

FLSA-266

August 4, 1971

This is in reply to your letter of June 25, 1971, concerning the counting of hours worked in a strike situation under the Fair Labor Standards Act.

You ask whether employees who are required to remain on your client's premises for prolonged periods of time, in excess of 24 hours, because of picketing must be paid for periods when they are not performing any work. You state that employees who are prevented from leaving company property during a strike would be scheduled to work one 12-hour shift, and would then be scheduled for 12 hours of uninterrupted free time. Meal periods during the 12-hour shift would be counted as hours worked.

Where an employee is required to remain on the premises of the employer for periods of time of such duration that it is necessary for him to live on the premises, as during a strike period, all of the time required to be so spent will, in general, constitute hours worked unless the employee has free periods which he may utilize for purely private pursuits. Where such an employee is rarely interrupted in his normal sleeping and eating time and these pursuits can be pursued adequately and comfortably in the circumstances, the normal uninterrupted eating, sleeping and recreational periods may be excluded from working time. The amount of time that may be excluded is a question of fact to be determined in the light of the special circumstances present in each situation.

Of course, if on rare occasions the employee is required to work during his scheduled free time, the time so worked must be counted as hours worked. If the free time is cut through with frequent work calls, however, it cannot be said that the time is noncompensable.

In the case you describe, each employee who is required to remain on the employer's premises during a strike would be scheduled to work a twelve hour shift followed by twelve hours of uninterrupted free time. During the rest shift the employee would be completely relieved of all duties and may use the time for relaxation and other entirely private pursuits. Under such circumstances we would take the position that it would be permissible under the Act for the employer and the employee to agree to exclude from hours worked a reasonable amount of the time which the employee is free to devote to personal pursuits. What is reasonable under the circumstances will involve consideration of the fact that the activities available to an individual in a struck plant may place certain limitations on the ability of the employee to use the time effectively for his own purposes.

Sincerely,

Horace E. Menasco
Administrator

