

FLSA-928

June 30, 1967

This is in further reference to your letters concerning the reporting and filing of copies of the subject agreement pursuant to section 516.20 of Regulations, Part 516, (section 516.20 was formerly designated as section 516.11), with respect to the companies shown on the attached list.

Section 7(b) (1) of the Fair Labor Standards Act provides an exception from the overtime requirements for an employee employed in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than 1,040 hours during any period of 26 consecutive weeks, if such employee receives compensation for employment in excess of 12 hours in any weekday or 56 hours in any workweek, as the case may be, at a rate of not less than one and one-half times the regular rate at which he is employed.

You will note that section 516.20(b) of Part 516 requires that the employer keep copies of the collective bargaining agreement and the National Labor Relations Board certification as part of his records and, within 30 days after the collective bargaining agreement has been made, report and file a copy thereof with the Administrator. It is noted that the subject agreement became effective on May 1, 1965, but there is no record that it was received by this office.

There is also no evidence that the subject union has been certified as bona fide by the National Labor Relations Board within the meaning of section 7(b)(1) of the act. Such certification is a condition precedent to entering a valid contract under section 7(b)(1) of the act. We do not raise any objection, however, when the certification has been obtained after the agreement has been negotiated if the application for certification has been made to the National Labor Relations Board on or before the effective date of the contract.

Section 2(f)(i) of the subject agreement provides, in part, that the normal work schedule of route drivers when working as such shall be 5 days, 40 hours per week. Any hours required by the employer to be worked as such in excess of 8 hours a day shall be accumulated and traded for time off at the then applicable straight time transportation rate at the convenience of the company in accordance with present practice but without unreasonable delay; and the choice of the same shall be by seniority. Accumulated time of route drivers shall be traded off in multiples of 5 consecutive days in a calendar week. When traded time is granted in a week in which a holiday falls, then the amount of time traded shall be 32 hours.

It further provides that no route driver subject to the overtime provision of the Fair Labor Standards Act shall work in excess of 1,040 hours during any period of 26 consecutive weeks. The company shall have the right to schedule traded time of route drivers so as to insure that they shall not work in excess of the hours provided above.

It is further provided that such a route driver shall be paid one and one-half times his regular rate, computed on a 40 hour basis which shall include his base pay and commission, for all hour worked as a commission route driver in excess of 12 hours in any workday or 56 hours in any workweek. He shall not accumulate any hours for trading purposes for those hours for which he is paid overtime.

Finally, hours worked in excess of 8 and up to 12 daily and in excess of 40 and up to 56 weekly shall be traded as heretofore.

With respect to the practice under section 2(f)(i) of the agreement, if accumulating and trading time, we wish to advise you that the payment of minimum wages due an employee must ordinarily be made at the regular pay day for the workweek, or when the pay period covers more than a single week, at the regular pay day for the period in which the particular workweek ends. The same requirement applies to the overtime pay due these employees for their hours in excess of 12 a day or 56 a week. When it is not possible, prior to preparing the payroll, to ascertain the number of overtime hours worked by an employee in the last workweek of the pay period, the requirements of the Fair Labor Standards Act will be satisfied if the employer pays the overtime compensation as soon after the regular pay day as is practicable. Such a payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for the payment of the amounts due, in any event not later than the next pay day after such computation can be made. The accumulating and trading of time, as presently practiced under the subject agreement, would not meet this requirement as to the time of payment of wages under the act.

If you have any further questions, you may wish to contact our Regional Office located at U.S. Parcel Post Building, 341 Ninth Avenue, New York, New York 10001. That office will be pleased to assist you.

Sincerely yours,

Clarence T. Lundquist
Administrator

Enclosure