1997 WL 957908 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion LetterFair Labor Standards Act (FLSA)

January 21, 1997

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***1** This is in response to your letter in which you raise a number of questions concerning the application of the Fair Labor Standards Act (FLSA) to member volunteers of a cooperative grocery store.

Under section 3(g) of the FLSA, "employ" is defined as "to suffer or permit to work." However, the Supreme Court has made it clear that the FLSA was not intended "to stamp all persons as employees who without any express or implied compensation agreement might work for their own advantage on the premises of another." In administering the FLSA, the Department follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable and similar nonprofit corporations that receive their service. Please note examples of volunteer services in the enclosed "Employment Relationship Under the Fair Labor Standards Act."

With regard to questions 1, 2, and 3, you indicate that cooperative members volunteer to stock shelves, sweep floors, slice meat, and operate cash registers in the store in exchange for discounts on purchases. The discounts may be used by the members at anytime during the two week period after they are earned. You ask if this practice violates the minimum wage provisions of the FLSA.

In this case, the cooperative members do not appear to be "volunteers within the meaning of the FLSA. This is so because the services volunteered are not for public service, religious, or humanitarian objectives as required by the FLSA, rather, the services are being donated for commercial business purposes. It is, therefore, our opinion that the cooperative members would be considered "employees" within the meaning of the FLSA, and would be subject to the minimum wage and overtime provisions of the Act. This determination would not change even if member employees were not given discounts, or if they performed tasks of their own choosing and worked anytime they chose.

As the Supreme Court recognized in Goldberg v. Whitaker House Cooperatives Inc., 366 U.S.

28 (1961), part ownership or any proprietary interest of a member in a cooperative does not preclude the existence of an employer-employee relationship. As the Court stated in that case, "[w]e fail to see why a member of a cooperative may not also be an employee of the cooperative." Id. at 32. Moreover, the fact that the company is not operated for profit also is immaterial. See Farmers Irrigation Co. v. McComb, 337 U.S. 755, 768 (1949).

With respect to questions 4-7, there is not enough information in your letter for us to make a determination. Whether or not the professionals, board members, and committee members would be considered "employees" pursuant to the FLSA would depend upon all of the facts in the particular situation.

***2** This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided full and fair description of all the facts and circumstances that would be pertinent to our consideration and the questions presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

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

Maria Echaveste
Administrator

Enclosure

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