

MEMORANDUM OF LAW

DATE: December 20, 1993

TO: Larry Gardner, Labor Relations Manager

FROM: City Attorney

SUBJECT: Premium Overtime for MAST Officers

BACKGROUND

Recently, Firefighters Union, Local 145 furnished your office with a copy of the Eighth Circuit Court case of Carlson v. City of Minneapolis, 925 F.2d 264 (1991). Local 145 has indicated that pursuant to the Carlson case, Metro Arson Strike Team ("MAST") officers are entitled to premium overtime for hours worked in excess of forty-three (43) hours per week. You have asked if this is a correct reading of the Carlson case.

ANALYSIS

The Carlson case does not address the issue of overtime pay for MAST officers. Quite the contrary, the court in the Carlson case makes it very clear that it has been asked only to determine if the Minneapolis arson investigators engage in fire protection or law enforcement activities. A review of the duties of the arson investigators led the court to the conclusion that the arson investigators are indeed engaged in law enforcement activities. The court noted however, that the 207(k) exemption still applies to law enforcement personnel when it stated: "Certainly these public employees must fall into one of the two categories created in 29 U.S.C. Section 207(k)." Id. at 266.

29 C.F.R. Section 553.230 delineates the overtime computation for law enforcement personnel under the 207(k) exemption. It states, in pertinent part:

- (b) For those employees engaged in law enforcement activities (including security personnel in correctional institutions) who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same

relationship to 171 as the number of
days in the work period bears to 28.

This figure is based on a 1975 computation compiled by the
Department of Labor pursuant to the court's direction in James v.
Donovan, 380 (25 W.H. Cases (BNA) (D.D.C. 1981)) aff'd per
curiam. These computations are still valid at this time.

CONCLUSION

In conclusion, pursuant to the Carlson case, MAST officers
are law enforcement officers for purposes of the 207(k)
exemption. MAST officers are entitled to premium overtime at the
rates outlined in 29 C.F.R. Section 553.230, a copy of which is
attached.

If you have any further questions, please give me a call.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:jrl:300(x043.2)

Attachment

cc Holly Reed-Falk

Penny Castleman

ML-93-111

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