scheduling which must be followed in providing fire suppression services. I have attached the estimates for the City of Montebello in this regard; these estimates are based on the time and one-half overtime pay requirements of the FLSA, and the following data regarding the existing wage and hour conditions as of the date the Fair Labor Standards Act Amendments of 1974 was signed into law.

1. Fire service employees were scheduled on a 58 hour per week work schedule.

2. A total of 54 employees were involved in providing fire suppression services.

3. Annual salaries (top step) for fire suppression employees were as follows:

| | |
|---|---|
| a. Battalion Chief | $20,580 |
| b. Captain | $16,920 |
| c. Engineer | $14,832 |
| d. Dispatcher | $ 9,127 |

4. 1973-74 total overtime budget – $50,000

5. 1973-74 total fire suppression budget for salaries, wages and fringe benefits – $985,031.

I hope this information is of some assistance to you in your preparation of the lawsuit challenging the constitutionality of the extension of the FLSA to State and local Government. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

/s/ Roy R. Pederson
Roy R. Pederson
City Administrator

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# CITY OF MONTEBELLO INCREASED COSTS FOR PROVIDING FIRE SUPPRESSION SERVICES TO MONTEBELLO RESIDENTS AS RESULT OF FLSA AMENDMENTS OF 1974*

| | |
|---|---|
| January 1, 1975 | |
| Increase In Overtime Costs | $10,725 |
| % Increase In Overtime Costs | 21.5% |
| % Increase In Total Salary Costs | 1.1% |
| January 1, 1976 | |
| Additional Increase In Overtime Costs | $2,962 |
| % Additional Increase In Overtime Costs | 5.9% |
| %Additional Increase In Total Salary Costs | .3% |
| January 1, 1977 | |
| Increase In Regular Salary Cost (6 additional fire fighters) | $104,235 |
| % Additional Increase In Total Salary Costs | 10.6% |
| % Increase In Number of Fire Employees | 11.1% |
| Summary | |
| Increase In Overtime Costs | $13,687 |
| Increase in Regular Salary Costs | 104,235 |
| Increase In Total Salary Costs | $117,922 |
| % Increase In Overtime Costs – 27.3% | |
| % Increase In Total Salary Costs – 12% | |

*All figures are stated in terms of estimated annual costs

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I, ROBERT J. FRANZ, Assistant to the City Administrator, City of Montebello, California hereby swear under penalty of perjury that the cost estimates included in the letter (with attachments) attached hereto, are true and correct estimates based on all available factual data. I hereby further certify that all factual data included in the letter (with attachments) attached hereto is true and correct.

/s/ Robert J. Franz
Robert J. Franz

STATE OF CALIFORNIA )
)
COUNTY OF LOS ANGELES )

Subscribed and sworn to before me this 22nd day of November, 1974.

/s/ Helen F. Liggett
Notary Public in and for the State
of California, County of Los Angeles

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**Defendant's Exhibit No. 20**

CITY OF MONTEBELLO
1600 BEVERLY BOULEVARD
MONTEBELLO, CALIF. 90640

October 3, 1974

Mr. Allen E. Pritchard
Executive Vice President
National League of Cities
1620 Eye Street N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

In response to a request from Don Benninghoven of the League of California Cities, this letter will attempt to illustrate the impact of the Fair Labor Standards Act on the City of Montebello. It is my understanding that this information is to be used in conjunction with the proposed law suit challenging the constitutionality of the extension of the FLSA to State and local government.

I will attempt to follow the general outline of the questionnaire prepared by the League of California Cities in describing the impact of the various provisions of the FLSA.

VOLUNTEERS – The extension of the FLSA to the City of Montebello has had significant impact on the ability of the City to utilize volunteers in a manner most beneficial to the public being served. The impact on two City departments, Police and Parks & Recreation, has been particularly significant:

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POLICE

1. Prior to the application of the FLSA, the City utilized "reserve" officers (numbering approximately 40) for various police department functions such as special event coordination, fingerprint officer, and booking officer. These officers also ride in patrol cars as the "second man" in the patrol car.

Reserve officers are paid $25 a month as compensation for their contribution to the City. There is a wide variance in the number of hours worked per month by reserve officers depending on current activities and the individual officer's desires. It is not unusual for a reserve officer to work as many as 40-50 hours per month, although the average would be approximately 20 hours per month. Reserve officers, obviously, are not performing the various functions described above because of the amount of compensation offered by the City. They are volunteering their time as a public service to the City and enhancing their knowledge of police activities. The City has generally considered $25 per month compensation as a recognition of the fact that a reserve officer must furnish his uniform and equipment at his own expense. It has never been considered compensation for hours worked since these individuals are volunteers.

2. Due to the application of the FLSA to the City of Montebello, the number of hours worked per month by reserve officers is now limited to $25 divided by the minimum wage or approximately 12-1/2 hours per month. Detailed timecards must also be maintained which were not previously necessary for the officers.

3. Sections 776.5 and 785.6 of the Act of Federal Interpretative Bulletins requires this change in the practice of compensating reserve officers.

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PARKS & RECREATION

1. Prior to the application of the FLSA, the City hired recreation aides for the summer months to help with the City's various recreation programs. Many of the individuals hired for these purposes are more interested in helping out with the recreation program (as a public service) than with the compensation received for their work. Consistent with this, many of the individuals work more than the number of hours per week (or year) that they are compensated for. The number of hours per week (or year) these individuals can be paid is based on an annual review of the various recreation programs during the budgetary process. At that time, it is determined what level of services can be funded from the taxpayers' funds, and the amount of money budgeted is based on the determination. The individuals hired may be willing to provide a higher level of service than budgeted out of taxpayers' funds, and, therefore, volunteer their time over and above the number of hours they are compensated for.

2. Due to the application of the FLSA to the City of Montebello, the number of hours worked per week (or year) by recreation aides is limited to the amount of hours budgeted during the annual budget process. Individuals are not allowed to volunteer their time to assist in recreation programs over and above their compensated hours.

3. Section 785.11 of the Act of Federal Interpretative Bulletins requires this change in the practice of utilizing recreation aides.

TRAINING – As a part of the agreement with the Montebello Police Association during the past year's meet

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and confer process, the City implemented an educational/merit incentive program for the police department. The program had to be modified prior to adoption (by deleting a portion of the program) because of certain FLSA requirements:

1. Prior to the application of the FLSA, the City could have required that a police department employee complete a certain number of units of education per year in order to maintain eligibility for the proposed educational/merit incentive pay. This requirement is considered important to the City management since additional pay for the completion of a certain level of education does not provide "incentive" for education once the level is obtained. The City feels that a workable program for additional pay for education should include a maintenance provision to insure that the individual continues to earn his additional pay.

2. Due to application of the FLSA to the City of Montebello, the requirement to complete a minimum number of units per year was deleted from the educational/merit program. This is due to the fact that provisions of the FLSA require that the City compensate the employee for the hours spent in a classroom as well as study time for all class work. This would significantly increase the cost of the educational/merit program, and would require an additional administrative procedure to monitor and verify hours spent by employees in the classroom and studying. This additional requirement is not within the intent of the educational/merit incentive program which was agreed to during the meet and confer process.

3. Section 785.28 of the Act of Federal Interpretative Bulletins prevents the inclusion of such an educational maintenance requirement unless compensated as described above.

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COMPENSATORY TIME

1. Prior to the application of the FLSA, the City granted compensatory time as a method of paying employees for overtime hours worked. Paid overtime was also utilized when authorized by a specific budget appropriation.

2. Due to the application of the FLSA to the City of Montebello, compensatory time is no longer authorized and all overtime situations now must be anticipated in advance during budgetary review.

3. One effect of this provision of the FLSA, is to reduce the City's ability to respond to emergency situations in those departments or activities in which no overtime was budgeted during the annual budget process. The estimated additional cost to pay overtime, rather than grant compensatory time, for fiscal year 1974-75 is (approximately 1% of the City's property tax revenue) $15,000.

EXEMPT/NONEXEMPT CLASSIFICATIONS

1. Prior to the application of the FLSA, the City had adopted by a resolution of the City Council designations of management and non-management employees.

2. Due to the application of the FLSA to the City of Montebello, all job classifications within the City must be reviewed to determine whether the position is exempt or nonexempt under the FLSA. Since the exempt/nonexempt designations do not coincide with the City's management/nonmanagement designations, two separate systems of designation must be maintained on a continual basis.

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RECORDKEEPING

1. Prior to the application of the FLSA, the City's recordkeeping requirements were limited to those required for State, Federal, and retirement reporting purposes, and for internal recordkeeping requirements.

2. Due to the application of the FLSA to the City of Montebello, additional records must be maintained which the City has no use for except to comply with the recordkeeping requirements of the FLSA. Examples of such records are:

Total daily or weekly straight-time earnings; and

Total overtime pay for the workweek.

The City of Montebello did not maintain the records prior to the application of the FLSA since the City pays its employees on a biweekly basis and has no need for the above weekly information.

TIME AND A HALF OVERTIME PAYMENT

1. Prior to the application of the FLSA, the City of Montebello granted either compensatory time or straight-time pay for overtime hours worked.

2. Due to the application of the FLSA to the City of Montebello, time and a half payment is required for all overtime worked by City employees (excluding safety, transit and exempt employees).

3. The total cost impact of the time and one-half pay requirement will not be known until guidelines are issued by the Department of Labor regarding overtime pay for safety employees. Current estimates are that the ultimate cost increase could be as high as $140,000 a year at current pay rates. This is approximately 2.5% of the City's total cost for salary and fringe benefits, and would

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require a property tax increase of approximately 7% to fund from that revenue source.

I hope that the information provided above will be of some assistance to the NLC in its preparation of the proposed law suit. As most of the cited examples indicate, the City of Montebello has developed, over the years, a personnel and administrative system which is cognizant of: employee needs, taxpayer concerns, public service concepts, ability to pay, and sound personnel practices. The application of the Fair Labor Standards Act to the City has disrupted the system by mandating rules and regulations which do not recognize all of the above considerations.

Please do not hesitate to contact me if you feel I can be of further assistance.

Very truly yours,

/s/ Roy R. Pederson
Roy R. Pederson
City Administrator

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**Defendant's Exhibit No. 21**

CITY OF MENLO PARK
CIVIC CENTER
MENLO PARK, CALIFORNIA 94025

October 4, 1974

National League of Cities
1620 "I" Street, N.W.
Washington, D.C. 20036

Gentlemen:

The purpose of this letter is in response to a questionnaire sent to us from the League of California Cities concerning the Fair Labor Standards Act and how it has effected our municipality. At this point in time the impact has been signifigant; however, many issues remain unresolved and therefore the impact to date very well may not represent total impact of change forced on our municipality by this act.

Menlo Park has historically paid twice a month. We have had to shift over to paying on a bi-weekly basis. To do this has required the use of four man nonths to change individual payroll records on each of our 150 full-time employees and our part-time employees as well. As of September 1, we began paying on a bi-weekly basis. Some organizational trauma has occurred because some mistakes were made in this conversion, and some people were not paid properly. These transition difficulties with the employees are of a minor nature however.

We have learned that some cities are not converting over from paying twice a month to a system of paying

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every two weeks. These cities have chosen instead to keep separate records: One set for their payroll system and one set to meet the hourly record requirements of the Fair Labor Standards Act. We consider this obviously to be an inefficient way of doing things however we recognize that some cities might not be in the position where they can afford to reallocate resources on an instantaneous basis to restructure their whole payroll system as we have felt forced to do. Perhaps the largest single area of difficulty that has grown up as a result of the passage of the Fair Labor Standards Act has been the disallowing of compensatory time off. We had a system where we gave the employee an option of either comp time or cash time-and-a-half money overtime. This option has been taken away from the employee and many feel that we, the management of the City, have inflicted an unnecessary and unfair restriction on their behavior patterns. We had a good system in the eyes of employer and employee and the Fair Labor Standards Act has destroyed that system. Another area that Fair Labor Standards Act is impacting is in our Police Department. The exact nature of the impact is difficult to determine at this point because the rules are not clear for safety officers. Historically, we have operated in the Police Department with a regular force of about 45 and a reserve force of about 30. The reserves have been paid when filling in on shifts for regular officers. Reserves have also been used for things where regular officers would not normally be used. For these activities the reserve officers have not been paid. The City has benefited by the expansion of service, and the reservist has benefited be receiving police training. The City's affirmative action program has been assisted immeasurably by being able to

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use the reserves as an entry vehicle into the regular department for minority candidates. The Fair Labor Standards Act basically says you're either a worker on the payroll or you're a volunteer. We are having a problem with that and we are having difficulty with determining whether or not our reserves are safety officers or miscellaneous employees and therefore don't know whether the rules went into effect May 1 or go into effect January 1.

