



LABOR PROVISIONS OF THE NRA CODES

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Certain provisions of the NRA codes have been for the most part overlooked, or have received only a passing glance from the commentators on this phase of the New Deal. The purpose of the codes is an attempt to carry out the declared policy of the National Recovery Act, briefly: to bring about recovery by increasing purchasing power.

It will be recalled that shortly after the passage of the Recovery Act on June 16, 1933, it became common to refer to the New Deal in general as revolutionary. The Roosevelt Revolution and various other euphonies were applied to the changes brought about by the new Administration. The NIRA was repeatedly referred to as the keystone of the whole program. One writer, whose work bears the imposing title, GOVERNMENT RULES INDUSTRY, characterized it as the most important piece of legislation in the history of Congress. It should be emphasized, however, that it is not the purpose of this paper to determine whether the New Deal or the NIRA does constitute any fundamental change in the social structure. But it seemed worthwhile to mention the importance that the NIRA assumed in the minds of many shortly after its passage. The Act itself is little more than a declaration of public policy which delegates wide powers to the President and to the administrative units which he was empowered to create. Without codes to carry it out the law would remain an empty gesture. It is significant that only a small portion of the Act must be written verbatim into the codes, notably Section 7a, guaranteeing to employees the right of collective bargaining.

President Roosevelt expressed himself emphatically on the day that the Recovery Act was passed that no business had a right to exist which did not pay to its employees a living wage and he went on to say, "By living wages, I mean more than a bare subsistence level—I mean wages of a decent living." The codes thus were intended to bring wages not merely up to a subsistence level—but to wages of a decent living.

It is generally assumed that industry is under a minimum wage and a maximum hour limit. This is hardly true. Industry, or a large portion of it, cannot be said to be working under a forty-hour week nor a weekly minimum wage. The provisions of the codes may be divided into two categories: one provides the minimum wage and maximum hour limits;

the other makes exceptions to those limits. Almost all of the provisions of the codes may be classified in this manner. The first part of the code sets up certain standards; the second part makes exceptions to those standards. The first part guarantees purchasing power; the second part takes away that guarantee. Almost all of the codes contain provisions exempting large numbers of workers from any restrictions at all.

This is particularly true in regard to hour limitations. The engineers, electricians, firemen, truckmen, skilled mechanics and laborers under a great many of the codes may work from two to twenty hours per week longer than those engaged in factory work. A large number of these groups are subject to no hour maximum at all. A provision from the Wool Textile Code is typical:

On and after the effective date no employer shall employ any employee in excess of forty hours per week, this however not to apply to hours of labor for repair shop crews, engineers, electricians, firemen, office, sales and supervisory staff, shipping, watching and outside crews.

Also in nearly all of the codes those engaged in emergency and maintenance and repair work are subject to no limit whatever. What constitutes an emergency is in most cases not defined. A provision is usually included for extra pay for overtime, but in a few industries employees may be required to do extra work for which they receive no compensation. In some industries the employees receive an extra dollar for an extra eight hours work. The hour provisions fall hardest on the watchmen, who as a rule work longer hours than those in other vocations and usually get the lowest pay of any group.

The executives, or those serving in a supervisory capacity, are not subject to the hour limitations. What constitutes an executive is not defined in some codes, while in others he is defined as a person making a certain salary per week. In the Hotel Industry an executive may earn as little as \$19.00 per week, being of course subject to no hour restriction.

A large number of codes not only except large classes of employees from any hour restrictions at all, but provides a general hour provision of between 50 and 60 hours. In the Retail Drug Trade employees may work from 52 to 56 hours a week, while under the Hotel code employees are permitted to work as much as 60 hours per week. The 40 hour scale has not been written into any of the codes for the retail trades. Many of the codes include a so-called tolerance or peak period provision, the purpose of which is to enable business to take care of seasonal increases without hiring additional workers. Such a provision is incorporated into 116 of the first 300 codes. In some cases, there is no hour limit imposed during the peak period.

Another common provision which is written into over one-third of the codes is the averaging clause which has a tendency to nullify the general hour maximum. In the Iron and Steel code, for example, the 40 hour a week limit may be averaged over a period of six months.

Home Industry, which was said to be an evil by Administration spokesmen, has been abolished in over 10 per cent of the industries under the NRA. In 13 of the industries it is limited or subjected to various restrictions. In others it is acknowledged to be an evil but is not restricted in any way.

The administration of the codes is left, without exception, entirely up to the employers. The Code Authorities, which are the chief administrative units, have wide and indefinite powers. They may make investigations, collect statistics and hear and adjust complaints and carry on the general work of enforcing the code. The Government as represen-

tatives on the code authority who, however, may take no part as it is specifically provided that they shall have no vote.

Child labor has not as yet been abolished in several large industries, notably, Newspaper Publishing, Graphic Arts, Retail Food and Grocery Trades, Retail Jewelry Trade and several others. In the Newspaper Publishing Industry there is no limit on those persons engaged in delivering. Those engaged in street sales may work 11 or 12 hours a day regardless of age, provided the work does not interfere with school. The Newspaper code has fewer restrictions than any other code yet approved.

