for greater flexibility. The annual employment guaranteed could be either 2,080 hours (the present figure) or a lesser figure down to a minimum either of 1,840 hours or of 46 normal workweeks of not less than 30 hours per week. The exemption from overtime pay for hours worked up to 12 a day or 56 a week would not, as at present, be lost for the entire year with respect to an employee who must be worked at the end of the year for a few hours beyond the present 2,080-hour limit. The House bill permitted employment in excess of the annual period guaranteed, up to a maximum of 2,240 hours, if not less than time and one-half the regular rate is paid for all hours worked in excess of the guaranteed period which are also in excess of 40 in the workweek or in excess of 2,080 hours in the contract year. The conference agreement adopts the provisions of the House bill.

Fourteen workweek hours exemption for first processing and canning of fish.—The House bill added to section 7 (b) (3) of the act a partial exemption from the overtime pay requirements for employees in industries engaged in the first processing or canning of fish in the raw or natural state. This provision was added in lieu of the complete

wage and hour exemption provided in section 13 (a) (5), which is discussed below. The conference agreement substitutes for the House provision a new overtime exemption for canning of fish in section 13 (b) discussed below.

Section 7 (c) hours exemptions for processing of farm products.—The conference agreement leaves unchanged the hours exemptions provided by section 7 (c) of the act, except for adding buttermilk to the commodities listed in the hours exemption provided for the first processing of milk, cream, skimmed milk or whey into dairy products. Such a provision was contained in both the House bill and the Senate amendment. The seasonal exemption for the first processing of agricultural or horticultural commodities within the "area of production" was changed in the House bill by transferring the authority to define "area of production" from the Administrator to the Secretary of Agriculture. The Senate amendment did not make this change. The conference agreement leaves this authority in the Administrator.

"Regular rate" and crediting of overtime pay.—The House bill added a new subsection (d) to section 7 of the act containing a comprehensive statutory definition of "regular rate," and a new subsection (g) specifying the payments excluded from "regular rate" which may be credited toward the overtime compensation required by the act. The Senate amendment contained no such provisions. The conference agreement (sec. 7 (d)) adopts the House provisions defining "regular rate" except for revisions of paragraph (3) of subsection (d) indicated below. The conference agreement adopts the crediting provision contained in subsection (g) of the House bill.

The House bill defined "regular rate" as all remuneration for employment except certain specified types of payments. The conference agreement adopts this approach. Each of the seven subdivisions of subsection (d) is intended to provide a separate, carefully defined exclusion from "regular rate." Accordingly, a payment excluded under any one subdivision would not be deemed part of the "regular rate" by reason of the fact that such payment may not be excluded by the language of any other subdivision. The classes of payments excluded under the first four subdivisions are not creditable toward overtime payments required by section 7 of the act.

Payments excluded from "regular rate" and not creditable as overtime pay—Section 7 (d) (1), (2).—The conference agreement adopts the language of the House provisions excluding from the "regular rate" (1) bona fide gifts and payments in the nature of gifts made at Christmas time or on other special occasions under specified conditions, and (2) payments which are not made as compensation for hours of employment, including payments for occasional periods when no work is performed due to vacation, holiday, illness, or failure of the employer to provide sufficient work, and including payments as reimbursement for traveling or other expenses under certain conditions.

Section 7 (d) (3).—Clause (a) of this subsection of the House bill provided for the exclusion from the "regular rate" of certain sums paid at the sole discretion of the employer in recognition of services performed during a given period of time, and not paid pursuant to a prior contract, agreement, or promise causing the employee to expect such payments regularly. The conference agreement adopts the House provision.

The House bill, in clauses (b) and (c) of this subsection, provided for the exclusion from the "regular rate" of certain payments made pursuant to bona fide profit-sharing plans or trusts and of "talent fees" paid to radio and television performers. The conference agreement makes these exclusions, retaining the numbering of the House bill, but adding language giving the Administrator authority to issue appropriate regulations defining the bona fide profit-sharing plans or trusts pursuant to which payments may be made to employees without increasing the "regular rate," and defining "talent fees." Under the conference agreement, similar provision is made in clause (b) for regulations permitting the exclusion from the "regular rate" of payments made by employers pursuant to bona fide thrift or savings plans. Such plans were not expressly mentioned in the House provision.

Section 7 (d) (4).—The conference agreement adopts the language of the House provision excluding from the "regular rate" contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits.

