FLSA-974

October 23, 1980

Thank you for your letter regarding the application of the Fair Labor Standards Act to time spent by ambulance service paramedics in a State mandated training program. Our *** Area Office referred your letter to this office for response.

You state that the State *** has by statute and rules regulated the providing of ambulance service. Pursuant to this statutory authority, the State Commissioner of Health has promulgated rules relating to basic and advanced life support (ALS) transportation services. The rules require that in order to be employed as an attendant on an ALS ambulance the person (1) must be registered by the Commissioner pursuant to Minn. Stat. 214.13 to provide paramedic services; or (2) have successfully completed the written examination and the practical examination approved by the Commissioner according to the provisions of 7 MCAR §1.604 A. 2. and fulfill the continuous education requirements set forth in 7 MCAR 51.604 A.3.

The continuing education requirements are:

(1) Successful completion every two years of 48 hours of refresher training;

(2) Successful completion every year of a course in Cardio-Pulmonary Resuscitation (CPR); up to four hours of a course of such instruction, if successfully completed, may be applied as partial fulfillment of the 48 hours required every two years;

(3) Successful completion every two years of instruction in advanced cardiac life support; up to sixteen hours of a course of such instruction if successfully completed, may be applied as partial fulfillment of the 48 hours required every two years; and,

(4) Retention of the competencies listed as documented in a statement of satisfaction by the medical director.

In addition, you advised a member of my staff on September 25, 1980, that the program outlined above is applicable only to the second defined group of employees. Accordingly, our response will be limited to that group.

The Department of Labor's Interpretative Bulletin on Hours Worked, 29 CFR Part 785, defines in §§785.27-.32 those circumstances under which attendance at training programs and similar activities need not be counted as working time under the FLSA. In general, as indicated in 29 CFR 785.27, four criteria must be met: (a) attendance must be outside the employee's regular working hours; (b) attendance must be voluntary; (c) the training must not be directly related to the employee's job; and (d) the employee must not perform any productive work during attendance.

Your letter states that criteria (a) and (d) have been met. As for criterion (c), although the training is clearly related to the employee's job, §785.31 takes the position that even such training need not be compensated if it corresponds to courses offered by independent bona fide institutions of learning and is voluntarily attended by an employee outside normal working hours.

The training courses described in your letter appear to be of the type that would be offered by independent institutions in the sense that the courses provide generally applicable instruction which enables an individual to gain or continue employment with any employer which provides ambulance services. If this assumption is true, then we would regard the training as primarily for the benefit of the employee and not the employer. In training of this type, where the employee is the primary beneficiary, §785.31 indicates that criterion (c) does not have to be met.

As for criterion (b) in §785.27, we think that in each situation the reason why attendance by an employee is not voluntary must be examined. Where an employer (or someone acting in its behalf or interest) either directly or indirectly requires an employee to undergo training, the time so spent is clearly compensable. The employer in such circumstances has usurped and controlled the employee's time, and must pay for it. Where the State has required the training, however, a different situation arises. In general, such State-required training, as is the case here, is of general applicability, and not tailored to meet the particular needs of individual employers. In light of these considerations, we take the position that the FLSA does not require compensation for time spent in the training you have described.

The State statute here appears to be silent on the compensability of such training. If it in fact requires the employer to pay for the time spent in training, or is later amended to do so, then of course the employer would have to pay. The FLSA does not preempt State statutes which are more beneficial to employees than the FLSA itself. We would also point out that our opinion does not apply to training which the State requires specifically for State employees.

Sincerely,

Henry T. White, Jr.
Deputy Administrator