With our regular officers we have yet to determine the total impact on work schedules and what new additional payroll changes we will have to be making for them. It is our opinion that with regard to the City of Menlo Park the Fair Labor Standards Act has cost the taxpayers money, has potential to reduce the quality of service and create organizational disharmony between employer and employee. That in summation is our opinion of the impact of this act.

Very truly yours,

/s/ Richard B. Kerwin
Richard B. Kerwin
Assistant City Manager

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**Defendant's Exhibit No. 22**

CITY OF MENLO PARK
CIVIC CENTER
MENLO PARK, CALIFORNIA 94025

November 21, 1974

Mr. Charles Rhyne
Rhyne & Rhyne
400 Hill Building
Washington, D.C.

Dear Mr. Rhyne:

I have been asked by the League of California Cities to submit information to you concerning the anticipated effects of the Fair Labor Standards Act on our police department operations in terms of increased costs and/or diminished services to the public. While the total impact is difficult to determine as yet, we do know that substantial organizational changes will occur which will end our Reserve program and will produce less service for greater costs.

Specific dimunitions of service will be in the areas of crime prevention, traffic enforcement, case investigation and follow up, non-emergency and emergency indident response and both service and crime related calls.

We estimate that to prevent this reduction of service will require the employment of six additional officers to be added to the 38 sworn personnel already working. The costs of doing this will be approximately $120,000 annually – and we can't afford it!

Very truly yours,

/s/ Richard B. Kerwin
Richard B. Kervin
Assistant City Manager

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**Defendant's Exhibit No. 23**

CITY OF INGLEWOOD CALIFORNIA
CIVIC CENTER
ONE MANCHESTER BOULEVARD
INGLEWOOD, CALIFORNIA 90301

October 4, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

With the inclusion of local governments in the Fair Labor Standards Act Amendments in May of this year came all of the problems that one might expect in this City and all of the other surrounding cities. Disruption and chaos are inherent in any Federal or State regulations that require uniform application to all cities with no consideration of the variety of personnel practices, policies and procedures that exist within the individual cities.

The city of Inglewood hastily moved to comply with the law on May 1, 1974. The basic problems to be solved at that time were to 1) determine exempt and non-exempt personnel; 2) establish an acceptable record-keeping system and; 3) abolish items contained in collective bargaining agreements that were in conflict with the FLSA.

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One of the items contained in the agreement between management and the employee associations in this City was a policy of granting either overtime pay or compensatory time off at 1½ times the regular rate of pay for all hours worked in excess of forty hours. It is significant to note that initial examination of past employee pay records show that the majority of the employees actually utilized the compensatory time off as opposed to overtime pay. Since FLSA disallows this practice, the compensatory time off has been abolished. Yet employees still request compensatory time off but must be refused since the enactment of the amendments.

Emergency services of one type or another always appear during the year. Management has utilized "comp time off" extensively to pay for these unanticipated occasions. Even though "comp time" has stopped, emergencies have not. Funds provided for these services will have to be shifted from predesignated areas.

FLSA requires jurisdictions to maintain accurate records showing hours worked and wages paid. The ideal way of maintaining this type of information would be to provide a single printout. However, Inglewood has a payroll system that was computerized in the 1950's. The system is an exception payroll system which means that checks are automatically issued for all employees at the applicable 40-hour rate without the submission of time cards. Time cards are entered only for exceptions, i.e., overtime, sick leave, vacation. Therefore, the computer printout only shows actual dollars paid to an employee and not the hours worked. In order to comply with the law it became necessary to design a system of log sheets for all employees showing actual hours worked in addition to the computer printout showing wages paid. In

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some of the larger departments this required an additional employee to manually prepare and maintain the necessary records. The current payroll system has been revised many times and has reached the point where programs can no longer be revised or added.

FLSA requires that hours of off-the-job training required by an employer are considered hours worked and must be paid at the minimum wage. The Police Department, in an attempt to achieve affirmative action goals, has been providing employment opportunities to 15 young men and women interested in a career in law enforcement. Trainees work 20 hours per week and attend school 20 hours per week. These employees were paid $3.57 per hour for the 20 hours worked. The City provided funds for tuition and books. However, the twenty hours of school were not considered hours worked and were not paid. One possible solution to the problem was to provide $2.00 per hours for 40 hours. However, that was not possible since the City was bound by agreement to pay a minimum $3.57 per hour. The other solution was to provide $3.57 hourly for all 40 hours. The City could not afford this expense. The end result was to abolish the 20 hours of school, thereby relieving all signs of impetus from the program.

A few of the employees in the Police Department who, in addition to their regular 40-hour positions with the City, also worked part-time as matrons in the jail. The FLSA requirement of paying the part-time hours at 1½ times resulted in the employees loss of part-time opportunities for those employees.

The limitations on determining exempt status through the three categories (administration, executive and professional) were not broad enough. Consideration was

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not given to the employee who earns the high salary levels and performs specialized duties that do not fit the three defined categories. Often these employees perform vital services that are not always limited to a 40-hour week. Overtime pay is extremely high for these employees.

These are just a few of the problems and solutions experienced in this City. The proposed regulations for safety will increase the burden of government.

I heartily endorse the actions of the League in its pursuit of justice for local governments. If you require any additional information please contact me.

Yours truly,

/s/ D.W. Ayres
Douglas W. Ayres
City Administrator

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**Defendant's Exhibit No. 24**

CITY OF CLOVIS
CITY HALL, 533 POLLASKY AVE.
CLOVIS, CALIF. 93612

October 9, 1974

Mr. Allen B. Pritchard, Jr.
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

The following information is provided in response to the request by Don Benninghoven of the League of California Cities.

The application of the Fair Labor Standards Act to local government has had the following effects on the City of Clovis:

1.. Compensatory Time

It has eliminated the use of compensatory time off, necessitating additional overtime cost to the City. Employees have been affected in an equally unpleasant manner in that they have previously been able to miss work for doctors appointments, to care for sick children, etc., by using compensatory time. This type of leave must now be taken as "leave without pay". Compensatory time has also been valuable to employees who must work holidays, in that they have been able to schedule their own holidays through use of compensatory time. While it is still possible to allow an employee time off in the same

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work week, it is difficult for an employee to accumulate a whole day of credit in one week and impossible to schedule anything in advance.

2. Overtime

The City pays for hours in excess of eight (8) in one day, at the overtime rate. The Fair Labor Standards Act has not required this, but the city is bound to it by a long-standing local agreement. Therefore, scheduling a long day for an employee one day to allow time off on the next is too expensive to be reasonable.

3. Training

Employees required to attend training schools have been placed in a position by the Fair Labor Standards Act that if "homework" is required, overtime must often be paid. The same applies to travel time. While attendance at these schools has generally been sought by employees who see the value to careers and, in the case of Fire and Police personnel, is necessary for the safe conduct of their job, the City may have to cut back on the number of employees able to attend in the future for financial reasons. While clarification is not yet available, the City's educational incentive program for Fire and Police personnel, which "encourages" the continuation of their education, may become too costly if the City is required to compensate their class and study time at the overtime rate.

4. Volunteers

Volunteer and reserve employees have been able to gain work experience through completion of a set number of training hours per month in addition to hours of paid employment. The Fair Labor Standards Act will require that these employees either be paid for all hours, or be denied the opportunity to receive any payment at all.

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5. Student Interns

The City has been actively involved in internship programs with California State University, Fresno, to give students the opportunity to observe and participate, to a limited extent, in the daily governmental operations. Students have often been compensated for their work through school credit and a small stipend. The Fair Labor Standards Act will cause the City to either eliminate the program or the pay, excluding at least some students either way.

6. Meetings

The City would like to be able to encourage participation to subprofessional personnel at evening meetings if they are interested. With the Fair Labor Standards Act, the City would be required to pay overtime for their participation and must be careful to avoid even encouraging their interests.

7. Employee Incentive

Cities have previously been able to provide some flexibility to employees to work scheduling and through the use of compensatory time. The Fair Labor Standards Act. has removed the flexibility, making work hours "hard and fast". Adding to this the loss of training opportunities and the chance to "work one's way up" through participation at meetings and working after hours, the Fair Labor Standards Act threatens to stifle employee incentive in the non-exempt classes.

It is my hope that this information will be of some assistance to you. Your efforts are greatly appreciated.

Very truly yours,

/s/ Allen L. Goodman
ALLEN L. GOODMAN
City Manager

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**Defendant's Exhibit No. 25**

CITY OF CORONADO
1825 STRAND WAY
CORONADO, CA. 92118

October 4, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

Per your request, the following consists of the impact that the Fair Labor Standards Act has on the City of Coronado in terms of costs and services:

1. Collective Bargaining Agreements: The City has negotiated Memorandums of Understanding and also has a provision in its Civil Service Rules a benefit where an employee can take compensating time off as a method of payment for overtime worked. In many instances, employees desire to accumulate this time over a period of months and take off the time at the mutual convenience of the City and of the employee. Due to the passage of the Fair Labor Standards Act, the City was required to amend its Civil Service Rules to basically eliminate compensating time off unless it was given in the same payroll period in which it was earned.

2. Scheduling: Some minor changes will be required in the City's Fire Department as a result of the Fair Labor

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Standards Act for scheduling purposes. The City will probably be required to restructure the working schedules to provide for 28-day work periods for volunteers. In that the City of Coronado does not pay its volunteer workers a stipend, the Fair Labor Standards Act does not pose a problem to the City of Coronado in this area.

3. Seasonal Peaks and Valleys: The passage of the Fair Labor Standards Act has created a small problem in this area. The City employs seasonal recreational workers and lifeguards due to the nature of Coronado being a summer tourist attraction. These workers are required to work occasionally over forty hours per week during the summer months. Therefore, the City will now be required to pay overtime at time and a half to these workers where in the past we were not required to pay this overtime since the employees were paid on an hourly basis based on hours actually worked.

4. Training: The City of Coronado has not encountered or does not anticipate any problems in this area.

5. Incentives: The City does not anticipate any problems nor has encountered any problems in this area.

6. Compensatory Time: The basic abolition of compensatory time will result in increased overtime cost to the City of Coronado in that the City will be required to pay its overtime in cash instead of the prior method of compensating the overtime by providing the employee with time off in the future.

7. Joint Employment: This area will not significantly impact the City of Coronado, however, there may be isolated circumstances where employees are currently working two distinct jobs for the City. However, in the future, the employee will be required to terminate his second job.

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8. Social Services: It is not anticipated that the minimum wage rate will significantly impact the City of Coronado due to the fact that our lowest paid hourly position meets the minimum wage requirement under the Fair Labor Standards Act.

9. Leave: This area will not create a problem for the City of Coronado in that the City only pays overtime for those hours actually worked. However, the City does pay time and a half overtime for all overtime worked over 8 hours a day and/or 40 hours a week. This applies to all classifications except the Fire Department and non-permanent hourly positions.

10. Changing Pay From Annual or Monthly to Hourly: Since the adoption of the Fair Labor Standards Act, no additional City employees have been put on hourly wages. The only hourly employees are those which have always been paid on an hourly basis, and those are typically the Recreation workers, lifeguards, and other intermittent employees.

In conclusion, the most significant impact of the City of Coronado is in the area of the fire service. The City currently has a 63-hour work week for all firemen. Effective January 1, the maximum amount of hours that a fireman can work without being compensated overtime is 60 hours per week which will require that the City either pay the additional overtime required or reduce its work week to 60 hours. The additional cost to the City if the City were to pay the required overtime in lieu of lowering the work week would amount to $33,363.00 in

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1975, $59,363.00 in 1976, and $111,363.00 in 1977.
If you need additional information, please advise.

Sincerely,

/s/ R. C. Oakley
Richard C. Oakley
Assistant to the City Manager
Personnel

**Defendant's Exhibit No. 26**

CITY OF SUMTER
SOUTH CAROLINA
29150

September 19, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard,

In reply to your recent inquiry, following are the effects of the Fair Labor Standards Act (FLSA) upon the operation of the City of Sumter, South Carolina.

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1. Overall budgetary effect.

