STATE OF CALIFORNIA GRAY DAVIS, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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December 9, 2002

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Re: **Wage Requirements For Camp Counselors** (00258)

Dear Mr. Gerard:

I have been asked to respond to your letter regarding the above-referenced subject written to the Chief Counsel. Please excuse the delay in responding to this inquiry.

In your letter, you state that your client sponsors educational programs which include outdoor overnight camps in both forest and island settings. The camps range in duration from one to five days during which time the children participate in activities designed to educate them about the relationship between land and sea. Participants in the island camp travel by boat to the camp location.

Your client, according to the letter, also sponsors programs aboard both historic ships and modern vessels and it is during these programs on historic ships that your client's employees re-create for school children the maritime life in the appropriate historic period. Your letter also states that during the course of their duties, your client's employees supervise the children, direct educational activities, prepare meals and monitor the safety of the participants[1]. These historic ship programs involve an overnight stay on the ship and last approximately 18 hours. The employees arrive approximately 30 minutes before the program and may stay for approximately 15 minutes after the children leave.

In addition, according to your letter, your client also offers educational programs that last approximately 3 to 5 hours and cover topics such as oceanography and ichthyology. The client's

[1]We assume for purposes of this letter that the description in this paragraph applies to the programs on the historic ships, though it is not really clear.

employee's typically work two to three overnight programs and several day programs in a given week and their work schedules vary from week to week. You note that your client offers its programs year-round, though the overnight historical programs are primarily offered during the school year.

Initially, we wish to inform you that there is insufficient information regarding any employees of your client except those involved in the program you describe involving "historical ships". Even that program is not really adequately described; however, based on the information you do provide, we feel that we can answer some of the questions you pose regarding that particular program.

Your initial question is: "Is our client an 'organized camp'?" The question is asked in an effort to establish that the program you describe would allow your client to claim the exemption from minimum wage and overtime requirements under the provisions of Labor Code § 1182.4. As we explain in detail below, your description of your client's program would prevent us from finding that your client is an "organized camp" as that term is defined.

§ 1182.4. Organized camp employees.

(a) No student employee, camp counselor, or program counselor of an organized camp shall be subject to a minimum wage or maximum hour order of the commission if the student employee, camp counselor, or program counselor receives a weekly salary of at least 85 percent of the minimum wage for a 40-hour week, regardless of the number of hours per week the student employee, camp counselor, or program counselor might work at the organized camp. If the student employee, camp counselor, or program counselor works less than 40 hours per week, the student employee, camp counselor, or program counselor shall be paid at least 85 percent of the minimum hourly wage for each hour worked.
(b) An organized camp may deduct the value of meals and lodging from the salary of a student employee, camp counselor, or program counselor pursuant to appropriate orders of the commission.
(c) As used in this section, "organized camp" means an organized camp, as defined in Section 18897 of the Health and Safety Code, which meets the standards of the American Camping Association.

You conclude that Labor Code §1182.4 does not require that a qualifying organized camp must meet the definition set forth in Health & Safety Code Section 11897 and the standards of the American Camping Association ("ACA"). You state that this conclusion is supported by the fact that section 11897 does not mention the ACA. While that observation is without doubt true, we don't see how it has any bearing on the question of whether, in order to meet the exemption from the overtime and minimum wage

requirements of the California law, the organization must meet the definition of "organized camp" as set out at Labor Code Section 1182.4(c):

> "As used in this section, 'organized camp' means an organized camp, as defined in Section 18897 of the Health and Safety Code, which meets the standards of the American Camping Association."

As you can see, the sentence is compound. The language is unambiguous. Not only must the camp be "organized", it must also meet the definition of "organized camp" set out in Health & Safety Code § 18897 and it must meet the standards of the American Camping Association. We must, therefore, disagree with your conclusion.

The California Legislature has chosen to use the criteria adopted by the American Camping Association:

> "The main purpose of the ACA-accreditation program is to educate camp owners and directors in the administration of key aspects of camp operation, particularly those related to program quality and the health and safety of campers and staff. The standards establish guidelines for needed policies, procedures, and practices." (ACA On-line Information)

The American Camping Association is a community of camp professionals who, for nearly 100 years, have joined together to share knowledge and experience and to ensure the quality of camp programs. Obviously, the California Legislature felt that by utilizing the experience of this organization it was ensuring that the exemption from minimum wage and overtime requirements were only granted to groups which met the industry standards. It is reasonable for the Legislature to expect that such certification would insure that both the public - whose children attend the programs - and the affected employees were protected.

The Legislature has adopted the standards promulgated by the ACA which cover such areas as:

- Site and Food Service
- Transportation
- Health and Wellness
- Operational and Management
- Human Resources, and
- Program Standards.

You present no evidence to support your suggestion that "church-sponsored camps...may not be able to afford [the accreditation process]." Additionally, you present no evidence that your client is unable to afford the accreditation process or that your client is a "church-sponsored" organization. Indeed, there is no evidence that accreditation is either "time-consuming" or "expensive" as you state. In addition, you fail to point out how the fact that a program is either "church-sponsored" or the sponsor is unable to afford accreditation would impact on the question of whether the

program would have to meet the standards set out in the Labor Code.

We note that the ACA (and, incidentally, the provisions of Health & Safety Code § 18897(a)) provide that the program must be "at least 5 consecutive days in length or five days in not more than 14 days." This would be one of the criteria that would have to be met in order to qualify for the exemption.

It is clear from a reading of the statute that the Legislature has determined that the standards of the American Camping Association is the criterion to be used to determine eligibility for the exemption from the minimum wage and overtime obligation of the law. It is not possible for this agency to determine whether your client meets the standards of the American Camping Association without a full investigation by officers of this Division or through the accreditation process available.

