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commerce were not intended to be included as employees doing work ''closely related'' to production on ''on behalf of'' the producer where they were employed by a ''local window-cleaning company'' or a ''local independent nursery concern,'' merely because the customers of the employer happen to include producers of goods for commerce.[17] A similar view was expressed with respect to employees of a ''local exterminator service firm'' working wholly within the State exterminating pests in private homes, in a variety of local establishments, ''and also in buildings within the State used to produce goods for interstate commerce.''[17]

[15 FR 2925, May 17, 1950, as amended at 22 FR 9692, Dec. 4, 1957]

§ 776.20 "Goods."

(a) *The statutory provision.* An employee is covered by the wage and hours provisions of the Act if he is engaged in the ''production'' (as explained in §§ 776.15 through 776.19) ''for commerce'' (as explained in § 776.21) of anything defined as ''goods'' in section 3(i) of the Act. This definition is:

> *Goods* means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(b) *''Articles or subjects of commerce of any character.''* It will be observed that ''goods'' as defined in the Act are not limited to commercial goods or articles of trade, or, indeed, to tangible property, but include ''articles or subjects of commerce of *any character* (emphasis supplied).[18] It is well settled that things such as ''ideas, * * * orders, and intelligence'' are ''subjects of commerce.'' Telegraphic messages have, accordingly, been held to be ''goods'' within the meaning of the Act.[19] Other articles or subjects of commerce which fall within the definition of ''goods'' include written materials such as newspapers, magazines, brochures, pamphlets, bulletins, and announcements;[20] written reports, fiscal and other statements and accounts, correspondence, lawyers' briefs and other documents;[21] advertising, motion picture, newspaper and radio copy, artwork and manuscripts for publication;[22] sample books;[23] letterheads, envelopes, shipping tags, labels, check books, blank books, book covers, advertising circulars and candy wrappers.[24] Insurance policies are ''goods'' within the meaning of the Act;[25] so are

[17] H. Mgrs. St., 1949, page 15.

[18] As pointed out in *Lenroot* v. *Western Union Tel. Co.*, 141 F. 2d 400 (C.A. 2), the legislative history shows that the definition was originally narrower, and that subjects of commerce were added by a Senate amendment.

[19] *Western Union Tel. Co.* v. *Lenroot* 323 U.S. 490.

[20] *Mabee* v. *White Plains Pub. Co.*, 327 U.S. 178; *Yunker* v. *Abbye Employment Agency*, 32 N.Y.S. 2d 715; *Berry* v. *34 Irving Place Corp.*, 52 F. Supp. 875 (S.D. N.Y.); *Ullo* v. *Smith*, 62 F. Supp. 757, affirmed in 177 F. 2d 101 (C.A. 2); see also opinion of the four dissenting justices in *10 E. 40th St. Bldg.* v. *Callus*, 325 U.S. at p. 586.

Waste paper collected for shipment in commerce is goods. See *Fleming* v. *Schiff*, 1 W.H. Cases 893 (D. Colo.), 15 Labor Cases (CCH) par. 60,864.

[21] *Phillips* v. *Meeker Coop. Light & Power Asso.*, 63 F. Supp. 733, affirmed in 158 F. 2d 698 (C.A. 8); *Lofther* v. *First Nat. Bank of Chicago*, 48 F. Supp. 692 (N.D. Ill.) See also *Rausch* v. *Wolf*, 72 F. Supp. 658 (N.D. Ill). There are other cases (e.g., *Kelly* v. *Ford, Bacon & Davis*, 162 F. 2d 555 (C.A. 3) and *Bozant* v. *Bank of New York*, 156 F. 2d 787 (C.A. 2) which suggest that such things are ''goods'' only when they are articles of trade. Although the Supreme Court has not settled the question, such a view appears contrary to the express statutory definitions of ''goods'' and ''commerce''.

[22] *Robert* v. *Henry Phipps Estate*, 156 F. 2d 958 (C.A. 2); *Baldwin* v. *Emigrant Industrial Sav. Bank*, 150 F. 2d 524 (C.A. 2), certiorari denied 326 U.S. 757; *Bittner* v. *Chicago Daily News Ptg. Co.*, 4 W.H. Cases 837 (N.D. Ill.), 29 Labor Cases (CCH) par. 62,479; *Schinck* v. *386 Fourth Ave. Corp.*, 49 N.Y.S. 2d 872.

[23] *Walling* v. *Higgins*, 47 F. Supp. 856 (E.D. Pa.).

[24] *McAdams* v. *Connelly*, 8 W.H. Cases 498 (W.D. Ark.), 16 Labor Cases (CCH) par. 64,963; *Walling* v. *Lacy*, 51 F. Supp. 1002 (D. Colo.); *Tobin* v. *Grant* 8 W.H. Cases 361 (N.D. Calif.). See also *Walling* v. *Sieving*, 5 W.H. Cases 1009 (N.D. Ill.), 11 Labor Cases (CCH) par. 63,098.