Faced with a prior year budget deficit, additional annual salary adjustments, requirements to reach $1.90 minimum wage plus an estimated $125,000 annual salary cost that will become effective January 1, 1975 places the city in a severe financial dilemma. The increase of the minimum wage to $1.90 per hour not only affects the employee receiving less than that now but also the entire pay scale from top to bottom. If the lowest wage is increased all other wages must also be increased to maintain the relative degrees between pay grades. This upward "domino effect" is directly inherent in the implementation of FLSA and is actually the greatest single cost factor involved. This total increase of approximately $235,000 for adjusted salaries, plus rising prices for all other items procured, leaves the city with only two alternatives:

(a) Substantial tax and utility rate increases, and/or

(b) Reduction of services.

Both of these alternatives are deplorable since they have the effect of lowering the discretionary income of the poor, the middle class worker, and especially the senior citizens who have to survive on a fixed income. Effective July 1, 1974 our tax millage *was* increased seventeen mills (30%) and our utility rates were increased approximately forty percent. The FLSA laid these added burdens on our citizens.

2. Compensatory time.

The most unfortunate provisions of the FLSA reguarding employee moral are those dealing with compensatory time. Our employees in the past have taken compensatory time in lieu of payment. Now, under FLSA we have had to stop compensatory time

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except during the pay period in which it was earned which is usually unfavorable to both the city and the employee. The workload generating the extra work normally extends several days which usually precludes the city from being able to let the employee off within the pay period, and the employee would rather save his compensatory credits until such time that he can use them for some special occasion, i.e. long week-end, fishing trip, etc.

In the Fire Department, firefighters often "come-in" one-half hour, an hour, or even a whole day for their friends who need to leave "early" or to be "off". This practice is very acceptable to the man and the city in that one qualified man works for another. However, under FLSA and the Department of Labor (DOL) interpretations thereto, this practice has had to be discontinued.

It is estimated that the loss of compensatory time as a feasible, workable means of compensating employees will cost the city and the local taxpayers not less than $20,000. From the tax payers viewpoint, this amount alone represents a 1.3 millage increase in property taxes. Some rulings allowing mutually agreeable "switching" of work hours and compensatory time are badly needed. Without these, the employees, whom the law is designed to help, are the ones ultimately to be hurt.

3. Fire Fighters who work part-time.

Presently, there are fourteen firefighters who work in other city departments on their days off from the fire department. As of January 1, 1975 these firefighters will lose their part-time work because of the sixty hour maximum work, or because they will lose their firefighter status and thereby be eligible for overtime after forty

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hours per week, or both. These men now work an average of twenty hours per week in their part-time positions.

This is another example of the law hurting the people it was designed to help. Under the present rulings, the city cannot afford to continue to allow the firefighters to supplement their income through other employment with the city. This seems especially foolish since they can work the same or more hours with another employer. Because the city will simply terminate the part-time firefighters, the firefighters lose.

It seems that firefighters should have the same opportunity to work for the city on their "days-off" as for any other employer. To fill the void left after the part-time firefighters are terminated, the city will be forced to hire fulltime people to accomplish part-time job requirements; the direct cost to the city, not counting a corresponding loss of productivity, will exceed $23,000.

4. Marginal employees.

The city employs approximately five people who are marginally productive due to age, lack of training, and/or lack of ability. Before implementation of FLSA these people were employed below $1.90 per hour because their productivity in the job they performed was below the value of $1.90 per hour. Further, these employees did not want to be on "welfare" but have enough pride to want to work and to pay their own way. However, due to FLSA and the city's economic realities, we have two alternatives:

(a) Waste taxpayers money by employing these people at $1.90 per hour when they cannot produce enough work to justify that wage rate, or

(b) Terminate the employees because they cannot perform the "whole" job.

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While it is undesirable, the city has no alternative under FLSA but to terminate them and all other marginal employees. The terminated employees then will become a "social liability" dependent upon the government for their economic survival. This benefits neither society nor the individual.

5. Attendance at meetings after hour.

Some city employees covered by FLSA, such as various staff personnel, codes enforcement inspectors, planning officials, etc. are required as a normal part of their job to attend evening meetings with various governing bodies, review boards, advisory bodies, etc. The requirement to consider these meetings as work time is discriminatory and beyond the intent of FLSA because compensation for the evening meetings is included in the respective salary the same as any other component of the job. To be fair to the employer, if evening meetings are considered work time, the employee's *hourly* rate would have to be reduced, which would immediately open another "Pandora's box" of employee relations problems.

A second point: these employees also are attending the meetings as a part of their training. In most instances the directors, or chief officials in these functions, are exempt from FLSA coverage. Again the city is left with two alternatives:

(a) Employees covered by FLSA would not attend evening meetings, or

(b) Let them attend, with compensatory time and/or overtime as payment for attendance.

With the present financial realities and the current daily work load, alternative "b" is unacceptable. Therefore, the employee is again hurt because he loses his training opportunity and the "prestige" afforded by attending the evening meetings.

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6. Sanitation worker's incentives.

Approximately twenty-five sanitation workers are currently working under a daily incentive system. Normally, their actual hours worked average about thirty-two hours per week, but they are being paid for forty hours. Because of the difficulty in recruiting employees to "tote" garbage and the urgent health facets of garbage collection, the city has only no alternative under FLSA but to continue paying for forty hours when less hours are worked, plus overtime for the excess hours over forty. To many sanitation workers, the most important part of his job is the incentive system which permits them to "get-off" an average of two hours early each day. If we started paying for the *actual* hours worked (in other words, remove the task aspect of the job) almost all the sanitation workers in our opinion would quit. Those who did not quit could "slow down" their performance to insure earning overtime. Paying for such a "slow down," or decreased productivity, is economically unacceptable to the city.

The FLSA and the current labor supply, at the minimum, unfairly forces the city to pay for work not performed and, at the maximum, opens "Pandora's box" of unending personnel and financial problems for the city and longer work hours for the employees.

The above paragraphs basically describe the effects of FLSA on the operations of the City of Sumter. In my professional opinion as a career public administrator, the financial effects of the FLSA will be greater than the rather conservative estimates expressed in this report but will not be apparent until more time has elapsed. The provisions of the FLSA, coupled with a discontinuance of Revenue Sharing (should this become a reality – God

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forbid) and the continued inflationary spiral will result in financial disaster for many cities. The only general alternatives seem to be:

(a) A drastic increase in local taxation

(b) A drastic reduction of services available to municipal citizens, and/or

(c) The development of radically new methods of municiple operation including revenue generation.

The question then becomes, can "c" occur before the financial disaster arrives and "a" or "b" has to be implemented?

Hopefully this summary will be useful in your efforts. If additional information is needed please let us know. Thanks for your interest.

Sincerely yours,

/s/ Powell Black
R. Powell Black
City Manager

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**Defendant's Exhibit No. 27**

CITY OF LODI
CITY HALL, 221 WEST PINE STREET
LODI, CALIFORNIA 95240
(209) 368-0641

September 26, 1974

Mr. Allen F. Pritchard, Jr
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

Mr. Don Benninghoven, Executive Director of the League of California Cities, has asked that we forward to you the impact of the FLSA on local government. In his prologue, he indicated that one of the arguments Mr. Rhyne wants to document is that state and local governments serve as laboratories for experimentation with new and differing personnel practices.

I think that that point is dysfunctional to the problem at hand. If we truly are laboratories, then we should be open to experimentation, tampering and tinkering. I submit that the personnel practices of a city – any city – reflect the local needs of that city in terms of functions performed, ability to pay, level of service and desires of the community. These decisions must be made by the local legislative body and not congress and the body politic of Washington, D.C.

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Among the disruptive factors we in Lodi are faced with as a result of the recent amendments to the Fair Labor Standards Act are: Collective bargaining agreements, scheduling, additional personnel, volunteers, training and professional development, joint employment, and payroll computation.

Collective Bargaining Agreements:

For the past five or six years we have negotiated at the table, provisions covering working conditions, hours of work, compensation, time off and the like. This procedure resulted in a great deal of give and take on both sides of the table, but now this law negates some of those provisions or mandates the agreed upon provisions will cost more.

For instance, in our utility operation we do not have need for a full-time night trouble-shooter, but must make provisions to cover emergencies. The agreed-to provisions were that we would pay a man two hours' pay each night to be available for trouble calls – the man is free to pursue his own activities but must be able to be contacted. If he is called out, he is guaranteed two hours pay at time and one-half regardless of the amount of time he worked, and will be paid for any time in excess of 2 hours at the time and one-half rate.

Under the FLSA Act, the "Standby Pay" increases the man's hourly wage when he is required to work because the standby pay for hours not worked increases his hourly rate of pay. This is an unwarranted increase in costs to the city.

In all of our agreements we have provisions for compensatory time off which is earned at the time and one-half rate. This was requested by the employees groups so that the individual could have time available for

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personal business. The work was done for the convenience of the employer, but the time off was also taken at the convenience of the employee. Our employees have even complained that compensatory time off is their right, because it is in a contract which Congress has nullified.

Scheduling:

As a result of the 40-hour per week provision, it has been necessary for us to reschedule certain operations that require 24-hour per day manning. In most cases, the changes made were beneficial to the employees and the City. Fortunately, we were able to rearrange schedules so that no additional non-police and fire fighting personnel are required. Previous work schedules were established through the bargaining process and that process has been circumvented through the provisions of this Act.

Additional Personnel:

The regulations on public safety employees have not yet been made available; so we do not know all the ramifications in that area. We do know that it is necessary to add additional personnel to our fire fighters to meet the requirements of the Act. The City of Lodi added two additional fire fighter positions. When we must reduce the work week to 54 hours or less, we must either add personnel or pay additional overtime.

During past years, we have increased fire fighters salaries and wage supplements in lieu of reducing on-duty time – this, as a result of collective bargaining.

The resultant added costs in this area result in reshuffling priorities and reducing other services which are no less important, but because of this law pre-empt such things as recreation and youth programs, additional police coverage, and the like.

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Training:

The entire field of water quality is undergoing a metamorphisis of upgrading the capabilities of those persons working in the field as well as keeping up with the state of the art. The State requires certain minimum standards of employees in this field which requires outside study and training. The City has recognized the fact that when a man becomes more competent, he is entitled to more income – that past year we increased the salary of all of our sewer plant operators by 2.5% in recognition of their increased competence by meeting State requirements.

To assist our people in reaching these goals we pay for their tuition, membership and expenses in trade and professional associations and allow them time off to go to their meetings. Because of the provisions of the FLSA we no longer can do this, because we recognize that the City does receive a benefit from their participation. Now we both lose.

The same thing applies to sub-professional engineering positions throughout the City.

Joint Employment:

We hire a number of full-time and part-time custodians, recreation leaders and maintenance personnel. In the past a full-time person could apply for a part-time position in a different department and/or a different function. The City benefited in that we knew the calibre of the work and character of the part-time employee; but the individual benefited in that he could earn extra money if he so desired. As a result of the FLSA, the employee has suffered a reduced income and the City has the expense of processing more personnel – even though our payroll costs will remain the same.

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Payroll Computation:

The City of Lodi does not have the benefit of a computer, therefore payroll is computed mechanically. We compute payroll on a monthly basis. When overtime is paid, separate calculations for that particular week must be performed rather than on a monthly basis – this is complicated more when a seven-day period includes the end and the beginning of a month.

As a result the City is having to redo its payroll system. We know one day we must install some sort of electronic data processing, but the more complicated payroll function will move that date forward.

I know I have not covered all the subtle impacts of the Act but I feel I have covered the major impact on the City of Lodi. If we can amplify this data or provide you with further information we will be glad to do so. We strongly support your efforts and urge your strong prosecution of this most important issue.

Very truly yours,

/s/Jerry L. Glenn
Jerry L. Glenn
Assistant City Manager

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**Defendant's Exhibit No. 28**

CITY OF DOWNEY
8425 SECOND STREET
DOWNEY, CALIFORNIA 90241
MAIL ADDRESS: P.O. BOX 607

October 8, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard,

In response to your inquiry on the impact of the Fair Labor Standards Act, the following departmental responses are submitted:

1. Department of Public Works and Community Development

A. Charges for removing tree limbs and sand bagging flooded areas during storms could increase $4,000. annually.

B. While there may be some increase in costs for constructing the Rose Float, sending a crew to Pasadena and back with the float could cost an additional $1,000. because while there, employees work around the clock New Year's Eve to guard the float.

C. With 50 pre-scheduled evening meetings per year, there will be a $500. increase annually in expenses for secretaries to take minutes.

