

## FLSA-668

December 24, 1974

This is in further reply to your letter of September 4, 1974, in which you request a ruling on behalf of your client, \*\*\* on the application of the monetary requirements of the Fair Labor Standards Act to pilots.

Section 13(b)(3) of the Fair Labor Standards Act exempts from its overtime pay requirements, but not its minimum wage, "any employee of a carrier by air subject to the provisions of Title II of the Railway Labor Act". This exemption is not an industry or establishment exemption. It applies to individual employees of a common carrier by air 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.

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.

It is our opinion, therefore, 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. If you have any further questions with regard to the Railway Labor Act, we suggest that you get in touch with Mr. George S. Ives, Chairman, National Mediation Board, 1230 Sixteenth Street, N.W. Washington, D.C. 20036.

Sincerely,

William Hoffman, Chief  
Division of Minimum Wage

and Hour Standards  
Wage and Hour Division

Enclosure