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## INDUSTRIAL HOME WORK<sup>1</sup>

BY RUSSELL LINDQUIST AND DONALD K. SMITH\*

THE STRUGGLE against industrial home work began with the development of industry but such work has continued to exist in spite of all efforts to regulate or prohibit it.

The reasons why home work has continued to exist are multiple.<sup>2</sup> First, there is the inherent difficulty of enforcing any restrictions upon home work. The only known method of enforcement is through inspection, and an inspector for every home is impracticable if not impossible. Adding to this difficulty is the fact that, in too many instances, both employer and home worker

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<sup>1</sup>The phrase "industrial homework" is subject to no absolute definition, but for the purpose of effectuating their respective homework enactments the following definitions have been written into home work laws.

New York defines the term to mean "the manufacturing in a home in whole or in part with material which has been furnished by an employer of any article or articles to be returned to the said employer." Texas, California, Massachusetts, and West Virginia define it as "any manufacture, in (a—the) home, of materials or articles for an employer."

To make these definitions effective, however, the terms "manufacture," "home," and "employer" are defined. "Manufacture" is defined by California and Massachusetts to mean "to prepare, alter, repair, or finish in whole or in part" while under the New York law the term is defined to include "preparation, alteration, repair or finishing, in whole or in part or handling in any way."

California, Massachusetts, Texas and West Virginia define "home" to mean "any room, house, apartment, or other premises, whichever is most extensive, used in whole or in part as a place of dwelling."

California, Texas, Massachusetts, and New York have defined "employer" to mean "any person who, directly or indirectly or through an employee, agent, independent contractor, or any other person delivers (or causes to be delivered) to another person any material or articles to be manufactured in a home and thereafter to be returned to him, not for the personal use of himself or of a member of his family (for use other than the personal use of himself or of a member of his family)."

<sup>2</sup>(1939) Ruth Shallcross, *Industrial Homework*, p. 21.

act in opposition to the enforcement agencies because they believe home work is necessary and beneficial.

The employer, in industries which utilize home work, contends that if he were forced to transfer the work done in homes to the factory the costs of manufacture would be so increased as to destroy the market for his product. Then again by relegating work to the home, the employer is able to vary the size of his working force from one period of time to another without the expense of maintaining a fully equipped factory of the size necessary to carry a peak load. This advantage is particularly evident in those industries which are seasonal. As a result, the employer is able to reduce his overhead costs: rent, heat, light, and in some industries even the costs of machinery. This also enables him to avoid the duty of maintaining the sanitary conditions demanded by law. He is also able to make further savings because of the inherent difficulty of enforcing labor legislation in the home work industries. Home work provides a means of producing at wages far below the minimum standard set by law and makes it possible to avoid paying out for unemployment compensation, workmen's compensation, social security and other employee benefits.

The reasons given by workers for feeling that home work is necessary and beneficial are both social and economic. Some workers prefer the freedom from direct supervision which home work offers while others object to the noise, speed or other strains of factory work. Many workers continue to do home work because they have become accustomed to a home work environment. Generally they or their ascendants have come from foreign countries where home work prevailed, and consequently, they consider home work a substantial means of livelihood. Women who must stay in the home to care for the family use this means of earning added income. This is particularly true in respect to mothers with large families and widows with small children. For the same reasons, old and incapacitated persons participate in industrial homework.

Industrial home work has long been regarded as a social and economic evil. Its abuses, as we have seen before, are largely the result of the inability to regulate, with any degree of success, this type of work. The very working conditions which legislative enactments have tended to correct in the factory such as child labor, long hours, low wages, and unsanitary working conditions continue to exist in the home. In many instances the home worker is compelled to furnish certain tools and materials which the factory employer provides without question. Often this same worker is

compelled to call for the work and return it upon completion. In a great number of cases the states are paying relief to home workers who receive wages too low for subsistence and are in fact subsidizing those employers who refuse to pay a living wage.

Industrial home work has been a problem in America for more than a century.<sup>3</sup> The oldest home work industry in this country is the glove industry which centered in one area, Fulton County, New York. Other early industries that utilized home work were the textile industries and the boot and shoe industry and about 1880 the clothing industry began to relegate work to the homes. The rapid growth of population, the development of large urban centers, the existence of a laissez-faire philosophy, and the large influx of immigrants, resulted in a rapid increase in home work in the last half of the nineteenth century.

Agitation against industrial home work began early.<sup>4</sup> One of the earliest concerted efforts against home work was carried on by the Cigar Makers Union. They first attempted to organize the tenement cigar makers. In this the union was unsuccessful. In about 1874 they organized a campaign the ultimate goal of which was the complete abolition of home work in the manufacture of cigars. In 1879 the union tried to get home work abolished under Congress' taxing power; the theory was to tax home work out of existence. The bill was introduced into Congress but failed to pass both houses. Having failed to obtain federal assistance the Cigar Makers Union turned to the states for aid. In 1883 the New York legislature enacted a statute entitled: "An Act to Improve the Public Health in the City of New York by prohibiting the manufacture of cigars and the preparation of tobacco in any form in the tenement houses in said city."<sup>5</sup> But in the following year this Act was declared unconstitutional<sup>6</sup> on the grounds that the title did not properly express the subject matter as required by the state constitution.<sup>7</sup>

In 1884 the New York legislature again attempted to prohibit the manufacture of cigars and other tobacco products in tenement homes.<sup>8</sup> This Act was very similar to the Act of 1883.<sup>9</sup> It was de-

<sup>3</sup>(1941) *International Labor Review* 1; (1944) 58 *Monthly Labor Review* 1145.

<sup>4</sup>(1939) Ruth Shallcross, *Industrial Homework*, p. 43.

<sup>5</sup>New York, *Laws of 1883*, ch. 93.

<sup>6</sup>*Matter of Application of Paul*, (1884) 94 N. Y. 497.

<sup>7</sup>New York Constitution, Art. 3, Sec. 16.

<sup>8</sup>New York, *Laws of 1884*, ch. 272.

<sup>9</sup>New York, *Laws of 1883*, ch. 93.

clared unconstitutional<sup>10</sup> on the grounds that such a law would arbitrarily deprive the home worker of his property and his personal liberty without due process of law.

But in spite of the court's refusal to uphold anti-home work legislation the New York factory inspectors went on record in 1889 contending that the only real remedy "lies in entirely prohibiting the manufacture of goods for the market in these dens and tenements."<sup>11</sup>

The next legislative enactment concerning industrial home work was passed in Massachusetts in 1891. Between the time of the passage of this Act and 1899, twelve states had enacted some types of home work legislation.<sup>12</sup>

Early home work laws were enacted for the purpose of improving health conditions both as to the worker and to the consumer. Though each act varied in specificity they all tended to follow rather definite principles. The industries most commonly covered by these various acts were the wearing apparel industry, the cigar industry, and the artificial flower and feather industry.

Five states<sup>13</sup> enacted prohibitory clauses in their acts wherein they provided that no room, apartment or dwelling be used for the manufacture of goods covered by their acts. In each of these acts, however, the family was exempted from the prohibitory clause.<sup>14</sup> All the states have provided for the regulation of work in those industries covered by their acts. These provisions are limited in general to such work carried on in any house, room, or place used as a dwelling though some acts have extended coverage to include rear buildings.<sup>15</sup> Three<sup>16</sup> of these acts exclude the family from coverage entirely.

