

AUG 11 1993

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to a canine patrol officer employed by _____ Township. The issue of concern is whether certain time spent by the officer at home in caring for the dog is compensable under the FLSA.

You state that your client _____ was approached by the officer about establishing a canine unit in 1991. The Township subsequently entered into an agreement with the officer for use of his dog and for the officer's services for canine patrol purposes. You believe that the Township is not liable to the officer for additional FLSA compensation for taking care of the dog because the officer initiated the arrangement, and because the officer owns the dog. We do not agree.

The FLSA defines the term "employ" to mean "suffer or permit to work." As indicated in 29 CFR 785.7, the U.S. Supreme Court has held that employees subject to the Act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer or his business." Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123, 321 U.S. 590 (1944).

Certain training and "care" of a police dog at home by a canine officer is considered a part of the officer's principal activities and not preliminary or postliminary activities within the meaning of §4 of the Portal-to-Portal Act of 1947, 29 U.S.C. 251 et seq. See Truslow v. Spotsylvania County Sheriff, 783 F.Supp. 274 (E.D. Va. 1992); Nichols v. City of Chicago, 789 F.Supp. 1438 (N.D. Ill. 1992).

We consider the term "care" to mean bathing, brushing, exercising, feeding, grooming, related cleaning of the dog's kennel or transport vehicle, and similar activities performed by the canine officer at home on workdays as well as on days off duty or during vacation periods. Such work is considered to be compensable under the FLSA. Care also includes time spent in administering drugs or medicine for illness and/or transporting the dog to and from an animal hospital or veterinarian.

Likewise, time spent in training the dog at home is compensable. All of the foregoing activities are, of course, illustrative but not all inclusive. However, ownership of the police dog is not a factor in determining the compensability of the time spent in such activities under the FLSA.

We take the position that dog care activities of the type illustrated do not have to be compensated at the same rate of pay as paid for law enforcement activities. If different pay rates are used, the employer may, pursuant to an agreement or understanding arrived at with the employee before performance of the work, pay for overtime hours engaged in such work at time and one-half the special rate pursuant to §7(g)(2) of the FLSA.

Further, the employer and the employee may work out a reasonable agreement as to compensable hours worked at home in canine care in addition to law enforcement work at the job site. See 29 CFR 785.23. Such agreements should provide that additional hours spent in extraordinary care (e.g., time spent in trips for veterinary care) should also be captured and reported.

We trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator