

LABOR: Sec. 10175 authorizing 5 days' pay to be withheld by employer from employees' wages, does not control the disposition of the sums withheld.

May 29, 1944.

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Mr. Orville S. Traylor,
Commissioner of Labor,
Jefferson City, Missouri.

Dear Sir:

Your letter of May 11, 1944, is as follows:

"This department has been requested to give a ruling on certain parts of Section 10175, R.S. 1939.

"1. Under this statute, can a manufacturer pay over union dues direct to the union although employees do not assign such fees to the union?

"2. If a manufacturer is required to pay over union dues direct to the union by federal laws or by federal regulations such as the War Labor Board, are they not in violation of this statute, particularly if the employee is not a member of such union?

"3. Would the above answers be influenced by the fact that the manufacturer is engaged in interstate commerce or intrastate commerce?

"We would appreciate your opinion on this section as soon as possible as we have several inquiries concerning same."

Section 10175, R. S. Mo. 1939, provides:

"The employees of the operators of all manufactories, including plate-glass manufactories, operated within this state shall be regularly paid in full of all wages due them at least once in every fifteen days, in lawful money, and at no pay day shall there be withheld from the earnings of any employee any sum to exceed the amount due him for

his labor for five days next preceding any such pay day. Any such operator who fails and refuses to pay his employees, their agents, assigns or anyone duly authorized to collect such wages, as in this section provided, shall become immediately liable to any such employee, his agents or assigns for an amount double the sum due such employee at the time of such failure to pay the wages due, to be recovered by civil action in any court of competent jurisdiction within this state, and no employee, within the meaning of this section, shall be deemed to have waived any right accruing to him under this section by any contract he may make contrary to the provisions hereof."

The pertinent part of this section applicable to the questions presented is that "at no pay day shall there be withheld from the earnings of any employee any sum to exceed the amount due him for his labor for five days next preceding any such pay day". This provision when considered with the fact that wages must be paid "every fifteen days" makes it at once apparent that on such pay day the employer may withhold approximately one-third of the employee's wages, assuming, of course, that the daily wage is fairly constant. That apparent fact makes it unnecessary to consider the situation that might arise if the withholding for union dues exceeded the amount authorized to be withheld, because no monthly dues of a union are in excess of approximately one-third of the members monthly earnings.

This leaves the question: Does this statute control what the employer shall do with the amounts withheld? The section states that "Any such operator who fails and refuses to pay his employees * * * as in this section provided" (i.e. every fifteen days, at which time five days' wages may be withheld) shall become immediately liable to any such employee * * * for an amount double the sum due, * * * to be recovered in any court of competent jurisdiction* * * ." Thus it appears that the statute in no way applies to the disposition of the amount withheld. For example, assume the employee's wage is \$1.00 per day; that on pay day there is due him \$15.00, but that the employer withholds \$6.00 which is \$1.00 more than five days' pay. In such case this statute would authorize the employee to recover \$30.00 or double the amount due at the time of failure to pay the wages as prescribed in the statute, but this is all it covers.

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If wages, within the limit prescribed, are withheld wrongfully, or the withheld portion is wrongfully disposed of, the employee has ample redress in the courts by ordinary legal action. The dispute that would thus exist is one between the employer and employee, and is not within the terms of Section 10175 R. S. Mo. 1939.

Questions one and two presented fall in this latter category and do not come within the terms of the statute unless the amounts withheld should be in excess of that authorized. This view renders it unnecessary to consider the third question.

CONCLUSION.

It, therefore, is our opinion that Section 10175, R.S. Mo. 1939, does not apply to the amount withheld by an employer from the employee's wages, except where the sum should exceed the amount authorized to be withheld, and further that said section does not control the disposition of amounts withheld by the employer.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney-General.

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