U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FEB 2 1 1995

This is in further response to your inquiry on behalf of the City
of   .   The City is concerned about the application of the
Fair Labor Standards Act (FLSA) to the simultaneous employment of
certain City firefighters by the City's school department as
athletic coaches.

As your know, a recent investigation of the City disclosed that
certain City firefighters, while simultaneously employed as
coaches by the City's school department, were not paid proper
overtime compensation. The City paid all back wages due these
employees and agreed to full future compliance with the FLSA.
Subsequently, City Solicitor   requested that the
Secretary of Labor exempt these employees so that they could
work, as before, without FLSA overtime compensation while so
employed. Mr.   and one of the affected employees, who had
made a similar inquiry, was advised on December 9, 1994, by the
Wage and Hour Boston Regional Office that the Secretary of Labor
has no such authority (copies enclosed).

We must reiterate that there is no provision in the FLSA or its
implementing regulations that allows the Secretary of Labor to
waive its provisions with respect to any employee. The FLSA in
general is remedial in purpose and Congress, in enacting the FLSA
was concerned with the objective of establishing certain minimum
labor standards.

As your constituents were advised, the Supreme Court has held
that an employee or his or her union may not waive the employee's
rights under the FLSA. Brooklyn Savings Bank v. O'Neil, 328 U.S.
697 (1945); Barrentine v. Arkansas-Best Freight System, 450 U.S.
728 (1981). In O'Neil, supra. the Court observed that "while in
individual cases hardship may result, the restriction will enure
to the benefit of the general class of employees in whose

interest the law is passed as to that of the community involved (citations and internal quotations omitted)."

If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosures

cc: Washington, D.C. Office