

JAN 25 1995

This is in further response to your inquiry concerning collectively bargained bonuses under the Fair Labor Standards Act (FLSA). We previously furnished you existing opinions and citations on this issue by facsimile (fax).

Your questions are answered in the order presented:

Q.1. Do collectively bargained performance or incentive bonus payments have to be included in the "regular rate" for FLSA overtime compensation purposes?

A.1. Yes. See 29 CFR §778.211(c). Methods used in including such payments are found at 29 CFR §§778.208 - .210. Also, see the opinion dated 8/26/94 previously sent by fax.

Q.2. Do collectively bargained "signing" bonuses have to be included in the "regular rate" for FLSA overtime purposes?

A.2. Whether "signing" bonuses have to be included in the regular rate depends upon certain conditions related to how employees may "qualify" for such payments. The issue is discussed in greater detail in the opinions of 10/15/81 and 4/21/86 previously sent to you by fax. Also, see Minizza v. Stone Container Corp., 842 F.2d 1456 (3rd Cir. 1988).

Q.3. Do negotiated bonuses paid for attendance (reducing absenteeism) or reducing or eliminating safety violations or injuries have to be included in the "regular rate" for FLSA overtime purposes?

A.3. Yes. See 29 CFR §778.211(c).

Q.4. May a company and the union negotiate "shift differentials" and specifically provide in the CBA that the differentials will not be included in the "regular rate" for the purpose of FLSA overtime compensation?

A.4. No. The FLSA requires that such payments must be included in the "regular rate." See 29 CFR §778.207. Employees or their union may not waive their rights under the FLSA. See Brooklyn Savings Bank v. O'Neil, 328 U.S. 697 (1945); Barrentine v. Arkansas-Best Freight System, 450 U.S. 728 (1981).

We trust that the above is responsive to your inquiry.

Sincerely,

Ethel P. Miller
Chief, Branch of Fair Labor
Standards Act Enforcement