

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

Released

B-187181

FEB 15 1978

The Honorable Teno Roncalio
House of Representatives

Dear Mr. Roncalio:

Further reference is made to your letter dated December 1, 1977, with enclosures, on behalf of Mr. Delf Lovato, Vice President of the American Federation of Government Employees Local 2354, Francis E. Warren Air Force Base, Wyoming, concerning our decision Matter of [REDACTED] B-187181, October 17, 1977.

In that decision we held that [REDACTED] wage grade employees of the Department of the Air Force, Francis E. Warren Air Force Base, were not entitled to overtime compensation under either the statutory authority for overtime for wage board employees, 5 U.S.C. 5544 (Supp. II, 1972), or under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq. (Supp. IV, 1974), for time they were restricted to remote worksites due to adverse weather conditions.

In our decision [REDACTED], we held that there was no entitlement for overtime compensation under 5 U.S.C. 5544 (Supp. II, 1972) since neither claimant performed any work or was required to hold himself ready to perform work during the period for which overtime was claimed. We noted that [REDACTED] had been paid overtime compensation for overtime which he voluntarily worked during part of the time he was restricted to the remote worksite.

Concerning the claimants' possible entitlement to overtime compensation under the provisions of the FLSA, *supra*, we pointed out that the Civil Service Commission (Commission) is authorized to administer the provisions of the FLSA with respect to employees of the United States. Upon reviewing our submission of the facts surrounding the employees' claims, the Chief of the Commission's Pay Policy Division determined that the claimants were not entitled to overtime compensation under the FLSA. The Commission's report reads in pertinent part as follows:

"Under the FLSA certain principles must be considered in determining whether waiting time is 'hours of work.' An employee who is waiting because he or she has been detained at the worksite is either on duty or off duty during this period.

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" * * * They / [REDACTED] / were detained on this particular day, but they were completely relieved from duty, and they were not expected to perform work, or to be available to perform work, until the following morning. * * * the waiting time belonged to the employees and was not under the control of the agency. Thus these employees were 'waiting to be engaged' and, therefore, off duty. Consequently, the time that these two employees were detained meets none of the conditions that would make this time 'hours of work' under the FLSA."

In accordance with the report of the Commission we found that the waiting time on which Messrs. [REDACTED] claims were based was not compensable under the FLSA.

Mr. Lovato, in his correspondence dated November 21, 1977, implies that the agency unfairly presented to our Office the facts surrounding the claims for overtime and that this biased presentation resulted in our denial of the claim. There is nothing in the record which supports the contention that the agency presented this case to us in an unfair manner. We note that Mr. Lovato has not cited any specific factual errors in the agency record. He does not allege that the claimants were detained in a work or standby status. Instead he states that the employees were not allowed to leave due to a heavy rainstorm. Mr. Lovato also alleges that our decision in [REDACTED] is a violation of the "Fair Labor Standards Act." However, Mr. Lovato has not cited any legal authority or precedent which would support a conclusion that our decision involved an error of law.

Accordingly, upon review we find no basis that would warrant changing the conclusion reached in our decision of October 17, 1977. We regret that we are unable to give a more favorable reply regarding the claims of Messrs. [REDACTED]. We are enclosing the correspondence which you forwarded with your letter of December 1, 1977.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosure