

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION
455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102
(415) 703-4150

1992-10.02



H. THOMAS CADELL, JR., Chief Counsel

October 2, 1992

RECEIVED

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Richard J. Simmons, Esq.
Musick, Peeler & Garrett
One Wilshire Blvd.
Los Angeles, CA 90017-3321

State of California
Bureau of Field Enforcement
EUREKA

Re: Provisions of Section 3(C) of Order 5-89

Dear Mr. Simmons:

I am in receipt of a copy of a letter directed to Jose Millan, Senior Deputy Labor Commissioner, regarding the interpretation of the provisions of Section 3(C) of Wage Order 5-89.

Your letter, I fear, may give the impression to those who are not privy to all of the correspondence and discussions that this Division or some of its officers may agree with the interpretation that you put on the language contained in Section 3(C). It is my understanding that you have been fully apprised of the position of the DLSE in regard to this issue.

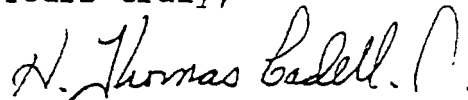
The DLSE does not interpret the language which provides for an overtime exemption during the 14-day work periods to be an adaptation of the FLSA but that the IWC language is different from that of the federal law. The obvious difference is that the language of the IWC Orders requires that the agreement be "voluntarily arrived at" while 29 U.S.C. §207(j) does not make such a requirement.

As you know, exceptions to remedial legislation are to be narrowly construed. Still another common rule of statutory construction requires that meaning be given to each word used by the Legislature. Putting just those two rules of construction to work can lead to no other conclusion that that reach by the DLSE: The employee must agree to the 14-day schedule and such schedule may not be a condition of employment.

What Mr. Cusanovich may have thought the legislation meant is interesting from an historical perspective; but it is not relevant to the question of the result of the plain meaning of the language as it was chaptered.

I note that Mr. Tom Luevano of the California Hospital Assn. has been copied on the letter of September 8th. I hope you will see to it that Mr. Luevano is given a copy of this letter so that there can be no confusion regarding the position of the Division in this matter.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. Jose Millan

Kurt Barthel
✓ John Chiolero
Eureka file