

JUL 28 1997

Dear

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to certain travel time by police officers in patrol cars outside of normal duty hours. We regret the delay in responding to your inquiry.

You ask whether the time spent by a police officer commuting to and from work in a marked police car outside his or her normal duty hours must be treated as hours worked under the FLSA. Generally, subject to certain conditions (e.g. the travel must be within the normal commuting area), the answer is no. You ask a number of follow-up questions that will be addressed in the order presented:

Q.1. Does it matter if use of the vehicle is mandatory?

A.1. Yes. The Employee Commuting Flexibility Act of 1996 (Section 2102 of PL 104-188) that amends the Portal-to-Portal Act of 1947 provides, among other matters, in order for the travel time to be considered noncompensable, the use of the vehicle by the employee must be pursuant to an agreement between the employer and employee or the employee's representative. This requirement may be satisfied by a written agreement but a written agreement is not required. A collective bargaining agreement may also serve this purpose, or an understanding based on established industry or employer practices. See House Report 104-585 (May 20, 1996) at page 4.

Q.2. Does it matter if the officer is required to monitor the police radio channel while commuting?

A.2. No. Monitoring the police radio channel while commuting would not, per se, change an otherwise

noncompensable home to work (or vice versa) trip into hours worked. See 29 CFR §553.221(f).

Q.3. Does it matter if the officer is required to respond to emergency calls while commuting to work.

A.3. Yes. The officer would be considered to be "on-duty" from the moment that he or she responds to the emergency. See 29 CFR §553.221(f).

Q.4. Does it matter if the officer is required to carry specialized police gear in the vehicle?

A.4. No. Merely transporting tools or supplies of the type described (riot gear, specialized weapons, crime scene material, or first aid materials) would not change the noncompensable nature of the commute in the police vehicle. House Report 104-585 at page 5.

Q.5. Would transporting a police dog in the vehicle make the commute compensable?

A.5. No. We think that transporting the police dog is akin to transporting tools and supplies as discussed in A.4.

We trust that the above is responsive to your inquiry.

Sincerely,

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Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team