



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

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ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

October 25, 1938.

Dear Sir:

The Board understands that, at their meeting in September, the Presidents of the twelve Federal Reserve banks expressed the view that, as a matter of policy, all of the Federal Reserve banks, for the time being at least, should conform to the standards established by the Fair Labor Standards Act of 1938, regardless of whether or not the provisions of the act may later be held to be inapplicable to the Federal Reserve banks. The Board concurs in the view that this is a desirable and proper policy for the Federal Reserve banks to pursue at this time.

The considerations which led to the adoption of this policy support the view that the Federal Reserve banks should apply the standards established by the act to all classes of employees except classes specifically exempted by the act and that, whenever any doubt exists as to the applicability of the act to a particular employee or class of employees, the doubt should be resolved in favor of its applicability, at least until the situation is clarified by administrative rulings or otherwise. Practical considerations as well as considerations of policy support this view. The act is drawn in very broad and sweeping terms; many doubts exist as to its correct interpretation as applied to particular situations; violations of the act are punishable by fine or imprisonment; and, under the provisions of section 16(b) of the act, any employer who violates the provisions of sections 6 or 7 is liable to the employee or employees affected in double the amount of their unpaid minimum wages or their unpaid overtime compensation, as the case may be, and such liability may be enforced in suits brought by individual employees.

The Board understands that, while the policy of complying with the standards established by the act may entail some minor changes, the Federal Reserve banks have generally maintained working conditions more favorable to their employees than the minimum standards required by the act and that the adoption of this policy will not involve any major changes, either in hours of employment or in salaries paid.

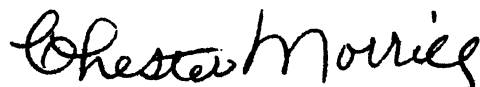
In this connection, attention is invited to the provision of section 18 of the act to the effect that, "No provision of this act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage of this act or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this act".

On the other hand, it is believed that every reasonable effort should be made through careful management to avoid increasing the expenses of the Federal Reserve banks any more than is reasonably necessary in order to comply with the standards established by the act. To this end, it is expected that the Federal Reserve banks will carefully canvass the extent to which overtime work may be avoided and the taking on of more employees may be kept to a minimum, by lending employees between departments, by reducing the number of hours worked on one or more days of a week as an offset to overtime worked on other days in the same week, and by making other operating and administrative adjustments.

Inasmuch as it would seem desirable for all of the Federal Reserve banks to pursue uniform policies in conforming to the standards established by the act, the Board has considered questions raised by various Federal Reserve banks and its views as to the manner in which certain of these questions should be answered are set forth in a memorandum inclosed herewith. However, it should be understood that no expression of the Board's views would afford the Reserve banks any legal defense in any criminal proceeding for a violation of the act or in any suit brought by an employee to recover double the amount of any overtime compensation alleged to be due him under the act, if it should be held that the Federal Reserve banks were subject to the act.

It is not believed to be desirable at the present time for the Federal Reserve banks or the Board acting on their behalf to attempt to obtain any rulings or determinations from the Administrator. However, it is anticipated that from time to time the Administrator will issue regulations and will make determinations and rulings at the request of others, which will aid in deciding how best to conform to the standards prescribed by the act; and every effort will be made to obtain copies of such regulations, rulings and determinations, and to forward them to the Federal Reserve banks as promptly as possible.

Very truly yours,



Chester Morrill,
Secretary.

Inclosure.

TO PRESIDENTS OF ALL FEDERAL RESERVE BANKS

COMMENTS RELATIVE TO THE
FAIR LABOR STANDARDS ACT OF 1938

(The following statements are for the information of the Federal Reserve banks and do not represent final legal conclusions. All of such statements are, of course, subject to the possibility that different positions may be taken by the Administrator or by the courts.)

Maximum Hours of Work.

The Act does not forbid requiring employees to work more than the maximum number of hours specified in the statute if they are paid for work in excess of such maximum hours at a rate not less than one and one-half times the regular hourly rate of compensation. For the purposes of the Act the controlling factor is the total number of hours actually worked during any one workweek, regardless of any leave taken during such week.

Must Workweek be Same as Calendar Week?

The regulations of the Wage and Hour Division apparently contemplate that the workweek of an employee may be different from the calendar week and different from the workweek of other employees of the same employer, provided that the workweek is not changed for the purpose of evasion of provisions of the Act or any regulations prescribed pursuant thereto.

