Fair Labor Standards Act

Date: June 25, 1938
Author: U.S. Congress; Senator Hugo Black (D-Ala.)
Genre: legislation

Summary Overview

In the context of American liberalism, the Fair Labor Standards Act reflects the movement's emphasis on protecting workers' rights, promoting economic justice, and regulating labor practices to prevent exploitation. It marked a significant step toward creating a more equitable labor market and expanding the role of the federal government in regulating the economy during the New Deal era.

The law had three main parts: (1) the setting of a minimum wage for many workers (which began at 25 cents per hour) along with a forty-four-hour workweek (which later decreased to forty); (2) a requirement that employers pay workers a higher rate for any labor that they did above that limit (overtime); and (3) a ban on some kinds of child labor. Like so much of the New Deal, these restrictions would both become more generous and expand to more workers over time. The law also created a Wage and Hour Division inside the federal Department of Labor in order to enforce this legislation.

Defining Moment

The Fair Labor Standards Act (FLSA) was the last major legislation passed as part of the original New Deal. Senator Hugo Black had first proposed what would become known as the wages and hours bill in 1932 as a work-sharing agreement that capped workers hours at thirty per week. It met with stiff opposition. The Black-Connery bill of 1937 included the same thirty-hour workweek and a national minimum wage. The final legislation, signed in 1938 (after Black had moved on to the U.S. Supreme Court), was a compromise between many interests. Facing opposition from the American Federation of Labor and Southern Congressmen, some provisions were strengthened and others weakened. Nevertheless, the fundamental principle of federal intervention into economic matters as justified by the Commerce Clause of the Constitution remained intact.

Before the end of 1937, President Franklin D. Roosevelt's court-packing bill (which aimed to expand the size of the Supreme Court) and a recession caused by a drop in social spending would hurt his popularity (even though he would be reelected two more times). There were enough compromises in the final version of the Fair Labor Standards bill to make it serve as a good demonstration of Roosevelt's waning power. Roosevelt had to muster an enormous amount of political pressure to secure the FLSA's final passage. Congress failed to act on it in the summer of 1937. Roosevelt called a special session to address the bill in November 1937. The final compromise legislation did not pass until June 1938. The law survived a constitutional challenge before the Supreme Court in *United States v. Darby Lumber Company* (1941).

Author Biography

Hugo Black (1886-1971) was a lawyer and prosecutor from rural Alabama who became a U.S. senator from Alabama in 1927. His politics, as the Fair Labor Standards Act suggests, were Southern Populist. He had been a member of the Ku Klux Klan before he entered politics, but he completely disassociated himself from that organization even before it became widely discredited.

In 1937, President Franklin D. Roosevelt appointed Black to the U.S. Supreme Court. While Black had been a good friend of the New Deal, Roosevelt wanted an advocate for his programs on the Court because some of his most important programs had been blocked by the justices on constitutional grounds. During his long tenure on the Supreme Court, Black was known as an advocate for free speech and for being one of the Court's most liberal members.

Historical Document

Fair Labor Standards Act

An Act

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes...

Finding and Declaration of Policy

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general wellbeing of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several states, to correct and as rapidly as is practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power...

(75th Congress, Chapter 676, 1938)

[This is only the first section of the bill laying out its rationale and intent. The full act is prohibitively lengthy and detailed for the purposes of the present volume.]

Document Analysis

Like so much of the New Deal, the Fair Labor Standards Act (FLSA) depends upon the Commerce Clause of the U.S. Constitution in order to justify its existence, as the inclusion of the phrase "in and affecting interstate commerce" in its very first sentence demonstrates. The thinking was that since goods produced by child labor or workers working long hours travel through interstate commerce, or cause strikes that impede interstate commerce, then Congress has the right to regulate them. This same justification was not enough to save the National Industrial Recovery Act (NIRA) in 1935, but the Court had changed by the time that it reviewed the FLSA in 1941 and was willing to accept this exercise of the commerce power as legitimate.

The citing of unfair competition—that is, the idea that low pay, long hours, or the like "constitutes an unfair method of competition in commerce"—demonstrates the connection between this legislation and the earlier NIRA. The overall purpose of that legislation was to get the economy moving again by bringing industries together and setting basic standards. Standards regarding wages, hours, and child labor was exactly the kind of regulation that appeared in the codes of fair conduct that various industries had set with the government in NIRA. The FLSA essentially resurrected that part of the earlier legislation and made it stick.

The final 1938 version of the bill had lots of exceptions written into it in order to get the legislation passed. For example, the child labor provision did not apply to the agricultural sector if those children were not legally compelled to be in school; nor did it apply to child actors. Similarly, the hours provisions did not apply to administrators or salesmen, seamen, or railroad workers. Furthermore, industry groups were required to be included in efforts to classify employees into groups that determined their eligibility for protections under this legislation. That left plenty of room for further administrative exceptions.

Other parts of the law were phased in gradually in order to make it easier on employers who needed to adapt their policies to meet these standards. For example, the initial minimum wage for the first year in which FLSA was in effect was stipulated at 25 cents per hour. After that, it became 30 cents an hour for the following six years. Seven years after that it became 40 cents per hour. All of these rates and time periods are specified in the original legislation. Similarly, the starting workweek was forty-four hours, dropping to forty-two hours during the second year in which the law was in effect, and forty hours only after that.

Essential Themes

All the standards in the bill are national in nature, geographic exceptions being outlawed in the law. Labor standards are never identical across regions left to their own, so the effect of the law was to raises wages in the South, which had been trailing behind in wages since the days of slavery. Better wages for southerners meant more buying power and a faster recovery in that region, which was an important part of the Democratic Party's coalition. Powerful southern businesses resisted improved wage and labor standards, particularly in terms their implications for racial equality, but Roosevelt believed that this was the best way to cement his party's hold on the South even if it further alienated conservative southern Democratic senators who already resisted the New Deal.

Despite his reputation as a prolabor president, Roosevelt preferred conveying rights to labor via statute rather than collective bargaining. This actually dampened incentives to form unions in the first place, and tied workers directly to the Democratic Party without a union leadership wedged between them. Better wages improved the buying power of union and nonunion workers alike—or such was Roosevelt's thinking—thereby speeding recovery by magnifying the effects of the legislation. Raising wages was a very important component of Roosevelt's New Deal, and the need for raising wages was a frequent theme in the president's arguments in support of the FLSA.

—Jonathan Rees, PhD

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