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D. The only administrative change has been in the Water Division where during the summer employees worked nine hours from Monday through Thursday, took every other Friday off, and worked eight hours on alternate Fridays (as follows).

| S | M | T | W | T | F | S | |
|---|---|---|---|---|---|---|---|
| | 9 | 9 | 9 | 9 | | | |
| | 9 | 9 | 9 | 9 | | | (36 hrs 1st week) |
| | 9 | 9 | 9 | 9 | 8 | | (44 hrs 2nd week) |

The work week was changed to begin at noon Friday to come up with 40 hours each week as shown below:

| F | S | S | M | T | W | T | F | |
|---|---|---|---|---|---|---|---|---|
| 4 | | | 9 | 9 | 9 | 9 | 0 | (40 hrs 1st wk) |
| 0 | | | 9 | 9 | 9 | 9 | 4 | (40 hrs 2nd wk) |
| 4 | | | 9 | 9 | 9 | 9 | 0 | (40 hrs 3rd wk) |
| 0 | | | 9 | 9 | 9 | 9 | 4 | (40 hrs 4th wk) |

2. City Clerk-Treasurer

The Fair Labor Standards Act does not enable the Executive Secretary to the City Clerk to receive overtime pay or compensatory time off for the hours she expends at the evening Council meetings.

The secretary accrues at least three hours monthly for overtime at the night Council meetings. Her normal daily routine duties, which include the transcription of Council minutes, makes it very difficult to give time-off from the job during the week in which the overtime hours took place.

In prior years, it was a simple matter of giving her a half-day off from work at a time of the month when her workload was at a minimum. The F.L.S.A. no longer permits this procedure.

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3. Fire Department

A. Collective Bargaining Agreement. It has been the policy in the past years to negotiate agreements to allow Comp Time for holiday accrual. Under FLSA, this process has been disallowed. This makes mandatory payment of overtime a necessity.

B. Scheduling. Public Safety Services require unusual mandatory scheduling schemes. The disruption of work schedules mandated by the Federal Government has caused unnecessary hardship and excessive costs with a direct relation to said law.

Example: Pre-Scheduling allows for a 56 hour work week for a fireman on a 27-day cycle. Under FLSA, the mandatory schedule is 56 hours on a 28-day schedule which precludes the 27-day work cycle. Even though the former is more attractive and complies with most work schedulings in use, FLSA pre-empts this particular field.

C. Training. The detrimental effect of paying time and one-half for training assignments in excess of 40 hours will tend to destroy the employer relationship that has developed through upgrading employees at a standard base rate.

4. Police Department

A. The requirements of FLSA are different from those in our City Personnel Regulations relative to overtime. FLSA has mandated different benefits which should be a negotiable item to be bargained for by the employee bargaining unit.

B. FLSA requires now that when calling in a person to work on one of his regular days off, we are required to pay time and one-half as opposed to the previous practice of straight time.

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C. Under the new rules, an employee is not allowed to accumulate overtime. This is a serious morale factor in that many employees prefer to accumulate overtime, to be taken later as compensatory time off.

D. FLSA has forced the abandonment of an extremely effective proposal for 12-hour police dispatcher shifts. The scheduling for such a scheme would have resulted in an employee working less than 40 hours during some weeks and in excess of 40 hours in others. This would result in a lower overall manning cost. Under the new law, the City would be required to pay employees time and one-half for work in excess of 40 hours in each week even though the final month's total work time would be the same as it is presently.

E. The Police Department carries on an effective and extensive training program. Much of this activity is requested by employees in order to increase their effectiveness and promotability. Under FLSA, time and one-half would have to be paid for such training over the 40 hour limit.

F. In changing of shifts in the 24-hour police operation there will be many occasions where a person during the first week of a shift, must work in excess of 40 hours, requiring time and one-half.

We trust these responses will be helpful and wish you well in your endeavor.

Yours very truly,

/s/ Charles W. Thompson
Charles W. Thompson
City Manager

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**Defendant's Exhibit No. 29**

NEW JERSEY STATE
LEAGUE OF MUNICIPALITIES
433 BELLEVUE AVENUE
TRENTON, NEW JERSEY 08618

October 4, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Allen:

Enclosed is a letter which we received commenting on various aspects of the Fair Labor Standards Act amendments which were signed into law last spring. While some of these battles may have been lost in Congress it may be that some of the decisions relating to police and firemen could still be reached when the guidelines and regulations are drafted to be effective next January 1.

Will you please let me have your response to this letter from the Manager of Randolph Township so that I can forward it on to him.

Very truly yours,

/s/ Bob
Robert H. Fust
Executive Director

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TOWNSHIP OF RANDOLPH
MUNICIPAL BUILDING
MILLBROOK AVENUE
RANDOLPH, N.J. 07801

September 30, 1974

Mr. Robert H. Fust
Executive Director
New Jersey State League of Municipalities
433 Bellevue Avenue, Room D-403
Trenton, NJ 08618

Dear Bob:

I have received a report from a member of our staff who attended the conference with respect to the Fair Labor Standards Act sponsored by the League and P.S.I. on September 20, 1974. I am extremely concerned with the information provided at the conference and would urge and recommend that the League organize some specific action to coordinate what I feel will be virtually the unanimous opinion of New Jersey officials in seeking changes in several regulations which I consider to be totally improper. The following are just a few examples of items of this type:

1. It is my understanding that if an individual attends some kind of educational or training sessions which are related to his job, the hours spent for this purpose must be included as part of the 40 hour "work week". I would note that we, and many other municipalities, have existing provisions in labor contracts that provide for incentive payments for advanced education. To include

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this time as part of the work week would be in direct conflict with legally established collective bargaining agreements and would force us to discourage advanced education of employees, or perhaps even violate these contracts to avoid exceeding the 40 hour work week.

2. We, any many other municipalities, have existing contract provisions with Police Detectives whereby a flat additional amount of money is provided for Detectives due to the irregular hours which are required. The regulations as explained to date, would again cause the same problem as indicated in paragraph 1 above.

3. Another situation of the same type involves formerly established agreements for payment of court time at either straight time rates or at a flat per diem amount. Once again, if this time is included as part of the normal work week, it would aggrevate existing collective bargaining contracts and tend to hinder and slow up the current backlog of court cases by forcing delays in court appearances by Police Officers to stay within the 40 hour work week.

4. We have a situation in Randolph, which I am sure is common in other communities, whereby certain full time employees serve as the Secretary or Staff Person for volunteer boards and commissions. It has been stated that such service for positions which are unquestionably separate from the normal full time positions of the employee are considered to be "dual employment" and that the combined hours for these positions must be calculated in determining whether an individual has worked 40 hours or more per week. To me, this is completely illogical and will clearly result in a detrimental situation for local governments since there is a clear advantage to having an employee who has some knowledge of Township procedures and some responsibilities on a full time basis provide service to part time boards and committees.

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I believe Gerry Dorf could perhaps be involved in some of the above questions which relate to union contracts and that some action on a coordinated basis is needed to indicate the desire for changes in the law as explained to date.

Very truly yours,

/s/ Pete
J. Peter Braun
Township Manager

**Defendant's Exhibit No. 30**

CITY OF PHOENIX, ARIZONA
PERSONNEL DEPARTMENT

September 20, 1974

Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D. C. 20006

Dear Mr. Pritchard:

In response to your questionnaire regarding the impact of the Fair Labor Standards Act on municipalities, please be advised that the principal expected impact for the City

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of Phoenix is related to the police and fire services. Since we have not received Department of Labor guidelines yet for the public safety area, we are unable to respond definitively in this area. We will, however, advise you just as soon as possible after we have had an opportunity to review the federal guidelines.

The fiscal impact outside of the public safety area for the City of Phoneix is relatively minimal inasmuch as the City has adopted a number of premium pay practices similar to private industry for a number of years. The principal fiscal change will entail an additional annual expenditure of approximately $100,000 in overtime payments for those persons previously receiving compensatory time off.

Many man hours and efforts are also required to review job classifications and individual positions for coverage under the Act. This task is in process now and as yet we have no determination of wholesale changes required.

Sincerely yours,

/s/ R.W. Galloway
Robert W. Galloway
Personnel Director

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**Defendant's Exhibit No. 31**

CITY OF TULSA OKLAHOMA
OFFICE OF THE MAYOR

September 17, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, Northwest
Washington, D.C. 20006

Dear Allen:

I have received a request from the Oklahoma Municipal League to forward to you a questionnaire with information regarding the impact of the Fair Labor Standards Act upon the City of Tulsa. The questionnaire does not provide the opportunity to define the particular problems which Tulsa may encounter, however, so I am outlining them here.

There are four areas that will cause problems as far as the City of Tulsa is concerned in the future:

1. Record keeping and control will be a problem for the City because of the variety of work weeks established for city employees and the widely dispersed nature of city departments and functions.

2. Compensatory time off for non-uniformed employees also presents a problem. With the passage of the Fair Labor Standards Act, it will be impossible for the city in the future to provide compensatory time off for non-exempt employees. The law provides that after

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the passage of 40 hours within a given work week, employees will be compensated at the rate of tame-and-one-half their regular straight time rates for any hours thereafter.

Because of potential budget limitations, and the strict controls placed upon the financing powers of cities in the State of Oklahoma, it may be necessary to curtail services in order to stay within budget boundaries.

3. We anticipate difficulty with provisions on age discrimination in the Fire and Police Departments. Currently, the Fire and Police Departments have an entry age limitation of 21 to 31. The Fair Labor Standards Act provides that employers cannot discriminate against anyone seeking employment if the person is from age 40 to age 65 and has the physical and mental qualifications for a job. This will inhibit our ability to deny employment to applicants who are between the age bracket of 40 and 65 for the Fire and Police Departments.

This can have a serious effect on the Fire and Police retirement plans, and threatens additional potential liability that can be incurred through on-the-job injury.

4. The final major problem we will face is with the Fire Department work week. The City of Tulsa Fire Department now works a 240-hour work month. Starting January 1, 1976, Fire Department employees who are now working a 24-hour work shift will be working an average of eight hours of overtime per month.

Based on the present manpower head count and wage structure in the Fire Department, we can expect a cost to be incurred by the City of Tulsa for overtime payment of $115,200 per year if we continue on the same basic work schedule we now have. We project an additional impact

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of $11,500 per year for retirement and other fringe benefits as results of increased wages to be paid to Fire Department personnel. The total potential cost during 1976 would be $126,700.

Starting in January, 1977, firemen will be dropped to 216 hours per month under the Fair Labor Standards Act. This would result in each fireman in the operational divisions receiving 24 hours of overtime pay per month. The total overtime impact for 1977 will be $380,600.

I hope this information will be helpful in determining whether a challenge will be filed against the act.

Let me add here my personal thanks for your taking the time to participate in the Oklahoma Municipal League's convention here last week. Your contribution to the program was appreciated.

Sincerely,

/s/ Robert J. LaFortune
Robert J. LaFortune
Mayor

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**Defendant's Exhibit No. 32**

CITY OF SUNNYVALE CALIFORNIA
DEPARTMENT OF ADMINISTRATION

October 7, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street N. W.
Washington, D. C. 20006

Dear Mr. Pritchard:

Enclosed is a communication from the Director of Public Safety listing the impact of the FLSA overtime provisions in fire services on the City of Sunnyvale.

The annual cost of the overtime requirements would be $11.78 per hour for officers and $13.60 per hour for lieutenants for calendar 1975; 10% more for calendar 1976; and 10% more for calendar 1977. Translated into work hour dollars the cost in 1975 would be $169,212; in 1976 $186,133 and in 1977 $204,746. The total for all three years would be $560,091. This additional cost is for a lower level of service.

Please note the additional scheduling problems which are as realistic a difficulty as the additional cost. If such legislation had been passed with proper analysis of the mathematics of cycles, a six week cycle should have been used–not the four week. This note is aside from the other considerations voiced.

Sincerely,

/s/ W. T. Hopkins
W. T. Hopkins
Assistant City Manager

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CITY OF SUNNYVALE
CALIFORNIA

September 30, 1974

To: Assistant City Manager

From: Chief, Dept. of Public Safety

Subject: Work Hours for Fire Service

In our discussions concerning recent legislation reducing the number of hours that fire service may work during a seven-day peroid, the following information is submitted.

During the calendar year 1975, under the most adverse ruling by the Department of Labor, Sunnyvale would have to provide an additional 13,728 work hours in the fire stations. In 1976, this would increase to 16,016; and in 1977, to 20,259.

Developing the additional man hours required to comply with legislation, however, does not necessarily solve the problem since hours are not necessarily capable of being computed into bodies for proper scheduling. For example, there is no way to schedule a 54-hour week.

My best estimate is that by January, 1977, we would have to have an additional fire shift consisting of six Lieutenants and sixteen Public Safety Officers for a total of twenty-two additional bodies.