Payments excluded from "regular rate" and creditable as overtime premiums—*Section 7 (d) (5), (6), (7); section 7 (f).*—Under the House bill (section 7 (d) (5)), overtime premiums paid for hours worked in any day or workweek because such hours are in excess of 8 in a day or 40 in a workweek or in excess of the employee's normal working hours or regular working hours, as the case may be, were expressly excluded from the employee's regular rate of pay. Section 7 (g) of the House bill provided for the crediting of such premiums toward statutory overtime compensation due for work in excess of 40 hours. In addition, section 7 (d) (6), (7), and 7 (g) of the House bill continued in effect the provisions of section 7 (e) of the present act (added by act of July 20, 1949, Public Law 177, 81st Cong., 1st sess.). These provisions, which constituted a partial definition of "regular rate" in Public Law 177, are repeated here solely because section 7 (d) is intended to constitute a more comprehensive definition of "regular rate." Although by reason of their textual relation to other provisions of the bill, sections 7 (d) (6) and 7 (d) (7) differ slightly in wording from Public Law 177, they are intended to solve the identical problems which Public Law 177 was intended to solve, and the discussion and specific examples set forth in House Report No. 121 and Senate Report No. 402, accompanying H. R. 858, are applicable to sections 7 (d) (6) and 7 (d) (7). The provision of the House bill corresponding to section 7 (e) (1) of the present amended act expressly placed premium pay for work on "regular days of rest" in the same category under that provision as premium pay for work on Saturdays, Sundays, holidays, and sixth or seventh days of the workweek. "Regular days of rest" are not mentioned expressly in the present section 7 (e) (1). The conference agreement adopts the language of the House provision.

As explained later in this statement under the heading "Retroactive provisions," the provisions of section 7 (e) of the present act, as retained in section 7 (d) (6), (7), and 7 (g) of the conference agreement, will continue to have retroactive effect as provided in section 16 (e) of the conference agreement which replaces section 2 of the act of July 20, 1949 (Public Law 177, 81st Cong., 1st sess.).

Contract pay plans.—The House bill (sec. 7 (c)) contained a provision specifically providing that no employer should be deemed to have violated the overtime provisions of the act by employing any employee for a workweek in excess of 40 hours if such employee was employed pursuant to either a bona fide individual contract, or a collective-bargaining agreement, if the duties of such employee necessitated irregular hours of work, and the contract or agreement (1) specified a regular rate of pay of not less than the minimum hourly rate provided in the act, and compensation at not less than one and one-half times such rate for all hours worked in excess of 40 in any workweek and (2) provided a weekly guaranty of pay for not more than 60 hours based on the rates so specified. The conference agreement adopts the House provision.

Overtime pay based on rate not obtained by averaging straight-time earnings for workweek.—The House bill (sec. 7 (f)) permitted overtime payments for hours worked in excess of 40 in a workweek to be made, under specific conditions, at time and one-half the bona fide hourly or piece rates applicable to the work performed during such overtime hours. Under this provision, employers and employees could agree, in advance of the performance of work and subject to specified conditions, to calculate overtime pay for such work by increasing the applicable hourly or piece rate for a given kind of work by 50 percent during the hours worked after 40 in the workweek, rather than by paying time and one-half based on average hourly straight-time earnings for the workweek. The Senate amendment contained no such provision. The conference agreement adopts the House provision, with two modifications. The first modification makes it possible for such an employment agreement to meet the requirements of this subsection whenever overtime pay is so calculated for the total number of hours worked by the employee in such workweek in excess of 40 hours, even though some of the hours for which overtime pay is received fall before the fortieth hour. This makes it unnecessary to recompute the amount due under the statute at the end of the workweek where it is clear that overtime pay as permitted under this subsection has been paid for a number of hours of work equivalent to the number worked after 40. The second modification is the addition to the House provision of a new clause (3), permitting the computation of overtime pay at a rate not less than one and one-half times a basic rate established by agreement (which may remain constant from workweek to workweek) if such basic rate is authorized by regulation of the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time.

WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS

The House bill limited the application of the provisions of section 8 of the act to industries in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce and made necessary clarifying changes in its subsections to carry out this purpose. Subsection (a) stated the policy of the act to reach an objective of a 75-cent minimum wage for such industries as rapidly as economically feasible without substantially curtailing employment. Subsection (b) specified that the minimum-wage rates which a special industry com-

mittee recommends, and the Administrator approves, were not to give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico or the Virgin Islands. Except for technical changes made necessary by raising the statutory minimum to 75 cents an hour, subsections (c) and (d) of section 8, setting forth the standards and procedures to govern the issuance of wage orders, were to be the same as under the present act. Subsection (e) of section 8 of the present act was omitted from the House bill because it served no purpose in such bill. Subsections (f) and (g) of the present act were retained as subsections (e) and (f).

The Senate amendment made no changes in section 8 of the act except to insert the figure "75 cents an hour" for the figure "40 cents an hour" wherever it was used in its several subsections. The conference agreement adopts in substance the provisions of the House bill.

As is noted elsewhere, the conference agreement provides for adding a new subsection to section 11 under which existing orders of the Administrator restricting industrial home work in a number of industries, which were originally issued under subsection (f) of section 8 of the present act, are continued in full force and effect.

ATTENDANCE OF WITNESSES

The House bill amended section 9 of the act relating to attendance of witnesses by making a technical correction therein and by taking away from the Secretary of Labor subpoena powers vested in him by Reorganization Plan No. 2 of 1946 in connection with administration and enforcement of the child-labor provisions of the act. The Senate amendment made no changes in section 9.

The conference agreement follows the Senate amendment in this respect, leaving unchanged the act's provisions relating to attendance of witnesses.

COURT REVIEW

The House bill amended section 10 of the act relating to court review of Puerto Rican and Virgin Islands industry wage orders issued by the Administrator under section 8 of the act by inserting in subsection (a) thereof the requirement that the Administrator's findings of fact on which such orders are based must be supported by "a preponderance of the evidence" rather than by "substantial evidence," as at present. In addition, the House bill made certain technical corrections in section 10. The Senate amendment made no changes in section 10. The conference agreement follows the Senate amendment in this respect and leaves unchanged existing law relating to court review of industry wage orders.

INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOMEWORK REGULATIONS

The House bill made changes in section 11 which transferred to the Administrator of the Wage and Hour Division the authority of the Secretary of Labor to make investigations and inspections under the child-labor provisions of the act. The Senate amendment made no changes in section 11. The conference agreement follows the Senate amendment in this respect and leaves unchanged existing law relating

to administration and enforcement of the child-labor provisions, including investigations and inspections.

The conference agreement adds to section 11 a new subsection (d) under which all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect. The Administrator is authorized to issue such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary to prevent the circumvention or evasion of, and to safeguard, the minimum wage rate prescribed by the act. The effect of this provision has been explained above in connection with the discussion of the changes made by the conference agreement in sections 5 and 8 of the act. Consistent with the addition of this new subsection, the title of section 11 has been changed by the conference agreement to read "Investigations, inspections, records, and homework regulations."

CHILD-LABOR PROVISIONS

The House bill added a proviso to section 12 (a) of the act which would relieve a purchaser of goods produced in an establishment where oppressive child labor was employed, if such purchaser could prove that he was without knowledge of the employment of oppressive child labor and acted in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the child-labor provisions. The Senate amendment contained no similar provision. The conference agreement follows the House bill in this respect but adopts language similar to the Senate amendment of section 15 (a) (1) of the act, discussed below.

The House bill eliminated the provisions of section 12 (b) of the act which authorizes the Secretary of Labor, or his authorized representatives, to make investigations and inspections under the child-labor provisions and to institute actions for injunctions under section 17 for violations of the child-labor provisions. The House bill, in section 11 (a), transferred such authority to the Administrator. The Senate amendment made no change in the existing law. The conference agreement follows the Senate amendment and makes no change in existing law in this respect.

The House bill provided a new section 12 (b) which directly prohibited the employment of oppressive child labor in commerce or in the production of goods for commerce. The Senate amendment contained identical language as section 12 (c). The conference agreement includes this language as section 12 (c).

EXEMPTIONS

General statement.—The House bill substantially revised section 13 (a) (2) of the act relating to retail and service establishments, amended section 13 (a) (5) relating to fisheries and sea-food employees, section 13 (a) (8) relating to newspapers, section 13 (a) (10) relating to the processing of agricultural commodities, and added new exemptions affecting employees of taxicab companies, certain telegraph agencies, forestry, logging, and sawmill operators, nonprofit agricultural irrigation companies, and rural home workers. The House bill also amended section 13 (a) (4) relating to carriers by air and enlarged

the child-labor exemption contained in section 13 (c). The Senate amendment also substantially revised section 13 (a) (2), amended section 13 (a) (11) relating to telephone-switchboard operators, and added exemptions for certain employees of agricultural irrigation companies and telegraph agencies, employees engaged in the processing or storing of cotton or the processing of cottonseed, employees engaged as home workers in sewing baseballs, and outside buyers of poultry, eggs, cream, and milk. The Senate amendment also exempted newsboys from the wage, hour, and child-labor provisions, and further enlarged the child-labor exemption. Each provision of the House bill and the Senate amendment is discussed below.

Retail and service establishments.—Both the House bill and the Senate amendment contained an identical amendment providing for an exemption for retail and service establishments (sec. 13 (a) (2)). The amendment was continued in the conference agreement.

The amendment (sec. 13 (a) (2)), agreed to in conference clarifies the existing exemption by defining the term “retail or service establishment” and stating the conditions under which the exemption shall apply. This clarification is needed in order to obviate the sweeping ruling of the Administrator and the courts that no sale of goods or services for business use is retail. See *Roland Electrical Co. v. Walling* (326 U. S. 657); *McComb v. Diebert* ((E. D. Pa. 1949) 16 Labor Cases Par. 64,982); *McComb v. Factory Stores* (81 F. Supp. 403 (N. D. Ohio 1948)).

Under paragraph (2) of section 13 (a) as agreed to in conference an establishment is an exempt retail or service establishment if it meets three tests:

First, over 50 percent of the establishment's sales by annual dollar volume of goods or services must be made within the State in which the establishment is located. The requirement that the greater part of the selling or servicing be in intrastate commerce found in the present law is eliminated because of the tendency of the courts to hold that many sales or services made or performed within a State are not intrastate sales or services. See *Kirschbaum v. Walling* (316 U. S. 517, 526); *Boutell v. Walling* (327 U. S. 463, 467). Under the new test, if the sales are made within the State in which the establishment is located, it is immaterial that the sales (a) are made pursuant to prior orders from customers, (b) contemplate the purchase of goods by the establishment from outside the State to fill customers' orders, or (c) are made to customers who are engaged in interstate commerce or in the production of goods for interstate commerce. In this connection, see *Walling v. Jacksonville Paper Co.* (317 U. S. 564).

