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amendment to section 15(a)(1), contained in the Statement of the Managers on the part of the House appended to the Conference Report on the Fair Labor Standards Amendments of 1949:[4]

> 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. (Emphasis supplied.)

This discussion would appear to be generally applicable also to the similar provisions of the Act contained in section 12(a).

§ 789.2 " * * * in reliance on written assurance from the producer * * *."

In order for a purchaser to be protected under these provisions of the Act, he must acquire the goods ''in reliance on written assurance * * *.'' The written assurance specified in section 15(a)(1) is one from the ''producer'' and in section 12(a) it is one from the ''producer, manufacturer or dealer.''

Since the acquisition of the goods by the purchaser must be ''in reliance'' upon such written assurance it is obvious that the Act contemplates a written assurance given to the purchaser as a part of the transaction by which the goods are acquired and on which he can rely at the time of their acquisition. Thus, where the purchaser does not receive a written assurance at the time he acquires particular goods, he cannot be said to have acquired the goods ''in reliance on'' the specified written assurance merely because the producer later furnishes an assurance that all goods which the purchaser has previously acquired from him were produced in compliance with the Fair Labor Standards Act.

The assurances described in the Act are assurances in writing ''from'' the producer or ''from'' the producer, manufacturer, or dealer, as the case may be. It is therefore clear that the following procedures will not amount to ''written assurance from the producer'' within the meaning of the Act:

(a) The purchaser stamps his purchase order with the statement that the order is valid only for goods produced in compliance with the requirements of the Fair Labor Standards Act. No written statement concerning the production of the goods is made to the purchaser by the producer. The producer ships the goods which the purchaser has ordered.

(b) The purchaser stamps the above statement on his purchase order and in addition notifies the producer that shipment of the goods so ordered will be construed by the purchaser as a guarantee by the producer that the goods were produced in compliance with the Act. The producer ships the goods to the purchaser.

In neither of these situations can the purchase order be deemed to contain a written assurance from the producer to the purchaser. A statement concerning the circumstances under which the order will be valid is sent to the producer, but no written instrument at all is given the purchaser by the producer. Although, in these situations, the shipment of the goods by the producer may establish a contractual relationship between the parties, the conditions of the statute are not satisfied because there is in neither situation any written assurance from the producer to the purchaser that the goods were produced in compliance with applicable provisions of the Act referred to in sections 12(a) and 15(a)(1).

§ 789.3 "* * * goods were produced in compliance with" * * * the requirements referred to.

It is apparent from the language of the statute and the statement appended to the Conference Report[5] that the written assurance referred to is one

[4] H. Rept. No. 1453, 81st Cong. 1st sess., p. 31.

[5] H. Rept. No. 1453, 81st Cong., 1st sess., p. 31.

with respect to specific goods in being, assuring the purchaser that the ''goods in question were produced in compliance'' with the requirements referred to in sections 12(a) and 15(a) (1). A written statement made prior to production of the particular goods is not the type of assurance contemplated by the statute.

A so-called ''general and continuing'' assurance or ''blanket guarantee'' stating, for instance, that all goods to be shipped to the purchaser during a twelve-month period following a certain date ''will be or were produced'' in compliance with applicable provisions of the Act would not afford the purchaser the statutory protection with respect to any production of such goods after the assurance is given. This type of assurance attempts to assure the purchaser concerning the future production of goods. With respect to any production of goods after the assurance is given, this ''general and continuing'' assurance would, at most, be an assurance that the goods will be produced in compliance with the Act.

The definitions of the terms ''goods'' and ''produced'' in sections 3(i) and 3(j) of the Act[6] respectively, should be considered in interpreting the requirement that the written assurance must relate to goods which were produced in compliance with applicable provisions of the Act. These definitions make it apparent, for instance that the raw materials from which a machine has been made retain their identity as ''goods'' even though these raw materials have been converted into an entirely different finished product in which the raw materials are merely a part.

Since ''goods,'' as defined in the Act, ''does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturing, or processor thereof,'' the ''hot goods'' restrictions of section 12(a) and section 15(a)(1) do not apply to such ultimate consumers. There appears to be no need, therefore, for such consumers to secure these written assurances from their suppliers.

§ 789.4 Scope and content of assurances of compliance.

A question frequently asked is whether a single written assurance of compliance will suffice for purposes both of section 12(a), relating to child labor, and section 15(a)(1), relating to wage and hour standards. A single assurance would appear to be sufficient, provided it is specific enough to meet all the conditions of the two sections. Although it is possible that the courts might find assurances referring generally to compliance ''with the requirements of the Act'' adequate for all purposes, the safer course to pursue would be to phrase the assurance in terms of compliance with the specific sections of the Act whose violation would bar the goods from interstate or foreign commerce.

The language of the statute gives support to this view. It will be noted that the written assurance referred to in section 15(a)(1) is described as one of ''compliance with the requirements of the Act * * *,'' whereas the written assurance referred to in section 12(a) is described as one of ''compliance with this section.'' In view of the differences in wording of the two sections, a court might conclude that a general assurance of compliance with the Act is not sufficient to include a specific assurance of compliance with section 12, on the theory that if Congress had intended an assurance of compliance with the Act to be sufficient under the child-labor provisions, there would have been no reason for the use of the more specific language which it placed

[6] Section 3(i) defines ''goods'' to mean ''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.''

Section 3(j) defines ''produced'' to mean ''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.''