U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

September 16, 2005 **FLSA2005-10NA**

Dear ***Name****,*

This letter is in response to your request for an opinion as to whether pilots, nurses, and paramedics of an air ambulance company are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) because they fall into the FLSA section 13(b)(3) exemption for employees covered by the Railway Labor Act.

One of your clients owns an air transportation company that has a Federal Aviation Administration (FAA) 135 certificate and provides air ambulance services to many states, including Arizona, Colorado, New Mexico, California, Minnesota, Texas, Utah, and Oregon. In addition, the air ambulance company provides international services to Mexico and Canada. The company employs pilots, nurses, and paramedics as flight team members, all of whom must obtain a flight physical administered by a medical examiner approved by the FAA. The company pays these employees a flat rate ("shift pay") for the hours worked. However, they are not paid overtime compensation. You advised in your letter that your client is subject to the provisions of Title II of the Railway Labor Act (RLA).

Section 13(b)(3) of the FLSA exempts from its overtime pay requirements, but not its minimum wage requirements, "any employee of a carrier by air subject to the provisions of Title II of the Railway Labor Act." Title II applies to "every common carrier by air engaged in interstate or foreign commerce …, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service." 45 U.S.C. § 181. The National Mediation Board (NMB) has the authority to interpret the RLA, and the NMB has determined that an air ambulance service operating pursuant to FAA certificates and holding itself out to the public for hire is subject to the RLA. *See In re Rocky Mountain Holdings, LLC d/b/a Eagle Airmed of Ariz.*, 26 N.M.B. 132, 1999 WL 17850 (1999); *see also Slavens v. Scenic Aviation, Inc.*, 221 F.3d 1353, 2000 WL 985933 (10th Cir. 2000) (unpublished).

We agree with your conclusion that your client is subject to Title II of the RLA, and it is therefore our opinion that 29 U.S.C. § 213(b)(3) applies. The Department is of the view that this exemption applies to individual employees of a common carrier by air provided that no more than 20 percent of the time is devoted to transportation activities that do not bear a "reasonably close relationship" to the exempt activities that bring the employer's operation under Title II of the RLA.[1] The pilots would therefore be exempt from FLSA overtime requirements if less than 20 percent of their duties involve non-exempt work. With regard to the nurses and paramedics, they are designated as "flight crew members" and required to obtain a flight physical administered by an FAA approved medical examiner. The medical services they provide to the patient are an integral part of the firm's transportation activities because patients cannot be transported unless they are accompanied by a nurse and/or paramedic. Thus, their "work bears more than a tenuous, negligible, and remote relationship to the transportation activities of the employer." *Slavens,* 2000 WL 985933, at *2 (quoting

[1] *See* FOH 24j01 (copy enclosed), which provides that "[t]he exemption under Section 13(b)(3) … applies to individual employees of an air carrier when their activities bear a reasonably close relationship to the exempt type of transportation which bring the employer's operation under Title II of the Railway Labor Act." Pursuant to 29 C.F.R. § 786.1, "the exemption provided by section 13(b)(3) of the [FLSA] will be deemed applicable even though some nonexempt work (that is, work of a nature other than that which characterizes the exemption) is performed by the employee during the workweek, unless the amount of such nonexempt work is substantial. For enforcement purposes, the amount of nonexempt work will be considered to be substantial if it occupies more than 20 percent of the time worked by the employee during the workweek." *See also* WH Opinion Letter dated December 24, 1974 (copy enclosed).

Northwest Airlines, Inc. v. Jackson 185 F.2d 74, 77 (8th Cir. 1950)). Therefore, the nurses and paramedics would qualify for the FLSA overtime exemption if less than 20 percent of their duties involve non-exempt work.

You also ask what would be required for an air ambulance company to be considered a "common carrier" exempted from overtime under the FLSA. The term "common carrier" is from Title II of the RLA. Although the FLSA exempts employees of a carrier subject to the provisions of Title II, it does not define "common carrier." The NMB administers the RLA, and the Department relies upon the NMB's interpretations of RLA terms for guidance. If you have further questions with regard to the provisions of the RLA, we suggest you contact the NMB, 1301 K Street, N.W., Suite 250 East, Washington, D.C. 20005.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express 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. You have represented that this opinion is not sought by a party to pending private 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,

Barbara R. Relerford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures:

FOH 24j01
WH Opinion Letter December 24, 1974

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