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by such instrumentalities.[45] Such work is ''so related to the actual movement of commerce as to be considered an essential and indispensable part thereof, and without which it would be impeded or impaired.''[46]

§ 776.12 Employees traveling across State lines.

Questions are frequently asked as to whether the fact that an employee crosses State lines in connection with his employment brings him within the Act's coverage as an employee ''engaged in commerce.'' Typical of the employments in which such questions arise are those of traveling service men, traveling buyers, traveling construction crews, collectors, and employees of such organizations as circuses, carnivals, road shows, and orchestras. The area of coverage in such situations cannot be delimited by any exact formula, since questions of degree are necessarily involved. If the employee transports material or equipment or other persons across State lines or within a particular State as a part of an interstate movement, it is clear of course, that he is engaging in commerce.[47] And as a general rule, employees who are regularly engaged in traveling across State lines in the performance of their duties (as distinguished from merely going to and from their homes or lodgings in commuting to a work place) are engaged in commerce and covered by the Act.[48] On the other hand, it is equally plain that an employee who, in isolated or sporadic instances, happens to cross a State line in the course of his employment, which is otherwise intrastate in character, is not, for that sole reason, covered by the Act. Nor would a man who occasionally moves to another State in order to pursue an essentially local trade or occupation there become an employee ''engaged in commerce'' by virtue of that fact alone. Doubtful questions arising in the area between the two extremes must be resolved on the basis of the facts in each individual case.

§ 776.13 Commerce crossing international boundaries.

Under the Act, as amended, an employee engaged in ''trade commerce, transportation, transmission, or communication'' between any State and any place outside thereof is covered by the Act regardless of whether the ''place outside'' is another State or is a foreign country or is some other place. Before the amendment to section 3(b) which became effective January 25, 1950, employees whose work related solely to the flow of commerce into a State from places outside it which were not ''States'' as defined in the Act were not employees engaged in ''commerce'' for purposes of the Act, although employees whose work was concerned with the flow of commerce out of the State to such places were so engaged.[49] This placed employees of importers in a less favorable position under the Act than the employees of exporters. This inequality was removed by the amendment to section 3(b).[50] Accordingly, employees performing work in connection with the importation of goods from foreign countries are engaged ''in commerce'' and covered by the Act, as amended. The coverage of such employees, as of those performing work in connection with the exportation of goods to foreign countries, is determined by the same principles as in the case of employees whose work is connected with goods procured from or sent to other States.

[45] Such employees would also be covered as engaged in the production of goods for commerce. See *Lewis* v. *Florida Power & Light Co.*, 154 F. 2d 751 (C.A. 5); *Walling* v. *Connecticut Co.*, 154 F. 2d 552 (C.A. 2); also § 776.21(b).

[46] *New Mexico Public Service Co.* v. *Engel*, 145 F. 2d 636, 640 (C.A. 10).

[47] The employee may, however, be exempt from the overtime provisions of the Act under section 13(b)(1). See part 792 of this chapter.

[48] *Reck* v. *Zarmocay*, 264 App. Div. 520, 36 N.Y.S. 2d 394; *Colbeck* v. *Dairyland Creamery Co.*, 17 N.W. 2d 262 (S. Ct. S.D.).

[49] The definition of ''commerce'' previously referred to commerce ''from any State to any place outside thereof.'' The amendment substituted ''between'' for ''from'' and ''and'' for ''to'' in this clause.

[50] H. Mgrs. St., 1949, pp. 13, 14.

ENGAGING IN ''THE PRODUCTION OF GOODS FOR COMMERCE''

§ 776.14 Elements of "production" coverage.

Sections 6 and 7 of the Act, as has been noted, cover not only employees who are engaged ''in commerce'' as explained above, but also ''each'' and ''any'' employee who is engaged in the ''production'' of ''goods'' for ''commerce''. What employees are so engaged can be determined only by references to the very comprehensive definitions which Congress has supplied to make clear what is meant by ''production'', by ''goods,'' and by ''commerce'' as those words are used in sections 6 and 7. In the light of these definitions, there are three interrelated elements of coverage to be considered in determining whether an employee is engaged in the production of goods for commerce: (a) There must be ''production''; (b) such production must be of ''goods''; (c) such production of goods must be ''for commerce''; all within the meaning of the Act.[51] The three elements of ''production'' coverage are discussed in order in the sections following.

§ 776.15 "Production."

(a) *The statutory provisions.* The activities constituting ''production'' within the meaning of the phrase ''engaged in * * * production of goods for commerce'' are defined in the Act[52] 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 Act bars from interstate commerce ''any'' goods in the production of which ''any'' employee was employed in violation of the minimum-wage or overtime-pay provisions,[53] and provides that in determining, for purposes of this provision, whether an employee was employed in the production of such goods:

> * * * proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.[54]

(b) *General scope of ''production'' coverage.* The statutory provisions quoted in paragraph (a) of this section, show that for purposes of the Act, wherever goods are being produced for interstate or foreign commerce, the employees who are covered as ''engaged in the production'' of such goods, include, in

[51] These elements need not be considered if the employee would be covered in any event because engaged ''in commerce'' under the principles discussed in preceding sections of this part.

[52] Act, section 3(j). This definition is also applicable in determining coverage of the child labor provisions of the Act. See part 4 of this title.

[53] Act, section 15(a)(1). The only exceptions are stated in the section itself, which provides that ''it shall be unlawful for any person—(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;''

[54] Act, sec. 15(b).