U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

WHD-OL-1964

November 19, 1964

Name*

This replies to your letter of July 21, 1964, enclosing a statement on the views of the ____ concerning the application of the Fair Labor Standards Act to time spent by employees in attending certain lectures, meetings, training programs, and other similar activities. You state that the nature of the airconditioning and refrigeration industry makes it necessary for employers to conduct "service meetings" to keep their servicemen on a par with the frequent technological advance of the industry.

You cite several court cases on pages 6, 7, and 8 of your opinion and also an opinion letter dated October 19, 1961. These refer to the question of whether an employer-employee relationship exists between persons engaged in attending a training program and those sponsoring the program. As stated in the cases and letter you cite, if no employer-employee relationship exists between these parties, then the problem of "hours worked" cannot arise, and the sponsor of the meeting cannot be held liable to compensate the trainees for the time spent in the meetings. However, the servicemen involved in the situation you outline are already employees of the sponsor of the "service meetings;" there is no "employer-employee relationship" question. The only question you raise is whether time spent by those employees in "service meetings" should be counted as compensable "hours worked".

An employee in any industry who is covered by the act and not specifically exempt from its requirements must be compensated for time spent in attending lectures, meetings, training programs, and other similar activities, unless all of the criteria outlined in sections 785.27 through 785.29 of Interpretative Bulletin, Part 785, are met. These requirements are; (a) attendance is outside the employee's regular working hours; (b) attendance is in fact voluntary; (c) the course, lecture, or meeting is not directly related to the employee's job; and (d) the employee does not perform any productive work during such attendance. The information in your letter indicates that the "service meetings" held in your industry could meet criteria (a), (b), and (d). However, your letter further indicates that the "service meetings", to you define that term, are directly related to the employee's job and therefore fail to meet criterion (c). Section 785.29 of the bulletin discusses this requirement and states in part; "The training in directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job."

This requirement is suspended only "special situations, "as discussed in section 785.31 of the bulletin. The Divisions would regard meetings sponsored by your employer members as "special situations" where the instruction is occurred with significant innovations or technical advances in the industry such as would be presented at a meeting of an educational society, such as the ____ to which you refer, or where the instruction is concerned with principles of customers relations, safety, and business practices and

is in substance similar to that offered in technical or educational institutions. Essentially, in the case of installation, service and maintenance personnel who are qualified mechanics, the test is whether the subject matter and level of presentation in such that the employee would attend the meeting voluntarily because of his desire to advance himself or keep absent of industry developments. Any training which is designed to teach the employee to service or repair a specific piece of equipment, such as instruction which does little more than explain details of the service manual for that particular item, is thus not included in "special situation." This does not preclude, of course, using a particular model of a particular brand of equipment as the vehicle for explaining advances in the industry. It is recognized that the latest ideas are often initially confined to one company's models, and that technical advances can often be illustrated only through detailed explanation of the components of a particular piece of equipment. Voluntary attendance by an employee at meetings which are regarded as "special situations," outside of working hours, would not be hours worked even if the training provided does relate directly to the employee's job.

On page 8 of your opinion, you cite an opinion letter, dated November 15, 1963, which holds that if a manufacturer of a product introduces a new model at a meeting for retail salesmen of all the stores in an area, the time spent by such salesmen at this meeting would not be counted as compensable hours worked. In a like manner, if a manufacturer or trade association in your industry holds a meeting for the instruction of a new product or products at which servicemen from the general area served by the manufacturer or association are present, and if attendance is clearly voluntary, the time spent by the employees in the meeting would not be counted as compensable hours worked.

If the members of your association are not able to arrange their "service meetings" to meet the criteria explained above, they may be interested in considering the feasibility of computing overtime compensation for their employees under the provisions of section 7(f)(2) of the act. The application of that section of the act is discussed in section 778.19 of Interpretative Bulletin, Part 778 (copy enclosed). The act does prohibit an employer from contracting to pay an employee different rates of pay for different kinds of work, or a lower hourly rate of pay for non-productive time (such as training time) than for productive time. Therefore, under section 7(f)(2) of the act, an employee who performs two or more different kinds of work for which different straight-time hourly rates are established, may agree with his employer in advance of the performance of the work that he will be paid during overtime hours one and one-half times the rate established for the type of work he is performing during such overtime hours. However, as pointed out in section 778.29(c), one of the requirements for computing overtime pay under this section is that the hourly rate upon which the overtime rate is based must be a bona fide rate. An hourly rate will be regarded as bona fide for a particular kind of work if it is equal to or greater than the minimum wage prescribed by the act and if it is in fact the rate actually paid for such work when performed during non-overtime hours.

We thank you for your views and opinions on this matter. We know that many contractors in your industry are concerned with this problem, and we believe that this concern with this problem, and we believe that this concern can be alleviated if the contractors are made aware of the exact provisions of the act and the interpretative bulletins which discuss such situations. We

therefore hope that you can use your influence in the industry to help the contractors comply with the requirements of the law.

Sincerely yours,

Clarence T. Lundquist
Administrator

Enclosures

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).