/s/ G. K. H.
George K. Hansen

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**Defendant's Exhibit No. 33**

CITY OF CORCORAN
1033 CHITTENDEN AVENUE
CORCORAN, CALIFORNIA 93212
(209) 992-2151

September 25, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice-President
National League of Cities
1620 "I" Street N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

The Fair Labor Standards Act of 1974 has in several instances disrupted Municipal Administration and personnel practices within the City of Corcoran. Many of these disruptions have necessitated a shifting of resources. The results of this shifting will be immeasurable as services and community projects are deferred to meet the costs proposed and mandated on the City by the Fair Labor Standards Act.

The City of Corcoran, a community of 6,000 people, located in the southern San Joaquin Valley, has attempted to outline by example, some of the disruptions as they relate to City services and our capabilities to deliver those services.

I. FIRE. Prior to the adoption of the FLSA, the City of Corcoran's Fire Department was comprised of five paid full time personnel and complemented by a

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volunteer force of seventeen personnel. We have been able to maintain a fire rating of 4, as deficiencies in the area of personnel were minimal. Scheduling for the department has been done on the basis of a 3 on - 3 off shifting to constitute 183 shifts a year. This shifting has been reached through a meeting/conferring process between the City of Corcoran and the department's association as required by the Meyers-Millias-Brown Act, the State of California's Public Labor Statute. An 84-hour duty week has not been felt, by the department personnel, to be detrimental to their health and safety, because of the small number of responses made by the Department. Under the Fair Labor Standards Act, a mandated reduction of nearly 30% in working hours would result in the following:

1. An increase in the hourly rate of pay by nearly 30%.

2. Necessitate the City employing two additional personnel at an estimated annual cost of $18,000.

3. Reduce the amount of inservice training time available because of the high costs of calling personnel in for overtime for training.

4. Cause remodeling of the City's station, prior to scheduling because the need to house additional personnel.

II. POLICE. Prior to the adoption of the FLSA, the City of Corcoran's Police Department was comprised of 15 full time personnel and complemented by a reserve force of ten. We feel that we have been able to maintain a low crime rate in Part I and Part II offenses because of some donated time on behalf of the men of the department and the reserve force.

The Police Department is also responsible for running and maintaining the City's Ambulance Service on an

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overtime basis, but generally ranged at the convenience for the personnel involved. Under the Fair Labor Standards Act, mandated requirements will result in:

1. A reduction in department training, such as weapons' practices, due to the high costs of overtime for personnel called to service.

2. An alteration of ambulance services, because of the overtime requirements in training personnel sufficiently to operate the ambulance.

III. PUBLIC WORKS. Prior to the adoption of FLSA, the City of Corcoran's Department of Public Works was comprised of twenty full time personnel. They are responsible for water, solid waste, sewage, and parks maintenance. The City has been successful in meeting the Environmental Protection Agency's requirements in the areas of sewage treatment and solid waste disposal by maintaining shifting, consistent with available manpower within the Department while remaining consistent to the City's service level requirements. Scheduling for the refuse personnel has been on a 48 hour, 6 days a week basis. This shifting was reached on a meeting/conferring basis between the City of Corcoran and the Department's Association. Premium pay has been paid and an incentive has been provided to the crews who finish their prescribed routes in less than the eight hours duty.

Under the Fair Labor Standards Act, mandated payment requirements will result in:

1. An increase in the hourly rate of pay to refuse department employees by nearly 20%.

2. The necessity to hire two additional personnel at an estimated annual cost of $16,000.

3. The necessity to purchase additional refuse equipment to allow for a rescheduling of routes to meet the 40 hour work week requirement.

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IV. GENERAL AREAS. Of the City's 48 employees, 39 are represented by an Association for the purposes of meeting/conferring with the City on issues of wages, hours, and other fringe benefits. The City of Corcoran and the Employees Association, through this meeting/conferring process, have in the past agreed to:

1. Straight time payment for hours worked beyond normal shifting. The adoption of FLSA and the mandating of payment of time and a half for overtime worked is estimated to cost the City an additional $10,000 annually.

2. Leaving to the employee's option to take overtime worked in the form of pay or compensatory time off. With the adoption of FLSA, this option has been taken away from the employees and will result in the additional costs of $5,000 a year to the City.

As previously mentioned, this disruption created by the adoption of FLSA is only partially measurable. It is estimated, by the examples given above, that the FLSA will cost the City annually approximately $49,000 to meet the mandates of the hours and wages provisions. What is immeasurable, is the fact that these costs will:

1. Defer the implementation of designed future services and programs because revenues will not be there to see them implemented.

2. Result in increased utility fees and tax rates to the citizens of Corcoran to meet the FLSA mandates.

Your consideration, to these facts, will be greatly appreciated.

Sincerely yours,

/s/ Thomas I. Smith
Thomas I. Smith
City Manager

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**Defendant's Exhibit No. 34**

CITY OF COLUMBIA
SOUTH CAROLINA

27 November 1974

Mr. N. Alex Bickley, President
National Insitute of Municipal Law Officers
839 – 17th Street, N. W.
Washington, D. C. 20006

Dear Mr. Bickley:

This is in reply to your request for information regarding fire and police services and their status vis-a-vis the FLSA of 1974.

The City of Columbia presently has 216 law enforcement officers and 230 personnel engaged in fire protection service. These figures include all job classes covered under the Act.

This year's budget for personnel services is $2,546,945 for the police department and $2,388,103 for the fire department.

In regards to the police department, we anticipate only a minimum in additional costs and no reduction in service attributable to the Act since we have had a 42 1/2 hour work week in effect for quite some time and were well above minimum wage considerations.

Within the fire department, we have no minimum wage problems, but do anticipate some increase in overtime compensation for the coming year. We anticipate no reduction in service. The following year it will be

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necessary for us to put on a minimum of twelve additional firefighters to meet schedule compliance with the Act. This would mean an estimated annual increase of approximately $110,000.

One prime area that is likely to suffer within both our fire and police departments is in training. Since all job related training is compensible, and since training programs are difficult to arrange during scheduled work hours for these departments, decreased in-service training is a likely result.

This of course is just as damaging in the long run, and mitigates efficiency of these departments just as much as an outright decrease in service.

No firm determination has been made as yet as to the method for raising revenues to meet these new costs. In relation to the inflationary picture the FLSA will register an annoying, but certainly lesser problem with us. The combined effect, however, most likely will result in an ultimate tax increase.

Thank you for the opportunity to voice our concern.

With kindest regards.

Sincerely,

/s/ Kenneth L. Westmoreland
Kenneth L. Westmoreland
Administrative Assistant

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**Defendant's Exhibit No. 35**

CITY OF RICHMOND
DEPARTMENT OF LAW
RICHMOND, VIRGINIA 23219

December 5, 1974

Mr. Charles S. Rhyne
National Institute of Municipal
Law Officers
839 17th Street, N. W.
Washington, D. C. 20006

Dear Charlie:

Attached please find copy of Alex's letter to all municipal attorneys dated November 18, 1974 concerning FLSA. You will note that I have supplied the information opposite each question asked.

I hope this will be of some help.

Sincerely,

/s/ Conard
C. B. Mattox, Jr.
City Attorney

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NATIONAL INSTITUTE OF
MUNICIPAL LAW OFFICERS
839 - 17th STREET, N.W.
WASHINGTON, D.C. 20006
[202] 347-7996

November 18, 1974

Dear Municipal Attorney:

As you are aware, one of the subjects presented at the recently conducted NIMLO Conference in San Diego was the constitutionality of the 1974 Amendments to the Fair Labor Standards Act. Mr. Thomas M. Utterback, City Attorney of Cape Girardeau, Missouri, in his presentation, stated with respect to possible court challenges:

> "Far too long, states have shirked their obligations, and it is that vacuum the Federal Government has filled. For this reason, it is important to have a substantial record based on testimony from real live people as to the nature of state and/or local government and the impact of FLSA '74 on state and local government."

The National League of Cities is presently in the preparation stages of a challenge to the constitutionality of the 1974 Amendments to the Fair Labor Standards Act. We need factual information which would clearly illustrate fiscal impact or trade-offs which must now be made by cities due to application of the FLSA. Charles S. Rhyne has been chosen by the National League of Cities as Counsel in their action.

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Of paramount interest is the following information regarding fire and police protection services. Figures should be estimated and computed without regard for the as yet unpublished regulations.

1. The number of police presently employed. 572
2. The number of firemen presently employed. 523
3. The amount presently budgeted for police. $8,998,700
4. The amount presently budgeted for firemen. $7,149,000
5. The estimated increase in amount due to the FLSA amendments for police. None
6. The estimated increase in amount due to the FLSA amendments for firemen. $161,000 for period 1/1/74 – 6/30/75 (20 additional firefighters)
7. The sources of necessary increases in revenues to meet these new costs, i.e., the amounts which will come from:
    a. decrease in police personnel
    b. decrease in firemen personnel
    c. elimination of other government services
    d. any other source Unappropriated reserve

Any additional experiences regarding fiscal organizations as required by FLSA of functions which only government can perform would be appreciated. Include the same information as above, being sure to state the number of employees, and annual amounts affected with as much specificity as possible.

Your prompt attention is appreciated.

Sincerely,

/s/ N. Alex Bickley
N. Alex Bickley
President

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**Defendant's Exhibit No. 36**

CITY OF REIDSVILLE
MUNICIPAL BUILDING
220 WEST MOREHEAD STREET
NORTH CAROLINA 27320

December 2, 1974

Mr. N. Alex Bickley, President
National Instutute of Municipal Law Officers
839 – 17th Street, N. W.
Washington, D. C. 20006

Dear Mr. Bickley:

In response to your letter of November 18, 1974, we have calculated the following:

I. Police Department: Number of policemen presently employed – 40

The amount presently budgeted for police –

| | | | |
|---|---|---|---|
| a. | Patrol Division | – | $282,085.00 Salaries |
| | | – | $356,049.00 Total |
| b. | Traffic Division | – | $ 24,684.00 Salaries |
| | | – | $ 98,384.00 Total |

The estimated increase in amount due – 2.5 overtime hours/week/man or $33,567.84.

Sources to meet these new costs – funds would have to be transferred from the General Fund or Revenue Sharing to the Police Department's line items, placing a great hardship on the City.

II. Fire Department: Number of firemen presently employed – 22

The amount presently budgeted for fire –

a. Salaries $193,629.00
b. Total $270,584.00

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The estimated increase in amount due – the City would be caused to employ three (3) additional firemen at a cost to the City of $30,635.00 placing an additional hardship on the budget to that indicated above.

Sources to meet these new costs would be the same as above.

If we can be of additional help please feel free to contact us.

Sincerely yours,

/s/ Charles K. Beck
Charles K. Beck
City Manager Intern

**Defendant's Exhibit No. 38**

BYRLEY, CHARLES A. – Biographical Sketch
[as of October, 1974]

Born and reared: Corbin, Kentucky

Undergraduate and graduate work: University of Kentucky

Kentucky State Government (10 years):
Deputy Commissioner of Finance;
Deputy Commissioner of Highways;
Deputy to the Governor

Council of State Governments (6 years; Chicago, Illinois):
Director, Midwestern Office;
Secretary-Treasurer, Midwestern Governors' Conference;

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Executive Secretary, National Association of State Budget Officers;

Executive Secretary, National Association of State Purchasing Officials;

Secretary-Treasurer, National Conference of Lieutenant Governors

*Director of Federal-State Relations, National Governors' Conference (Washington, D. C.): March, 1967, to March, 1974

*Director, Washington Office, Council of State Governments: July, 1968, to June, 1974

Executive Director, National Governors' Conference, Washington, D. C.: March, 1974, to present [1150 Seventeenth Street, N.W., Washington, D. C. 20036 Telephone: 202/785-5600]

Additional information available upon request.

*Positions held concurrently.

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**Defendant's Exhibit No. 39**

WYOMING
EXECUTIVE DEPARTMENT
CHEYENNE

December 20, 1974

Mr. Charles A. Byrley
Executive Director
National Governor's Conference
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Dear Charlie:

I must formally express my concern with respect to the negative budgetary impact recent amendments to the Fair Labor Standards Act have brought to bear upon the State of Wyoming.

It is clear that inadequate attention was given by Congress with respect to the disruptive effect the subject changes would have on State Personnel management systems.

