

## FLSA-666

November 27, 1981

This is in reply to your letter of November 6, 1981, requesting an opinion concerning the application of the Fair Labor Standards Act to certain employees of the \*\*\* Railway Company. You state that these employees work for the railroad at the \*\*\* where they are substitutes for regular employees of the railway. These employees unlike the regular employees are not members of the International \*\*\* Association.

The Fair Labor Standards Act requires that all covered and nonexempt employees be paid at least a minimum wage of \$3.35 an hour for all hours worked and overtime pay of one and one-half times the regular rate of pay for all hours worked over 40 in the workweek. However, section 13(b)(2) of the Act provides an overtime pay exemption for any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of Part 1 of the Interstate Commerce Act. The provisions of Part 1 apply only to common carriers engaged in interstate commerce in the transportation of passengers or property. The exemption would apply to employees engaged in such transportation that is wholly by railroad or that is partly by railroad and partly by another common carrier which arranges with the railroad for a continuous carriage or shipment. Therefore, the employer must be recognized by the Interstate Commerce Commission as a common carrier, or the employer's firm must be owned by or under the common control of such a carrier. In addition, the employees must be engaged in activities which subject their employer to Part 1 of the Interstate Commerce Act.

We have been informally advised by the Interstate Commerce Commission that the employees you describe would be subject to the Interstate Commerce Act since they are employees of the \*\*\* which is itself subject to the Act. Therefore, since these employees are subject to Part 1 of the Interstate Commerce Act and are employees of an employer engaged in the operation of a common carrier by rail, they would be exempt from the overtime provisions of the Fair Labor Standards Act under section 13(b)(2). However such employees must be paid not less than the statutory minimum wage of \$3.35 an hour for each hour worked in order to be in compliance with the Act's monetary requirements.

With regard to your comments concerning 49 DSCS section 10101A (12), that Act concerns rail transportation policy and is enforced and interpreted by the Interstate Commerce Commission. Therefore, if you wish to obtain additional information concerning that Act, you can contact Ms. Ellen Hanson, Deputy Director for the Section of Finance, 5414 Interstate Commerce Commission, 12th and Constitution Avenues, N.W., Washington, D.C. 20423 (telephone: (202) 275-7245).

If we can be of any further assistance, please feel free to contact this office at any time.

Sincerely,

William M. Otter  
Administrator