FLSA-912

February 22, 1979

This is in reply to your letter requesting an opinion on your client's proposed method of paying overtime compensation under the Fair Labor Standards Act. We regret the delay in our response.

The facts in your letter indicate that the company will pay for travel time, which is not required by the union agreement, at one-third of the employee's hourly rate of pay, which is required by the union agreement when travel time is paid for. The union agreement also requires that overtime compensation, at one and one-half times the hourly rate, be paid for non-travel hours worked in excess of 8 in a day or 40 in a workweek. However, the union agreement does not require that travel time, even when paid for, be included in the hours of work for the purpose of computing overtime compensation, although the Act requires such payment. You also state that the company will maintain records showing the overtime compensation required by the Act and the union agreement. Further, whichever method gives the employee a larger pay, will be the method by which the employee is paid.

You ask if the company may use the weighted average method of paying overtime compensation, as explained in section 778.115 of 29 CFR Part 778. Your first example is that of an employee who works 40 hours in a workweek for an hourly wage of $10.05 an hour, and spends 10 hours traveling for which he is paid one-third of the hourly rate or $3.35 an hour, which means that the employee received $435.50 as the straight time pay for that week: (40 hrs. x $10.05)+ (one-third x $10.05 or $3.35 x 10 hrs.) = $435.50. The total pay is then divided by the total hours of work ($435.50 divided by 50 hrs.) which gives $8.71 as the regular rate of pay, which is then multiplied by the overtime hours ,of work (10 hrs.) times 1/2 of the weighted average rate resulting in $43.55, which is added to the straight time pay of $435.50 for a total weekly pay of $479.05 for the employee that workweek.

In your second example you show the payment method for an employee who works only 3 days during the workweek, but who works 10 hours a day and then spends 12 hours traveling, for which he is paid one-third the hourly rate. In this case he has worked 42 hours in the workweek and would be due 2 hours of overtime compensation, resulting in a pay of $341.70, (30 hrs. x $10.05) + (one-third x $10.05 or $3.35 x 12 hrs.) = $341.70. This would make the regular rate equal to $8.14, which is then multiplied by the overtime hours of work (2 hrs.) times 1/2 the weighted average rate resulting in $8.14 which is added to the straight time pay of $341.70 for a total weekly pay of $349.84 for the employee that workweek.

However, as the union agreement requires overtime after 8 hours of work in a day the overtime compensation would be the hourly rate times 6 hours of daily overtime, resulting in an additional amount of $30.15 ($10.05 x ½ x 6) = $30.15), resulting in a

total weekly pay of $371.85. Since the latter method of overtime computation yields a higher pay for the employee, it is the one that he would receive for that workweek.

It is our opinion, based on the information provided in your letter, that this method of computing overtime compensation would be in compliance with the Fair Labor Standards Act, because it assures that the employees are paid at least one and one-half times the weighted average hourly rate.

Sincerely,

Lamar Johnson
Deputy Administrator
Wage and Hour

Xavier M. Vela
Administrator