that they were already under the jurisdiction of the Maritime Commission pursuant to the Merchant Marine Act of 1936 (Joint Hearings before the Committees on Labor on S. 2475 and H.R. 7200, 75th Cong., 1st sess., pp. 1216, 1217). The representative of the latter union also asked that ''seamen'' be exempted for the same reason saying * * * ''We feel that in a general interpretation of the whole bill that the way has been left open for the proposed Labor Standards Board to have jurisdiction over those classes of workers who are engaged in transportation. While this may not have an unfavorable effect upon the workers engaged in transportation by water, we feel that it may conflict with the laws now in effect regarding the jurisdiction of the government machinery now set up to handle these problems'' (id. at p. 545). And he went on to testify, ''What we would like is an interpretation of the bill which would provide a protective clause for the 'seamen' '' (id. at p. 547).

(c) Consonant with this legislative history, the courts in interpreting the phrase ''employee employed as a seaman'' for the purpose of the Act have given it its commonly accepted meaning, namely, one who is aboard a vessel necessarily and primarily in aid of its navigation (*Walling* v. *Bay State Dredging and Contracting Co.*, 149 F. 2d 346; *Walling* v. *Haden*, 153 F. 2d 196; *Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678). In arriving at this conclusion the courts recognized that the term ''seaman'' does not have a fixed and precise meaning but that its meaning is governed by the context in which it is used and the purpose of the statute in which it is found. In construing the Fair Labor Standards Act, as a remedial statute passed for the benefit of all workers engaged in commerce, unless exempted, the courts concluded that giving a liberal interpretation of the meaning of the term ''seaman'' as used in an exemptive provision of the Act would frustrate rather than accomplish the legislative purpose (*Helena Glendale Ferry Co.* v. *Walling*, 132 F. 2d 616; *Walling* v. *Bay State Dredging and Contracting Co.*, supra; *Sternberg Dredging Co.* v. *Walling*, supra; *Walling* v. *Haden*, supra).

§ 783.30 The 1961 Amendments.

One of the steps Congress took in the 1961 Amendments to extend the monetary provisions of the Act to more workers was to limit the scope of the exemption which excluded all employees employed as seamen from application of the minimum wage and overtime provisions. This it did by extending the minimum wage provisions of the Act to one employed as a seaman on an American vessel (section 6(b)(2)), by adding to the language of section 13(a)(14) to make the exemption applicable only to a seaman employed on a vessel other than an American vessel, and finally by the addition of a new exemption, section 13(b)(6), relieving employers of overtime pay requirements with respect to those employees employed as seamen who do not come within the scope of the amended section 13(a)(14). (H. Rep. No. 75, 87th Cong., 1st sess., pp. 33, 36; Sen. Rep. No. 145, 87th Cong., 1st sess., pp. 32, 50; Statement of the Managers on the part of the House, H. (Cong.) Rep. No. 327, 87th Cong., 1st sess., p. 16.) In view of the retention in the 1961 amendments of the basic language of the original exemption, ''employee employed as a seaman'', the legislative history and prior judicial construction (see § 783.29) of the scope and meaning of this phrase would seem controlling for purposes of the amended Act.

WHO IS ''EMPLOYED AS A SEAMAN''

§ 783.31 Criteria for employment "as a seaman."

In accordance with the legislative history and authoritative decisions as discussed in §§ 783.28 and 783.29, an employee will ordinarily be regarded as ''employed as a seaman'' if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation, provided he performs no substantial amount of work of a different character. This is true with respect to vessels navigating inland waters as well as ocean-going and coastal vessels (*Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678; *Walling* v. *Haden*, 153 F. 2d 196, certiorari denied 328 U.S.

866; *Walling* v. *Great Lakes Dredge & Dock Co.*, 149 F. 2d 9, certiorari denied 327 U.S. 722; *Douglas* v. *Dixie Sand and Gravel Co.*, (E.D. Tenn.) 9 WH Cases 285). The Act's provisions with respect to seamen apply to a seaman only when he is ''employed as'' such (*Walling* v. *Haden*, supra); it appears also from the language of section 6(b)(2) and 13(a)(14) that they are not intended to apply to any employee who is not employed on a vessel.

§ 783.32 "Seaman" includes crew members.

The term ''seaman'' includes members of the crew such as sailors, engineers, radio operators, firemen, pursers, surgeons, cooks, and stewards if, as is the usual case, their service is of the type described in § 783.31. In some cases it may not be of that type, in which event the special provisions relating to seamen will not be applicable (*Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678; *Cuascut* v. *Standard Dredging Co.*, 94 F. Supp. 197; *Woods Lumber Co.* v. *Tobin*, 199 F. 2d 455). However, an employee employed as a seaman does not lose his status as such simply because, as an incident to such employment, he performs some work not connected with operation of the vessel as a means of transportation, such as assisting in the loading or unloading of freight at the beginning or end of a voyage, if the amount of such work is not substantial.

§ 783.33 Employment "as a seaman" depends on the work actually performed.

Whether an employee is ''employed as a seaman'', within the meaning of the Act, depends upon the character of the work he actually performs and not on what it is called or the place where it is performed (*Walling* v. *Haden*, 153 F. 2d 196; *Cuascut* v. *Standard Dredging Corp.*, 94 F. Supp. 197). Merely because one works aboard a vessel (*Helena Glendale Ferry Co.* v. *Walling*, 132 F. 2d 616; *Walling* v. *Bay State Dredging & Contracting Co.*, 149 F. 2d 346), or may be articled as a seaman (see *Walling* v. *Haden*, supra), or performs some maritime duties (*Walling* v. *Bay State Dredging & Contracting Co.*, 149 F. 2d 346; *Anderson* v. *Manhattan Lighterage Corp.*, 148 F. 2d 971) one is not employed as a seaman within the meaning of the Act unless one's services are rendered primarily as an aid in the operation of the vessel as a means of transportation, as for example services performed substantially as an aid to the vessel in navigation. For this reason it would appear that employees making repairs to vessels between navigation seasons would not be ''employed as'' seamen during such a period. (See *Desper* v. *Starved Rock Ferry Co.*, 342 U.S. 187; but see *Walling* v. *Keansburg Steamboat Co.*, 162 F. 2d 405 in which the seaman exemption was allowed in the case of an article employee provided he also worked in the ensuing navigation period but not in the case of unarticled employees who only worked during the lay-up period.) For the same and other reasons, stevedores and longshoremen are not employed as seamen. (*Knudson* v. *Lee & Simmons, Inc.*, 163 F. 2d 95.) Stevedores or roust-abouts traveling aboard a vessel from port to port whose principal duties require them to load and unload the vessel in port would not be employed as seamen even though during the voyage they may perform from time to time certain services of the same type as those rendered by other employees who would be regarded as seamen under the Act.

§ 783.34 Employees aboard vessels who are not "seamen".

Concessionaires and their employees aboard a vessel ordinarily do not perform their services subject to the authority, direction, and control of the master of the vessel, except incidentally, and their services are ordinarily not rendered primarily as an aid in the operation of the vessel as a means of transportation. As a rule, therefore, they are not employed as seamen for purposes of the Act. Also, other employees working aboard vessels, whose service is not rendered primarily as an aid to the operation of the vessel as a means of transportation are not employed as seamen (*Knudson* v. Lee & Simmons, Inc., 163 F. 2d 95; *Walling* v. *Haden*, 153 F. 2d 196, certiorari denied 32 U.S. 866). Thus, employees on floating equipment who are engaged in the construction of docks, levees, revetments