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Unreasonable Searches and Seizures - The Reach for Power

Dicta Editorial Board

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FEDERAL LEGISLATION

Unreasonable Searches and Seizures "The Reach for Power"

Section 11 of the Fair Labor Standards Act provides that the Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions of employment in any industry subject to the Act, and may enter and inspect such places and such records, question such employees, and investigate such facts or matters as he may deem necessary to determine whether any person has violated the statute, or which may aid in the enforcement thereof.

Recently the new Administrator of the Act announced a more vigorous enforcement policy that would proceed upon the basis of routine inspection of employment records. The foregoing section of the Act, however, has now been challenged as unconstitutional by the American Newspaper Publishers Association. This Association has advised its members that compliance with the requests of wage-hour inspectors for information is "wholly optional with a publisher" in the absence of the issuance of a formal complaint. Where such a complaint has been issued, the Association adds, the publisher need comply only in the event a court order has been issued. The Wage and Hour Division, which administers the Act, takes the position that the Administrator has authority to examine the records of any employer whether or not there is reason to believe he has violated the provisions of the statute. The District Court at Chicago, some weeks ago, upheld the right of inspectors to examine the records of all employees where a complaint had been issued. This order was directed against the Montgomery Ward & Co., Incorporated, which thereafter appealed to the Circuit Court of Appeals for the Seventh Circuit where the case is now pending. No case has yet been decided where an inspection was demanded in the absence of issuance of a complaint. In denying the constitutional authority to conduct such investigations, the American Newspaper Publishers Association has invoked the decision of the Supreme Court of the United States in *Federal Trade Commission v. American Tobacco Company*, 264 U. S. 298, wherein a similar power, claimed by the Federal Trade Commission, was held to be violative both of the spirit and letter of the Fourth Amendment. In that case the Court *per* Mr. Justice Holmes, held that, "It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up."—(N. Y. State Bar Assn. Lawyer Service Letter, Feb. 21, 1940.)