<sup>10</sup>Matter of Application of Jacobs, (1885) 98 N. Y. 98.

<sup>11</sup>(1941), 43 International Labor Review 1.

<sup>12</sup>Massachusetts' Acts & Resolves, (1891) ch. 357; (1892) ch. 296; (1893) ch. 246; (1894) ch. 508, sec. 44-48; (1898) ch. 150. Laws of New York, (1892) ch. 655; (1892) ch. 673, sec. 13-14; (1893) ch. 173, sec. 2; (1896) ch. 991, sec. 2, 5 & 6; (1897) ch. 415, art. 7; (1899) ch. 191, art. 7; (1904) ch. 550. Hurd's Illinois Revised Statutes, (1899) ch. 48, sec. 21-31. General Public Laws of New Jersey, (1893) ch. 216. Laws of Maryland, (1894) ch. 302; (1896) ch. 467; (1902) ch. 101. Pennsylvania Digest of Laws, (1895-1901) p. 302. Laws of Ohio, (1896) p. 317. General Laws of Indiana, (1897) ch. 65, sec. 13 & 14; (1899) ch. 142, sec. 14. Laws of Wisconsin, (1899) ch. 232; (1901) ch. 239. Revised Statutes of Missouri, (1899) ch. 161, art. 5, sec. 10096-98. General Statutes of Connecticut, (1902) ch. 250. Public Acts of Michigan, (1899) No. 233, sec. 19; (1901) No. 113, sec. 17.

<sup>13</sup>Illinois, Maryland, Pennsylvania, Indiana, and Missouri.

<sup>14</sup>Cf. Missouri which permits the family plus three outsiders to work.

<sup>15</sup>Cf. Massachusetts which expressly excludes rear buildings.

<sup>16</sup>New York, Ohio, and Connecticut.

These early acts emphasized health regulations. They were nearly uniform in providing that workshops be kept in a clean and healthful condition. Likewise most statutes provided for a limited amount of free air space for each employee, proper ventilation, and adequate lighting. Provisions were made in the majority of these acts for the inspection of both workshops and goods produced therein and empowering state health boards to issue such orders as the public safety might require. Four of these states<sup>17</sup> extended their inspection provisions to cover articles produced by home workers outside their state and empowered their State Health Boards to take proper measures where the articles were found to be unsanitary and to have been made under unhealthy conditions.

Two-thirds<sup>18</sup> of the states required the worker, employer, or both to be licensed or to have a permit. Five<sup>19</sup> of these states provided for revocation of the license or permit should the health department find conditions unsanitary. Two-thirds<sup>20</sup> of the states either required that the proprietor give notice of the location of the workshop, the nature of the work carried on there, and the number of persons employed or required that the proprietor keep a register containing the name and address of each of his home workers.<sup>21</sup>

Only three<sup>22</sup> statutes required labels to be placed on goods produced under their act, two<sup>23</sup> of them limiting this requirement to cases where the goods were produced in violation of the act.

Illinois<sup>24</sup> was the only state to incorporate into its home work Act special provisions for women and children. Children under fourteen were prohibited from working and for persons employing children under sixteen a register of the name, birthplace, age, and place of residence was required. The Act further provided that female employment was to be limited to eight hours per day or forty-eight hours per week. However, this latter provision was declared unconstitutional.<sup>25</sup>

Each state provided a penalty of a fine or imprisonment or both for violations. Four states<sup>26</sup> extended liability to the tenement

<sup>17</sup>Massachusetts, New York, Illinois, and Michigan.

<sup>18</sup>Massachusetts, New York, Maryland, New Jersey, Pennsylvania, Wisconsin, Indiana, and Michigan.

<sup>19</sup>New York, New Jersey, Maryland, Wisconsin, and Indiana.

<sup>20</sup>New York, Maryland, Pennsylvania, Wisconsin, Michigan, Massachusetts, Illinois, and Connecticut.

<sup>21</sup>New York made both requirements.

<sup>22</sup>Massachusetts, New York, and Missouri.

<sup>23</sup>Massachusetts, and Missouri.

<sup>24</sup>Illinois Revised Statutes, (1899) ch. 48, sec. 24-25.

<sup>25</sup>Richie v. People, (1895) 155 Ill. 98.

<sup>26</sup>New York, New Jersey, Pennsylvania, and Wisconsin.

owner who knowingly permits in his building the manufacture of goods unlawfully produced. Maryland<sup>27</sup> used a peculiar method of enforcing its statute in providing that if any association or society provided enough evidence to base a conviction for violation of one of these provisions, they should get one-half the fine.

*State v. Hyman*<sup>28</sup> seems to be the only case to consider the constitutionality of any of this group of early statutes. They upheld the entire Act<sup>29</sup> as a health measure. The court could find nothing which would indicate that its design, purpose, or details had not a real and substantial relation to the police power, and as the regulation was considered not to be an unreasonable exercise of the police power it was upheld.

From the early part of the twentieth century until the passage of the National Industrial Recovery Act of 1933 there were only a few sporadic changes in state homework enactments. However, the few changes that were made pointed out the trend of future home work legislation.

In New York there was a general dissatisfaction with the earlier law. Organized labor continued to exert pressure and in 1910 instigated the great cloak and suit strike in New York City in which they demanded the complete abolition of home work. Though they failed to stop (home work) effectively there is no doubt such pressure influenced legislation.<sup>30</sup>

In 1913 an amendment<sup>31</sup> was passed to the New York Law in which the manufacture in homes of dolls and doll clothing, infants' and children's wearing apparel, and articles of food was prohibited. This statute was sustained in two New York cases.<sup>32</sup> As in *State v. Hyman*<sup>33</sup> this statute was sustained on the basis of public health. The New York Court failed to mention the earlier case of *Matter of Application of Jacobs*<sup>34</sup> where it had held the New York Act of 1884,<sup>35</sup> to be a violation of the due process clause of the Fourteenth Amendment.

In 1921 Wisconsin<sup>36</sup> changed its home work law whereby the

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<sup>27</sup>Laws of Maryland, (1884) ch. 302, sec. 149 d.

<sup>28</sup>*State v. Hyman*, (1904) 98 Md. 596, 57 Atl. 6, 64 L. R. A. 637.

<sup>29</sup>Laws of Maryland, (1902) ch. 101 as based on the Act of 1894, ch. 302, and the Act of 1896, ch. 467.

<sup>30</sup>(1944), 58 Monthly Labor Review 1145.

<sup>31</sup>New York Laws, (1913) ch. 260.

<sup>32</sup>*People v. Balofsky*, (1915) 167 App. Div. 913; *People v. Rapport*, (1920) 193 App. Div. 135, 183 N. Y. S. 589, 38 N. Cr. 488.

<sup>33</sup>*State v. Hyman*, (1904) 98 Md. 596, 57 Atl. 6, 64 L. R. A. 637.

<sup>34</sup>*Matter of Jacobs*, (1885) 98 N. Y. 98.

<sup>35</sup>Laws of New York, (1884) ch. 272.

<sup>36</sup>Laws of Wisconsin, (1921) ch. 259.

State Board of Health and the State Industrial Commissioner acting jointly were empowered to prohibit home work entirely on those articles where it was found necessary to protect the health of the consumer or the home worker. This was a cornerstone of present day home work law.