The second test provides that in order for an establishment to be exempt not less than 75 percent of its annual dollar volume of sales of goods or services (or of both) must not be for resale. In other words, at least three-fourths of the goods or services (or both) sold must be to purchasers who do not buy for the purpose of reselling. Normally, goods are to be considered as sold for resale even though the purchaser sells them in an altered form. In section 3 (n) there is a special definition of the word “resale” which is applicable in the case of building materials. This has been discussed above.

The third test provides that 75 percent of the establishment's annual dollar volume of sales of goods or services (or of both) must be recognized in the particular industry as retail sales or services. Under this

test any sale or service, regardless of the type of customer, will have to be treated by the Administrator and courts as a retail sale or service, so long as such sale or service is recognized in the particular industry as a retail sale or service. Thus, the sale by a farm implement dealer of farm machinery to a farmer will be retail if the sale is recognized as retail in such industry. So, too, sales by the grocery store, the hardware store, the coal dealer, the automobile dealer selling passenger cars or trucks, the clothing store, the dry goods store, the department store, the paint store, the furniture store, the drug store, the shoe store, the stationer, the lumber dealer, etc., whether made to private householders or to business users, will be retail, so long as they are recognized as retail sales or services in such industries. Likewise, sales or services of hotels, restaurants, barber and beauty shops, repair garages, filling stations and the like, whether made or rendered to private householders or to business customers, will be retail so long as they are recognized as retail sales or services in such industries.

The location of the establishment, whether in an industrial plant, an office building, a railroad depot, or a Government park, etc., will make no difference in the application of the exemption. So long as the establishment meets the tests described above, it will be excluded from the minimum wage and overtime provisions of the act.

Up to 25 percent of the establishment's annual dollar volume of sales of goods or services (or of both) may consist of sales for resale and sales that are not recognized as retail sales or services in the particular industry without loss of the exemption.

Paragraph (2) of section 13 (a) of the conference agreement does not exempt large mail-order houses which make most of their sales to out-of-State customers. Nor does it exempt warehouses and central offices of chain-store systems. The employees in such warehouses and central offices are not employed "by" any single retail or service establishment in the chain but rather by the chain itself. Since, however, the exemption does apply to any employee employed "by" an exempt retail or service establishment, it is applicable to employees of an exempt retail or service establishment working in a warehouse operated by and servicing such establishment exclusively, whether or not the warehouse operation is conducted in the same building as the selling or servicing activities. For the same reason, the exemption applies to collectors, repair and service men, outside salesmen, merchandise buyers, consumer survey and promotion workers, and delivery men employed by an exempt retail or service establishment, although they do most of their work away from the establishment. The exemption, however, does not apply to any manufacturing activities since any such activities, when conducted by a retail establishment, if exempt, are intended to be exempt under section 13 (a) (4) discussed below. This does not mean, however, that an exempt retail or service establishment will lose its exemption under section 13 (a) (2) if it engages in some incidental work in the nature of processing in connection with its sales and services, e. g., a grocery may grind coffee; a drug store may prepare prescriptions; a restaurant may process food; a clothing store may make alterations in suits; or a repair garage may grind valves.

The amendment does not exempt banks, insurance companies, building and loan associations, credit companies, newspapers, telephone companies, gas and electric utility companies, telegraph com-

panies, etc., because there is no concept of retail selling or servicing in these industries. Where it was intended that such businesses have an exemption one was specifically provided by the law (sec. 13 (a) (8) (exemption for small newspapers), sec. 13 (a) (11) (exemption for switchboard operators of small telephone exchanges)). The amendment also does not exempt an establishment engaged in the sale and servicing of manufacturing machinery and manufacturing equipment used in the production of goods, because the sale and servicing of such equipment have never been recognized as retail selling or servicing in the industry which distributes or services that type of equipment.

Laundries.—Both the House bill and the Senate amendment contained an identical amendment exempting certain laundries, section 13 (a) (3). The amendment is continued in the conference agreement.

Paragraph (3) of section 13 (a) of the conference agreement grants a specific exemption to laundries and establishments engaged in laundering, cleaning, or repairing clothing or fabrics. This exemption contains two limitations. First, over 50 percent of the establishment's annual dollar volume must be derived from the sales of such services within the State in which it is located. Second, 75 percent of such volume must be derived from the sales of such services to customers who are not engaged in a mining, manufacturing, transportation, or communications business.

The first limitation means that the laundry or cleaning establishment must be primarily engaged in serving customers within its State. If it is primarily engaged in serving customers outside the State of its location, it will not be exempt.

Under the second limitation, no laundry or cleaning establishment will be exempt if more than 25 percent of its business is with such customers as factories, mines, railroad companies, or bus companies. Thus, laundries whose customers consist principally of interstate business, such as a laundry furnishing linens to Pullman trains, will not be exempt. So also, industrial laundries or linen supply companies, more than 25 percent of whose sales of services are to mining, manufacturing, transportation, or communications business organizations, will be unable to qualify for the exemption and will, as at present, remain subject to the act.

On the other hand, the laundry or dry cleaner will be exempt if it meets the two limitations discussed above, whether it launders towels or other linen for barber or beauty shops, doctors' or dentists' offices, or schools, hospitals, restaurants, or hotels, or for the housewife.

Retail establishments making or processing goods.—The House bill contained an exemption from the wage and hour provisions of the act for any employee employed by an establishment which qualifies as a retail establishment under section 13 (a) (2) and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes the goods that it sells. The Senate amendment added a proviso to such exemption to the effect that more than 85 percent of the establishment's annual dollar volume of sales of goods or services must be made within the State in which the establishment is located. The bill as agreed to in conference (sec. 13 (a) (4)) adopts the House bill as amended by the Senate amendment with three changes. First, it is made clear that the establishment must qualify as an "exempt" retail establishment under section

13 (a) (2). Second, the reference to "services" contained in the Senate amendment is stricken and in lieu thereof there are substituted the words "so made or processed". Third, the goods which the exempt establishment makes or processes must be made or processed at the establishment which sells the goods. An establishment will be exempt under this provision of the conference bill if it meets the following six tests:

1. Over 50 percent of its annual dollar volume of sales of goods must be made within the State in which the establishment is located.

2. Seventy-five percent of its annual dollar volume of sales of goods must not be for resale.

3. Seventy-five percent of its annual dollar volume of sales of goods must be recognized as retail sales in its industry.

4. The establishment must be recognized as a retail establishment in its industry.

5. More than 85 percent of the establishment's annual dollar volume of sales of goods which it makes or processes must be made within the State in which the establishment is located.

6. The goods which the exempt establishment makes or processes must be made or processed at the establishment which sells the goods. This test will be met despite the fact that there is a physical dividing line between the manufacturing portion of an establishment and the selling portion such as a partition, wall, etc. For example, a bakery will meet the test even though it bakes its bread and pastries in a back room and sells same in a front room of its establishment.

This exemption will apply typically to bakery establishments which bake the breads and pastries which they sell, ice plants which manufacture the ice they sell, and ice cream parlors or candy kitchens which make their own ice cream or candy.

As in the case of the exemption provided by section 13 (a) (2) the exemption here applies to any employee employed "by" rather than "in" the establishment. Consequently, the following types of employees of an establishment which meets the tests set forth above will also be exempt, even though they may do most of their work outside the establishment: bill collectors, outside repair and service men, outside salesmen, merchandise buyers, consumer survey and promotion workers and delivery men.

Fish canning.—The House bill contained a 14-workweek exemption from the overtime provisions of section 7 of the act for any industry engaged in the first processing or canning of fish in the raw or natural state. The Senate amendment had no comparable provision. The House bill continued the exemption contained in existing law with respect to fish, shellfish, etc., with the exception that the processing and canning of the products and byproducts specified in the exemption would not have applied to fish. The Senate amendment continued the exemption contained in existing law. The conference agreement (a) strikes out the 14-workweek exemption contained in the House bill; (b) continues the exemption contained in section 13 (a) (5) of the present law with the exception of canning; and (c) transfers the canning exemption from section 13 (a) of the act to section 13 (b), which has the effect of exempting the canning of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct

thereof, from the overtime provisions of the act but not from the minimum wage requirements. Under the conference agreement "canning" means hermetically sealing and sterilizing or pasteurizing and has reference to a process involving the performance of such operations. It also means other operations performed in connection therewith such as necessary preparatory operations performed on the products before they are placed in bottles, cans, or other containers to be hermetically sealed, as well as the actual placing of the commodities in such containers. Also included are subsequent operations such as the labeling of the cans or other containers and the placing of the sealed containers in cases or boxes whether such subsequent operations are performed as a part of an uninterrupted or interrupted process. It does not include the placing of such products or byproducts thereof in cans or other containers that are not hermetically sealed as such an operation is "processing" as distinguished from "canning" and comes within the complete exemption contained in section 13 (a).

Irrigation workers.—The House bill added a new wage-and-hour exemption as section 13 (a) (16) which applied to any employee employed in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, which are used exclusively for supply and storing of water for agricultural purposes. The Senate amendment provided an identical exemption as an additional clause in section 13 (a) (6) with the exception that language was added permitting the employer to operate on a share-crop basis. The conference agreement follows the Senate amendment and includes the exemption in section 13 (a) (6).

Small newspapers.—The House bill amended section 13 (a) (8) of the act relating to weekly and semiweekly newspapers by increasing the permitted circulation of an exempt newspaper from 3,000 to 5,000, by extending the exemption to dailies and by permitting the major part of the circulation to be not only within the county where printed and published, but also within counties contiguous thereto, whether or not within the same State. The exemption was renumbered section 13 (a) (9). The Senate amendment made no change in existing law. The conference agreement follows the House bill but reduces the circulation from 5,000 to 4,000 and retains the numbering of the present section 13 (a) (8).