[25] *Darr* v. *Mutual Life Ins. Co.*, 169 F. 2d 262 (C.A. 2), certiorari denied 335 U.S. 871.

bonds, stocks, bills of exchange, bills of lading, checks, drafts, negotiable notes and other commercial paper.[26] ''Goods'' includes gold;[27] livestock;[28] poultry and eggs;[29] vessels;[30] vehicles;[31] aircraft;[32] garments being laundered or rented;[33] ice;[34] containers, as, for example, cigar boxes or wrapping paper and packing materials for other goods shipped in commerce;[35] electrical energy or power, gas, etc.;[36] and by-products,[37] to mention only a few illustrations of the articles or subjects of ''trade, commerce, transportation, transmission, or communication among the several States, or between any State and any place outside thereof'' which the Act refers to as ''goods.'' The Act's definitions do not, however, include as ''goods'' such things as dams, river improvements, highways and viaducts, or railroad lines.[38]

(c) *''Any part or ingredient.''* Section 3(i) draws no distinction between goods and their ingredients and in fact defines goods to mean ''goods'' * * * or any part or ingredient thereof.'' The fact that goods are processed or changed in form by several employers before going into interstate or foreign commerce does not affect the character of the original product as ''goods'' produced for commerce. Thus, if a garment manufacturer sends goods to an independent contractor within the State to have them sewn, after which he further processes and ships them in interstate commerce, the division of the production functions between the two employees does not alter the fact that the employees of the independent contractor are actually producing (''working on'') the ''goods'' (parts or ingredients of goods) which enter the channels of commerce.[39]

Similarly, if a manufacturer of buttons sells his products within the State to a manufacturer of shirts, who ships the shirts in interstate commerce, the employees of the button manufacturer would be engaged in the production of goods for commerce; or, if a lumber manufacturer sells his lumber locally to a furniture manufacturer who sells furniture in interstate commerce, the employees of the lumber manufacturer would likewise come within the scope of the Act. Any employee who is engaged in the ''production'' (as explained in § 776.15) of any part or ingredient of goods produced for trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof is engaged in the production of ''goods'' for commerce within the meaning of the Act.[40]

(d) *Effect of the exclusionary clause.* The exclusionary clause in the definition that excepts ''goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof,'' is intended to protect ultimate consumers other than

[26] *Bozant* v. *Bank of New York,* 156 F. 2d 787 (C.A. 2).

[27] *Walling* v. *Haile Gold Mines,* 136 F. 2d 102 (C.A. 4); *Fox* v. *Summit King Mines,* 143 F. 2d 926 (C.A. 9).

[28] *Walling* v. *Friend,* 156 F. 2d 429 (C.A. 8).

[29] *Walling* v. *DeSoto Creamery & Produce Co.,* 51 F. Supp. 938 (D. Minn).

[30] *Slover* v. *Wathen,* 140 F. 2d 258 (C.A. 4).

[31] *Hertz Drivurself Stations* v. *United States,* 150 F. 2d 923 (C.A. 8).

[32] *Jackson* v. *Northwest Airlines,* 75 F. Supp. 32 (D. Minn.).

[33] *Phillips* v. *Star Overall Dry Cleaning Laundry Co.,* 149 F. 2d 416 (C.A. 2).

[34] *Hamlet Ice Co.* v. *Fleming,* 127 F. 2d 165 (C.A. 4); *Atlantic Co.* v. *Walling,* 131 F. 2d 518 (C.A. 5).

[35] *Enterprise Box Co.* v. *Fleming,* 125 F. 2d 897 (C.A. 5), certiorari denied, 316 U.S. 704; *Fleming* v. *Schiff,* 1 W.H. Cases 883 (D. Colo.), 5 Labor Cases (CCH) par. 60,864.

[36] *Walling* v. *Connecticut Co.;* 62 F. Supp. 733 (D. Conn.), affirmed 154 F. 2d 552 (C.A. 2).

[37] *Walling* v. *Peoples Packing Co.,* 132 F. 2d 236 (C.A. 10), certiorari denied 318 U.S. 774.

[38] *Engebretsen* v. *Albrecht,* 150 F. 2d 602 (C.A. 7); *Kenny* v. *Wigton-Abbott Corp.,* 80 F. Supp. 489 (D. N.J.).

[39] *Schulte Co.* v. *Gangi,* 328 U.S. 108.

[40] *Roland Electrical Co.* v. *Walling,* 326 U.S. 657; *Bracy* v. *Luray,* 138 F. 2d 8 (C.A. 4); *Walling* v. *W. J. Haden Co.,* 153 F. 2d 196 (C.A. 5); *Mid-Continent Pipe Line Co.* v. *Hargrave,* 129 F. 2d 655 (C.A. 10); *Boiling* v. *Allison,* 4 W. H. Cases 500 (N.D. Okla.); *Hanson* v. *Lagerstrom,* 133 F. 2d 120 (C.A. 8); *Walling* v. *Comet Carriers,* 151 F. 2d 107 (C.A. 2); *Walling* v. *Griffin Cartage Co.,* 62 F. Supp. 396, affirmed in 153 F. 2d 587 (C.A. 6); *Walling* v. *Kerr,* 47 F. Supp. 852 (E.D. Pa.).

producers, manufacturers, or processors of the goods in question[41] from the ''hot goods'' provisions of section 15(a)(1) of the Act.[42] Section 15(a)(1) makes it unlawful for any person ''to transport * * * (or * * * ship * * * in commerce * * * any goods'' produced in violation of the wage and hours standards established by the Act. (Exceptions are made subject to specified conditions for common carriers and for certain purchasers acting in good faith reliance on written statements of compliance. See footnote 53 to § 776.15(a).) By defining ''goods'' in section 3(i) so as to exclude goods after their delivery into the actual physical possession of the ultimate consumer (other than a producer, manufacturer, or processor thereof) Congress made it clear that it did not intend to hold the ultimate consumer as a violator of section 15(a)(1) if he should transport ''hot goods'' across a State line.[43] Thus, if a person purchases a pair of shoes for himself from a retail store[44] and carries the shoes across a State line, the purchaser is not guilty of a violation of section 15(a)(1) if the shoes were produced in violation of the wage or hours provisions of the statute. But the fact that goods produced for commerce lose their character as ''goods'' after they come into the actual physical possession of an ultimate consumer who does not further process or work on them, does not affect their character as ''goods'' while they are still in the actual physical possession of the producer, manufacturer or processor who is handling or working on them with the intent or expectation that they will subsequently enter interstate or foreign commerce.[45] Congress clearly did not intend to permit an employer to avoid the minimum wage and maximum hours standards of the Act by making delivery within the State into the actual physical possession of the ultimate consumer who transports or ships the goods outside of the State. Thus, employees engaged in building a boat for delivery to the purchaser at the boatyard are considered within the coverage of the Act if the employer, at the time the boat is being built, intends, hopes, or has reason to believe that the purchase will sail it outside the State.[46]

§ 776.21 "For" commerce.

(a) *General principles.* As has been made clear previously, where ''goods'' (as defined in the Act) are produced ''for commerce,'' every employee engaged in the ''production'' (as explained in §§ 776.15 through 776.19) of such goods (including any part or ingredient thereof) is within the general coverage of the wage and hours provisions of the Act. Goods are produced for ''commerce'' if they are produced for ''trade, commerce, transporation, transmission, or communication among the several States or between any State and any place outside thereof.''[47] Goods are produced ''for'' such commerce where the employer intends, hopes, expects, or has reason to believe that the goods or any unsegregated part of them will move (in the same or in an altered form or as a part or ingredient of other goods) in such interstate or foreign commerce.[48] If such movement of the goods in commerce can be reasonably anticipated by the employer when his employees perform work defined in the Act as ''production'' of such goods, it makes no difference whether he himself, or a subsequent owner or possessor of the goods, put the goods in interstate or foreign

[41] *Southern Advance Bag & Paper Co.* v. *United States*, 183 F. 2d 449 (C.A. 5); *Phillips* v. *Star Overall Dry Cleaning Laundry Co,* 149 F. 2d 485 (C.A. 2), certiorari denied 327 U.S. 780.

[42] *Jackson* v. *Northwest Airlines*, 70 F. Supp. 501.

[43] *Hamlet Ice Co.* v. *Fleming*, 127 F. 2d 165 (C.A. 4), certiorari denied 317 U.S. 634.

[44] Note that the retail or service establishment exemption in section 13(a)(2) does not protect the retail store from a violation of the ''hot goods'' provision if it sells in interstate commerce goods produced in violation of section 6 or 7.

[45] See cases cited above in footnotes 41, 42, 43, this section.

[46] *Walling* v. *Lowe*, 5 W.H. Cases (S.D. Fla.), 10 Labor Cases (CCH) 63,033. See also *Walling* v. *Armbruster*, 51 F. Supp. 166 (W.D. Ark.); *Joshua Hendy Corp.* v. *Mills*, 169 F. 2d 898 (C.A. 9); *St. Johns River Shipbuilding Co.* v. *Adams*, 164 F. 2d 1012 S. (C.A. 5).

[47] Fair Labor Standards Act, section 3(b).

[48] *United States* v. *Darby*, 312 U.S. 100; *Warren-Bradshaw Drilling Co.* v. *Hall*, 371 U.S. 88; *Schulte Co.* v. *Gangi*, 328 U.S. 108.