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Fair Labor Standards Act -- Exemption of Agricultural Employees -- The "Area of Production"

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Plaintiff, suing for unpaid minimum and overtime wages, was employed as a night watchman in a cotton warehouse located in a town of 6,309 population in an area characterized by a large volume of cotton production. Over ninety-five percent of the cotton regularly received by the warehouse was grown within twenty miles of the warehouse. The defendant, operator of the warehouse, claimed that the plaintiff was exempt from the Fair Labor Standards Act[1] under section 13(a)(10).[2]

This section of the act completely exempts from both the minimum wage and the overtime provisions employees engaged in storing or processing agricultural commodities within the "area of production." And Congress conferred upon the Administrator of the Fair Labor Standards Act the duty to define the "area of production."[3] Therefore, in order to be exempt an employee must not only be engaged in one of the operations enumerated in the act, but his place of employment must fall within the Administrator's definition of "area of production."[4]

The Administrator defines "area of production" as being in open country or in a rural community. He further qualifies this by requiring that in order for a business to be considered as within the "area of production" ninety-five percent of its supply of commodities must come from the immediate vicinity. In the case of cotton compressing, that percentage must come from within a twenty mile radius of the place of business. The most controversial qualification placed in the "area of production" test involves the population of the place where the business

[1] Fair Labor Standards Act, 52 STAT. 1060 (1938), as amended, 29 U.S.C. §§ 201-219 (1952). Sections 1-11 of the act generally provide that all employees engaged in commerce or in the production of goods therefor are entitled to a set minimum wage and certain overtime benefits. The particular employees here in question were found to be in the production of goods for commerce because their occupations were directly essential and closely related to such production. See Kirschbaum v. Walling, 316 U.S. 517 (1942).

[2] Lovvorn v. Miller, 215 F.2d 601 (5th Cir. 1954). See text at note 10 *infra*.

[3] Fair Labor Standards Act § 13(a)(10), 52 STAT. 1060 (1938), as amended, 29 U.S.C. § 213(a)(10) (1952), provides that the minimum wage and overtime provisions of the act shall not be applicable to "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."

[4] The reasons which prompted Congress to grant this power to define to the Administrator were set out by Justice Frankfurter in the early case of Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607 (1944). "In view . . . of the variety of agricultural conditions and industries throughout the country the bounds of these areas could not be defined by Congress. Neither was it deemed wise to leave such economic determinations to the contingencies and inevitable diversities of litigation. And so Congress gave the Administrator power to assess all the factors relevant to the subject matter." *Id.* at 614.

is located. It is expressly provided that no establishment located within a city or town of more than 2,500 population can be exempt.[5]

Tobin v. Traders Compress Co.[6] was the first direct attack on the Administrator's population test in the courts. In this case the Court of Appeals for the Tenth Circuit held that the definition was based on relevant economic conditions. The court pointed out that a population of 2,500 is the popular dividing line between urban and rural communities according to the Bureau of Census and other agencies. Although the court took notice of the fact that over eighty percent of all the cotton-compressing industry would fall outside the exemption because of the population test alone, it ruled that the Administrator's definition is neither arbitrary nor capricious. The court granted that the test is not perfect; however, it pointed out that no better criteria have been advanced and that the power to define was given to the Administrator and not the courts.

In the *Traders Compress* case there was a strong dissent.[7] The dissenting opinion takes the position that a test based on population amounts to an unfair discrimination. It urges that too much emphasis is placed on the mere location of the business establishment and not on the character of the community which may surround it. The dissent brings to light the very strong possibility that two identical agricultural industries may be located not more than a mile apart, yet one might get the advantages of being exempt from paying minimum wages and overtime while the other could still be required to meet these standards. It further states that the population of a town generally has nothing to do with whether or not such town is within a particular "area of production."

In *Jenkins v. Durkin*[8] the Court of Appeals for the Fifth Circuit, by way of dictum, expressed the opinion that the population criterion of the Administrator's definition is an invalid standard. The conclusion of this court is based completely on the reasoning set out by the dissent in the *Traders Compress* case.[9] This dictum set the stage for the holding of the same court of appeals in the case under discussion, *Lovvorn v.*

[5] 29 C.F.R. § 536.2 (1956).

[6] 199 F.2d 8 (10th Cir. 1952). The fact that the courts have the power to declare a regulation of the Administrator to be in excess of the power delegated by Congress was established in Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607 (1944). In that case the Court ruled that a provision in the Administrator's definition requiring that an employer have no more than seven employees if he was to claim the exemption was an arbitrary and capricious criterion for determining "area of production." Having come to this decision, the Court announced that it would refrain from enforcing any part of the regulation until the number of employees test had been removed. The question of the population test was also raised in this case, but the Court reserved any decision concerning it.

[7] 199 F.2d 8, 11 (10th Cir. 1952) (dissenting opinion).

[8] 208 F.2d 941 (5th Cir. 1954).

[9] See note 7 *supra.*

Miller.[10] The court there found that the employer met all the qualifications for the exemption except for the fact that his business establishment was located within a town of 6,309 population, greater than the prescribed maximum of 2,500. The population criterion was held to be a standard which discriminated among businesses located within a single "area" of agricultural production. The court again cited with approval the dissent in the Tenth Circuit case of *Tobin v. Traders Compress Co.* and held that the population criterion was arbitrary, capricious, and invalid.

Within one year from the date of this decision the Fifth Circuit was again faced with the same problem in *Mitchell v. Budd*.[11] Relying on its decisions in *Jenkins v. Durkin* and *Lovvorn v. Miller,* the court again held that the Administrator's definition was invalid. The Supreme Court granted certiorari in the *Budd* case,[12] because of conflicting decisions in the Fifth and Tenth Circuits as to the validity of the population test, and reversed the Fifth Circuit. The Court found that the Administrator was compelled to draw "a line between agricultural enterprises operating under rural-agricultural conditions and those subject to urban-industrial conditions,"[13] that the Administrator had stayed within the allowable limits after a reasoned and objective consideration of all the factors involved, and that his definition was a valid one.

It is understood that prior to the holding of the Court in the *Budd* case the Administrator was in the process of drafting a completely new and different definition of "area of production." However, with the coming of this decision he was able to abandon this new plan and to continue to restrict the applicability of the exemption in those industries storing or processing the products of local agriculture. The growths, shifts, and changes in the population of this country in recent years have affected the farming communities and the towns located in the heart of agricultural areas. In the light of these changes, it seems reasonable to suggest that what was once a proper measure of "area of production" might now require some amending if the intended benefit to the agricultural industry is not to be lost.

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[10] 215 F.2d 601 (5th Cir. 1954). See text at note 2 *supra*.
[11] 221 F.2d 406 (5th Cir. 1955).
[12] Mitchell v. Budd, 350 U.S. 473 (1956).
[13] 350 U.S. at 478.