FLSA-499

January 18, 1972

This is in further reply to your letter of November 29, 1971, concerning the application of the overtime pay exemption provided in section 13(b)(3) of the Fair Labor Standards Act to certain commuter airline pilots and air taxi/charter pilots.

The exemption under section 13(b)(3) is not an industry or establishment exemption. It applies to individual employees of an air carrier when their activities bear a reasonably close relationship to the exempt type of transportation activities which bring the employer's operation under Title II of the Railway Labor Act. Title II applies to "every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service". The performance of nonexempt work will defeat the exemption where such work exceeds 20 percent of the employee's total work during the workweek.

Work performed by mechanics on training planes, transient planes, and on planes other than those used in operations which subject the employer to Title II of the Railway Labor Act clearly has no relation to exempt air transportation and would, if it constituted a substantial part of their work, defeat the exemption. Flyers and other employees who operate a flying school also perform nonexempt work, as do employees who sell airplanes and parts.

The information you have provided indicates that the commuter airline pilots and the air taxi/charter pilots with whom you are concerned fly in interstate commerce passengers and/or freight and/or air mail and are not employed by so-called "regulated" carriers. The lowest salary of the pilots is between $9,500 and $9,800 per year.

As clarified in a recent telephone conversation you had with a member of my staff, your reference to "regulated" carriers concerned the large airlines such as *** who hold CAB registration as certificated air route carriers. The employees you are concerned with are employed by carriers who hold letters of certification or registration from the Federal Aviation Administration as air taxi and commercial operators (ATCO).

The National Mediation Board, which administers the Railway Labor Act, has taken the position that any carrier that has been issued an ATCO certificate or an ATCO letter of registration by the Federal Aviation Administration and is engaged in interstate operations is a common carrier by air and subject to the Railway Labor Act. The Board does not assert jurisdiction over solely intrastate operations when there is no significant carriage of mail.

Thus, it is our opinion that the air carrier exemption under section 13(b)(3) of the Fair Labor Standards Act would be applicable to an air carrier which has been issued an ATCO certificate or an ATCO letter of registration, is subject to Title II of the Railway Labor Act, and does not engage in a substantial amount of non-carrier activities. Whether or not the exemption is applicable to a particular employee of such a carrier must be viewed in the light of whether or not the employee exceeds the 20 percent limitation on the performance of work which does not bear a relationship to the firm's exempt transportation activities.

Sincerely,

Horace E. Menasco
Administrator