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MINIMUM FAIR WAGE LAW:

1. "MINIMUM FAIR WAGE STANDARD"—MEANS DETERMINATION AND RECOMMENDATION OF WAGE BOARD WITH RESPECT TO MINIMUM SCALE OF WAGES FOR ANY OCCUPATION OR OCCUPATIONS—ADEQUATE COMPENSATION FOR TYPE AND SKILL OF EMPLOYMENT—LOCALITY WHERE EMPLOYMENT PERFORMED MAY BE CONSIDERED—SECTIONS 154-45d THROUGH 154-45s G. C.

2. "MINIMUM FAIR RATE"—MEANS AMOUNT OF MONEY OR SERVICES OR GOODS WHICH IS REASONABLY COMMENSURATE WITH VALUE OR CLASS OF SERVICE, GIVEN IN RETURN FOR LABOR AND SERVICES PERFORMED BY RECIPIENT OF THE WAGE.

3. MINIMUM WAGE BOARD AND DIRECTOR OF DEPARTMENT OF INDUSTRIAL RELATIONS—REPORT OF WAGE BOARD—EXISTING CONTRACTS NEGOTIATED BETWEEN EMPLOYERS AND NATIONALLY AFFILIATED BARGAINING AGENCIES OF UNION EMPLOYES—MAY BE CONSIDERED AND GIVEN SUCH WEIGHT AS IN SOUND DISCRETION MAY BE DEEMED FIT.

4. UNION CANNOT LEGALLY NEGOTIATE FOR RATES BELOW MINIMUM RATES IN A REGULARLY MADE MANDATORY ORDER—DIRECTOR, DEPARTMENT OF INDUSTRIAL RELATIONS.

5. REGULARLY MADE MANDATORY ORDER VOIDS AND SUPERSEDES EXISTING CONTRACTS OR PORTIONS THEREOF WHICH PROVIDE FOR RATES LOWER THAN THOSE PROVIDED FOR IN MANDATORY ORDER.

6. PETITION OF FIFTY OR MORE RESIDENTS OF STATE—FILED TO HAVE DIRECTOR RECONVENE WAGE BOARD TO RECONSIDER THE THEN EXISTING MANDATORY ORDER—WHERE PETITION FILED, DIRECTOR OF DEPARTMENT OF INDUSTRIAL RELATIONS AND MINIMUM WAGE BOARD DO NOT NEED TO FIND THAT WAGES PAID PURSUANT TO EXISTING REGULARLY MADE MANDATORY ORDER ARE OPPRESSIVE AND UNREASONABLE—SECTION 154-45n G. C.

SYLLABUS:

1. "Minimum fair wage standard," as the same is used in the Minimum Fair Wage Law, Section 154-45d to Section 154-45s, inclusive, General Code, means the determination and recommendation of the Wage Board with respect to the minimum scale of wages for any occupation or occupations, adequately compensating for the type and skill of employment concerned, and which determination may take into consideration the locality where the employment is to be performed.

2. "Minimum fair rate," as the same is used in the Minimum Fair Wage Law, Section 154-45d to Section 154-45s, inclusive, General Code, means that amount of money or services or goods which is reasonably commensurate with the value of any service or class of service rendered, given in return for labor and services performed by the recipient of the wage.

3. The Minimum Wage Board and the Director of the Department of Industrial Relations, in passing on the report of the Wage Board, may consider existing contracts negotiated between employers and nationally affiliated bargaining agencies of union employees, and may give such weight, as they in their sound discretion think fit, to such negotiated contracts.

4. A union cannot legally negotiate for rates which are below the minimum rates set forth by the Director of the Department of Industrial Relations in a regularly made mandatory order.

5. A regularly made mandatory order voids and supersedes existing contracts or those portions of existing contracts which provide for rates lower than those provided for in said mandatory order.

6. The Director of the Department of Industrial Relations and the Minimum Wage Board do not need to find that wages paid pursuant to an existing regularly made mandatory order are oppressive and unreasonable, when a petition of fifty or more residents of the state, as provided for in Section 154-45n, General Code, is filed to have the Director reconvene the Wage Board to reconsider the then existing mandatory order.

