FLSA-507

September 7, 1972

This is written in response to*** letter of August 3, 1972, on your behalf, regarding the application of the Fair Labor Standards Act to the University Play School at *** .

In order to obtain more information concerning the employer-employee relationship involved in the organization and operation of the school, Mrs. Aubry of my staff called you on August 17, 1972, to discuss the matter.

You informed her that the Play School was founded as a cooperative project by the *** , a national service organization for women, to furnish nursery care to children of students. There is a Nursery Board composed of wives of students who operate the school on a volunteer basis. The Board hires the Director of the School as well as the wives of the students who work there. The University furnishes the space. The Play School is not licensed by the State. The employees pay their own social security taxes, as they are considered "self employed". You were advised by an accountant that your project is a "cooperative" for income tax purposes.

The school is in operation from 7 to 5:30 for five days a week. Employees' hours are staggered to permit supervision of the children at all times, but no employee works over 40 hours in a workweek. The Director, who is the wife of a student, works 35 hours a week and is paid $80 a week. The school has 5 or 6 full-time workers who work from 36 to 40 hours a week, for which they are paid $45 a week. You have one worker who is paid $1.60 an hour as she is an N.Y.C. worker under the Community Action Head Start Program. The nursery school services cost $10 per child per week, which includes a free lunch. You have 40 children enrolled at the present time.

Based on the above facts, the University Play School would be considered a covered enterprise within the meaning of the Fair Labor Standards Act if at least two employees handle or otherwise work on any goods which originally came from out of the State. All nonexempt employees in a covered enterprise would have to be paid salaries which would be large enough to yield at least the statutory minimum wage of $1.60 an hour for each hour worked in the workweek and overtime compensation at one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

The enclosed WH Publication 1364 gives general information concerning the application of the Fair Labor Standards Act to employees of preschool centers. You will note on page 2 of the publication that individuals who volunteer their services to a preschool not as employees or in anticipation of pay are not considered employees within the meaning of the Act. Therefore, you may be able to ease the financial burden of the University Play School by increasing the use of volunteer workers, in keeping with the underlying objectives of the mothers who volunteer their services in a preschool as a public duty, without pay, to maintain effective services for their children would not be considered "employees" within the meaning of the Fair Labor Standards Act. You may also be able

to obtain the help of additional N.Y.C. workers who you indicated are paid with Community Action Funds.

We hope that the University Play School will have few serious problems of adjustment to the law.

Sincerely,

Horace E. Menasco
Deputy Assistant Secretary