

FLSA-1142

October 29, 1973

This is in reply to your letter of September 17, 1973, concerning the claim for back wages of Mrs.*** of ***.

An employee's acceptance of back wages paid by the employer under the Department's supervision pursuant to the provisions of the Fair Labor Standards Act entirely relieves the employer of any further liability to the employee. This relief is provided under the terms of section 16(c) of the Act, which states:

"The Secretary of Labor is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages..."

Back wages due to *** were paid under the Department's supervision pursuant to the above provisions and payment was accepted by her. The waiver of any claim for the back wages against the employer is evidenced by a Receipt For Payment Of Back Wages signed by Mrs.*** (copy enclosed). Further action by Mrs.*** or by this Department on her behalf against the employer for back wages in this matter is thus barred by the specific terms of the statute. Her acceptance of the back wages paid pursuant to the provisions of section 16(c) has relieved the employer of any further liability to her for back wages.

The authority to conclude cases under the terms of section 16(c) is delegated to our enforcement personnel in the field. In view of the specific provisions in the Act, it has not been found necessary to have any procedure for appeal to the Secretary of Labor. Although there is no such procedure, however, the employee is not bound by our findings in an investigation. An employee who wishes to retain her independent right to sue the employer under section 16(b) may decline to accept payment of back wages tendered under the Department's supervision. That section allows an employee to sue for back wages and an additional sum, up to the amount of back pay, as liquidated damages, plus attorney's fees and court costs. As provided in the Act and explained on the Receipt For Payment Of Back Wages signed by Mrs.***, her acceptance of payment under the Department's supervision according to section 16(c) constituted an election to proceed under that section in lieu of section 16(b).

The Act's provisions for employee election regarding back wages permits cases to be closed with finality on a basis agreeable to both the employer and employee. Departmental review is thus not necessary in such cases, either for legal or administrative reasons, and no such review has been established. Closing a case pursuant to section

16(c), as in Mrs.*** case, constitutes final agency action. Such finality is needed for effective and practical enforcement of this law.

Although there is no appeal in cases where an employee accepts payment of the back wages under section 16(c), all the facts in this matter have been carefully reviewed in our Wage and Hour National Office. The crux of Mrs. *** dissatisfaction stems from the manner in which her back wages were computed. In this respect the Department must follow the decision of the U.S. Supreme Court in the case of Overnight Motor Transportation Company v. Missel, 316 U.S. 572 (1942). That case is the authority for the method of computing overtime pay to salaried employees working fluctuating hours, and is explained in section 778.114 of Interpretative Bulletin, Part 778. Mrs.*** now refuses to accept this legal authority which is controlling in her case and all similar cases. Our careful review of this matter indicates that the investigation of her claim was thorough and complete and that she received all of the back pay to which she was legally entitled.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosures