FLSA-10

December 10, 1979

This is in further reply to your mailgram of October 12, 1979, concerning the investigation of *** under the Fair Labor Standards Act.

Many of the individuals who work at the three establishments in question are paid no wages. Even when the value of the meals, lodging and other facilities that are provided free of charge to these individuals are credited towards the minimum wage to the extent permitted by the Fair Labor Standards Act (FLSA), the workers receive less than the minimum wage specified in the Act, currently $2.90 per hour.

The case has been in Washington for review because of questions about whether or not the workers here are volunteers rather than employees. Even if the workers here are employees, however, the other issue which arises is whether they are so closely associated with a church that the FLSA does not apply to them.

After studying the case thoroughly, we have concluded that the individuals in question are not volunteers and that their relationship with the church does not prevent the FLSA from applying to them. The FLSA, as the Supreme Court has noted, was "not intended to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another" (Walling v. Portland Terminal Co., 330 U.S. 148, 152 (1947). On the other hand, as the Court has also made clear, the FLSA's purpose is "to insure that every person whose employment contemplated compensation should not be compelled to sell his services for less than the prescribed minimum wage." (ibid.)

In cases arising under the FLSA, the courts have held that "the crucial question is not whether the work was voluntary but rather whether the plaintiff was in fact performing services for the benefit of the employer with the knowledge and approval of the employer. *** And a contract to pay nothing for work stands in no better light under the Act than a contract to pay below the minimum wage." Republican Pub. Co. v. American Newspaper Guild, 172 F.2d 943, 945 (C.A. 1, 1949) Wirtz v. Leonard, 317 F.2d 768,769 (C.A. 5, 1963).

The workers at *** are in our opinion employees and not volunteers under this standard. They work "for the benefit of the employer" with its "knowledge and approval." They work as much as 70 hours per week. For their services they are provided with rent, meals, clothing and whatever spending money they require to obtain the necessities of life. In other words they derive their entire livelihood from this work and are an essential part of the businesses. In short, they follow the path of an employee and are therefore protected by the FLSA.

The fact that a church operates the grocery stores and filling station does not, in and of itself, prevent application of the FLSA. These establishments are essentially no different

from commercial businesses. A similar case faced the courts in Mitchell v. Pilgrim Holiness Church Corp., 210 F.2d 379 (C.A. 7, 1954), cert. denied 347 U.S. 1013. There, employees who worked in a printing plant which published pamphlets, books and other materials were held to be covered by the FLSA even though the plant was operated by a religious organization and most of the publications were of a religious nature.

The case file is being returned to the *** Area Office for further handling in accordance with the conclusions expressed in this letter.

Sincerely,

C. Lamar Johnson
Deputy Administrator