Tennessee<sup>37</sup> and Ohio<sup>38</sup> each passed home work acts during this period patterning them after the early state acts and having health as their basis. Pursuant to a California Statute<sup>39</sup> the State Industrial Welfare Commission entered a decree in 1918 ruling that the piece rate paid women and minors had to equal seventy-five per cent of the rate paid for such work in factories with an outside minimum of twenty-one cents an hour.

During this period the courts in a number of instances were applying the Workmen's Compensation Act to industrial home workers, i.e., finding home workers to be employees within their meaning. In each of these cases<sup>40</sup> the applicant was injured while working with his own equipment in his own home on the employer's materials. In the *DeJong Case*<sup>41</sup> the home worker was held to be an employee though not engaged exclusively in the employer's work.

The National Industrial Recovery Act passed in 1933 was the first attempt at nation wide control of home work. One hundred and eighteen industries adopted codes that made provisions for the regulation of home work. The only means of enforcing these codes, however, was by voluntary support of the employers and the unions<sup>42</sup> and as a result of confusion in the administration of the Act the employers' support was to a large extent lost.<sup>43</sup> In spite of the faults present, however, reports seem to indicate that gains made in home work control were encouraging in those industries where the codes were supported.<sup>44</sup> Nevertheless, a report<sup>45</sup> made by the United States Department of Labor showed that home workers still worked long hours, and in general there was little raise in working standards for these people.

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<sup>37</sup>Tennessee Acts, (1915) ch. 28.

<sup>38</sup>Ohio, Annotated Revised Statutes, (1908) 4364-80.

<sup>39</sup>California, Henning's General Laws of California, (1941) ch. 241.

<sup>40</sup>Allied Mutual Liability Insurance Co. v. De Jong, (1924) 209 App. Div. 505, 205 N. Y. S. 165; *Fiocca v. Dillon*, (1916) 175 App. Div. 957, 161 N. Y. S. 1125; *Liberatore v. Friedman*, (1918) 224 N. Y. 710, 121 N. E. 876.

<sup>41</sup>Allied Mutual Liability Insurance Co. v. De Jong, (1924) 209 App. Div. 505, 205 N. Y. S. 165.

<sup>42</sup>(1941) 43 International Labor Review 1.

<sup>43</sup>(1939) Ruth Shallcross, *Industrial Home Work*, p. 61.

<sup>44</sup>(1935) 40 Monthly Labor Review, p. 888.

<sup>45</sup>(1935) 40 Monthly Labor Review, p. 888.



The value of the N.R.A., however, was not so much its effectiveness in controlling industrial home work as the things learned as a result of this first nation-wide attempt to control home work. The employers became aware of the unfair competition from which they suffered as a result of home work utilized by some employers. Benjamin Kadison, representing the Embroidery Manufacturing Association, contended that it was impossible for an employer of factory help to compete with this evil.<sup>46</sup> The N.R.A. also showed clearly the evils caused by a partial prohibition of home work in an industry. A firm engaged in two or more branches of an industry in which home work was prohibited in only one branch of the industry could shift all of their work into that branch free of regulations. An example of this evasion under the N.R.A. was where the employers in the embroidery industry wishing to gain a competitive advantage by evading the strict embroidery code provisions would try to come under one of the apparel codes which did not prohibit home work.<sup>47</sup>

It was clearly proved under the N.R.A. that prohibition of home work in an industry did not cause undue hardship upon either the worker or the employer, but in many cases actually benefited both parties. But with a few individual exceptions the workers found they could adjust themselves to and were more satisfied with a factory job.<sup>48</sup> Also many employers found improvements in both the quantity and the quality of work done in the factory.<sup>49</sup> One industrial engineer of a New York firm reported that the production of three factory workers equalled that of five home workers. Further the N.R.A. hour and wage studies proved that low wages were inherent in home work and were not alone caused by the fact that the home workers considered it "pick-up" work and as a result did not put full time on the job.

But this period of nation-wide regulation of home work ended when in 1935 the N.R.A. was declared unconstitutional.<sup>50</sup> From 1935 until the passage of the Fair Labor Standards Act in 1938, the control of home work was again left completely to the state.

For the most part early state enactments proved ineffectual in

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<sup>46</sup>U. S. Dept. of Labor, (1942) Clara M. Beyer, *Prohibition of Industrial Home Work in the Embroideries Industry*, p. 5.

<sup>47</sup>U. S. Dept. of Labor, (1942) Clara M. Beyer, *Prohibition of Industrial Home Work in the Embroideries Industry*, p. 16.

<sup>48</sup>U. S. Dept. of Labor, (1942) Clara M. Beyer, *Prohibition of Industrial Home Work in the Embroideries Industry*, p. 17.

<sup>49</sup>U. S. Dept. of Labor, (1942) Clara M. Beyer, *Prohibition of Industrial Home Work in the Embroideries Industry*, p. 24.

<sup>50</sup>*U. S. v. Schechter Poultry Co.*, (1935) 295 U. S. 495, 55 Sup. Ct. 837, 79 L. Ed. 1570, 97 A. L. R. 947.

the regulation and prohibition of industrial home work.<sup>51</sup> Coverage was very narrow for the most part in these laws. Most of them were extremely limited in the kinds of industrial home work covered and in the places where home work was carried on. They made no attempt to meet such abuses as long hours, low wages and child labor.<sup>52</sup> Under the N.R.A. definite strides were made in the prohibition of industrial home work and though declared unconstitutional it did stimulate interest in enacting legislation to preserve the gains developed.

Today 19 states,<sup>53</sup> the District of Columbia<sup>54</sup> and Puerto Rico<sup>55</sup> have passed acts regulating or prohibiting industrial home work. Early legislation was enacted and sustained as a health measure, but recent legislation emphasizes the economic and social evils of home work, viz; long hours, low wages, child labor, and the threat to established standards, as well as health purposes.

Prohibitions in modern statutes are of two types. (1) Home work is prohibited in certain industries. (2) Home work is prohibited to certain persons.

<sup>51</sup>(1939) U. S. Dept. of Labor, Industrial Home Work Legislation and Its Administration, Bulletin No. 26, p. 3.

<sup>52</sup>Cf. Illinois Revised Statute, (1899) ch. 48, sec. 24 and 25, later declared unconstitutional in *Richie v. People*, (1895) 155 Ill. 98.

<sup>53</sup>California, Deering's Codes, (1938) Labor Code, sec. 2650-2668 (added to Labor Code by ch. 809, Laws of 1939). See also Deering's Codes, (1938) Labor Code, sec. 1171-1203. Colo., (1935) Colorado Statutes Annotated, ch. 97, sec. 236-256, as amended by ch. 189, sessions laws, (1937) approved April 28, 1937. Conn., Cumulative Supplement to General Statutes, (1931-1935) sec. 905c-908c; Supplement to General Statutes, (1937) sec. 575d. See also, Supplement to General Statutes, (1937) sec. 788d, 790d, 791d; Ill., Laws of Illinois, (1937) an act to Revise the Law Regulating Industrial Home Work, filed July 13, 1937, (Senate Bill No. 299). Ind., Burns Annotated Indiana Statutes, (1933) sec. 40-1010, 40-1016 to 40-1019. Md., Bagby's Annotated Code of Maryland, (1924) art. 27, sec. 301, 303, 304, 305, 306, 308. Mass., Acts and Resolves of Mass., (1937) ch. 429. Mich., Compiled Laws of Mich., (1929) sec. 8337 and 8354. Mo., Revised Statutes of Missouri, (1929) sec. 13279-13281. N. J., Revised Statutes of New Jersey, (1937) sec. 34:6-120 to 34:6-136. See also, Revised Statutes of New Jersey, (1937) sec. 34:11-34 to 34:11-56. N. Y., Cahill's Consolidated Laws of New York, (1931-1935) Supplement, ch. 32, sec. 350-363. See also, Cahill's Consolidated Laws of New York, ch. 32, art. 4 & 5. Ohio, Complete Ohio General Code, Page's Desk Edition, (1932) sec. 1020-1026. Ore., 1935 Supplement, Oregon Code, sec. 49-302a to 49-303, and 49-306, and Oregon Code, (1930) sec. 49-304, 49-305, and 49-307 to 49-321. Penn., Pennsylvania, (1937) Act no. 176. R. I., Rhode Island Public Laws, (1936) ch. 2328. See also, Rhode Island Public Laws, (1936) 2289. Tenn., Code of Tennessee, (1932) sec. 6633-6639. See also, Code of Tennessee, (1932) sec. 5343. Tex., General and Special Laws, (1937) ch. 481. W. Va., Code of West Virginia, (1931) ch. 21, art. 7, sec. 1-11 (article 7 added by House Bill 233, 1939, as enacted). Wis., Wisconsin Statutes (1937) sec. 103.44, 101.28, and 146.03. See also, Laws of Wisconsin, (1937) ch. 6.

<sup>54</sup>Public, no. 215, Sixty-fifth Congress, 40 Statutes 960.

<sup>55</sup>Industrial Home Work Law, Act no. 163, Laws of 1939.

Seven states<sup>56</sup> and Puerto Rico prohibit home work in the production of certain specified articles, the more common of which are food and drink, drugs and poisons, toys and dolls, bandages and other sanitary goods, tobacco, fireworks and explosives.

Six states<sup>57</sup> and Puerto Rico have empowered a designated official or body to prohibit by order industrial home work in any industry in which it finds that home work injures health and welfare of home workers or renders unduly difficult maintenance of existing labor standards or enforcement of those established by law or regulation by factory workers.

Under the New York Act the Industrial Commissioner has made four orders. Order No. 1,<sup>58</sup> prohibits industrial home work in the men's and boys' outer clothing industry; except that special authorizations may be issued for aged and disabled home workers.<sup>59</sup> Order No. 2,<sup>60</sup> prohibits industrial home work in the men's and boys' neckwear industry; except that special permits and certificates may be issued to aged or disabled home workers.<sup>61</sup> Order No. 3<sup>62</sup> prohibits industrial home work in the artificial flower and feather industries; except that in artificial flower industry special permits and certificates may be issued to aged or disabled home workers.<sup>63</sup> In *Dote v. Dept. of Labor*,<sup>64</sup> the plaintiffs attacked Order No. 3 as invalid not only as being unreasonable but also on the grounds that the Labor Law<sup>65</sup> which conferred upon the Industrial Commissioner the authority to promulgate such an order was unconstitutional as an improper delegation of power and as a violation of property rights. The court first upheld the validity of the statute on the grounds that the legislature was within the police power when it adopted the legislation and therefore, did not violate property rights in enacting the same. They further found no im-

<sup>56</sup>California, Illinois, Massachusetts, New Jersey, New York, Pennsylvania, and West Virginia.

<sup>57</sup>California, Massachusetts, New York, Pennsylvania, New Jersey, and West Virginia.

<sup>58</sup>Industrial Commissioner, Home Work Order No. I, 1936.

<sup>59</sup>Home worker must be over sixty and must have physical disability which would prevent him from performing same work in a shop.

<sup>60</sup>Industrial Commissioner, Home work Order No. II, 1937.

<sup>61</sup>Home worker must be unable to adjust to factory work because of age or physical or mental disability, or to leave home because his presence there is required to care for invalid.

<sup>62</sup>Industrial Commissioner Home Work Order No. III, 1938.

<sup>63</sup>Home worker must be unable to adjust to factory work because of age or physical or mental disability, or to leave home because his presence there is required to care for an invalid.

<sup>64</sup>*Dote v. Dept. of Labor*, (1940) 173 Misc. 562, 18 N. Y. S. (2d) 557.

<sup>65</sup>Cahill's Consolidated Laws of New York, 1931-1935 Supplement, ch. 32, sec. 351, art. 13.

proper delegation of legislative power as the labor law provided for the gradual elimination of home work for economic reasons and simply gave the commissioner the power to bring about such abolition by proper rules and procedure. The court goes on to find the Order No. 3 was not unreasonable and therefore valid. Again in *First American Natural Ferns Co. v. Picard*<sup>66</sup> Order No. 3<sup>67</sup> was attacked. Again the order was sustained as reasonable and the *Dote Case*<sup>68</sup> was followed in upholding the constitutionality of the New York home work Act.<sup>69</sup> Order No. 4 extends prohibition to the glove industry.

Both the Colorado Law and the Oregon Law grant their industrial Commission<sup>70</sup> authority to issue orders regulating conditions of employment of women or minors in any occupation, trade, or industry. Each state has enacted an order under its respective statute. Colorado Order No. 2<sup>71</sup> applies to retail trade occupation, including all selling of merchandise to the consumer, not for the purpose of resale and expressly provides that work that can be done at a regular place of business may not be performed elsewhere. The Oregon Order<sup>72</sup> applying to needlecraft occupations expressly prohibits work in private homes, unsanitary basements and buildings, and places unsafe on account of fire risks.

Both the Connecticut enactment of 1935<sup>73</sup> and the Rhode Island Act of 1936<sup>74</sup> look toward the eventual elimination of home work in their state. By the Connecticut Act the general distribution of home work is prohibited, but the commissioner may except persons physically incapacitated or whose services are required at home to care for a member of the household, or simple hand processes in which home work is customary, if found that suspension of

<sup>66</sup>*First American Natural Ferns Co. v. Picard*, (1940) 175 Misc. 280, 23 N. Y. S. (2d) 39.

<sup>67</sup>In the interval between *Dote v. Dept. of Labor*, (1940) 173 Misc. 562, 18 N. Y. S. (2d) 557, and *First American Natural Ferns Co. v. Picard*, (1940) 175 Misc. 280, 23 N. Y. S. (2d) 39, Order No. III was amended. Under its original construction it applied only to women and minors, but as amended it was made to apply to all persons including men.

<sup>68</sup>*Dote v. Dept. of Labor*, (1940) 173 Misc. 562, 23 N. Y. S. (2d) 39.

<sup>69</sup>*Cahill's Consolidated Laws of New York, 1931-1935 Supplement*, ch. 32, sec. 351, art. 13.

<sup>70</sup>Power is given to the State Welfare Commission in Oregon.

<sup>71</sup>Industrial Commission Order No. II, (1938) issued pursuant to 1935 Colorado Statutes Annotated, ch. 97, sec. 236-256 as amended by ch. 189 session laws, 1937.