Columbus, Ohio, August 9, 1948

Hon. W. J. Rogers, Director, Department of Industrial Relations
Columbus, Ohio

Dear Sir:

I am in receipt of your communication in which you request my opinion on several questions concerning the Minimum Wage Law, Section 154-45d to Section 154-45s, inclusive, General Code. In your request, you set forth many provisions of this law upon which I will comment during the course of this opinion. The questions which you ask are:

(1) What is a "minimum fair wage standard"?

(2) What is a "minimum fair rate"?

(3) May the Minimum Wage Board and the Director of the Department of Industrial Relations, in passing on the report of the Wage Board, consider existing contracts negotiated between employers and nationally affiliated bargaining agencies of union employees?

(4) If such negotiated contracts may be considered, what weight should be accorded to them?

(5) May a union legally negotiate for rates which are below the minimum rates set forth by the Director of the Department of Industrial Relations in a regularly made mandatory order?

(6) What effect does a new regularly made mandatory order have on existing union contracts which provide for rates lower than those provided for in the mandatory order?

(7) After a mandatory minimum fair wage order has been in effect for more than one year, and after a petition of fifty or more residents of the state, as provided for in Section 154-45n, General Code, has been filed, must the Director and the Wage Board determine that there are then being paid wages which are oppressive and unreasonable even though above the existing minimum wage order?

Section 34 of Article II of the Constitution of Ohio, adopted September 3, 1912, provides for the enactment of minimum wage legislation. This section states:

> "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power."

The Minimum Wage Law, Section 154-45d to Section 154-45s, inclusive, General Code, was enacted pursuant to this constitutional provision by the Ninetieth General Assembly and became effective June 20, 1933. These statutes have not been amended or changed since their enactment. The constitutionality of the Minimum Wage Law was challenged and the Supreme Court of Ohio in Strain v. Southerton et al., 148 O. S. 153, sustained the finding of the Court of Appeals holding that this law was constitutional. Prior to this finding of the Ohio Supreme Court, the Federal District Court held that the Ohio Minimum Wage Law did not violate the contract, equal protection and due process provisions of the Constitution of the United States. This conclusion was reached in Walker v. Chapman, 17 Fed. Supp. 308, decided November 20, 1936. It was held in this case that in defining a "fair wage" which was commensurate with the value of service or class of service rendered, the court was not bound to follow construction placed upon minimum wage laws of other states by courts of such other states. The question of minimum fair wages has been before courts for many years. In Adkins v. Children's Hospital, 261 U. S. 525, it was held that the District of Columbia could not constitutionally fix minimum wages for women. This decision was overruled in West Coast Hotel Company v. Parrish, 300 U. S. 379, which held that it was a reasonable exercise of police power, in light of current economic conditions, for the state to legislate minimum wages for women.

The first question which you ask is, what is a "minimum fair wage standard"? It is a general rule of statutory construction, so firmly established that citation of authority is not necessary, that if the legislature has used a term without specifically defining said term, the commonly accepted definition of that term is to be used in the application of the particular statute. There is no definition of this term within the provisions of the Minimum Wage Law, and we must look to the generally accepted use of the term. It is first to be noted that the use of the word "standard" as

a noun is a corruption of the proper use of the word as an adjective. Subsection 4 of Section 154-45h, General Code, provides:

> "Within sixty days of its organization a wage board shall submit a report including its recommendations as *to minimum fair wage standards* for the women or minors in the occupation or occupations the *wage standards* of which the wage board was appointed to investigate. If its report is not submitted within such time the director may constitute a new wage board."
>
> (Emphasis added.)

As a matter of strict grammatical construction, the word "standard" should be used as an adjective, and the statute would then refer to a "standard minimum fair wage." This is the real meaning of the word "standard" as used in this section of the General Code. "Standard" is defined in the Second Edition of Webster's New International Unabridged Dictionary as follows:

> "That which is set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality; esp., the original specimen weight or measure sanctioned by government, as *the standard pound, gallon, yard, meter, or the like.*
>
> "That which is established by authority, custom, or general consent, as a model or example; criterion; test; in general, a definite level, degree, material, character, quality, or the like, viewed as that which is proper and adequate for a given purpose."
>
> (Emphasis added.)

