

FLSA-137

July 7, 1981

This is in reply to your letter of June 22, 1981, concerning the employer-employee relationship between your client, *** and certain contract welders under the Fair Labor Standards Act (FLSA). You enclosed a copy of the *** Master Welding Contract under which these welders provide welding equipment and services to ***.

We have reviewed the *** Master Welding Contract, and have concluded that, as written, it does not create an employer-employee relationship under the FLSA. We understand that the "contractors" in question are for the most part skilled welders with a substantial investment in equipment, which includes both trucks and welding machines.

The language of paragraphs 20, 21 and 23 clearly represents that the company shall not exercise control over the manner and means of conducting the work, that the contractor is free to contract for similar services for others while performing this contract, and that he will furnish his own equipment and other facilities. We understand that paragraph 22, which requires the contractor to keep and make available employee time records, is intended only to protect the company in the event of FLSA problems, and is not a device to control the work force. We also understand that paragraph 24, which requires the contractor to abide by a schedule is mainly for purposes of security. Under these circumstances, we do not view these latter provisions as detracting from the contractor's independent contractor status.

If the evidence showed that certain of these contract welders were in fact totally dependent on this company for their livelihood and had no means or prospects of contracting with others, we might reach a different conclusion. Also, if the evidence were to indicate that *** its employees or agents, assisted certain of these welders in establishing themselves as independent contractors by selling, leasing, financing, or otherwise furnishing necessary equipment and materials, such action might cause us to reach a different conclusion.

We trust the above has satisfactorily responded to your inquiry. Please let us know if you have further questions.

Sincerely,

Henry T. White, Jr
Deputy Administrator