U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

WHD-OL-1975-0019

May 9, 1975

Name*

This is in reply to your letter of December 5, 1974, regarding a possible "dual employment" situation based on certain employees being employed by both ___________________________. We regret that the volume of correspondence received in connection with the 1974 amendments to the Fair Labor Standards Act did not enable us to respond sooner.

You state that three firefighters of the ___________ Fire Department are also employed as Emergency Medical Technicians by the Jackson Memorial Hospital, a county operated institution. You believe this dual employment to be a joint employment situation under the Fair Labor Standards Act and cite as your reasons for so believing section 553.9(b) of 29 CFR, Part 553, copy enclosed and section 791.2(b) (2) of 29 CFR, Part 791, copy also enclosed. You state:

1. There exists an Intergovernmental agreement between _____ City and _____ County regarding the operation of a fire district;
2. ___ City provides training to employees engaged in Emergency Medical treatment and the county hospital benefits from such training;
3. In reality, the public employs the three persons and hence their work benefits both the city fire department and the county hospital which the public supports and;
4. The standards for Emergency Medical Technicians are the same for _____ City and Jackson Memorial Hospital, the county institution.

It is our opinion that it would not be significant that an intergovernmental agreement between the city and the county exists with respect to furnishing fire protection for a given fire district since such an agreement does not relate directly to the operation of the city fire department and the county hospital. Also, the fact that the city provides training that may be helpful to employees of the county would not, in itself, establish a joint employment arrangement between the two political jurisdictions for purposes of the Act. And while it is true that the public benefits from the operations of both the city fire department and the county hospital, for purposes of the Act the employers are considered to be the city and the county, not the general public.

The fact that the standards for Emergency Medical Technicians are the same for the city and the county would not, standing alone, be determinative of whether a joint employment relationship exists. If, in fact, the three employees of the city obtained employment at the county hospital completely on their own, as alleged by the hospital, and there is no agreement or understanding, written or implied, that both institutions are sharing the services of the three employees, a joint employment situation does not exist. In this connection, see section 553.9(c) of Part 553.

It should be noted that the matter of the constitutionally of the applicability of the Fair Labor Standards Amendments of 1974 to employees of State and local governments is before the Supreme Court in the case of National League of Cities, et al v. Brennan. Pending the decision in that case, enforcement of the Act's overtime provisions for employees engaged in fire protection or law enforcement activities has been enjoined by an order of the Court.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosures

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