U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

WHD-OL-1994-0005

August 15, 1994

Mr. David Nevins
Executive Director
American Ambulance Association
3800 Auburn Boulevard, Suite C
Sacramento, California 95821

Dear Mr. Nevins:

This s to provide you and your members with our position on the application of the Fair Labor Standards Act (FLSA) to employees whose duties involve various aspects of ambulance operations. Since the Department of Labor last articulated a public position on this question the courts have issued some clarifying decisions.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage (currently $4.25 an hour) for all hours worked and overtime pay of not less than one and one-half times the regular rate of pay for all hours worked over 40 in a workweek.

Section 13 (b) (1) of the FLSA provides an overtime pay exemption for any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to section 204 of the Motor Carrier Act (MCA) of 1935 (now codified at 49 U.S.C. 3102). This exemption applies to any driver, driver's helper, loader, or mechanic employed by a carrier, and whose duties affect the safety of operation of motor vehicles on the public highways in interstate or foreign commerce. The application of the exemption is discussed in 29 CFR Part 782.

In the cases of Spires v. Ben Hill County, 980 F.2d 683 (11th Cir. 1993) and Jones v. Giles, 741 F.2d 245 (9th Cir. 1984), two courts of appeals have held that ambulance drivers are not subject to the FLSA's section 13 (b) (1) motor carrier exemption. Both holdings are unconditional, without regard to the frequency of interstate operations, and in both cases the courts noted that the Interstate Commerce Commission (ICC))predecessor of the Department of Transportation (DOT) had determined that the unique operation of ambulances compared to other forms of motor transportation put them outside the ICC's jurisdiction. In Lonnie W. Dennis, Common Carrier Application, 63 M.C.C. 66 (1954), the ICC held that the Motor Carrier Act did not confer jurisdiction over ambulance services upon the Commission. The DOT adopted the reasoning of the Commission in Dennis when it published notice that ambulance services were not subject to

the requirements of the Federal Motor Carrier Safety Regulations. (42 Fed. Reg. 60078, 60080 (November 23, 1877).)

On the basis of Spires and Jones, the Department does not consider the section 13 (b) (1) exemption applicable to ambulance service employees. We are advising our investigative personnel that henceforth overtime for ambulance service employees is to be computed without regard to that exemption. We recognize that the case of Benson v. Universal Ambulance Service, 675 F.2d 783 (6th Cir. 1982) has a contrary result, but that decision did not deal with the ICC's interpretation of its own jurisdiction, which the ICC had explained in Dennis, and both the Ninth and Eleventh Circuits specifically declined to follow Benson.

We trust that this letter clarifies our position on this matter. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Maria Echaveste
Administrator

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*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).