



September 9, 2004

FLSA2004-9

Dear *Name**,

This is in response to your letter to Ms. Susan Nern of the Wage and Hour Division (WHD) in Phoenix, Arizona regarding the payment of overtime to nurses at the *Name** of *Name**. Your letter was forwarded to this office for a reply.

You state that your union, the *Name**, represents approximately 1300 nurses at *Name** and you have been considering how the overtime provisions of the Fair Labor Standards Act (FLSA) might be applied to them. You state that Section 7(j) is not feasible, and that you would prefer the implementation of an agreement under either Section 7(b)(1) or 7(b)(2) of the FLSA instead.

As you know, Sections 7(b)(1) and 7(b)(2) contain requirements concerning the number of overtime hours that may be worked and, also, both sections require that the overtime agreement may be reached only as the result of collective bargaining by employee representatives certified as bona fide by the National Labor Relations Board (NLRB). Your concern is that, although you are the bona fide representatives for *Name** employees, you are not certified by the NLRB. Instead, you are certified by the Local Government Employee-Management Relations Board, a board that you describe as "essentially the state equivalent" of the NLRB. You explain that because *Name** is considered a local governmental body, you are subject to the State collective bargaining statute (Nevada Revised Statutes 288.010 *et seq.*). You enclose a copy of a case by the Supreme Court of the State of Nevada which mentions that the state's Employee-Management Relations Board was patterned after the NLRB and you ask whether it would be acceptable to implement a Section 7(b) agreement under the auspices of a bargaining agent certified by a state rather than the NLRB.

Section 7(b) requires certification of the collective bargaining representative by the NLRB. No exception has been provided which would allow a Section 7(b) agreement negotiated by a bargaining agent certified by the State of Nevada, rather than the NLRB. The FLSA does not, however, require use of the Board's procedures for certification of the union as the exclusive bargaining representative of the employees within a particular bargaining unit for the purposes of the National Labor Relations Act. Certification by the NLRB for the purposes of section 7(b) can be a relatively routine matter, initiated by a letter of request. Enclosure of evidence that your union is certified by the Employee-Management Relations Board might facilitate certification by the NLRB.

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 which 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. You have also represented that this opinion is not sought by a party to pending litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above information is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.,
Acting Administrator

*Note: * The actual name(s) was removed to preserve privacy.*