

1973 WL 1294
United States District Court, District of Columbia.

Nelson Eugene Souder et al., Plaintiffs

v.

Peter J. Brennan et al., Defendants.

Civil No. 482-73

December 7, 1973

ROBINSON, D. J.

Declaratory Judgment and Injunction Order

***1** This cause came before this Court upon plaintiffs' motion for summary judgment and defendants' combined motion to dismiss and for summary judgment. Upon the entire record before this Court including the pleadings, interrogatories and affidavits, and upon the Memorandum Opinion of this Court dated November 14, 1973 [72 LC P 32,980], it is hereby ordered that plaintiffs' motion for summary judgment is granted, and defendants' motions are denied. The Court having ruled that the Secretary of Labor has a duty to implement reasonable enforcement efforts applying the minimum wage and overtime compensation provisions of the Fair Labor Standards Act to patient-workers at non-Federal institutions for the residential care of the mentally ill and/or mentally retarded, it is further ordered, adjudged and declared:

A. *Notification to the class.* That the Secretary of Labor, his officers, agents, servants, and all persons acting or claiming to act in his behalf and interest [hereinafter, the "ysecretary"], undertake the following notification activities: (1) Within 120 days from the date of this Order, notify the Superintendent of each non-Federal facility for the residential care of the mentally ill and/or mentally retarded, and the chief executive officer or officers of the supervising state agency for mental health and/or mental retardation, that they have the same statutory responsibility to compensate patient-workers as non-patient workers, and that defendants intend to enforce the minimum wage and overtime compensation provisions of the Fair Labor Standards Act on behalf of patient-workers.

(2) Within 120 days from the date of this Order, inform the Superintendent of each non-Federal facility for the residential care of the mentally ill and/or mentally retarded, and the chief executive officer or officers of the supervising state agency for mental health and/or mental retardation of their obligation to maintain records of hours worked and other conditions of

employment under [29 U. S. C. § 211\(c\)](#) and 29 C. F. R. Part 516 for patient-workers, just as is required for non-patient employees at the same facilities.

(3) Within 120 days from the date of this Order, contact the Superintendent of each non-Federal facility for the residential care of the mentally ill and/or mentally retarded and request that he inform patient-workers at his facility of their rights under the Fair Labor Standards Act. Indications that proper attention has been given to informing the patient-workers of their rights will be:

a. That the Superintendent has notified *in writing* every resident and his guardian of his rights under the Fair Labor Standards Act, as declared in this decision;

b. That copies of such written notifications have been posted on every living unit of residential facilities for the mentally ill and/or mentally retarded;

c. That efforts have also been made to notify all residents *orally* of their rights— e.g., by holding group meetings for present residents and by establishing procedures under which each new resident will be notified of his rights within one week of his admission. In order to increase the chances that plaintiffs will fully comprehend such oral presentations, defendants may suggest to the Superintendents and to the chief executive officers of the supervising state agencies that representatives of concerned organizations be invited to observe and perhaps to participate at such meetings;

***2** d. That non-patient employees of all non-Federal facilities for the residential care of the mentally ill and/or mentally retarded and their collective bargaining representatives or other representatives who deal with the employer on their behalf with respect to wages, hours, or other terms and conditions of employment, have been notified of this decision.

B. *Reasonable enforcement activities.* Within one year from the date of this Order, defendants shall contact every institution to which the Order applies so as to establish and implement the necessary procedures [including any special certifications under [29 U. S. C. § 214](#)] whereby every patient-worker in such institutions will be paid the wages due him. After the Department of Labor has made its initial efforts to aid the institutions in establishing their procedures for paying wages, it shall continue in the second year to give attention to investigation and enforcement of employment situations affecting the patient-workers. Thereafter, “reasonable” enforcement shall be defined to include those activities which are necessary to ensure the benefits of [29 U. S. C. §§ 206](#) and [207](#), to which patient-workers are entitled.

C. *Implementation Reports.* That the Secretary shall keep written records of his enforcement activities, which shall be available to the public through the Labor Department's Advisory Committee on Sheltered Workshops at six-month intervals. These reports should include a description of the activities taken to comply with the Order; the number of investigations of alleged violations of rights of patient-workers under the Fair Labor Standards Act (including a breakdown by type of establishment and number of workers involved at each such establishment), and the reason for such investigations; the results of each such investigation; and the disposition of each investigation confirming statutory violations, including lawsuits, settlements, and other enforcement activities.

E. *Costs.* That Court costs be taxed to defendants.