In Ashwell v. Miller, 54 Ind. App. 381, at page 387, the term "standard" is defined:

> "Such term presents to the mind the conception of a type or model, or of a combination of elements accepted as correct and perfect."

In view of these definitions of the word "standard," it is my opinion that the term is used in the Minimum Wage Law to mean the basis and the proper measure of wages and scales of wages that are to be paid to the different employees in any occupation or related occupations in one industry.

"Minimum" is defined in the Second Edition of Webster's New International Unabridged Dictionary as follows:

> "The least quantity or amount assignable, admissible, possible, etc., in a given case;—opposed to maximum."

In City of Mt. Vernon v. New York Interurban Water Company, 101 N. Y. S. 232, 115 App. Div. 658, "minimum" is defined:

> "The effect, if any there can be, of the use of the word 'minimum,' is that the rates shall not be less."

In Mennen Company v. Krass Company, 37 Fed. Supp. 161, at page 163, the following definition from Century Dictionary was accepted and followed:

> " 'Minimum' means of the smallest possible amount or degree; least; smallest."

To ascertain what is meant by "standard minimum fair wages," we must analyze the different sections of the Minimum Fair Wage Law. Subsection 5 of Section 154-45h, General Code, provides:

> "A wage board may differentiate and classify employment in any occupation according to the nature of the service rendered and recommend appropriate minimum fair rates for different employments. A wage board may also recommend minimum fair wage rates varying with localities if in the judgment of the wage board conditions make such local differentiation proper and do not effect an unreasonable discrimination against any locality."

It is to be noted that the Wage Board may "differentiate and classify employment in any occupation according to the nature of the service rendered." Another factor that may be included in a standard minimum fair wage is the locality where the labor is to be performed. Subsection 6 of Section 154-45h, General Code, provides:

> "A wage board may recommend a suitable scale of rates for learners and apprentices in any occupation or occupations, which scale of learners' and apprentices' rates may be less than the regular minimum fair wage rates recommended for experienced women or minor workers in such occupation or occupations."

This section of the General Code provides that the Wage Board shall also consider and recommend a different scale of rates for learners and apprentices. This is another factor to be included in the standard minimum fair wage. Subsections 7 and 8 of Section 154-45d, General Code, provide:

> "7. 'An oppressive and unreasonable wage' shall mean a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health.

"8. 'A fair wage' shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered. In establishing a minimum fair wage for any service or class of service under this article, the director, superintendent or the wage board without being bound by any technical rules of evidence or procedure (1) may take into account all relevant circumstances affecting the value of the service or class of service rendered, and (2) may be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid, and (3) may consider the wages paid in the state for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards."

In arriving at the standard minimum fair wage, the Wage Board obviously has to take into consideration the latter of the two above definitions. It is manifest from the foregoing that the standard minimum fair wage must contain provisions for "wages reasonably commensurate with the value of the service or class of service rendered." If the wage is not reasonably commensurate with the value of service rendered and in addition thereto is less than sufficient to meet the minimum cost of living necessary for health, it would be, under the above statutory provision, oppressive and unreasonable.

Section 154-45j, General Code, in part provides:

"* * * If the report is approved the director shall make a directory order which shall define minimum fair wages in the occupation or occupations as recommended in the report of the wage board and which shall include such proposed administrative regulations as the director may deem appropriate to implement the report of the wage board and to safeguard the minimum fair wage standards established. * * *"

This section of the General Code then goes on to provide different types of wage rates. Some of these enumerated wage rates are: rates for learners and apprentices, piece rates, time rates, overtime or part-time rates, bonuses or special pay and also deductions of several types.

In view of the foregoing, it is my opinion that a "minimum fair wage standard" is the finding of the Wage Board which includes the minimum scale of wages for any occupation or occupations which is adequate compensation for the type and skill of the employment concerned,

and which may include a determination which takes into consideration the locality where the employment is to be performed.

