

## **FLSA-1271**

June 1, 1994

This is in further response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to certain \*\*\* Police Officers who are members of the Police Department's Special Response Team (SRT). The issue of concern is whether time spent by SRT members in physical fitness training during off-duty hours is compensable under the FLSA. We regret the delay in responding to your inquiry.

An investigation of the \*\*\* Police Department under the FLSA focused on this issue. After reviewing the matter, Regional Administrator Buhl concluded that the off-duty physical training by SRT officers was not compensable in light of an opinion of September 12, 1985, issued by the Deputy Wage and Hour Administrator. That opinion took the position that police officers or firefighters who voluntarily spend time maintaining their physical fitness during off-duty hours do not have to be compensated for such time under the FLSA.

SRT officers have been recruited from the ranks of the Police Department in response to expressions of interest by individual officers. Among the minimum qualifications required for each individual is the ability to successfully complete and maintain physical agility standards. Officers must pass the physical agility test upon application for the SRT. Those officers selected for the SRT must pass this test again before they undergo FBI SWAT Team training. Thereafter, they are tested semi-annually to insure that they continue to meet such standards. Test minimums include 35 pushups, 60 situps, 5 pullups, and the completion of a 2-mile run in 16 minutes (or 17 minutes for officers 35 years of age or older). However, other (non-SRT) officers do not have to meet such standards.

The labor agreement between the City and the police officer's union provides for certain minimum compensation when SRT officers are called out. In addition, SRT officers are compensated for the time spent in training required, except for the personal fitness training at issue. SRT officers contend that at least three hours of physical fitness training activity per week is required to maintain the fitness level mandated under the SRT test standards. According to the Chief of Police, there is no empirical evidence to support this contention, but he admits that this amount of time spent in fitness training would be reasonable to meet the standards as outlined above.

The Department of Labor's Interpretative Bulletin on hours worked, 29 CFR 785, defines in §§785.27 - 785.32 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 of 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.

Since the physical training has not been performed during duty hours, criterion (a) has been met. Obviously, the issue would be moot if the SRT officers were allowed time "on the clock" to maintain their physical abilities. Criterion (d) is also met since no police work is performed during physical training.

As to criterion (b) and (c), the information you have provided is not sufficient to demonstrate that the training is required or directly related to the SRT job. Such physical training is of a general nature that is beneficial to any individual, whether or not he or she is an SRT officer.

Thus, we are not prepared to assert that physical training time outside of duty hours is compensable under the FLSA. While such training benefits the employer, it is also of benefit to the employee whether or not the employee is an SRT officer. In our view the issue of concern could be addressed by the parties through the collective bargaining process.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste  
Administrator