<sup>72</sup>State Welfare Commission Order, (1937) issued pursuant to 1935 Supplement, Oregon Code, sec. 49-302a to 49-305, and 49-307 to 49-321.

<sup>73</sup>Connecticut, Cumulative Supplement to General Statutes, (1931-1935) sec. 905c-908c.

<sup>74</sup>Rhode Island Public laws, (1936) ch. 2328.

home work would be an undue hardship on labor or industry.<sup>75</sup>

Rhode Island prohibits home work except where licenses and certificates are obtained. The act further provides that licenses and certificates shall be issued to home workers over fifty years of age who are physically handicapped for work in the employer's shop and to any person in those industries in which home work is customary in the State, unless it would unduly jeopardize the factory workers in such industry or jeopardize public health and safety. Under Minimum Wage Orders No. 1<sup>76</sup> and 2<sup>77</sup> home work is prohibited in (1) jewelry manufacturing (2) manufacturing of wearing apparel and allied occupations.<sup>78</sup>

Most states have limited the persons who may do home work. Seven states<sup>79</sup> and Puerto Rico have limited home work to those persons who are residents of the home where work is performed. Indiana, Maryland, and Tennessee have adopted a more conservative measure in limiting home work in certain specified industries only to members of the immediate family living at home while Missouri, even more conservative, limits home work in the manufacture of specified articles to three persons other than the immediate family.

Nearly all states that have enacted home work legislation have adopted a licensing system.<sup>80</sup> As we saw earlier this idea is not new as a number of the earliest home work statutes made provisions for licensing. Most states<sup>81</sup> require both employer and worker to be licensed. The employer is required to secure an annual permit for which a charge is made.<sup>82</sup> Four states<sup>83</sup> have provided for a

<sup>75</sup>Permits may be issued only to persons living in homes where work is performed.

<sup>76</sup>Mandatory Minimum Wage Order No. I, (1937) issued pursuant to Rhode Island Public Laws, (1936) ch. 2289.

<sup>77</sup>Mandatory Minimum Wage Order No. II, (1938) issued pursuant to Rhode Island Public Laws, (1936) ch. 2289.

<sup>78</sup>Under Wage Order No. II, occupations are defined to include wearing apparel and accessories, of whatever material composed and such allied occupations as upholstering and curtain, rug, pillow, and mattress manufacture.

<sup>79</sup>California, Connecticut, Illinois, Massachusetts, New York, Pennsylvania, and Texas.

<sup>80</sup>California, Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Rhode Island, Tennessee (only as to child labor under 16), Texas, West Virginia, Wisconsin and Puerto Rico.

<sup>81</sup>California, Connecticut, Illinois, Massachusetts, New York, Pennsylvania, Rhode Island, Texas, West Virginia, and Puerto Rico. Illinois makes the added requirement that the owner of the premises secure an annual sanitary permit.

<sup>82</sup>The charge made generally ranges from \$25 to \$100 a year. In cases where employers give out home work exclusively to restricted number of handicapped persons, fees may be waived.

<sup>83</sup>Illinois, New York, Pennsylvania, and Rhode Island.

graduated fee based on the number of workers employed. The worker is required to secure a permit for which no charge is made.<sup>84</sup> Both the employer's licenses and the worker's permit are subject to revocation.

Maryland and New Jersey require a license for the use of room or apartment,<sup>85</sup> application to be made by any member of family desiring to engage in home work. The license is revocable for non-compliance or when the health of the community or of the home workers requires it.

Most statutes provide for the keeping of records,<sup>86</sup> another requirement commonly found in early home work statutes. Still another requirement found in some of the earliest home work statutes was that of labeling goods produced by home workers. Today nine states<sup>87</sup> and Puerto Rico make this requirement. Generally under the labeling requirement the employer must label home work as such along with his name and address.<sup>88</sup>

Provisions regulating sanitation in home work manufacture—the most important regulation in early home work legislation—are present in nearly all modern home work laws. The statutes are uniform in their requirement that the premises be clean and fit for the purpose and free from communicable disease.<sup>89</sup> Some of these statutes have further provided for a minimum amount of air space per worker,<sup>90</sup> and that the workroom must be well and sufficiently lighted, heated, and ventilated.<sup>91</sup>

In these modern statutes provisions are often made regarding child labor, minimum wages, and maximum hours in industrial home work. With the exception of Illinois<sup>92</sup> no state made such

<sup>84</sup>In Texas a maximum fee of \$50 may be charged.

<sup>85</sup>The license shall state the maximum number of workers to be employed therein.

<sup>86</sup>The broader acts provide that the employer must keep a record of names and addresses of home workers, kind and amount of materials distributed, rate of pay, and total earnings each week of each worker. However, most acts do not require as complete a record.

<sup>87</sup>California, Maryland, Massachusetts, Missouri, New York, Pennsylvania, Texas, West Virginia, Wisconsin, and Puerto Rico.

<sup>88</sup>Missouri provides that the inspector shall label articles made under unclean or unhealthy conditions, "made under unhealthy conditions."

New York empowers the commissioner to label articles unlawfully manufactured, "Unlawfully made."

<sup>89</sup>Seven states: California, Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, and Texas will not issue a home worker's certificate to persons living in a home not clean and free from communicable disease.

<sup>90</sup>Illinois, Maryland, New Jersey, and Tennessee.

<sup>91</sup>Illinois, New Jersey, Ohio, and Tennessee.

<sup>92</sup>Illinois Revised Statutes, (1899) ch. 48, sec. 24-25.

provisions in the earlier home work legislation. Today ten states<sup>93</sup> and Puerto Rico have incorporated child labor provisions into their Acts; six states<sup>94</sup> and the District of Columbia have included minimum wage provisions; and five states<sup>95</sup> and Puerto Rico have made maximum hours provisions.

Seven states<sup>96</sup> and Puerto Rico provide a minimum age of sixteen years. Massachusetts, Texas, and Wisconsin provide for a minimum age of fourteen, fifteen, and eighteen respectively.

Several states have either by express provision in their home work statute or by a wage and hour order established the same wage and hour law as applies to factories in their state. Thus Connecticut, Massachusetts, Rhode Island, Pennsylvania, and Puerto Rico have incorporated their factory hour laws into their home work statutes.<sup>97</sup>

State laws, however, no matter how far reaching, do not adequately control home work without the aid of Federal legislation. Home work law-dodgers move to states which permit the greatest opportunities for exploitation, or they transport material to home workers across state lines.<sup>98</sup> One investigation showed that New York employers were sending material by mail to home workers in Texas. This results in an undermining of state laws unless there is adequate federal legislation to plug the gaps.

The National Industrial Recovery Act pointed the way to better and more effective control by the Federal Government. It also showed that labor and industry could adjust to the regulation and prohibition of home work.

Under the Walsh-Healey Act of 1936 industrial home work is prohibited in all government contracts of more than \$10,000.

The Fair Labor Standards Act, passed in 1938, provides for the

<sup>93</sup>California, Connecticut, Illinois, Massachusetts, New York, Pennsylvania, Rhode Island, Tennessee, Texas, and Wisconsin.

<sup>94</sup>Connecticut, Illinois, Massachusetts, New Jersey, Rhode Island, and Wisconsin.

<sup>95</sup>Connecticut, Massachusetts, New York, Pennsylvania, and Rhode Island.

<sup>96</sup>California establishes sixteen years as the minimum age except in case of children fifteen years of age who have completed seventh grade. A child of fourteen may work outside school hours or for a limited period if he has completed elementary school and his earnings are needed for family support. A child of twelve may work during vacation and on weekly school holidays.

New York and Pennsylvania further provide that all their child labor laws shall apply, and Wisconsin conditions the issuing of permits upon compliance with all their child labor laws.

<sup>97</sup>Connecticut and Rhode Island attempt only to regulate the hours of minors and women in home work.

<sup>98</sup>(1944) Industrial Home Work Bulletin, Prepared by the Div. of Labor Standards, U. S. Dept. of Labor, p. 6.

regulation of wages and hours in industries engaged in interstate commerce or in the production of goods for interstate commerce. Elmer F. Anderson, former administrator of the Wage and Hour Division, pointed out that "The Act makes no mention of home workers. Consequently, it applies to this class of workers exactly as it applies to all other employees of firms or individuals engaged in commerce or the production of goods for commerce."<sup>99</sup> The question of Congress' intent to include home workers under the Fair Labor Standards Act was later raised in *Walling v. American Needlecraft*.<sup>100</sup> The Court said it was apparent from debates of Congress and the legislative history of the Act that the intent was not to open the door for the return of sweatshops but to give a broad definition to the term "employee" so as to include home workers.

The experience gained in respect to home work under the N.R.A. was applied in enacting the F.L.S.A. Under this Act the Administrator is given the authority to promulgate prohibitory orders. By these orders home work has been prohibited in seven industries; jewelry, gloves and mittens, women's apparel, knitted outerwear, buttons and buckles, handkerchiefs, and embroidery.<sup>101</sup> However, exceptions were made to each of these orders,<sup>102</sup> and provisions were made allowing home work under a home work certificate granted where the worker (1) is unable to adjust to factory work because of age or a physical or mental disability; (2) is unable to leave home because his presence is required to care for an invalid in the home; (3) was engaged in home work in the specified industry prior to a certain date, or (4) is under the supervision of a State Vocational Rehabilitation Agency or sheltered workshop. These same wage orders set \$.40 an hour as the minimum to be paid a person who might obtain a home work certificate under one of these exceptions.

These prohibitory orders issued under the F.L.S.A. have been effective in reducing home work employment. A recent statement prepared by the Division of Labor Standards declares that

<sup>99</sup>(1942) Wage and Hour Manual, p. 139.

<sup>100</sup>*Walling v. American Needlecraft*, (C.C.A. 6th Cir. 1943) 139 F. (2d) 60.

<sup>101</sup>Jewelry, (1941) 4 Wage and Hour Reporter 574; Buttons & Buckles, (1942) 5 Wage and Hour Reporter 753; Gloves and Mittens, (1942) 5 Wage and Hour Reporter 754; Handkerchiefs, (1943) 6 Wage and Hour Reporter 112; Women's Apparel, (1942) 5 Wage and Hour Reporter 575; Embroidery, (1943) 6 Wage and Hour Reporter 856; Knitted Outerwear, (1942) 5 Wage and Hour Reporter 271.

<sup>102</sup>(1944) Industrial Home Work, prepared by the Division of Labor Standards, U. S. Dept. of Labor, p. 7.



"Home work has been practically eliminated in the industries covered by federal prohibitory orders."<sup>103</sup>

In *Gemsco v. Walling*,<sup>104</sup> the Court upheld the administrator's authority to restrict home work in the embroidery industry. The New York embroidery concerns brought action<sup>105</sup> contending that the administrator exceeded his authority in restricting home work in the industry and that the delegation to the administrator was unlawful. The Court found that Congress intended to give the administrator the power to limit home work as part of the "terms and conditions" found by the administrator to be necessary to prevent circumvention or evasion of a wage order, under section 8 of the F.L.S.A. It was held that the Act did not involve an unconstitutional delegation of power by permitting the administrator to prohibit home work since sufficient restrictive standards for administrative action were provided.

In the administration of the Act the Wage and Hour Division has made several important rulings. They have ruled that *waiting time* and *travel time* be considered working hours. Home workers who formerly spent several hours a week checking materials in and out of the employer's plant now receive the regularly hour pay for time so spent. The home worker is credited both with time spent travelling to and from the employer's place of business plus any time that he may be kept in line waiting. Such time is also included in calculating overtime. It has been further ruled that expenses incurred by home workers such as needles, thread, and electricity be paid for by the employer if such expenses reduce the hourly rate of pay to less than \$.40. This ruling also includes shipping and mailing expenses the home worker might incur.

Earnings may not be averaged over a period of more than one week, i.e., earnings above the minimum for one week may not be averaged with earnings of a below minimum week to make up the deficiency of poor earning weeks. Employers are liable for restitution to home workers under the Act. The Wage and Hour Division has maintained a great number of civil suits against employers for restitution of unpaid minimum wages due and an additional equal amount as liquidated damages.<sup>106</sup> Many of these

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<sup>103</sup>(1944) Industrial Home Work, prepared by the Division of Labor Standards, U. S. Dept. of Labor, p. 7.

<sup>104</sup>*Gemsco v. Walling*, (1945) 65 Sup. Ct. 605.

<sup>105</sup>By section 10(a) of the Fair Labor Standards Act action may be brought directly to the Federal Circuit Courts.

<sup>106</sup>Fair Labor Standards Act, (1938) sec. 16(b).

suits are settled by consent decrees.<sup>107</sup> The Act also provides for criminal actions against employers,<sup>108</sup> but these actions are not as common as the civil suits.

Child labor is naturally prohibited in those industries governed by prohibitory orders. In industries not covered by these orders the child labor provisions under the Act would apply to children engaged in industrial home work. It is difficult, however, to determine how effective these provisions are when work is done in the home. Where there is home work there is very likely to be child labor.

Whether the home worker is an independent contractor or an employee is a question that arises most frequently in home work litigation under the F.L.S.A. Independent contractors are not covered by the F.L.S.A. Consequently, employers have tried various schemes of subterfuge to make the worker appear to be an independent contractor and not an employee.

*Walling v. Buettner*<sup>109</sup> held an employer-employee relationship existed between the home workers and the company although a contract between the parties stated the home workers were independent contractors. The time of completion of the work, its character, the price paid for the work, and the manner of doing the work were all set by the company, thus indicating an employer-employee relationship.

In *People of N. Y. v. Famous Infants Knitwear Corporation*,<sup>110</sup> the defendant, a manufacturer of infants' hats, devised a buying and selling scheme in an attempt to avoid the home work law. He recommended several wool companies to the home worker telling him to purchase his wool from one of these. When the home worker presented the defendant's recommendation card she was given credit on her first order of wool. The finished hats were sold to the defendant who paid according to the weight. The home worker then paid the wool company. The home worker worked exclusively for the defendant. The court held that the attempt of the defendant to establish a status different from the actual relationship was not conclusive upon the court, but that they would look beyond the scheme to expose the real relation-

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<sup>107</sup>One of the largest of these suits against eleven knit-goods firms resulted in a consent decree whereby \$250,000 was paid out to home workers as back pay. (2 Wage and Hour Reporter 499).

<sup>108</sup>Fair Labor Standards Act, (1938) sec. 16(a).

<sup>109</sup>*Walling v. Buettner*, (C. C. A. 7th Cir., 1943), 133 F. (2d) 306, cert. den. 319 U. S. 771, 63 Sup. Ct. 1437, 87 L. Ed. 1719.

<sup>110</sup>*People v. Famous Infants Knitwear Corp.*, (1939) 172, Misc. 842, 18 N. Y. S. (2d) 167.

ship between the parties. It held the home workers to be employees within the Act.

*Walling v. Todd*<sup>111</sup> applied the common law test in finding the home workers to be independent contractors, hence, not bringing the home workers involved under the F.L.S.A. But the courts abandoned the common law approach to the problem shortly after this decision was rendered. In *Walling v. American Needlecraft*,<sup>112</sup> the agreement with the home workers called for a completed job according to specifications without supervision over their work while it was being performed. The home workers furnished their own materials and determined their own hours. These workers were held to be employees within the meaning of the F.L.S.A. The court said the F.L.S.A. was designed to implement a public, social, and economic policy through remedies unknown to and often in derogation of the common law, and if the Act included certain workers within its scope the court would not trouble itself with the common law master-servant relationship. The court in *Fleming v. Demeritt*<sup>113</sup> followed the *American Needlecraft Case*<sup>114</sup> in holding that the history and legislative intent of the F.L.S.A. indicates that industrial home workers are to be covered by the Act regardless of the existence of a common law master-servant relation. The court went on to say that the lack of supervisory control over the manner of performance of the work and the apparent absence of power to terminate the employment before completion of the job did not conclusively preclude home workers from being considered employees.

In determining whether home workers were employees for purposes of social acts other than the Fair Labor Standards Act, the courts developed tests along similar lines. In *Kentucky Cottage Industries v. Glen*,<sup>115</sup> the employer sought to recover Social Security taxes. Home workers had agreed to follow general specifications given as to the method of doing the work which allowed the employer no control over the details of method, hours, or working conditions. The employer reserved the right to reject finished goods. The court followed the common law test in finding this not to be an employer-employee relationship but rather an independent contractor. It was pointed out that the

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<sup>111</sup>*Walling v. Todd*, (1943) 52 Fed. Supp. 62.

<sup>112</sup>*Walling v. American Needlecraft*, (C. C. A. 6th Cir. 1943) 139 F. (2d) 60.

<sup>113</sup>*Fleming v. Demeritt Company*, (1944) 56 Fed. Supp. 376.

<sup>114</sup>*Walling v. American Needlecraft*, (C.C.A. 6th Cir. 1943) 139 F. (2d) 60.

<sup>115</sup>*Kentucky Cottage Industries v. Glenn*, (1941) 39 Fed. Supp. 642.

home workers pursued an independent business, undertaking to do specific work for others, using their own methods without submitting themselves to the employer's control.

*Andrews v. Commodore Knitting Mills*<sup>116</sup> involved a typical home work set up. The court found the home workers to be employees and thus brought the employers under the State Unemployment Insurance Law. The court, in determining this point seemed to apply the common law test relying upon three earlier New York Cases.<sup>117</sup> However, under *Peasley v. Murphy*<sup>118</sup> the courts said that the definition of the class entitled to receive benefits under their State Unemployment Compensation Act was broader than under the common law concept of master-servant. The court went on to say that the definition of employment was sufficiently pervasive to include all workers to whose security unemployment was a threat.

Most of the countries of North and South America, Europe, and Australia have enacted home work legislation. In Europe, home work is traceable back to the 12th century when liberation of the serf made home work important. The rise of trade in the 15th Century stimulated the utilization of home work. The guilds of this period opposed home work and during the 17th century the states joined in this opposition but the 18th century saw a switch in the leanings of government due to the new economic liberalism of that period.<sup>119</sup>

Their history of home work legislation parallels that of home work legislation in the United States. In 1890 the Minister of State in Germany proposed that the Federal Council be given power to extend factory industrial regulation to home workers, but no such measure was passed until 1911. During the 20th century other European countries enacted new or additional home work legislation.<sup>120</sup> Prohibitory provisions, wage and hour provisions, industrial risk provisions, health and sanitation provisions, child labor provisions, social and unemployment insurance provisions, and special administrative provisions are the most common provisions of these Acts.

<sup>116</sup>*Andrews v. Commodore Knitting Mills*, (1939) 257 App. Div. 515, 13 N. Y. S. (2d) 577.

<sup>117</sup>*Allied Mutual Liability Insurance Co. v. De Jong*, (1924) 209 App. Div. 505, 205 N. Y. S. 165; *Fiocca v. Dillon*, (1916) 175 App. Div. 957, 161 N. Y. S. 1125; *Liberatore v. Freidman*, (1918) 224 N. Y. 710, 121 N. E. 876.

<sup>118</sup>*Peasley v. Murphy*, (1942) 381 Ill. 187, 44 N. E. (2d) 876.

<sup>119</sup>See *Home Work in France: Its Origin, Evolution and Future* by Valentine Paulin. (1938) 37 *International Labor Review* 192.

<sup>120</sup>Switzerland, France, Austria, Russia, Norway, Spain, Czechoslovakia, England, Belgium, Netherlands, and Bohemia.

These Acts in general provide for an overall or national home work board with subordinate boards to carry out the administration of these provisions. Existing administrative machinery, used under the Factory Laws of the Labor Code, is commonly used.

European Statutes of today are reminiscent of early American state statutes in that the basis for their enactment is the protection of health, both of the home worker and of the consumer.

The usual wage provision provides that the wages paid shall not be less than the wages paid for similar work performed in factories or that permitted by law. Some acts provide wage rates are to be fixed only after the home workers and employer have failed to reach an agreement, while other acts give to the administrator the authority to fix minimum wage rates, or wage scales at any time.<sup>121</sup>

The European home work statutes have made few provisions for the regulation of hours. Insofar as they have enacted such provisions they are comparable to hour provisions in American Acts. They apply their general laws regulating the hours of factory workers<sup>122</sup> or authorize the administrator to expedite the time required to give out and receive home work<sup>123</sup> or provide for additional payment for waiting time exceeding a set amount of time<sup>124</sup> or prohibit the issuing or receiving of home work on Sundays and public holidays<sup>125</sup> or provide for rest periods under certain conditions.<sup>126</sup>

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<sup>121</sup>International Labor Office Legislative Series: 2 Switzerland, (1940) Federal Act respecting Home Work, Dec. 12, 1940; 3 Germany, (1934) Act: Home Work, March 23, 1934; 8 Russia, (1928) Order: Home Work, November 15, 1928; 4 Spain, (1926) Decree: Home Work, Legislative Decree respecting home work, July 26, 1926; 11 (c) France, (1941) Act to Amend the legislation respecting the wages of home workers, No. 3202, dated August 1, 1941; 2 Belgium, (1934) Act: Home Work, February 10, 1934; 5 Netherlands, (1933) Act to Regulate Home Work, dated November 17, 1933; 1 Czechoslovakia, (1920) Act: Home Work, December 12, 1919.

See also, Bulletin of the International Labour Office (Basle) Vol. 13, (1918) p. 55, Act Respecting Industrial Home Work, dated February 15, 1918, and the Amendments to the Act found in International Labor Office Legislative Series: 4 Norway, (1923); 12 Norway, (1928); Norway, (1933) p. 113 Index; 3 Norway, (1939).

<sup>122</sup>International Labor Office Legislative Series: 3 Germany, (1934) Act: Home Work; 2 Switzerland, (1940) Federal Act respecting home work, December 12, 1940.

<sup>123</sup>International Labor Office Legislative Series: 3 Germany, (1934) Act: Home Work.

<sup>124</sup>International Labor Office Legislative Series: 4 Spain, (1926) Decree: Home Work, July, 1926.

<sup>125</sup>International Labor Office Legislative Series: 2 Switzerland, (1940) Federal Act respecting home work, December 12, 1940.

<sup>126</sup>International Labor Office Legislative Series: 11 Germany, (1939) Order to Amend Home Work Act, October 30, 1939.

Prohibitory provisions have been enacted largely for the purpose of protecting the worker from industrial risks that involve the life, health, and morals of the worker and for the protection of public health. Administrative authorities generally are given the power to order the prohibitions where they consider it necessary.<sup>127</sup>

Few provisions concerning child labor are written into these Acts. Children under fifteen are prohibited from home work employment.<sup>128</sup> Austria prohibits children under twelve from engaging in home work and permits children over twelve to do such work where only members of the family are employed and where certain regulations to protect children are complied with.<sup>129</sup>

Some of these home work statutes provide for workmen's compensation and unemployment compensation,<sup>130</sup> while others establish a compulsory pension system.<sup>131</sup> England expressly excludes home workers from the English Unemployment Compensation Act.<sup>132</sup>

These Acts are generally administered by placing responsibility in the hands of a federal labor minister, or a corresponding national board, with authority to appoint subdivisional committees.<sup>133</sup> Belgium provides for a National Home Work Board composed of representatives of workers and employers in addition to a person of special training in economics and sociology, such person to be the chairman of the board.<sup>134</sup>

As in the American Acts, these Acts empower administrative officials to issue orders regulating home work or prohibiting its utilization entirely. The permit or licensing provisions found in

<sup>127</sup>International Labor Office Legislative Series: 3 Germany, (1934) Act: Home Work; 2 Switzerland, (1940) Federal Act Respecting Home Work, December 12, 1940; 8 Russia, (1928) Order: Home Work, November 15, 1928; 4 Spain, (1926) Decree: Home Work; 5 Netherlands, (1933) Act to Regulate Home Work, November 19, 1933.

<sup>128</sup>International Labor Office Legislative Series: 2 Switzerland, (1940) Federal Act respecting Home Work, December 12, 1940.

<sup>129</sup>International Labor Office Legislative Series: 4 Austria, (1935).

<sup>130</sup>International Labor Office Legislative Series: 4 Russia, (1930) 15 Belgium, (1936).

<sup>131</sup>International Labor Office Legislative Series: 4 Spain, (1926) Decree: Home Work, July 26, 1926.

<sup>132</sup>(1940) 34 Halsbury's Laws of England, p. 809.

<sup>133</sup>International Labor Office Legislative Series: 4 Spain, (1926) Decree: Home Work, July 26, 1926; 2 Belgium, (1934) Act: Home Work, February 10, 1934; 2 & 3 Switzerland, (1940) Federal Act Respecting Home Work, December 12, 1940; 5 Netherlands, (1933) Act to Regulate Home Work, November 17, 1933; 3 Germany, (1934) Act: Home Work, March 23, 1934.

<sup>134</sup>International Labor Office Legislative Series: 2 Belgium, (1934) Act: Home Work, February 10, 1934.

the United States, however, are not generally present in the European Acts.

The South American home work laws<sup>135</sup> are comparatively new with less complete coverage than found in the American and European Acts. They all provide for some type of registration and a government agency to regulate minimum wages, to provide for deductions from wages for losses incurred by the employer as a result of the home workers' fault, to determine when workers shall be paid for waiting time in receiving or delivering work, and to enforce health and sanitation laws.

Mexico issued a decree covering home work in the clothing industry and in a number of small scale industrial undertakings.<sup>136</sup> Though the Mexican Act is thus limited it has a more complete coverage than the South American Acts.

The Canadian enactment of April 9, 1936,<sup>137</sup> established a permit system for home work regulation similar to the permit systems found in the American Acts. These permits are revocable and are issued upon compliance with wage and health and sanitation provisions.

The Australian Home Work Act<sup>138</sup> covering the clothing industries also operates under a permit system. Licenses will be issued only upon compliance with certain conditions, one of which limits the number of home workers to one for every ten factory workers. These permits are revocable for failure to maintain health and sanitary conditions or if the holder of a permit is found not to be a fit and proper person to hold the license, or for any other sufficient reason of which the Industrial Registrar shall be the sole judge.

Most authorities on Industrial home work in the United States agree that the only way to completely remedy the evils of home work is by its complete abolition. They base this proposition on the theory that it is easier to enforce the complete prohibition of

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<sup>135</sup>International Labor Office Legislative Series. 1 Bolivia, (1939) Decree: Labor Code, May 26, 1939; 2 Peru, (1937) Act: Home Work, March 12, 1937; 1 Chile, (1931) Decree: Labor Code, May 13, 1931; 1 Ecuador, (1938) Decree No. 210 of August 25, 1938, to promulgate the Labor Code; 2 Uruguay, (1940) Act No. 9910 to lay down rules respecting home work, January 5, 1940; and International Labor Review, (1942) Vol. 45, An Act Regulating Home Work in Argentina, October 3, 1941.

<sup>136</sup>International Labor Office Legislative Series: 2 Mexico, (1942) Decree: Home Work, September 11, 1942; Amended in 1 Mexico, (1943) Decree: Home Work, March 19, 1943.

<sup>137</sup>International Labor Office Legislative Series: 2 Canada, (1939) An Act to Amend the Factory, Shop, and Office Building Act of 1932.

<sup>138</sup>International Labor Office Legislative Series: 3 Australia, (1935) Act: Factories and Shops (Amendment); 1 Australia, (1938).

home work than it is to enforce more limited regulations. Under free regulatory measures working standards in factories such as wages and hours are undermined.

But whatever merit there may be in regulation, it is apparent that in the United States the trend is decidedly toward prohibition of home work. This has become especially apparent since the enactment of the Fair Labor Standards Act. As noted earlier, there are already several industries in which home work has been prohibited under the Fair Labor Standards Act. Although the European countries have tended to pass regulatory measures only, there are to be found some prohibitory measures in their more recent statutes.

England has found a new use for industrial home work since the War. It has been used to tap sources of labor that would not otherwise be utilized. The radio industry has been especially adaptable to this system of production. However, it is generally believed that there will be little continued use of industrial home work after the war except in the case of disabled men and women and aged persons. To the disabled it would serve as a psychological as well as a financial advantage.

In contrast to England, the United States has tended to decrease home work during the war. The Walsh Healy Act, as before noted, prohibits home work in government contracts over \$10,000 and today most government contracts involve amounts greater than \$10,000. Also the Army and Navy have taken a stand in opposition to home work because they believe that home work is less efficient than factory work and thus involves a waste of labor.<sup>136</sup>

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<sup>136</sup>U. S. Dept. of Labor, (1942) Clara M. Beyer, *Prohibition of Industrial Home Work in the Embroideries Industry*, p. 24.