



September 20, 2004

FLSA2004-12NA

Dear *Name*\*,

This is in response to your letter concerning the overtime provisions of Section 7(b)(2) of the Fair Labor Standards Act (FLSA). Your firm is General Counsel to a union which is party to a collective bargaining agreement. That agreement expires November 20, 2004 and the union is looking into its options for the future.

You state that more than 25 years ago the union and employer obtained a letter from the Wage and Hour Division which states that the compensation agreement to which both parties agreed complied with the provisions of Section 7(b)(2). Since then the same Section 7(b)(2) provision has been incorporated into subsequent collective bargaining agreements either by negotiation or arbitration. You now ask the following questions for which our responses follow:

**May a union unilaterally withdraw from a compensation system pursuant to 7(b)(2)?**

The agreement to a Section 7(b)(2) compensation plan assumes the concurrence of both parties. The plan takes effect on the date it specifies and continues in the subsequent 52-week period during which the employer guarantees that the hours and weeks in that period meet the minimums and maximums stated in that section. At the end of this period, the decision whether to continue the agreement for another year is a matter for decision between the employer and the union. The Wage and Hour Division takes no position as to whether any such agreement should be continued. You may wish to contact the National Labor Relations Board (NLRB) regarding the consequence(s) of a union decision to withdraw from the agreement before the collective bargaining agreement has expired.

As stated above, a Section 7(b)(2) plan takes effect on the date it specifies and continues in the subsequent 52-week period during which the guaranteed hours and weeks in that period meet the minimums and maximums stated in that section.

The Wage and Hour Division does not enforce collective bargaining agreements. When a collective bargaining agreement exceeds the 52-week period of a Section 7(b)(2) agreement, the Wage and Hour Division takes no position on whether the parties renew the plan for another year. You may wish to contact the NLRB regarding the consequence(s) of a union decision to withdraw from the agreement before the collective bargaining agreement has expired.

**Must this withdrawal occur only at the expiration of the current collective bargaining agreement?**

See the answer to the previous question.

**May the Union, at the appropriate time, be assured that it will not be compelled against its wishes to be a party to a compensation system pursuant to 7(b)(2)?**

The Wage and Hour Division cannot compel either side to enter a new agreement that includes a compensation system pursuant to Section 7(b)(2).

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 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 the above information is responsive to your inquiry.

Sincerely,

Barbara Relerford  
Office of Enforcement Policy  
Fair Labor Standards Team

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