U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

WHD-OL-1975-0015

June 2, 1975

Name*

This is in reply to your letter of February 4, 1975, in which you ask whether, under the fact situations presented, a joint employment relationship exists under the Fair Labor Standards Act as to the employment of police officers employed by two or more employers, the principal employer being the City of _____.

Your first question involves a situation in which the employers are disassociated, and the services of a police officer by the secondary employer, or employers, are not required under any statute or local ordinance. In that case we would not find that a joint employment relationship exists even though the police officer wears his uniform at the place, or places, of his secondary employment, and his hours of work may be counted separately by each employer. See section 553.9(c), 29 CFR Part 553.

Your second question involves a situation in which the presence of a police officer at a workplace other than required by his primary employment with the City is required by statute, or local ordinance as, for example, when his duties there include traffic or crowd control. In that case a joint employment relationship exists, and the hours worked for all the joint employers must be counted in the aggregate for purposes of overtime computation. (See section 553.9(c)).

Section 791.2, 29 CFR Part 791, provides that where a joint employment relationship exists, all the joint employers are responsible, both individually and collectively, for all the applicable provisions of the Act, including the overtime provisions for the particular workweek or work period. In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers. The City of _____, therefore, is not solely responsible for the overtime premium pay due in the event total hours worked by a police officer for joint employers exceeds the applicable statutory maximum hours standard.

It should be noted that the matter of the constitutionality of the applicability of the Fair Labor Standards Amendments of 1974 to employees of State and local governments engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) 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.

We regret that the volume of correspondence received in connection with the 1974 Amendments to the Act did not permit us to reply sooner.

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).