

JAN 21, 1997

This is in further response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to police officers while attending administrative disciplinary proceedings.

The specific question you present is whether the time spent giving testimony by a police officer at an administrative proceeding would be compensable hours worked under the FLSA. In particular, when the police officer giving testimony has been subpoenaed to testify on behalf of a fellow officer during a disciplinary proceeding, would the time so spent be "hours worked" for FLSA purposes.

As you know, we have held that time spent in testifying in court or other proceedings is compensable hours of work under the FLSA if:

1. the time spent is controlled or required by the State or local government; or
2. if attendance is intended to benefit the State or local government; or
3. if attendance is a direct result of official police duties.

We agree with your conclusion that the time spent testifying on behalf of a fellow officer is the result of official police duties and, therefore, is compensable under the FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney

Office of Enforcement Policy

Fair Labor Standards Team

As the Supreme Court recognized in Goldberg v. Whitaker House Cooperative, Inc., 366 U.S. 28 (1961), part ownership or any proprietary interest of a member in a cooperative does not preclude the existence of an employer-employee relationship. As the Court stated in that case, "[w]e fail to see why a member of a cooperative may not also be an employee of the cooperative." Id. at 32. Moreover, the fact that the company is not operated for profit also is immaterial. See Farmers Irrigation Co. v. McComb, 337 U.S. 755, 768 (1949).

With respect to questions 4-7, there is not enough information in your letter for us to make a determination. Whether or not the professionals, board members, and committee members would be considered "employees" pursuant to the FLSA would depend upon all of the facts in the particular situation.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided full and fair description of all the facts and circumstances that would be pertinent to our consideration and the questions presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust that the above information is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator

Enclosure