In your second question you request a definition of the term "minimum fair rate." The word "rate," as the same is defined in the Second Edition of Webster's New International Unabridged Dictionary, is:

> "Quantity, amount, or degree of a thing measured per unit of something else; specif.: * * * *Amount of payment or charge based on some other amount, as in money obligations; as, the rate of wages per week;* the legal rate of interest per year."
>
> (Emphasis added.)

A "fair wage" is defined in subsection 8 of Section 154-45d, General Code, supra. A "fair wage" must provide a wage "fairly and reasonably commensurate with the value of the service or class of service rendered." A "minimum fair rate" would be the amount of money or services and goods given for labor which meets such stated requirement. In other words, a "minimum fair rate" is a "fair wage" expressed in terms of money paid for services rendered. Section 154-45j, General Code, states the different kinds of rates that may be paid. The pertinent part of this section provides:

> "* * * Such administrative regulations may include among other things, regulations defining and governing learners and apprentices, their rates, number, proportion or length of service, piece rates or their relation to time rates, overtime or part-time rates, bonuses or special pay for special or extra work, deductions for board, lodging, apparel or other items or services supplied by the employer, and other special conditions or circumstances; and in view of the diversities and complexities of different occupations and the dangers of evasion and nullification, the director may provide in such regulations without departing from the basic minimum rates recommended by the wage board such modifications or reductions of or additions to such rates in or for such special cases or classes of cases as those herein enumerated as the commissioner may find appropriate to safeguard the basic minimum rates established."

As may be seen by this section of the General Code, there are many different kinds of rates which may be provided in any mandatory order.

It is my opinion that the term "minimum fair rates" means that amount of money or services or goods which is reasonably commensurate with the value of the service or class of service rendered, given in return for labor and services performed by the recipient of the wage.

Your attention is directed to the fact that a "fair wage" may be a wage which is less than the amount "sufficient to meet the minimum cost of living necessary for health." Subsection 8 of Section 154-45d, General Code, supra, only requires that a "fair wage" be "fairly and reasonably commensurate with the value of the service or class of service rendered." Thus, in no case may the Director set a wage which is higher than the reasonable value of the service rendered. The reason for this provision is historical and can be plainly understood by considering the United States Supreme Court cases. This court first considered the question of a minimum wage for women in the case of Adkins v. Children's Hospital, supra, which was decided April 9, 1923. The court had before it a statute which authorized a board to "ascertain and declare * * * standards of minimum wages for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals." This statute was held to be invalid because it abrogated freedom of contract. At page 558 of this opinion, Mr. Justice Sutherland states:

> "* * * The declared basis, as already pointed out, *is not the value of the service rendered,* but the extraneous circumstances that the employee needs to get a prescribed sum of money to insure her subsistence, health, and morals. * * *"
>
> (Emphasis added.)

In this opinion the court emphasizes the point that the minimum wage was not limited by the value of the services rendered, and that an employer required to pay more was being forced to carry a burden which was the responsibility of society as a whole. The Adkins case had not been overruled in 1933 when the General Assembly of Ohio enacted the Minimum Wage Law. In order to avoid possible objections to this legislation, because of this decision the General Assembly placed a restriction on minimum wages by saying they should be "fairly and reasonably commensurate with the value of the service or class of service rendered."

The Minimum Fair Wage Law of Ohio was held constitutional by the Federal District Court for substantially these same reasons. In Walker v. Chapman, supra, decided November 20, 1936, it is stated at page 310:

> "In the instant case, however, there is nothing in the definition in the Ohio statute defining 'a fair wage' stating or implying

that any factor is to be added to the basis of the 'reasonable value of the services rendered.' Nor has the Ohio Minimum Wage Law been construed by the courts of Ohio to mean, in so far as 'a fair wage' is concerned, anything other than what is set forth in the statute itself, to wit, 'a wage fairly and reasonably commensurate with the value of the service or class of service rendered.' * * *

"Considering the Ohio Minimum Wage Law as one fixing as the basis for 'a fair wage,' one reasonably commensurate with the value of the service or class of service rendered, or *as one based solely on the 'reasonable value of the services rendered,'* the court is of the opinion that the act is clearly distinguishable from the act considered in the Adkins Case, and that there is nothing in the Morehead Case to change this view."

(Emphasis added.)

The rule of the Adkins case prevailed until the decision in West Coast Hotel Company v. Parrish, supra, was rendered. This case was decided March 29, 1937. The Washington statute which the court had under consideration provided:

"It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance."

The court in this case overruled the decision rendered in the Adkins case, and held that such an enactment was a valid exercise of the police power of the state, and did not abrogate the freedom of contract. The court specifically referred to the point made in the opinion of the Adkins case that the minimum wage could not be more than the value of services rendered. At page 399 it is stated:

"* * * The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. * * * The community is not bound to provide what is in effect a subsidy for unconscionable employers. * * *"

The court in this opinion states that the limitation made by the Adkins case, as to minimum wages not being more than the value of service rendered, was too strict a limitation on the police power of the state.

It is obvious that the Minimum Wage Law of Ohio does not extend beyond the limitation of the Adkins case. The General Assembly did not enact legislation which goes beyond a minimum wage which is commensurate with the service rendered.

The third question you ask in your request for my opinion is whether the Minimum Wage Board and the Director of the Department of Industrial Relations may consider existing contracts negotiated between employers and nationally affiliated bargaining agencies of union employees. Your fourth question inquires as to what weight should be accorded these negotiated contracts in any deliberation. Your attention is directed to the provisions of subsection 8 of Section 154-45d, General Code, supra. It is to be noted that this subsection states what factors may be considered by the Director, Superintendent or the Wage Board in establishing a minimum fair wage. Judge Zimmerman, in the opinion of Strain v. Southerton, supra, when commenting on this subsection, stated:

> "We are of the opinion that the phrases, 'may take into account,' 'may be guided' and 'may consider,' as used in paragraph eight of the section should be interpreted as meaning, '*shall* take into account,' etc., in order to carry out the purpose of the General Assembly as it appears from a general view of the act under consideration. State, ex rel. Myers, v. Board of Education, 95 Ohio St., 367, 116 N. E., 516; Mary Lincoln Candies, Inc., v. Dept. of Labor, 289 N. Y., 262, 45 N. E. (2d), 434, 143 A. L. R., 1078."

The Supreme Court of Ohio arrived at this conclusion in order to find the Minimum Wage Law constitutional. If these requirements were not found to be mandatory, there would be no definite standards to guide the Wage Board and the other administrators of the Minimum Wage Law; this then would result in the finding that the General Assembly had undertaken a delegation of its legislative authority, this of course being unconstitutional. It is to be noted that nothing is specifically stated that requires the Wage Board or the Director of the Department of Industrial Relations to consider existing contracts made with bargaining agencies. The factors which must be considered are "all relevant circumstances

affecting the value of the service or the class of service rendered, those factors which would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid, and wages paid in the state for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards." Contracts negotiated with bargaining agencies could not be considered under these last two provisions. When the entire Minimum Wage Law and the general purpose of this law are considered, I cannot see where such a contract would be a part of the "relevant circumstances affecting the value of the service or class of service rendered." I am sure that the legislative intent of this provision, in light of the surrounding sections of the General Code, was to give a fair wage that would take into consideration the various degrees of skill. Your attention is directed to subsection 3 of Section 154-45h, General Code, which provides:

> "The director or the superintendent shall present to a wage board promptly upon its organization all the evidence and information in the possession of the director or superintendent relating to the wages of women and minor workers in the occupation or occupations for which the wage board was appointed and *all other information which the director or the superintendent deems relevant to the establishment of a minimum fair wage for such women and minors,* and shall cause to be brought before the committee any witnesses whom the director or the superintendent deems material. A wage board may summon other witnesses or call upon the director or the superintendent to furnish additional information to aid it in its deliberation." (Emphasis added.)

