FLSA-476

February 9, 1978

This is in response to your letter dated November 7, 1977, concerning compensable worktime for farmworkers residing in a labor camp.

The general principles involved in determining what constitutes working time and which guide the Department in the performance of required duties are discussed in 29 CFR Part 785. A copy is enclosed for your reference.

Normal travel from home to work, or from a temporary residence such as a labor camp to the worksite is not worktime under the Fair Labor Standards Act and the Portal-to-Portal Act of 1947. This is true whether the worker is working at a fixed location or at different worksites (29 CFR 785.34 and 785.35). We recognize that farmworkers who reside in labor camps are generally provided transportation to and from the worksites by the agricultural employer. It is our opinion that the travel performed by these employees at the beginning and end of the workday is ordinary home to work travel. The fact that an employer provides the employee with transportation does not convert such travel time to a principal activity (Administrator's opinion letter, copy enclosed, dated April 8, 1968). However, if there is a custom, contract, or practice providing that an employee's regular daily travel between home or labor camp and the workplace at the beginning and/or end of the workday is compensable, such time will be so regarded under the provisions of section 4 of the Portal -to-Portal Act of 1947 as indicated in 29 CFR 785.34.

On the other hand, if the employer requires or directs an employee to drive an employer's vehicle to a job location, such travel time would constitute hours worked under the Act.

Time spent by a farmworker in travel as part of his principal activity, such as travel from jobsite to jobsite during the workday, must be counted as hours worked. Also, when an employee is required to report to a meeting place to receive instructions, perform other work, pick-up and carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked.

Farmworkers may be transported to the workplace and required to wait. Whether such waiting time is hours worked depends on the facts in the particular situation as discussed in 29 CFR 785.14 through 785.16. These criteria also apply in situations during the workday in which the farmworkers are required to wait for the resumption of work or transportation. As discussed in Part 785, such waiting time is hours worked when the employee is not completely relieved from duty or is required to wait for an indefinite time, or when the worker cannot use the time effectively for his own purposes.

Generally, farmworkers who are required to wait for work assignments in fields will be considered to be on duty as discussed in 29 CFR 785.15 since such periods are unpredictable or of such short duration the employees are unable to use the time effectively for their own purposes. Such time belongs to and is controlled by the

employer. See Goldberg v. Willmark Service System Inc., 215 F. Supp 577 (D. Minn. 1961), aff'd sub nom. Willmark Service System, Inc. v. Wirtz, 317 F2d 486 (C.A. 8 1963), cert. denied 375 U.S. 897.

Should you wish to provide us with more factual information indicating such matters as the time spent awaiting transportation or work instructions received or other work performed, we would be glad to consider these issues.

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

Sincerely,

Xavier M. Vela
Administrator

Enclosure