Even more apparent is the significant increase in costs associated with the requirement that additional classes of public employees have been made eligible for overtime pay. At the State level, the unanticipated cost of expanded overtime pay coverage will equal $2,415,103 for the period May 1, 1974, through the fiscal biennium 1975-77. At a time when state agency budget requests exceed projected revenues, it is disheartening to have additional burdens placed upon our fiscal apparatus. The

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failure of Congress to weigh carefully the financial repercussions of the broadened overtime pay requirements will operate to bring undue hardships upon the State at a most inappropriate time; obviously the effect upon local governments most of which are confronted with limited financial resources will be equally apparent.

Needless to say, the fact the effective date of coverage, May 1, 1974, does not coincide with the State's budget/appropriation cycle beginning in July of each biennium hampers our ability to comply immediately with the revised provisions of the Act.

You have my support in any effort you undertake to redress this situation.

With best regards, I am

Sincerely yours,

/s/ Stan Hathaway
Stan Hathaway
Governor

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**Defendant's Exhibit No. 40**

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

December 20, 1974

Mr. Charles A. Byrley, Director
Office of Federal-State Relations
National Governors' Conference
1150 - 17th Street, N. W.
Washington, D. C. 20036

Dear Mr. Byrley:

Mr. Edmond Rovner of the National Governors' Conference recently requested that I make available to you certain information concerning the implementation of the Fair Labor Standards Act enacted by the Congress in July 1974. Specifically, Mr. Rovner was concerned with the impact of the overtime provisions of the Fair Labor Standards Act on State governments and State budgets.

I have been informed by the Maryland Department of Personnel that overtime regulations governing Maryland's State employees substantially conform with the provisions of the Fair Labor Standards Act relating to overtime compensation. Accordingly, the effect of that Act on the Maryland State budget will not be as great as the effect on the budgets of many other States. It is our judgment that full compliance with the overtime provisions of the Fair Labor Standards Act will result in

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an additional annual expenditure of approximately $2.25 million.

If you have any further questions regarding this matter, I suggest that you contact Secretary Henry Bosz of the Maryland Department of Personnel.

Sincerely,

/s/ Marvin Mandel
Marvin Mandel
Governor

**Defendant's Exhibit No. 41**

EXECUTIVE OFFICE
STATE OF MISSOURI
JEFFERSON CITY

October 28, 1974

Mr. Terry Smith
National Governors' Conference
Office of Federal-State Relations
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Dear Mr. Smith:

Governor Bond has asked me to reply to your special letter regarding the proposed Department of Labor rule concerning salary levels to be used for minimum wage exemptions.

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The Missouri Department of Labor and Industrial Relations surveyed departments of the executive branch representing 46 percent of the state's total work force. The survey encompassed personal service wage rates for the "Executive/Administrative" and "Professional" categories funded by state revenues.

Of the group surveyed, there were 1181 employees classified in the affected categories and salary ranges. The annual monetary impact of the proposed rule change for this group would amount to approximately $1.5 million. Extrapolation of this dollar amount indicates the total monetary impact upon State revenues for all personal services would be in excess of $3.1 million annually, depending upon the wage rate spread utilized.

Governor Bond is concerned, in an era of announced "belt-tightening" by the President, that the dollar impact noted above will run contradictory to the goal of reducing inflation. The timing of this six-month study is simply, inappropriate. In this instance, rather than eliminating outmoded government regulations to spur savings, which is being urged by the President, the opportunity exists to table a potentially expensive study.

These financially troubled times dictate prudence and constraint at all levels. In our estimation, this proposed study should be postponed.

Sincerely,

/s/ Perry A. Roberts
Perry A. Roberts
Executive Assistant

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**Defendant's Exhibit No. 42**

STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
P.O. BOX 3278
LITTLE ROCK 72203

November 7, 1974

Mr. Charles A. Byrley
National Governors' Conference
Office of Federal-State Relations
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Byrley:

The U.S. Department of Labor's proposed wage rate changes for executive, administrative, and professional employees would impose a tremendous financial burden on the State of Arkansas. Many employees who are now exempt would become subject to overtime.

These employees are in responsible positions and are expected to work as long as necessary to get the job done. The responsible nature of their work meets all of the current tests for exemption.

The result of the higher wage rates would be to divert funds from a general pay increase, now being proposed for all employees, to the management and professional employees who would work in excess of forty hours a week if they determined extra hours were necessary to accomplish their objectives.

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The only other alternative would be to limit these employees to forty hours a week with a consequent lessening of public services. A time limit on these key employee's productivity would cause critical situations to develop in their relations with the public and reduce the availability of their expertise during the budget process prior to and during sessions of the Legislature.

We are working very hard to bring state employee's salaries up to a level that is competitive within both the state and the region. Arbitrary salary adjustments such as those being proposed serve only to disrupt orderly salary gains for all employees and make efficient and equitable salary administration almost impossible.

We are willing to provide your office with any support necessary to prevent a change in the existing wage rates.

Sincerely,

/s/ Richard R. Heath
Richard R. Heath
Director

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**Defendant's Exhibit No. 43**

STATE OF FLORIDA
OFFICE OF GOVERNOR REUBIN O'D. ASKEW

December 20, 1974

Mr. Charles Byrley
National Governor's Conference
1150 17th Street, N. W.
Washington, D. C. 20036

Dear Mr. Byrley:

We have been requested by your office to submit information as to the financial effects of the coverage of the Federal Fair Labor Standards Act on the State of Florida.

While you recognize that a definite dollar figure would be difficult to substantiate in detail on such short notice we do know that the cost is substantial and the amounts presented herein are our best estimates at this time.

A relatively minor area of coverage relates to the patients working in our hospitals and mental institutions. The Florida Legislature appropriated $500,000 for the seven month period of December 1 through June 30 for this purpose. After much review, we find that this appropriation falls far short of the cost in this area if we are to fulfill the therapeutic needs of the patients and at the same time comply with the Act. Adequate funding of this much needed program with the restaint placed on the state by the Act would require at least $1,625,000 annually.

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Federally mandated recordkeeping costs under the Act are substantial. This cost is estimated at $800,000 annually.

Overtime provisions of the Act have caused more expense to state government than any other section. On such short notice we are unable to compile this figure but Mr. Henry Anderson, Fair Labor Standards Coordinator will call you Monday morning with the amount.

Needless to say, the Federal Fair Labor Standards Act has placed a restraint on state government that interferes with our budgeting process and jeopardizes the state's ability to establish policies that are in the best interest of the citizens of the State of Florida.

If we can furnish any additional information, please let us know.

Sincerely,

/s/ Reubin Askew
Reubin O'D. Askew
Governor

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**Defendant's Exhibit No. 44**

OFFICE OF THE GOVERNOR
STATE CAPITOL
DES MOINES, IOWA 50319

December 19, 1974

Mr. Charles A. Byrley
Executive Director
The National Governors' Conference
1150 Seventeenth Street N.W.
Washington, D.C. 20036

Dear Charlie:

This letter is in response to an inquiry today from your office on the impact regarding the 1974 amendments to the Fair Labor Standards Act on the budget of Iowa state government.

The major areas where the amendments will have an effect are the provisions for time and one-half compensation for hours worked over 40 hours per week and also the requirement of a minimum wage for patients who work as part-time help in our social service institutions.

Our budget analysts in the Office of the State Comptroller advise me that these provisions in the amendments will require additional state expenditures of from $3 million to $3.5 million annually.

These additional costs to state government come at a time when we are already in a very tight budget situation.

Best regards.

Sincerely,
/s/ R. D. Ray
Robert D. Ray
Governor

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**Defendant's Exhibit No. 45**

STATE OF VERMONT
EXECUTIVE DEPARTMENT
Montpelier, Vermont

December 20, 1974

Mr. Charles Byrley
Executive Director
National Governors' Conference
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Byrley:

This is in response to your request for an estimate of the current and future fiscal impact of the 1974 Fair Labor Standards Act amendments on Vermont state government. My administration is still taking steps to implement the provisions of the 1974 amendments, and some of the figures which I will quote to you are at this time only estimates. It is almost impossible to estimate the full future impact. Nevertheless, I will try to fulfill your request.

The increase in the minimum wage will have very little impact. At the current time the State of Vermont is in compliance with the minimum wage provisions of the Fair Labor Standards Act. We will have to raise the minimum wage beginning January 1, 1976, in order to comply with the 1976 minimums. These minimums would probably have been raised even without the Fair Labor Standards Act requirements, so, in all fairness, I

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must say that the minimum wage provisions of the amendments have had little or no effect on the State as an employer.

It is in the maximum hours (overtime) sections of the law that very serious fiscal problems arise. The impact is felt both in increased personal services payments (i.e., higher overtime rates) and in administrative costs. So far, our Department of Highways has paid $100,000 to its district employees as retroactive payment for overtime worked since May 1, 1974. It is estimated that the Department of Highway's overtime costs in all of fiscal year 1975 will be about $200,000 higher than anticipated as a direct result of the new overtime provisions of the Fair Labor Standards Act. Other unanticipated retroactive FY '75 payments which will have to be paid to employees in other agencies of state government so far have amounted to approximately $10,000.

Another potentially large obligation which was completely unanticipated prior to passage of the Fair Labor Standards Act amendments is in the area of earned compensatory time. During the course of FY '75 it is anticipated that, under the provisions of the contract between the State and the employees' union, employees will voluntarily choose to take about 60,000 hours of their earned overtime in compensatory time off rather than cash. If the Department of Labor rules that the State must pay employees for all overtime hours worked in cash rather than allow them to take 60,000 hours in time off, it will increase our cash overtime obligation by approximately $330,000 in FY '75.

Another potential expense which is now pending is a lawsuit brought by some State employees on the basis of the Fair Labor Standards Act which, if the State loses, could cost the State a total of $250,000 more in overtime payments and damages.

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As a result of the record-keeping requirements of the Fair Labor Standards Act, the State finds that it is now required to update data processing procedures and forms. New computer programs must be written to comply with Fair Labor Standards Act requirements, and new forms must be printed. The additional unanticipated expense to the State in terms of time, material, and computer costs are estimated at $35,000.

Summing up the actual impact in FY '75, we find the following:

$200,000 – Department of Highway's overtime costs
10,000 – Other agency overtime costs
35,000 – Administrative costs

$245,000 – Actual FY '75 cash impact to date

Furthermore, depending on court decisions and Department of Labor interpretations, the State could also be liable in FY '75 for the following:

$330,000 – Compensatory time cash reimbursement
250,000 – Employee overtime lawsuit

$580,000 – Total potential additional expenses

+245,000 – Actual cash outlay

$825,000 – Grand Total potential FY '75 impact

While the figures noted above are of great concern to me, in a State which, like all others, is in the midst of severe economic and budgetary problems, my concerns for the impact of the law on our future operations are at least as great. For instance, we must hire attorneys on a

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contractual basis to defend the State against FLSA lawsuits which can be and are being brought by individual employees, labor unions, or the Department of Labor itself. I cannot reasonably estimate what these service fees might be, although $100 an hour for attorneys' fees, as you know, is not uncommon in the labor relations field. The cost of renegotiating contracts which have been invalidated in part by the Fair Labor Standards Act is very expensive in terms of time and material. It is impossible to place a dollar figure on this factor.

The State may also face additional substantial costs in retroactive overtime pay for certain irregularly scheduled employees such as cottage parents and park managers. In addition, depending on the regulations which the Department of Labor issues this month on law enforcement and fire protection personnel, the State could stand to incur even higher overtime costs, particularly for game wardens and certain airport firemen.

In summary, the Fair Labor Standards Act amendments have had substantial immediate fiscal impact and could have even more wide-ranging fiscal as well as programmatic and philosophic impact on State operations.

I hope these estimates and comments are of some help to you. If I can be of any more assistance, please contact me at any time.

Sincerely,

/s/ Thomas P. Salmon
Thomas P. Salmon

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**Defendant's Exhibit No. 46**

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
OLYMPIA

November 15, 1974

The Honorable Peter J. Brennan
Secretary of Labor
Department of Labor
Room 3136
14th Street and Constitution Avenue
Washington, D.C. 20210

Dear Mr. Brennan:

The Wage and Hour Division of the Department of Labor will hold a public hearing on Monday, November 18, 1974, to receive testimony concerning regulations to implement the Fair Labor Standards Amendment of 1974. These regulations could have a substantial and a very damaging effect on the services of volunteer fire departments in the State of Washington. I will be grateful to you for your assistance in making known to the Division my views on this matter.

There are over 16,000 Washington citizens who serve as volunteer firemen, providing essential protection and care to their fellow citizens throughout the state. These volunteers respond to emergency calls for fires, and more recently, under the Emergency Medical Assistance ("Medic I") Program. They make themselves available for training and organizational meetings; in some areas they

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remain in firehouses through the dangerous nighttime hours, ready to respond to any emergency.

Under the proposed revised regulations, these volunteers would be denied the opportunity to serve. The fire districts which have found it possible to rely upon their services would have to make alternative arrangements. Enormous increases in cost would follow any attempt to maintain existing levels of fire protection, or, even worse, large areas of the state would be left without vital services. Furthermore, I can find no evidence of any volunteer firemen in Washington State requesting the remuneration that is being suggested.

Most seriously though, the traditional concern of Americans for their neighbors in times of need will be denied, while volunteer fire departments will be forced to curtail their services and pay wages, which represent a serious financial burden while still falling far below the rate of earnings which the volunteers receive in their regular employment.

I do not believe this misplaced concept of "fairness" could have been the intent of Congress in the 1974 Amendments to the Fair Labor Standards Act. I hope the regulations issued by the Labor Department will make clear that fire departments may make arrangements for the participation of volunteers in fire prevention and related activities without violating the Fair Labor Standards Act and the Amendments of 1974

Thank you for your assistance in making these views known to the Wage and Hour Division.

Sincerely,

/s/ Daniel J. Evans
Daniel J. Evans
Governor

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**Defendant's Exhibit No. 47**

December 23, 1974

Mr. Charles Byrley, Executive Director
National Governors' Conference
1150 - 17th Street, N.W.
Washington, D. C. 20036

Dear Charlie:

Enclosed find the estimated impact of the 1974 amendments to the Fair Labor Standards Act insofar as the operation of Utah State Government is concerned.

These figures were prepared by the Utah State Department of Finance for your use in the deposition you will be giving in support of the complaint for declaratory judgment to which the National Governors' Conference is a party.

Sincerely,

/s/ Galvin L. Rampton
Governor

FEDERAL MINIMUM WAGE ACT
OF 1974 – IMPACT ON STATE GOVERNMENT

UTAH

| | |
|---|---|
| Highway Department | $671,400 |
| University & Colleges | 454,400 |
| Highway Patrol | 260,100 |
| Natural Resources | 733,500 |
| All Other Departments | 100,000 |
| | $2,219,400 |

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**Defendant's Exhibit No. 48**

STATE OF CALIFORNIA
GOVERNOR'S OFFICE
SACRAMENTO 95814

December 23, 1974

Mr. Charles A. Byrley
Executive Director
National Governors' Conference
1150 17th Street, N.W.
Washington, D.C. 20036

Dear Charlie:

The State of California supports the action of the National Governors' Conference in joining with the National League of Cities to pursue a constitutional law suit alleging that the 1974 Fair Labor Standards Act amendments are improper and will result in serious financial impact upon state and local governments. Further, we support and commend the additional effort to seek an injunction against implementation of the law until the constitutional question is answered.

As you perhaps know, the State of California has provided the Department of Labor with substantial information on the impact that implementation of the FLSA would have on our state. I am most disappointed to find that virtually none of our suggestions have been accepted, and I am particularly concerned that the proposed regulations do not exempt mutual aid services from the overtime provisions of the wage and hour portions of the law.

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We are estimating that the cost for the State of California to implement the 1974 Fair Labor Standards Act amendments will be approximately $16,000,000. Wage and hour provisions, and overtime pay and procedures could result in considerably higher costs to the State.

I must inform you, in reading the proposed regulations to implement the FLSA, I was surprised to find that an "Inflationary Impact Report" was not included. In President Ford's "Whip Inflation Now" (WIN) Speech, he stated that all new regulations and legislative enactments would have to be accompanied by an "Inflationary Impact Report". I applauded this action by the President because I firmly believe the government must lead the fight on inflation and set the example. This, however, does not appear to be the case with the 1974 Fair Labor Standards Act amendments.

We are certain that the inflationary impact of the proposed regulations now slated to go into effect on January 1st are so massive as to be difficult to measure. This is just another example of the citizenry bearing additional costs for government services without concurrent increases in the level or quality of services rendered. I feel it is essential that every effort be made to obtain an injunction against implementation of the FLSA amendments so that not only the constitutional question can be answered, but also so that an "Inflationary Impact Report" can be prepared, as required, so that it can be seen, in perspective, what effect these regulations will have on the economy of all 50 states and every local government.

The State of California has great concerns and major reservations about the amendments to the Fair Labor

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Standards Act of 1938 and to the propriety of the Federal Government attempting to mandate on other levels of government decisions that rightfully are, and ought to be, made by their own elected officials. We are accutely aware of the impact that these regulations will have on the State of California, and continue to oppose the implementation of same.

Sincerely,

/s/ Ronald Reagan
Ronald Reagan
Governor

---

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**Plaintiff's Exhibit No. 1**

BIOGRAPHICAL DATA

Name:
Allen E. Pritchard, Jr.
Residence:
627 Goldsborough Drive, Rockville, Maryland 20850
Telephone: (301) 762-1856
Office:
1612 K Street, N.W., Washington, D.C. 20006
Telephone: (202) 293-6915
Born:
June 2, 1921 at Niles, Ohio. Parents – Allen E. and Olive V. Pritchard (retired)
3712 Kay Place, Sarasota, Florida
Married:
April, 1944 to Mary Louise Zeller, Niles, Ohio – parents deceased
Children:
Allen E., III, 27; Mary Lou, 25; Elizabeth Ann, 23; Joseph Z., 14
Education:
Niles McKinley High School, Niles, Ohio
Miami University, Oxford, Ohio – 2 years
University of Colorado, Boulder, Colorado – 2 years – B.A., Economics and Political Science
University of Colorado, Boulder, Colorado – 38 quarter hours toward Master's Degree in Public Administration and 20 additional quarter hours in undergraduate courses

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Military Service:

Air Force, World War II – October 28, 1942 – March 8, 1946. 23 months service in South Pacific. Discharged as a Staff Sargeant.

Occupational Experience:

Colorado Municipal League, Boulder, Colorado, Research Assistant
February, 1947 – June, 1947

Colorado Municipal League, Boulder, Colorado, Executive Secretary
June, 1947 – April, 1948

League of Wisconsin Municipalities, Madison, Wisconsin, Assistant Executive Secretary
April, 1948 – September, 1952

Ohio Municipal League, Columbus, Ohio, Executive Director
September, 1952 – September, 1955

League of Kansas Municipalities, Topeka, Kansas, Executive Director
September, 1955 – February, 1960

Municipal Manpower Commission, Washington, D.C., Staff Director
February, 1960 – April, 1962

United States Senator James B. Pearson of Kansas, Administrative Assistant
April, 1962 – August, 1965

Joint Council on Urban Development (National League of Cities – U.S. Conference of Mayors) Administrator
November, 1965 – September, 1966

National League of Cities, Assistant Executive Director and Director of Congressional Relations,
September, 1966 – February, 1970

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National League of Cities, Deputy Executive Vice President
February, 1970 – June, 1972
National League of Cities, Executive Vice President
July, 1972 – present

Publications:
Editor – Colorado Municipal Journal, Ohio Cities and Villages, Kansas Government Journal;
Associate Editor – Nation's Cities;
Author – numerous technical papers and articles on American local government

Special Assignments:
Member – Nixon Transition Task Forces on: Intergovernmental Fiscal Policy; Public Welfare; Housing and Urban Renewal
November, 1968 – January, 1969
Member – HEW Task Force on HEW Interagency and Interprogram Relations
February, 1969
Chairman – HUD Task Force on Model Cities
March, 1969

Affiliations:
Phi Kappa Tau Fraternity (president and graduate advisor); Inter-fraternity Council; Kiwanis, Columbus, Ohio; Rotary, Topeka, Kansas; Executive Committee, American Municipal Association (now National League of Cities), 1955-1958; Methodist; Mason.

Hobbies:
Golf and camping

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Joint Exhibit No. 4(c): (39 Fed. Reg. 44141)

FRIDAY, DECEMBER 20, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 246

PART III

# DEPARTMENT OF LABOR

## Wage and Hour Division

# Employees of Public Agencies Engaged in Fire Protection or Law Enforcement Activities (Including Personnel in Correctional Institutions)

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# Title 29—Labor

## CHAPTER V—WAGE AND HOUR DIVISION

### PART 553—EMPLOYEES OF PUBLIC AGENCIES ENGAGED IN FIRE PROTECTION OR LAW ENFORCEMENT ACTIVITIES (INCLUDING SECURITY PERSONNEL IN CORRECTIONAL INSTITUTIONS)

The Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), as amended by the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259), 88 Stat. 55), extends the Act's minimum wage, overtime, equal pay and recordkeeping requirements to most public agency employees. In the case of certain public agencies (i.e., those having employees engaged in fire protection and law enforcement activities, including security personnel in correctional institutions), application of the Act's overtime provisions was delayed until January 1, 1975. This delay was accomplished by new section 13(b)(20) which provided an interim overtime exemption for all such employees regardless of the size of the employing public agency. Effective January 1, 1975, however, the section 13(b)(20) exemption will, by its express terms, be limited to fire protection and law enforcement employees who are employed by a public agency which has, during the workweek, less than five employees so engaged. For larger public agencies having such employees, the Act provides, in section 7(k), a partial overtime exemption which, by its express terms, becomes effective January 1, 1975. These two sections are self-executing and do not depend upon administrative rules or regulations.

On May 17, 1974, however, the Acting Administrator of the Wage and Hour Division, United States Department of Labor, recognizing the need for the is-

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suance of guidelines for interpreting the new and unique overtime exemptions relating to these public agency employees, published in the FEDERAL REGISTER (39 FR 17596) notice of a hearing scheduled for June 3, 1974, to obtain evidence and receive comments regarding the duties, customs, practices, and working conditions of such employees.

The public hearing, which was held as scheduled on June 3, 1974, lasted two full days, during which time 11 individuals and organizations testified and 143 related exhibits were made a part of the hearing record.

Thereafter, on October 30, 1974, the Administrator of the Wage and Hour Division, after reviewing the hearing record in light of the express language and legislative history of the sections 7(k) and 13(b)(20) exemptions, issued proposed regulations (29 CFR Part 553), defining "employees engaged in fire protection and law enforcement activities" and prescribing tentative guidelines for determining hours worked, the work period and tour of duty, and caused the proposed regulations to be published in the FEDERAL REGISTER (39 FR 38663).

The proposed regulations as thus published invited interested persons to submit written comments, suggestions, data or arguments in regard to them on or before December 2, 1974, and, in addition, scheduled a further public hearing for November 18, 1974. In order to give as wide publicity as possible to all affected public agencies, copies of the proposed regulations were mailed directly to the governors of all 50 States, with informational copies going to every State Attorney General and State Fire Marshal, each of whom was requested to bring the proposed regulations to the attention of interested State and local government officials. In addition, approximately 800

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copies of the proposed regulations were mailed to individuals, labor organizations, employer organizations, State and local government officials and agencies, as well as to members of the United States Congress.

The further public hearing, announced in the FEDERAL REGISTER on November 1, 1974, was held in Washington, D.C., on November 18–21, 1974, for the purpose of receiving oral suggestions, proposals and comments on the proposed Part 553 from interested persons. Thirty-eight individuals and organizations testified at this second hearing and approximately 300 related exhibits were made a part of the hearing record, which, along with the June 1974 hearing record, is on file with the Chief, Branch of Wage-Hour Standards, Wage and Hour Division, United States Department of Labor, Room 1107, 711 14th Street, NW., Washington, D.C. 20210.