The Director can give the Wage Board any other information which he "deems relevant" for the establishment of a minimum fair wage. Thus, the Director, in the exercise of his sound discretion, may present to the Wage Board contracts that have been negotiated by bargaining agencies. There are no provisions in the Minimum Wage Law which require the Director, Superintendent or the Wage Board to consider such negotiated contracts. It is my opinion that it is a matter of discretion as to whether the Director of the Department of Industrial Relations and the Wage Board may consider existing contracts negotiated between employers and nationally affiliated bargaining agencies of union employees, in arriving at a minimum fair wage. I do not presume to advise administrative agencies as to what constitutes a correct exercise of their discretion.

However, it would appear that a union contract which is the result of extensive negotiations which considered all the prerequisites for a minimum fair wage, would be a valid consideration for the Wage Board.

In view of what has been said hereinbefore, if it is a matter of discretion as to whether the contracts should be considered, the same rule should be followed as to the weight that should be given such contracts. Thus, in answer to your fourth inquiry, it is my opinion that the Minimum Wage Board and the Director of the Department of Industrial Relations may give as much weight to contracts negotiated between employers and nationally affiliated bargaining agencies of union employees as they, in the exercise of their sound discretion, deem suitable and proper.

Your inquiry in the fifth question is whether a union may legally negotiate for rates below the minimum rates set forth by the Director of the Department of Industrial Relations in a regularly made mandatory order. I direct your attention to Section 154-45e, General Code, which states:

> "It is hereby declared to be against public policy for any employer to employ any woman or minor in an occupation in this state at an oppressive and unreasonable wage as defined in Section 1 of this act, and any contract, agreement or understanding for or in relation to such employment shall be null and void."

This section of the General Code provides that any contract which contains an oppressive and unreasonable wage as the same is defined in subsection 7 of Section 154-45d, General Code, supra, shall be null and void.

Subsection 2 of Section 154-45r, General Code, states:

> "Any employer or the officer or agent of any corporation who pays or agrees to pay to any woman or minor employee less than the rates applicable to such woman or minor under a mandatory minimum fair wage order shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment of not less than ten nor more than ninety days or by both such fine and imprisonment, and each week in any day of which such employee is paid less than the rate applicable to him under a mandatory minimum fair wage order and each employee so paid less shall constitute a separate offense."

Section 154-45s, General Code, states:

> "If any woman or minor is paid by his employer less than the minimum fair wage to which he is entitled under or by virtue of a mandatory minimum fair wage order he may recover in a civil action the full amount of such minimum wage less any amount actually paid to him by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer to work for less than such mandatory minimum fair wages shall be no defense to such action. At the request of any woman or minor worker paid less than the minimum wage to which he was entitled under a mandatory order the director may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court."

It is clear that the General Assembly intended to make it a crime for any employer to pay a wage below the minimum fair wage provided in a regularly made mandatory order. No person, corporation or group of persons can legally contract to commit an unlawful act.

The underlying premise given for the decision rendered in West Coast Hotel Company v. Parrish, 300 U. S. 379, which overruled Adkins v. Children's Hospital, 261 U. S. 525, was that the states could legislate minimum wages as a part of their police power. And even under the rule of the Adkins case the state had power to legislate minimum wages if such wages were commensurate with the service rendered. Any union contract or any portion of a union contract which provides for wages which are less than those provided in a regularly made mandatory order would be null and void. Therefore, it is my opinion that a union cannot legally negotiate for rates which are below the minimum rates set forth in a regularly made mandatory order.

In your sixth question you ask what effect a mandatory order has on existing union contracts which provide for rates lower than those provided for in said mandatory order. I direct your attention to Section 154-45e, General Code, supra, and what has been stated heretofore in this opinion. Your question is explicitly answered by the provisions of Section 154-45e, General Code, supra, if the wage is found to be "both less than the fair and reasonable value of services rendered and less than sufficient to meet the minimum cost of living necessary for health." This section states that

"any contract, agreement or understanding for or in relation to such employment shall be null and void."