"Area of production."—The House bill amended section 13 (a) (10) of the act by transferring the authority to define "area of production" from the Administrator to the Secretary of Agriculture. The exemption was renumbered section 13 (a) (11). The Senate amendment made no change in existing law. The conference agreement follows the Senate amendment in this respect and leaves the present law unchanged, and retains the numbering of the present section 13 (a) (10).

Small telephone exchanges.—The House bill made no change in existing law with respect to the wage-and-hour exemption provided by section 13 (a) (11) of the act for switchboard operators employed in public telephone exchanges which have less than 500 stations, but renumbered this exemption as section 13 (a) (12). The Senate amendment increased the number of stations to not more than 750. The conference agreement adopts the Senate provision, and retains the numbering of the present section 13 (a) (11).

Taxicabs.—The House bill added a new section 13 (a) (13) to the act which provided a wage-and-hour exemption for any employee of an employer engaged in the business of operating taxicabs. The Senate amendment made no change in existing law in this respect. The conference agreement follows the House bill but rennumbers the exemption as section 13 (a) (12).

Contract telegraph agencies.—The House bill added a new wage-and-hour exemption as section 13 (a) (14) of the act for any employee or proprietor in a retail or service establishment as defined in the amended section 13 (a) (2) with respect to whom the wage-and-hour provisions would not otherwise apply, who is engaged in handling telegraph messages for the public under an agency or contract arrangement with a telegraph company if the telegraph message revenue of the agency does not exceed \$500 a month. The Senate amendment added substantially the same exemption as section 13 (a) (12) of the act. The conference agreement adopts the House provision but rennumbers the exemption as section 13 (a) (13).

Logging and sawmilling.—The House bill added a wage-and-hour exemption as section 13 (a) (15) of the act which applied to any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing, processing, transporting, or sawing logs or other forestry products in and about a sawmill if the number of employees employed by the employer in forestry or lumbering operations does not exceed 12. The Senate amendment made no change in existing law in this respect. The conference agreement adopts the House provision but excludes from the exemption sawmill and other operations in connection with processing of logs or other forestry products. The exemption covers the woods operations and extends through the preparing and transporting of logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal. To be exempt, an employee must be employed by an employer who has not more than 12 employees in forestry or logging operations.

Cotton and cottonseed.—The Senate amendment added a new wage-and-hour exemption as section 13 (a) (13) of the act which applied to employees of any employer engaged in ginning, storing, or compressing of cotton or in the processing of cottonseed, with the proviso that such employees must be employed in, about, or in connection with such operations which are conducted in any county in which cotton is produced as shown in the most recent annual cotton-production report of the Bureau of the Census. The House bill contained no such provision. The conference agreement follows the House bill and makes no change in existing law in this respect.

Rural home workers.—The House bill added a new wage-and-hour exemption as section 13 (a) (17) of the act which applied to any home worker in a rural area who is not subject to any supervision or control by any person whomsoever, and who buys raw material and makes and completes any article and sells the same to any person, even though the article is made according to specifications and the requirements of a single purchaser. The Senate amendment contained no such exemption. The conference agreement follows the Senate amendment in this respect.

Home work on baseballs.—The House bill contained no specific exemption for home workers employed in sewing baseballs and soft-

balls. The Senate amendment contained such an exemption. The conference agreement follows the House bill in this respect.

Air carriers.—The House bill eliminated the minimum-wage exemption now provided in the act for any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act, but continued the maximum-hour exemption as section 13 (b) (3) of the act. The Senate amendment made no change in existing law in this respect. The conference agreement adopts the House provision.

Outside buyers of poultry and dairy products.—The House bill made no change in existing law with respect to outside buyers of poultry or dairy products. The Senate amendment added a maximum hour exemption as section 13 (f) of the act, which applied to any individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state. The conference agreement follows the Senate amendment but numbers the exemption as section 13 (b) (5).

Child-labor.—Section 13 (c) of the existing law makes the child-labor provisions inapplicable with respect to employees employed in agriculture while not legally required to attend school as well as with respect to any child employed as an actor in motion pictures or theatrical productions. The House bill made no change in existing law in the provision relating to agriculture but broadened the exemption for actors by extending it to performers and by adding the words "or in radio or television productions" after the words "motion pictures or theatrical productions." The Senate amendment changed the child labor agriculture exemption by substituting for the words "while not legally required to attend school" the language "outside of school hours for the school district where such employee is living while he is so employed." The Senate amendment was identical with the House bill with respect to the child-labor exemption relating to actors and performers in motion pictures or theatrical productions, or in radio or television productions. The conference agreement adopts the Senate amendment with respect to the child labor agriculture exemption and adopts the provisions contained in both the House bill and the Senate amendment which broadens the child-labor exemption applicable to motion pictures and theatrical productions, and radio or television productions.

Newspaper carrier boys.—The House bill provided no special exemption for newsboys. The Senate amendment added an exemption as section 13 (e) of the act which provided a complete minimum-wage, maximum-hour, and child-labor exemption with respect to any employee engaged in the delivery of newspapers to the consumer. The conference agreement adopts the Senate provision but rennumbers the exemption as section 13 (d).

LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

Clause (1) of section 14 of the present act permits the employment "of messengers employed exclusively in delivering letters and messages" at subminimum rates, under regulations or orders of the Administrator as prescribed in section 14. The House bill made no change in existing law. The Senate amendment substituted for the above-quoted language the words "and of minor messengers under 18 years of age employed primarily in delivering letters and messages." The conference agreement follows the House bill but adopts that pro-

vision of the Senate amendment which substituted the word "primarily" for "exclusively" in the existing provision.

PROHIBITED ACTS

Both the House bill and the Senate amendment added language to section 15 (a) (1) designed to make it lawful for a purchaser in good faith of goods produced in violation of the act to sell such goods in commerce. The conference agreement (sec. 13 (a)) inserts in section 15 (a) (1) a proviso containing the language of the Senate amendment. This provision protects an innocent purchaser from an unwitting violation and also protects him from having goods which he has purchased in good faith ordered to be withheld from shipment in commerce by a "hot goods" injunction. An affirmative duty is imposed upon him to assure himself that the goods in question were produced in compliance with the act, and he must have secured written assurance to that effect from the producer of the goods. The requirement that he must have made the purchase in good faith is comparable to similar requirements imposed on purchasers in other fields of law, and is to be subjected to the test of what a reasonable, prudent man, acting with due diligence, would have done in the circumstances.

The conference agreement also provides in section 13 (b) that regulations or orders of the Administrator under the provisions of the new section 11 (d), dealing with industrial homework, may be enforced in the same manner as the Administrator's record-keeping regulations (sec. 15 (a) (5)).

PENALTIES

Both the House bill and the Senate amendment added a new subsection (c) to section 16 authorizing the Administrator to supervise the payment of unpaid minimum wages or overtime compensation due under the act, and providing that agreement by any employee to accept such payment should, upon payment in full, constitute a waiver of his rights under section 16 (b). The Senate amendment, in addition, authorized the Administrator, at the request or with the consent of the employee, to sue for any back wages due, and provided that the Administrator might join in one cause of action the claims of any employees similarly situated who consented thereto. The Senate amendment also provided that the consent of any employee to the bringing of any such action constituted a waiver of his rights under section 16 (b), unless the action be dismissed without prejudice on motion of the Administrator. The Senate amendment also provided that nothing in the subsection should affect the equitable jurisdiction of the courts under section 17. The Senate amendment also made the Portal-to-Portal Act 2-year statute of limitations applicable to such actions brought by the Administrator. The conference agreement adopts the Senate amendment in revised form.

The conference agreement omits from section 16 (c) in the Senate amendment the provision that the Administrator may sue for wages due at the request or with the consent of the employee making the claim. In its place the conference agreement substitutes a requirement that the Administrator can sue for such unpaid minimum wages

or unpaid overtime compensation only on the written request of the employee. The conference agreement adds a proviso to prevent the Administrator from using the authority granted in this section to bring test cases involving new or novel questions of law. The Administrator may use his authority under this section to bring a suit for an employee only in cases where the law has been settled finally by the courts. The proviso is not intended, however, to preclude the Administrator from instituting suits or the court from taking jurisdiction on the basis of existing legal precedents under the Fair Labor Standards Act of 1938 as amended, except to the extent that they are changed by the amendments made by the conference agreement. While the conference agreement omits the provision that the Administrator could join in one cause of action the claims of any employees similarly situated who consented thereto, it is the intention of the conferees under the conference agreement that the Rules of Civil Procedure of the district courts of the United States relating to joinder of parties will apply to actions brought by the Administrator under section 16 (c) as such rules would be applicable in any other civil actions brought in the district courts of the United States. In like manner, the rules as to joinder of parties applicable to civil actions in the courts of the several States and Territories will apply to actions brought by the Administrator in the courts of such States and Territories under section 16 (c).

INJUNCTION PROCEEDINGS

The House bill adopted the language of section 17 of the act without change. The Senate amendment altered this section to include a more precise description of the United States courts having jurisdiction of actions to restrain violations. The legal effect of both versions was the same. The conference agreement adopts the Senate version with a proviso to the effect that no court shall have jurisdiction, in any action brought by the Administrator to restrain violations of section 15, to order payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages. This proviso has been inserted in section 17 of the act in view of the provision of the conference agreement contained in section 16 (c) of the act which authorizes the Administrator in certain cases to bring suits for damages for unpaid minimum wages and overtime compensation owing to employees at the written request of such employees. Under the conference agreement the proviso does not preclude the Administrator from joining in a single complaint causes of action arising under section 16 (c) and section 17. Nor is it intended that if the Administrator brings an action under section 16 (c) he is thereby precluded from bringing an action under section 17 to restrain violations of the act. Similarly, the bringing of an injunction action under section 17 will not preclude the Administrator from also bringing in an appropriate case an action under section 16 (c) to collect unpaid minimum wages or overtime compensation owing to employees under the provisions of the law. Nor is the provision intended in any way to affect the court's authority in contempt proceedings for enforcement of injunctions issued under section 17 for violations occurring subsequent to the issuance of such injunctions. The provision, however, will have the effect of reversing such decisions as *McComb v. Scerbo* ((C. C. A. 2) 17 Labor Cases No. 65,297), in which the court included a restitution order in an injunction decree granted under section 17.

