FLSA-981

June 15, 1983

This is in reply to your letter of May 9, 1983, concerning the application of section 13 (b)(1) of the Fair Labor Standards Act (FLSA) to mechanics of a leasing firm.

You indicate that your client owns two separately incorporated companies. One company is a common carrier transporting goods in interstate commerce. Its drivers and mechanics are engaged in safety-affecting duties and thus are exempt from overtime under section 13(b)(1). The Department of Transportation has power to establish qualifications and maximum hours of service for such employees pursuant to the provisions of section 204 of the Motor Carrier Act of 1935.

The other company owned by your client leases tractors and trailers to various business concerns including your client's common carrier company. However, the leasing company is not a carrier, is physically separated from the common carrier, and has its own employees and offices.

You ask whether the mechanics employed by the leasing company would be exempt under section 13(b)(1) because the owner of the leasing company and the common carrier is the same person. The answer is no. Safety-affecting employees (other than drivers of a leasing establishment) do not come within the 13(b)(1) exemption unless the employer is a motor carrier in its own right. In this context "motor carrier" must be taken to mean motor carrier in the sense used in the Motor Carrier Act of 1935. Your client's leasing firm itself does not transport goods in interstate commerce. Common control is not material. See Boutell v. Walling, 327 U.S. 463.

You also ask if the mechanics were partly employed by the leasing company and partly by the common carrier during the same workweek, would section 13(b)(1) be applicable. In such a situation the common carrier and the leasing company would be considered joint employers under the criteria in section 791.2(b)(1) of Interpretative Bulletin, 29 CFR Part 791. It is our position that the noncarrier leasing company may not take advantage of an exemption available only to a carrier so as to avoid the payment of overtime compensation for an employee's hours of employment which would otherwise be required of the noncarrier employer.

In any workweek when the noncarrier employer employs an employee in noncarrier activities, and is responsible individually or jointly with the carrier for compliance with the overtime pay requirements of section 7(a), the liability of the noncarrier leasing company to pay such overtime compensation cannot be avoided on the ground that the joint employer who is a carrier is not required to pay such overtime compensation because of section 13(b)(1). See Wabash Radio Corp. v. Walling, 162 F.2d 391.

You also ask if transferring the ownership of the common carrier vehicles and maintenance to the leasing firm would affect the status of the mechanics on both company payrolls under section 13(b)(1). Such action would not affect the status of the mechanics employed by either firm.

Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator

Enclosure