

DATE: March 21, 1988

TO: Bruce Herring, Labor Relations Manager  
FROM: City Attorney  
SUBJECT: Overtime Pay for Firefighters

On February 17, 1988, you asked this office to analyze the effect of the decision in *Lanehart v. Horner*, 818 F.2d 1574 (Fed. Cir. 1987) on The City of San Diego's method of calculating overtime payments for City firefighters. We believe that the holding in that case is inapplicable to The City of San Diego for the following reasons.

Federal firefighters brought this action alleging that hours spent during a pay period on leave with pay such as annual leave, sick leave or military leave must be included as hours worked for computing overtime under the rules of the federal personnel system. The court agreed and held that the provisions of 5 U.S.C. .. 6603, 6307, 6222 and 6323 prevent any reduction in the customary and regular pay for federal firefighters, including overtime pay under the Fair Labor Standards Act (FLSA) 29 U.S.C. . 200 et seq., when federal firefighters take these types of leave during a work cycle. The court reached this ruling solely on the basis of its interpretation of statutes and regulations applicable only to federal government employees. The court was careful to limit its holding to the facts before it and stated at page 1582 that quantum for pay for leave under the FLSA is a "matter of private contract between the parties." 29 CFR 778.219(a)(1). The FLSA does provide that time spent on paid leave need not be used in determining an employer's "regular rate" for the purposes of overtime calculation. 29 U.S.C. . 207(e)(2).

The City's Memorandum of Understanding with Local 145 of the International Association of Firefighters currently resolves this issue for The City of San Diego. Paragraph 9 of Article 37 states as follows:

Firefighters, Fire Engineers and Captains who work more than 212 hours in any 28-day work cycle will be paid premium overtime for their hours worked in excess of 212. Compensatory time off, vacation, holidays, annual leave, sick leave or other compensated leave or unpaid leave will not be counted as hours actually worked during the 28-day work cycle in determining eligibility for premium overtime.

Therefore, we advise you that The City of San Diego is to be guided by the above provision in the current Memorandum of Understanding in calculating overtime compensation for firefighters employed by The City of San Diego and not by the holding in the Lanehart v. Horner case.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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