RELATION TO OTHER LAWS

The House bill reenacted, but did not change the provisions of section 18 of the act. The Senate amendment made no change in this section. The conference agreement also leaves unchanged the provisions of this section.

SEPARABILITY OF PROVISIONS

The House bill reenacted but did not change section 19 of the act. The Senate amendment made no change in this section. The conference agreement leaves unchanged the provisions of this section.

MISCELLANEOUS AND EFFECTIVE DATE

Effective date.—The House bill provided that the Fair Labor Standards Amendments of 1949 should take effect upon the expiration of 60 days from the date of the enactment thereof, except that the provisions of section 7, relating to overtime compensation, were to be in full force and effect from and after the date of enactment thereof. The Senate amendment provided that its amendments to the Fair Labor Standards Act should become effective upon the expiration of 120 days from the date of enactment thereof. Section 16 (a) of the conference agreement provides that except for the amendment made by section 4 of the conference agreement which is to take effect upon the date of its enactment, the Fair Labor Standards Amendments of 1949 shall become effective 90 days from the date of enactment thereof.

Portal-to-Portal Act.—The House bill (sec. 3 (d)) provided that no amendment made by the new act should be construed as amending, modifying, or repealing any provision of the Portal-to-Portal Act of 1947. The Senate amendment contained an identical provision (sec. 9 (b)) but added an exception with respect to the last sentence of section 16 (c) of the act added by the Senate amendment, dealing with the date for commencement of actions brought by the Administrator with respect to claims for unpaid minimum wages or overtime compensation owing to employees under the act. Section 16 (b) of the conference agreement adopts the Senate provision, amended to exclude the provisions of section 3 (o) of the act from the operation of this section.

Existing orders.—The House bill (sec. 3 (b)) provided that orders, regulations, and interpretations of the Administrator or of the Secretary of Labor, and agreements entered into by the Administrator or the Secretary of Labor, in effect under the act on the date of enactment of the Fair Labor Standards Amendments of 1949 should remain in effect as orders, regulations, interpretations, or agreements of the Administrator or the Secretary of Agriculture, as the case might be, except to the extent that any such order, regulation, interpretation, or agreement might be inconsistent with the provisions of the amendments or might from time to time be amended, modified, or rescinded by the Administrator or the Secretary of Agriculture, as the case might be, in accordance with the provisions of such amendments. The Senate amendment did not contain any provisions dealing with this matter. Section 16 (c) of the conference agreement follows the provisions of the House bill with respect to this matter, except that in accordance with the decision by the conferees to make no change

with respect to administration of the act the references to the Secretary of Agriculture contained in the House bill have been changed to references to the Secretary of Labor.

Existing liabilities.—The House bill (sec. 3 (c)) provided that penalties or liabilities, with respect to any act or omission occurring prior to the effective date of the fair labor standards amendments of 1949, should not be affected by any amendment made therein, except that after 2 years from such effective date no action was to be instituted under section 16 (b) with respect to any liability accruing thereunder for any act or omission occurring prior to the effective date. The Senate amendment contained no such provision. Section 16 (d) of the conference agreement adopts the House provisions. This provision will save the rights of the United States in respect to criminal prosecutions and of employees under section 16 (b). Penalties and liabilities for past acts are unaffected; also, injunctions previously issued by the courts under section 17 retain their validity, except to the extent that the acts or omissions upon which the injunctions were based are no longer unlawful under or prohibited by the amendments made by the conference agreement. The 2-year limitation provision is similar to section 6 of the Portal-to-Portal Act of 1947.

Retroactive provisions.—The House bill (sec. 3 (e)) expressly gave retroactive effect to sections 7 (d) (6), 7 (d) (7), and 7 (g), by adding language identical in effect to that of section 2 of the act of July 20, 1949 (Public Law 177, 81st Cong., 1st sess.). The Senate amendment contained no such provision. The conference agreement follows the approach of the House bill in this respect.

Section 16 (e) of the conference agreement provides that no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, in any action or proceeding commenced prior to or on or after the effective date of the conference agreement on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949 (the effective date of Public Law 177, 81st Cong., 1st sess.), if the compensation paid prior to that date for such work was at least equal to the compensation which would have been payable therefor had sections 7 (d) (6), 7 (d) (7), and 7 (g) of the Fair Labor Standards Act of 1938, as amended by the conference agreement, been in effect at the time of such payment.

Repeal of Public Law 177, Eighty-first Congress.—Section 16 (f) of the conference agreement contains a new provision repealing the act of July 20, 1949 (Public Law 177, 81st Cong., 1st sess.). The substance of section 1 of said act has been incorporated in section 7 (d) (6), 7 (d) (7), and 7 (g) of the Fair Labor Standards Act of 1938, as amended by the conference agreement. Section 2 of said act is likewise no longer necessary in view of the language contained in section 16 (e) of the conference agreement.

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