The lowest wage provision which has been written into any code is \$2.00 per week for the Needlework and Hand Embroidery Industry. This industry is outside of continental United States, on the island of Puerto Rico. The Cleaning and Dyers' Trade may pay, in some areas, a wage of 20 cents per hour; the Laundry Trade, 14 cents; the Iron and Steel Industry, 25 cents; Lumber Industry, 22.5 cents; Peanut Milling, 15 cents; the great Retail Trades from \$9.00 to \$14.00 per week. It should be pointed out that in a great many industries the minimum wage scale is somewhat higher.

A code provision for a minimum wage of \$5.60 per week, as in the Laundry Trade, or \$10.00 per week, as in the Iron and Steel Industry, does not mean that all employees in the industry are entitled to a wage that high. In nearly all of the codes there are large classes of employees who are specifically exempted from any wage provision at all. Other classes of workers are subject to a lower wage minimum than the general one imposed. The learners or beginners fall into this category. A majority of the codes provide that the learners may receive from 10 per cent to 30 per cent less than the general wage minimum. In most cases, a limit is set on the time that a person may be classified as a learner. However, out of the first 300 codes there are 14 that provide no limit on the time that a worker may be so classified. In some industries there is no restriction except as to the ratio of this group to the total number of employees. For example, in the Coffee Industry the only restriction is that learners may not constitute more than 10 per cent of the total number employed. In the Iron and Steel code learners and apprentices are specifically excepted from any provision. There is no restriction in either as to the wage they may be paid, the number that may be employed or the length of time that they may be considered learners. The code furthermore does not include the definition of learner.

There are similar provisions in the codes concerning office boys and girls except that there is no time limit in any of the codes as to how long a person might fall into this class.

Only a few of the codes include a minimum wage scale for skilled workers although some of them state that workers making more than the minimum general wage shall not suffer decrease in wages unless necessary. That is to say, the employers promise to be very reluctant about lowering wages and must not do so in a hasty and arbitrary manner.

Subnormal or substandard employees are usually special exceptions. In the Dress Manufacturing Industry, for example, the Code Authority, consisting of course, of employers, may set the wages. The only restriction is that substandard employees may not comprise more than 10 per cent of the total number of workers.

Deductions from wages, employees living in company houses, and trading at company stores are given special attention in a number of codes. Several of these provide that there shall be no deductions from pay checks except by voluntary consent of the employee. Others, as in

the Coal and Lumber code, specify that deductions from wages shall be fair. What is or is not fair is not made clear.

Very few of the codes have a universal minimum wage rate. There are a multitude of wage differentials, sometimes as many as 60 in one code. The regional differentials vary 100 per cent in some of the larger industries. The lowest wage falls invariably where the negro population predominates. Nearly half of the codes contain regional differentials.

The urban wage differentials, based on the size of the city or town, provide a wage discrimination of approximately 50 per cent. It usually varies from \$9.00 to \$16.00 per week.

Women under the NRA draw a much lower wage than men in a great many instances. There are wage discriminations based on sex in approximately one-third of the codes.

It is evident that the exceptions constitute the greater part of the codes. The exception under the NRA has become the rule. The question arises: Does an exception constitute a contradiction in a code? Might it not be said that insofar as a code is filled with exceptions it is outside of, not under, the NRA, with a promise and guarantee that the Government would to that extent let it alone? If the Administration specifically agrees that a certain class of workers are not to be subjected to the ordinary restrictions, is not that at least a partial negation of the NIRA? If the wage provisions are set low enough, as low as industry wants them, so that it may have a reasonable marginal area in which the law of supply and demand may operate, may it not be said that industry has won a great victory? Because, if the minimum wage is low enough, it will not interfere with the ordinary condition of the labor market and will not impose a restriction on business. It will, on the contrary cast, on all industrialists who have patriotically submitted to a code, the beneficence of a grateful people.

It is no longer to be wondered that business in the United States, where social legislation is admittedly backward, rushed forward all eager to be coded and subjected to minimum wages. The obvious question which arises in the minds of anyone who gives the codes a cursory examination is why business should have resisted regulation at all.

The exceptions, restrictions, vague phrases, conciliatory provisions, constitute the far more important part of the codes and seems to indicate that there has been a deliberate and conscious and successful attempt of industry to so qualify, to so except, to so hedge about the few restrictions that had been set as the major objectives of regulation, that the first or positive part of the program was nullified by the other part. When it is seen that nearly all those workers who, by the nature of their work, normally work more than 40 hours are specifically exempted from the hour maximum; when it is seen that the regular factory worker, who by reason of the low ebb of production, would not, without a code, work more than the maximum set in the code, is it true that industry, considering all these conditions, has been subjected to any regulation at all? The degree, it must be admitted when the codes are looked at in detail, has been slight.

It is evident from this brief and inadequate survey of the labor provisions of the codes, that the purpose and the spirit of the Act has been partially nullified and vitiated by the National Recovery Administration. The code provisions under consideration are confused, contradictory and ambiguous. However, the NRA has accumulated a great mass of statistics and has brought to light many hitherto unknown conditions in attempting to bring industry under government control. The provisions in some small measure carry out in a limited way the purpose of the National Industrial Recovery Act.