We conclude, therefore, that absent (1) accreditation by the ACA; (2) a statement by that organization that your client's programs meet the standards of the ACA, or (3) an independent finding by officers of the DLSE that your client's programs meet those standards, the workers cannot be exempt, pursuant to the provisions of Labor Code § 1182.4, from the minimum wage and overtime requirements of the California law.

Question numbered 3 in your letter is one of general interest and we will answer that inquiry without implying that the answer applies to your client's employees. You ask whether Labor Code § 1182.4 requires that affected employees be paid on a salary basis in order to qualify for the minimum wage and overtime exemption. You indicate that in your opinion the first sentence of subdivision (a) is contradicted by the second sentence. The DLSE interprets the language as follows:

> The first sentence states that the exemption from both the minimum wage and overtime requirements applies if the employee receives a weekly salary of at least 85 percent of the minimum wage based on a 40-hour workweek. Currently, that would mean that if the affected employee received a salary of $229.50 per week, the employer would be exempt from any further minimum wage or overtime obligation to that employee. The second sentence simply requires that in the event the employee works less than 40 hours per week, the employer may meet the minimum wage obligation by paying the employee at least 85% of the established minimum wage ($5.74 per hour) for each hour worked. However, if the employer chooses to pay an employee of an organized camp (other than camp counselor[2]) only for the hours actually worked (as opposed to a salary payment covering all

[2]Organized camp counselors may be subject to the 54-hour rule before overtime would be owed. See IWC Order 5, Section 3(E).

> work in the workweek) all work must be paid at no less than the minimum wage for all regular (non-overtime) hours and any work in excess of eight hours in a workday must be paid at the applicable premium rate. This answers your fourth question as well.

In answer to your question numbered 5, we are not familiar with the document you present. The term "organized camp" is already defined in the statute and we see no reason to redefine the term. As to the term "work time" which the document defines, we don't know what this term refers to. The term "work time" is not used in Labor Code Section 1182.4 nor is it used in the IWC Orders. What is even more confusing is that the document, as you note, purports to concern the "Application of The Provisions of IWC Order 5", yet those Orders have never used the terms "program counselor" or "student worker". Thus, we are not able to respond to your question numbered 5.

Question 6 in your letter refers to the language found in IWC Order 5, Subsection 3(E) and asks whether employees covered by that language ("camp counselors") who work more than 54 hours in a workweek in non-emergency situations are to be paid any differently than those who work over 54 hours in emergency[3] situations as allowed in the IWC Order. Subsection 3(E) provides:

> "This section does not apply to organized camp counselors who are not employed more than 54 hours and not more than six (6) days in any workweek except under the conditions set forth below."

Clearly, unless the camp counselor's employment meets the 54-hour rule or the "emergency" exception, the overtime provisions of Section 3 do apply. It is the position of the DLSE that in the event an organized camp counselor is employed more than 54 hours in a workweek and the actual hours worked in excess of 54 are not themselves directly attributable to the emergency situation, the counselor must be paid the applicable premium pay for all hours in excess of eight in any one day or forty in any one workweek.

Question numbered 7 in your letter asks: "Must camp counselors be paid for sleep time or meal time under Labor Code section 1182.4 or IWC 5-2001?"

As you know, the IWC Orders contain a definition of "Hours Worked" which, for most purposes, includes "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether

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[3]The term "emergency" is defined at Section 2(D) of the Order to mean "an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action."

or not required to do so[4]."

It is the position of the DLSE that inasmuch as the Legislature was familiar with the definition of "hours worked" which had been adopted by the IWC as early as 1947, we must assume that the definition must be incorporated into and used in defining the provisions of Labor Code § 1182.4.

As to the unique provisions of the IWC Order 5, absent a finding that the employees are required to "reside" on the premises of the employer, all time subject to the control of the employer is compensable.

DLSE has historically broadly interpreted the term "hours worked". "Under California law it is only necessary that the worker be subject to the 'control of the employer' in order to be entitled to compensation." (DLSE Opinion Letters 1993.02.03, 1993.03.31, 1994.02.03) The California Supreme Court, in the case of *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 584, stated "[T]his DLSE interpretation is consistent with our independent analysis of hours worked."

We can discern no exception from the definition[5] of "hours worked" for those hours when the organized camp counselors are required by the employer to remain on the premises, nor do we see any exception for meal or sleep time[6] while the employee is required to remain on the premises. It certainly seems clear that any such exceptions, if they had been anticipated by the IWC, would have been addressed in the specific language covering camp counselors. We are also unfamiliar with the difference between "direct" and "indirect" supervision of the children[7]. Your letter appears to state that while the camp counselors are eating and sleeping they are exercising only "indirect" supervision of the children. We can find no language in the law which would differentiate or, in fact, any language which even mentions "indirect".

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[4]Order 5 provides some differences in cases of employees required to reside on the premises of the employer. That is not the case in the facts you present.

[5]For instance, in Orders 4 and 5, the definition of "hours worked" for employees in the "health care industry" was limited to the definition used in connection with the FLSA, allowing those employers to require those workers to remain on the premises during meal periods. (See 29 C.F.R. § 785.19(b).)

[6]Here, again, the IWC has allowed, under certain circumstances, ambulance drivers and attendants to enter into written agreements with their employers whereby uninterrupted sleep time and meal time may be excluded from the "hours worked" in the day.

[7]The document you ask us to refer to also speaks of "direct" supervision, leaving the reader to conclude that there may be "indirect" supervision; however, this agency knows of no definition of those terms in relation to this issue.

We regret that we cannot be of more assistance to you. As you can see, however, we are unable to agree with many of your conclusions.

Yours truly,

H. Thomas Cadell Jr.

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