APR 20 1993

This is in reference to our letter to you dated December 2, 1986, in which we expressed our view that paid firefighters employed by the City of could volunteer their services to the Emergency Crew (the Crew) as emergency medical technicians (EMTs) without being compensated in accordance with the monetary provisions of the Fair Labor Standards Act (FLSA). Upon further review of situations similar to the one described in your letter, we have determined that our letter to you expresses a view that is not in accord with the Fair Labor Standards Amendments of 1985.

Under the circumstances described in your letter, including the integrated structure of the City's official safety program services, it is our view that all work involving like duties or services performed by paid career City firefighter/EMTs within the City, whether the firefighter/EMT reports to the City or to the Crew, is compensable and must be included in determining whether the firefighter/EMT has worked overtime hours for the purposes of the FLSA. We view the underlying purpose and rationale of §3(e)(4)(A) as requiring this result. Pursuant to §3(e)(4), an individual is not permitted to "volunteer" to perform services for a public agency if such services are the same type of services that the individual is <u>employed</u> to perform for the public agency. Although the Crew may be a corporate entity separate from the City, services performed by its "volunteer" personnel, who are also City employees, are clearly performed "for" the City. Not only do the services directly benefit the City, but they are identical to the services performed by these and other City employees, at places and times when City personnel are unavailable.

To allow firefighters to "volunteer" to perform through the Crew, for the City, the same services for which they are paid by the City raises the potential for abuse which Congress had in mind in enacting §3(e)(4)(A). See Senate Report No. 99-159, October 17, 1985, page 14, 2 U.S. Cong. News 1985, page 662 ("the Committee wishes to prevent any manipulation or abuse of minimum wage requirements through coercion or undue pressure upon employees to 'volunteer'").

Furthermore, even if the Crew was a public agency, this would not be the type of situation envisioned by §3(e)(4)(B) of the Act and 29 CFR 553.105. These sections provide for mutual aid agreements between two or more public agencies, whereby employees of one agency may perform volunteer services for a second agency without thereby being considered employees of the first agency while serving as volunteers. It should be noted, however, that these provisions contemplate cooperative relationships between separate geographic jurisdictions. They do not countenance the performance of regular volunteer duties by employees of a public agency, acting for the exclusive benefit of that same agency, as a direct supplement to the work force, but through the device of another agency, as in the case you describe.

We have also considered the provision in §7(p)(1) of the FLSA which separates for overtime purposes the hours worked voluntarily on a special detail by police or firefighters for a separate and independent employer. The legislative history of this provision, which is reflected in 29 CFR 553.227(a), makes clear that the second employer must be both separate and independent from the principal employer. We have concluded that the Crew cannot be said to be "independent" of the City. Although the Crew is not a "public agency" within the meaning of the FLSA, it has a close contractual relationship with the City. Its principal purpose is to provide the same type of services for the City, through the use of "volunteers," that regular employees of the City otherwise provide. They are therefore not truly "independent" of the City in the sense contemplated by §553.227. The illustrations given in that section all concern outside employers primarily engaged in activities unrelated to the public agency's law enforcement function, which occasionally have need for law enforcement personnel to provide security functions.

We wish to make clear that EMT volunteers who are members of the Crew <u>but not employed by the City</u> as firefighter/EMTs are not affected. As you know, volunteer fire and/or rescue departments are frequently served by individuals whose livelihood is earned principally in another vocation (e.g., mechanic, teacher, truck driver, lawyer, etc.). The FLSA excludes such individuals as employees of the public agency they serve if they receive no compensation or are paid expenses, reasonable benefits, or a nominal fee (or combination thereof) to perform the services for which they volunteered.

Accordingly, our letter to you dated December 2, 1986, is hereby withdrawn. Please let us know if you have any further questions.

Sincerely,

/s/

Acting Administrator