

FLSA-91

August 30, 1972

This is in further reply to your communication of July 12, 1972, an enclosed inquiry from Mrs. *** concerning her employment with the *** Telephone Answering Services.

The information we have obtained indicates that the firm is engaged in providing three types of services: telephone answering service, page boy service, and mobile telephone service. The switchboard operators handle all three services at the same time. Noncompliance with the overtime pay provisions of the Fair Labor Standards Act was disclosed. It is the contention of the firm that it is entitled to the complete exemption from both the Act's minimum wage and overtime pay provisions provided under section 13(a)(10).

Section 13(a)(10) of the Act provides a complete exemption for any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations. The Division has taken the position that this exemption is applicable even though some nonexempt work is performed by the employee and does not occupy more than 20 percent of the time worked by the employee during the workweek. Duties performed in connection with the mobile telephone service would be within the limitations set for exemption under that section of the Act. On the other hand, the performance of any duties in connection with the telephone answering service and the page boy service is nonexempt. It was determined as a result of investigative activity that the employees of *** Telephone Answering Service exceeded the limitation on nonexempt duties in the performance of telephone answering and page boy service and thus, were entitled to overtime pay.

As previously indicated the firm contends that the 13(a)(10) exemption applies and the case is presently under negotiation. We have requested that a representative of our Regional Office contact Mrs. *** to inform her of the present status of the case and of any subsequent action. We are also requesting that the office inform you of the result in this matter.

Sincerely,

Horace E. Menasco
Deputy Assistant Secretary