The right of the state to pass minimum wage provisions which interfere with the contract rights of the individual was discussed by Mr. Chief Justice Hughes in the opinion of West Coast Hotel Company v. Parrish, supra, at page 394:

> "And we added that the fact 'that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself.' 'The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer.'
>
> "It is manifest that this established principle is peculiarly applicable in relation to the employment of women in whose protection the State has a special interest. That phase of the subject received elaborate consideration in Muller v. Oregon (1908) 208 U. S. 412, 52 L. ed. 551, 28 S. Ct. 324, 13 Ann. Cas. 957, where the constitutional authority of the State to limit the working hours of women was sustained. * * *".

The statement made above in the first paragraph by Mr. Chief Justice Hughes was quoted from the opinion rendered in Holden v. Hardy, 169 U. S. 366. Therefore, it is my opinion that upon the issuing of a regularly made mandatory order, existing contracts or those portions of existing contracts which provide for rates lower than those provided in said mandatory order, are null and void, and are modified by the regularly made mandatory order.

In your last question, you ask whether upon the filing of a petition of fifty or more residents of the state, pursuant to the provisions found in Section 154-45n, General Code, the Director and the Wage Board must determine there are then being paid wages which are oppressive and unreasonable even though above the minimum wages provided by the then existing mandatory order. This section provides:

> "At any time after a minimum fair wage order has been in effect for one year or more, whether during such period it has been directory or mandatory, the director may on his own motion after conferring with the superintendent and shall on petition of fifty or more residents of the state reconsider the minimum fair

> wage rates set therein and *reconvene the same wage board or appoint a new board to recommend whether or not the rate or rates contained in such order should be modified.* The report of such wage board shall be dealt with in the manner prescribed in Sections six and seven of this act provided that if the order under consideration has theretofore been made mandatory in whole or in part by the director under Section ten then the director in making any new order or *confirming any old order* shall have power to declare to what extent such order shall be directory and to what extent mandatory." (Emphasis added.)

It is stated in this section that the Director must "reconvene the same wage board or appoint a new board to recommend whether or not the rate or rates contained in such order should be modified." I can find no provision in this section which states that it is absolutely necessary that the Wage Board find that the wages then being paid are oppressive and unreasonable. In other words, this section simply states that the Wage Board shall reconsider existing wage rates when this petition is filed. If the Wage Board would see fit to reaffirm existing wage rates, it may so do, and no modification would be necessary. If this in fact were the case, the judgment of fifty deeply interested people could rule a wage oppressive and unreasonable. It is my opinion that when a petition is filed in compliance with Section 154-45n, General Code, the Director of the Department of Industrial Relations and the Wage Board do not need to determine that wages then being paid, which are above the then existing minimum wage order, are oppressive and unreasonable.

Therefore, it is my opinion and you are advised:

1. "Minimum fair wage standard," as the same is used in the Minimum Fair Wage Law, Section 154-45d to Section 154-45s, inclusive, General Code, means the determination and recommendation of the Wage Board with respect to the minimum scale of wages for any occupation or occupations adequately compensating for the type and skill of employment concerned, and which determination may take into consideration the locality where the employment is to be performed.

2. "Minimum fair rate," as the same is used in the Minimum Fair Wage Law, Section 154-45d to Section 154-45s, inclusive, General Code, means that amount of money or services or goods which is reasonably commensurate with the value of any service or class of service rendered, given in return for labor and services performed by the recipient of the wage.

3. The Minimum Wage Board and the Director of the Department of Industrial Relations, in passing on the report of the Wage Board, may consider existing contracts negotiated between employers and nationally affiliated bargaining agencies of union employees, and may give such weight, as they in their sound discretion think fit, to such negotiated contracts.

4. A union cannot legally negotiate for rates which are below the minimum rates set forth by the Director of the Department of Industrial Relations in a regularly made mandatory order.

5. A regularly made mandatory order voids and supersedes existing contracts or those portions of existing contracts which provide for rates lower than those provided for in said mandatory order.

6. The Director of the Department of Industrial Relations and the Minimum Wage Board do not need to find that wages paid pursuant to an existing regularly made mandatory order are oppressive and unreasonable, when a petition of fifty or more residents of the state, as provided for in Section 154-45n, General Code, is filed to have the Director reconvene the Wage Board to reconsider the then existing mandatory order.

Respectfully,

HUGH S. JENKINS,
Attorney General.