A thorough analysis of all testimony and written material received in connection with the November 1974 hearing has been made, again in conjunction with the express statutory language and pertinent legislative history. This analysis indicated the desirability of making certain changes and additions in 29 CFR Part 553, as proposed, as well as adding new sections to it for the purpose of calling attention to the existence of other Fair Labor Standards Act exemptions which might be available to public agencies affected by new Part 553, as well as to the Act's recordkeeping requirements which are applicable to all covered employers. Other changes in proposed Part 553 expand the term "any employee in fire protection activities" to include employees of forestry conservation agencies who spot forest or brush fires and help in their extinguishment along with other individuals who are called upon to assist

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during periods of emergencies and high fire danger. Similarly, the term "any employee in law enforcement activities" has been expanded to include "border patrol agents," and modified to indicate that fish and game wardens and criminal investigative agents assigned to such offices as those of a district attorney may be engaged in such activities, depending upon the particular facts. Both of the foregoing terms have been further expanded to indicate that bona fide fire protection and law enforcement employees will not lose their exempt status when they perform "support activities" on a rotational assignment for training or familiarization purposes, or for other reasons due to illness, injury or infirmity; the requirement that law enforcement officers be sworn has been deleted, as has the requirement for completed training. The sections dealing with training (§ 553.7), secondary and joint employment (§ 553.9), volunteers (§ 553.11) and "comp time" (formerly § 553.17 and now § 553.19) have been further clarified, and a new section has been added to explain the general rules for determining compensable hours of work. Numerous other minor changes have been made but they are not discussed in this preamble since they can be readily discerned by comparing the proposed Part 553 with the version now to be issued. It was suggested that changes be made in the current definitions of executive, administrative or professional employees, and these suggestions, although not germane to the section 7(k) or 13(b)(20) exemptions, will be considered when 29 CFR Part 541 is reissued. The arguments criticizing the subsections dealing with mutual aid agreements (§ 553.10) and sleep and meal time (§ 553.15) were carefully considered. No substantive changes were made, however, because these subsections restate

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legal requirements which cannot be waived or altered by any official of the Department of Labor. Numerous other arguments were directed to the inflationary or cost impact of Part 553. Whatever impact there is, however, is the result of the 1974 Amendments, which, after Congress had considered these same arguments, expressly extended overtime protection to employees engaged in fire protection and law enforcement activities. Moreover, the extent to which the Act will have a cost impact on such public agencies depends, in large part, upon which of the several alternatives open to them the State and local jurisdictions elect to use. Assuming that all jurisdictions elect section 7(k), without any modification in the present tours of duty, the estimated cost impact of the extension of the Act's overtime requirement for calendar year 1975 is estimated to be $27 million for all such jurisdictions.

In issuing Part 553, it is recognized that the Secretary of Labor has been directed by the 1974 Amendments to conduct a study in calendar year 1976 of the hours ordinarily worked by fire protection and law enforcement employees, and to publish the results thereof in the FEDERAL REGISTER (88 Stat. 61). Now, therefore, pending completion of such study or studies, the final version of Part 553 is hereby adopted on an interim basis to read as follows:

Sec.
553.1 Statutory provisions.
553.2 Purpose and scope.

EMPLOYEES ENGAGED IN FIRE PROTECTION AND LAW ENFORCEMENT ACTIVITIES (INCLUDING SECURITY PERSONNEL IN CORRECTIONAL INSTITUTIONS)

Sec.
553.3 Fire protection activities.
553.4 Law enforcement activities.
553.5 20-percent limitation on nonexempt work.
553.6 Public agency employees engaged in both fire protection and law enforcement activities.

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Sec.
553.7 Employees attending training facilities.
553.8 Ambulance and rescue service employees.
553.9 Fire protection or law enforcement employees who perform unrelated work for their own agency or for another public agency or private employer.
553.10 Mutual aid.
553.11 Fire protection and law enforcement volunteers.

RULES FOR DETERMINING THE TOUR OF DUTY, WORK PERIOD AND COMPENSABLE HOURS OF WORK

553.12 General statement.
553.13 Tour of duty.
553.14 General rules for determining compensable hours of work.
553.15 Sleeping and meal time as compensable hours of work.
553.16 Work period.
553.17 Early relief.
553.18 Trading time.
553.19 Time off for excess hours or so-called "comp time."
553.20 The "regular rate."
553.21 Records to be kept.

AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended; 88 Stat. 60; (29 U.S.C. 201-219).

### § 553.1 Statutory provisions.

(a) In extending coverage to certain public agency employees, the Fair Labor Standards Act (hereafter the Act), by virtue of section 13(b)(20), provided a complete overtime exemption for any employee of a public agency who is engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) during the period between the effective date of the 1974 Amendments (May 1, 1974) to and through December 31, 1974. Beginning January 1, 1975, however, this complete overtime exemption may be claimed only with respect to "any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in

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any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than five employees in fire protection or law enforcement activities, as the case may be."

(b) Beginning January 1, 1975, public agencies not qualifying for the complete overtime exemption provided in section 13(b)(20) will be required to pay overtime compensation to their fire protection and law enforcement employees on a workweek basis as required by section 7(a) of the Act unless they elect to take advantage of the partial overtime exemption provided in section 7(k) which applies, not on a workweek basis, but on a work period basis, as follows:

* * * No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) In a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 240 hours; or

(2) In the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 240 hours bears to 28 days, compensation at a rate of not less than one and one-half times the regular rate at which he is employed.

(B) Effective January 1, 1976, section 7(k) is amended by striking out "240 hours" each place it occurs and inserting in lieu thereof "232 hours".

(C) Effective January 1, 1977, such section is amended by striking out "232 hours" each place it occurs and inserting in lieu thereof "216 hours".

(D) Effective January 1, 1978, such section is amended—

(i) By striking out "exceed 216 hours" in paragraph (1) and inserting in lieu thereof

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"exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975"; and

(ii) By striking out "as 216 hours bears to 28 days" in paragraph (2) and inserting in lieu thereof "as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days * * *.

(c) These statutory provisions, as is apparent from their terms, are limited to public agencies and do not apply to any private organization engaged in furnishing fire protection or law enforcement services, and this is so even if the services are provided under contract with a public agency.

(d) In determining whether a public agency qualifies for the section 13(b)(20) exemption after January 1, 1975, the fire protection and law enforcement activities are considered separately. Thus, for example, if a public agency employs less than five employees in fire protection activities but five or more employees in law enforcement activities (including security personnel in a correctional institution), it may claim the exemption for the fire protection employees but not for the law enforcement employees. No distinction is made between full-time and part-time employees, and both must be counted in determining whether the exemption applies. Bona fide volunteers may be excluded. This determination of the number of employees engaged in each of the two named activities is made on a workweek basis.

(e) In addition to the special exemptions provided in sections 7(k) and 13(b)(20), which are the subject matter of Parts 53, the Act provides other exemptions which, depending upon the facts, may be claimed for certain employees in

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lieu of such special exemptions. For example, section 13(a)(1) provides a complete exemption for any employee employed in a bona fide executive, administrative or professional capacity, as those terms are defined and delimited in 29 CFR Part 541, and that exemption may be claimed for any fire protection or law enforcement employee who meets all of the tests specified in Part 541 relating to duties, responsibilities and salary. Thus, although police captains are clearly employees engaged in law enforcement activities, they may also, depending upon the facts, qualify for the section 13(a)(1) exemption, in which event the employing agency may claim that exemption for such employees in lieu of the section 7(k) or 13(b)(20) exemption. Similarly, certain criminal investigative agents may qualify as administrative employees, in which event the employing agency may elect which of the applicable exemptions it will claim for such employees. In no event, however will the election to take the section 13(a)(1) exemption for an employee who qualifies for it result in excluding that employee from the count that must be made under § 553.1(d) in determining whether the employer may claim for its other employees the section 13(b)(20) exemption.

**§ 553.2 Purpose and scope.**

The purpose of Part 553 is to define the pertinent statutory terms used in sections 7(k) and 13(b)(20) and to set forth the rules by which the Administrator of the Wage and Hour Division will determine the compensable hours of work, tour of duty and work period in applying the section 7(k) exemption.

EMPLOYEES ENGAGED IN FIRE PROTECTION AND LAW ENFORCEMENT ACTIVITIES (INCLUDING SECURITY PERSONNEL IN CORRECTIONAL INSTITUTIONS)

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**§ 553.3 Fire protection activities.**

(a) As used in section 7(k) and 13(b)(20) of the Act, the term "any employee in fire protection activities" refers to any employee (1) who is employed by an organized fire department or fire protection district and who, pursuant to the extent required by State statute or local ordinance, has been trained and has the legal authority and responsibility to engage in the prevention, control or extinguishment of a fire of any type and (2) who performs activities which are required for, and directly concerned with the prevention, control or extinguishment of fires, including such incidental non-firefighting functions as housekeeping, equipment maintenance, lecturing, attending community fire drills and inspecting homes and schools for fire hazards. The term would include all such employees, regardless of their status as "trainee," "probationary," or "permanent" employee, or of their particular speciality or job title (e.g., firefighter, engineer, hose or ladder operator, fire specialist, fire inspector, lieutenant, captain, inspector, fire marshal, battalion chief, deputy chief, or chief), and regardless of their assignment to support activities of the type described in paragraph (d) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection activities. See § 553.7.

(b) The term "any employee in fire protection activities" also refers to employees who work for forest conservation agencies or other public agencies charged with forest fire fighting responsibilities, and who direct or engage in (1) fire spotting or lookout activities, or (2) fighting fires on the fireline or from aircraft or (3) operating tank trucks, bulldozers and tractors for the purpose of clearing fire

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breaks. The term includes all persons so engaged, regardless of their status as full time or part time agency employees or as temporary or casual workers employed for a particular fire or for periods of high fire danger, including those who have had no prior training. It does not include such agency employees as biologists and office personnel who do not fight fires on a regular basis, except, of course, during those emergency situations when they are called upon to spend substantially all (i.e., 80 percent or more) of their time during the applicable work period in one or more of the activities described in paragraph (b) (1), (2) and (3) of this section. Additionally, for those persons who actually engage in these fire protection activities, the simultaneous performance of such related functions as housekeeping, equipment maintenance, tower repairs and/or the construction of fire roads, would also be within the section 7(k) or 13(b)(20) exemption.

(c) Not included in the term "employee in fire protection activities" are the so-called "civilian" employees of a fire department, fire district, or forestry service who engage in such support activities as those performed by dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, camp cooks, clerks, stenographers, etc.

**§ 553.4 Law enforcement activities.**

(a) As used in sections 7(k) and 13(b)(20) of the Act, the term "any employee in law enforcement activities" refers to any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes,

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(2) who has the power of arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as "trainee," "probationary" or "permanent" employee, and regardless of their assignment to duties incidental to the performance of their law enforcement activities such as equipment maintenance, and lecturing, or to support activities of the type described in paragraph (f) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's law enforcement activities. See § 553.8.

(b) Typically, employees engaged in law enforcement activities include city police; district or local police; sheriffs, under sheriffs or deputy sheriffs who are regularly employed and paid as such; court marshals or deputy marshals; constables and deputy constables who are regularly employed and paid as such; border control agents; state troopers and highway patrol officers. Other agency employees not specifically mentioned may, depending upon the particular facts and pertinent statutory provisions in that jurisdiction, meet the three tests described above. If so, they will also qualify as law enforcement officers. Such employees might include, for example, fish and game wardens or criminal investiga-

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tive agents assigned to the office of a district attorney, an attorney general, a solicitor general or any other law enforcement agency concerned with keeping public peace and order and protecting life and property.

(c) Some of the law enforcement officers listed above, including but not limited to certain sheriffs, will not be covered by the Act if they are elected officials and if they are not subject to the civil service laws of their particular State or local jurisdition. Section 3(e)(2)(C) of the Act excludes from its definition of "employee" elected officials and their personal staff under the conditions therein prescribed. 29 U.S.C. 203(e)(2)(C). Such individuals, therefore, need not be counted in determining whether the public agency in question has less than five employees engaged in law enforcement activities for purposes of claiming the section 13(b)(20) exemption.

(d) Employees who do not meet each of the three tests described above are not engaged in "law enforcement activities," as that term is used in sections 7(k) and 13(b)(20). Such employees would typically include (1) building inspectors (other than those defined in § 553.3(a)), (2) health inspectors, (3) animal control personnel, (4) sanitarians, (5) civilian traffic employes who direct vehicular and pedestrian traffic at specified intersections or other control points, (6) civilian parking checkers who patrol assigned areas for the purpose of discovering parking violations and issuing appropriate warnings or appearance notices, (7) wage and hour compliance officers, (8) equal employment opportunity compliance officers, (9) tax compliance officers, (10) coal mining inspectors, and (11) building guards whose primary duty is to protect the lives and property of persons within the limited area of the building.

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(e) The term "any employee in law enforcement activities" also includes, by express reference, "security personnel in correctional institutions." A correctional institution is any government facility maintained as part of a penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime. Typically, such facilities include penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories. Employees of correctional institutions who qualify as security personnel for purposes of the section 7(k) exemption are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged in law enforcement activities regardless of their rank (e.g., warden, assistant warden or guard) or of their status as "trainee," "probationary," or "permanent" employee, and regardless of their assignment to duties incidental to the performance of their law enforcement activities, or to support activities of the type described in paragraph (f) of this section, whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity.

(f) Not included in the term "employee in law enforcement activities" are the so-called "civilian" employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenogra-

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