

FLSA-48

April 18, 1951

I regret the delay in making reply to your request for an opinion as to whether cleaning women employed by the *** are covered by the Fair Labor Standards Act of 1938, as amended.

From your letter it appears that the *** engaged in a general banking and trust business, owns and exclusively occupies a building in which it has its main office. The employees in question, employed as cleaning women in the evening, perform the usual sweeping, scrubbing, mopping, floor waxing, and dusting operations in maintaining the bank's quarters clean and attractive.

As you know, the Fair Labor Standards Act, hereinafter referred to as the Act, applies to employees engaged in interstate and foreign commerce or in the production of goods for such commerce, including any closely related process or occupation directly essential to such production. The Act requires that such employees be paid a minimum wage of seventy-five (75) cents an hour for all hours worked, and overtime compensation at not less than one and one-half times their regular rate of pay for all hours worked in excess of forty (40) in a workweek, unless the employees are exempt from one or both of these requirements by virtue of some specific provision of the Act. For your further information I am enclosing a copy of the Act and a copy of the Federal Wage-Hour Law Digest.

The Act defines "goods" to mean "* * * goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character * * * ." The Act defines the work "produced" as follows: "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."

The preparation, execution, or other validation of such documents as bills of exchange, negotiable notes, bonds, commercial paper, shares of stock and bills of lading is judicially recognized as the production of goods. See Bozant v. Bank of New York, 146 F.2d 787, 789 (C.A. 2).

In the normal course of events such goods freely move in commerce through the facilities provided by banks and trust companies. I assume that the *** is so engaged; if so, it is engaged in commerce and the production of goods for commerce within the meaning of the Act.

Under the Act prior to the most recent amendments thereto, which became effective January 25, 1950, the term "produced" was defined to include any "process or occupation necessary" to the production of goods. Under that definition maintenance and custodial employees, such as watchmen, janitors, charwoman, and elevator operators, employed by or performing maintenance or custodial services for producers of goods for commerce were held to be covered by the Act. Kirschbaum v. Walling, 316 U.S. 517; Walton v. Southern Package Corp., 320 U.S. 540; Borden Company v. Morella, 325 U.S. 679; and Bozant v. Bank of New York, 156F. 2d 787 (C.A. 2).

The amendments substituted the words "closely related process or occupation directly essential" to production for the above-quoted language in Section 3(j) of the Act but it is not believed that this change affects the coverage of maintenance and custodial employees, such as charwomen, employed by an employer engaged in the production of goods for commerce. The statement of the managers on the part of the House, appended to the Conference Report on H.R. 1453, 81st Congress, states, on page 14 thereof, that this change is "not intended to remove from the Act maintenance, custodial, and clerical employees of manufacturers, mining companies, and other producers of goods for commerce." (Underscoring supplied). The Conference Report states that "all such employees perform activities that are closely related and directly essential to the production of goods for commerce."

Under the above-quoted reasoning the activities performed by the eight (8) cleaning women employed at the main office of the are closely related and directly essential to the production of goods for commerce and they are, therefore, within the general coverage of the Act and the scope of the new amendments.

With respect to the case of Stoike v. First National Bank, 290 N.Y. 195, 48 N.E. 2d 482 (N.Y. Ct. of App., 1943), certiorari denied, 320 U.S. 726, to which you referred, you will note that the question of coverage based on the production of goods for commerce was not before the court and, for that reason, the case cannot be said to support your position as to the employees of the *** .

If you have further questions please feel free to write me or you may contact our Regional Office at *** .

Very truly yours,

Wm. R. McComb
Administrator

Enclosures