Maximum Hours in Workweek during Which Holiday Occurs.

Where an employee does not work on a holiday, there appears

to be nothing in the Act to prevent him being required to work a maximum of forty-four hours during the other days of the workweek in which the holiday occurs without any portion of such time being classed as overtime.

Allowance of Compensating Time in Lieu of Paying Overtime.

Payment for overtime work may be minimized by reducing time worked on one or more days to offset overtime worked on other days of the same workweek.

Luncheon Periods.

Periods allowed for meals during any particular workweek should not be counted in determining the number of hours actually worked during such week.

Payment for Overtime where Hours Worked do not exceed Forty-four Hours per Workweek.

The Act apparently does not require payment of time and one-half for overtime above the established number of hours in the bank's workweek but merely requires payment of time and one-half for overtime when the hours worked during any one workweek exceed forty-four hours and in such case requires the payment of time and one-half only for the overtime hours in excess of forty-four.

Overtime Work Resulting from Examinations, Audits, or Causes Beyond the Bank's Control.

There is no provision in the Act excluding overtime resulting from causes beyond the control of the employer. Therefore, it is believed that the fact that overtime results from audits or examinations

of the bank or from causes beyond the control of the bank does not justify noncompliance with the terms of the Act.

Method of Computing Hourly Wage of Employees Receiving Monthly or Yearly Salary.

The method of computing an employee's hourly wage is provided in the regulations of the Administrator of the Wage and Hour Division regarding records to be kept by employers pursuant to section 11(c) of the Fair Labor Standards Act. Copies of these regulations were forwarded to Counsel for the Federal Reserve banks on October 22, 1938. It is believed that, in making any division of annual or monthly salaries for the purpose of arriving at an hourly rate of pay, no deduction should be made for time allowed for annual leave or sick leave. For instance, in dividing the annual salary by a number of weeks, it should be divided by fifty-two and not by fifty-two minus the number of weeks allowed as annual leave or sick leave. Where the previously established workweek of an employee is less than forty-four hours a week, it is not believed advisable arbitrarily to divide his weekly salary by forty-four in order to determine his hourly wage, especially in view of the provisions of the last sentence of section 18 of the Act.

Building Maintenance Employees.

The question has been raised as to whether the wage and hour provisions of the Act apply to building maintenance employees, such as janitors, elevator operators, restaurant employees, watchmen, and guards. Although there are strong grounds for the view that the Act should not be construed as applying to such employees of Federal Reserve banks, it

is understood that the Wage and Hour Division of the Department of Labor regards this as a very close question and has not reached a decision thereon. Accordingly, until this point is clarified, it is believed that it would be advisable for the Federal Reserve banks to apply the minimum wage and maximum hour provisions of the Act to building maintenance employees as well as to all other classes of employees not specifically exempted from the Act.

Exemptions of Executive, Administrative, and Professional Employees.

Regulations defining executive, administrative, and professional employees were issued by the Administrator on October 19, 1938, and copies were sent to Counsel for each Federal Reserve bank under date of October 20. It will be observed that, under the terms of the regulation, the question whether a particular employee is exempted depends upon the facts in each individual case. Each Federal Reserve bank should determine which of its employees fall within these exemptions in the light of the regulations of the Administrator.

Employees of the Fiscal Agency Departments.

Employees in the fiscal agency departments of the Federal Reserve banks are not employees of the United States and, therefore, are not exempted under the provisions of section 3(d) of the Act.

Applicability of Child Labor Provisions.

In view of the provisions of the Act on this subject, it is believed that no Federal Reserve bank should employ or continue in its employ any person under sixteen years of age.

Time Spent in Traveling.

There is nothing in the Act or in any of the administrative

rulings to furnish any guide as to the proper treatment of time spent by a nonexempted employee in traveling on the business of his employer in determining the number of hours worked during a workweek. Therefore, the Board is not in a position to express any opinion on this subject. It is suggested, however, that a careful record be kept of the total time spent by nonexempted employees while in a travel status and of the portion of such time spent actually working (excluding the time spent solely in traveling) and other pertinent data, in order that appropriate adjustments may be made when the solution of this problem has been determined.

Records.

The Act requires an employer to keep such records as the Administrator shall prescribe by regulation or order. Regulations on this subject were published in the Federal Register for October 22, 1938, copies of which were sent to Counsel for the Federal Reserve banks on that date.