

FLSA 1203

June 12, 1987

This is in further response to your letter, addressed to Area Director *** concerning the application of the Fair Labor Standards Act (FLSA) to certain employees of the *** Unified School District #1 (the School District). You specifically wish to know how to compensate employees for their time spent as school bus drivers or driver's aides. We regret the delay in responding to your inquiry.

The FLSA is the Federal law of most general application concerning wages and hours of work. It requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in section 3(e)(2)(C) of FLSA and to those who may qualify for exemption from the minimum wage and/or overtime pay requirements of FLSA.

On January 16, the Department of Labor published final regulations, 29 CFR Part 553, which implement the Fair Labor Standards Amendments of 1985. These regulations contain rules concerning statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. A copy of the regulations is enclosed for your information.

In your letter, you indicate that the issue of how to pay school bus drivers and driver's aides for their time between trips, or "layover time," is currently the subject of negotiations with the employees' union. The School District has proposed to pay its school bus drivers and driver's aides for a maximum of 1 hour of their layover time. As proposed by the School District, these employees would not be paid for any time in excess of 1 hour during a layover. It is your contention that the school bus drivers and driver's aides who are completely relieved from duty during a layover between trips for more than 1 hour will have an opportunity to make use of this time for their own purposes.

The rules concerning the compensability of waiting time as hours worked under FLSA are set forth in sections 785.14 through 785.17 of the enclosed Interpretative Bulletin, 29 CFR Part 785. As indicated in section 785.16, waiting time or time spent in a layover is not part of the employee's hours of work if the employee:

- (1) is completely relieved of all duties and responsibilities,
- (2) is permitted to leave the job to go anywhere, and
- (3) knows in advance that work will not resume until a

specified time.

In addition, the period of the layover should be of sufficient length to permit the employee to use the time effectively for his or her own purposes.

The school bus drivers and driver's aides may leave their buses at one of the two transportation facilities which are operated by the School District. You state that these facilities are located near shopping centers and restaurants, and that they have parking areas for employees' private vehicles. Based on this information, it appears that the employees may be able to use their layover time in excess of 1 hour effectively for their personal business. However, we should emphasize that the criteria in section 785.16 of the regulations must be applied to the particular facts in each individual case in order to properly determine if the layover time must be paid for as hours worked under FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator

Enclosures